

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

**Amending the Moraga Municipal Code)
Title 12, Chapter 12.10 - Trees, Shrubs,)
Hedges and Other Landscaping in the)
Public Right-of-Way, Sections)
12.10.020, 12.10.030 and 12.10.040)
(CEQA Status: Exempt under CEQA)
Guidelines Section 15061(b)(3)))**

ORDINANCE NO. 301

WHEREAS, the Town of Moraga does not maintain sidewalks, pathways, curbs, gutters, hedges, trees, shrubs, and other landscaping and improvements in the sidewalk area from the roadway edge to the private property line, which is considered to be part of the Public Right-of-Way (ROW); and

WHEREAS, this policy is consistent with other local jurisdictions, including Contra Costa County and the Cities of Lafayette and Orinda; and

WHEREAS, in some cases, private property owners do not understand their maintenance responsibilities and obligations related to sidewalks, pathways, curbs, gutters, trees, shrubs, hedges, and other improvements and landscaping located within the ROW, which can lead to unanticipated costs for the property owners and unrealistic expectations of Town services; and

WHEREAS, the Town may, pursuant to its police power under California Constitution Article XI, § 7, make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, pursuant to Government Code section 39502, local agencies may by Ordinance identify weeds to be a nuisance, and the city could require and provide for the removal of grass, weeds, or other obstructions from the sidewalks, parking, or streets and make the cost of removal a lien upon the abutting property; and

WHEREAS, trees, shrubs, hedges, and other landscaping maintenance near or within the ROW are fire accelerants and, if not maintained properly, can become a threat to health and safety; and

WHEREAS, the Moraga-Orinda Fire District has requested that the Town clarify the responsibility of the fronting property owners to maintain trees, shrubs, hedges, and other landscaping maintenance within the ROW of the Town of Moraga; and

WHEREAS, trees, shrubs, hedges, and other landscaping maintenance located in the ROW must be maintained to preserve and protect public safety and convenience; and

WHEREAS, on September 28, 2022, the Town Council held a duly noticed public hearing, took testimony on, and considered the proposed amendments. At the close of the public hearing, the Council introduced the Ordinance.

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

SECTION 1. The Town Council finds that the proposed amendments are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) in that they do not constitute a "project" as defined by CEQA since they do not have the potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment.

SECTION 2. The Town Council hereby deletes and replaces Sections 12.10.020 Definitions, Section 12.10.030 Tree Maintenance in the Public Right-of-Way, and Section 12.10.040 Shrubs, Hedges and other Landscaping Maintenance of Chapter 12.10, "Trees, Shrubs, Hedges and other Landscaping in the Public Right-of-Way" within Title 12, "Streets, Sidewalks and Public Places" of the Moraga Municipal Code in their entirety with the following:

"Chapter 12.10 – Trees, Shrubs, Hedges and other Landscaping In the Public Right-of-Way

12.10.020 – Definitions.

For purposes of this Chapter, the following definitions shall apply:

"Abutting Property Owner" means the owner of a parcel of real property which abuts any portion of a sidewalk area between the property line of the parcel and the street line, including a parking strip and curb.

"Public Right-of-Way" means the area in, upon, above, beneath, or across any land or interest which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to the use of the general public for travel, and includes any public street, road, highway, freeway, bridge, lane, court, alley, boulevard, sidewalk, median, parkway, or emergency vehicle easement.

"Sidewalk Area" means the area between the property line of the parcel and the street line, which may include landscaping, such as shrubs, bushes and trees, mailboxes and other items, and improvements, such as a sidewalk, pathway, parking strip, curb and gutter.

12.10.030 – Tree Maintenance in the Public Right-of-Way.

Each tree in the Public Right-of-Way shall be maintained by the Abutting Property Owner in a neat, healthy, and safe condition. No encroachment will be permitted or maintained which interferes with, impedes, obstructs, or denies pedestrian or other lawful travel within the limits of the Public Right-of-Way of a public highway or impairs adequate sight distance for safe pedestrian or vehicular traffic.

2.10.040 – Shrubs, Hedges, and other Landscaping Maintenance.

Each shrub, hedge, or other landscaping in the Public Right-of-Way shall be maintained by the Abutting Property Owner in a neat, healthy, and safe condition. No hedge, shrub, or other plantings whatsoever or fence or similar structure shall be maintained by the Abutting Property Owner across any existing walkway in a sidewalk area or shoulder. The intent of this restriction is to keep a walkway free for pedestrian or other lawful public travel, including interference with vehicular travel. No encroachment will be permitted or maintained which interferes with, impedes, obstructs, or denies pedestrian or other lawful travel within the limits of the Public Right-of-Way of a public highway or impairs adequate sight distance for safe pedestrian or vehicular traffic."

SECTION 3. Effective Date. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

SECTION 4. This Ordinance shall be published and posted according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

SECTION 5. Severability. If any provision of the Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance, which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga, California, held on September 28, 2022, and was adopted and ordered published at a regular meeting of the Town Council held on October 12, 2022 by the following vote:

AYES: Mayor Woehleke, Vice Mayor Sos, Councilmembers McCluer and Onoda
NOES: None
ABSTAIN: None
ABSENT: Councilmember Makker

AFFIRMED:

Steve Woehleke, Mayor

ATTEST:

Marty C. McInturf, Town Clerk