

ORDINANCE NO. 1450

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ APPROVING A MUNICIPAL CODE AMENDMENT AND ZONING TEXT AMENDMENT TO AMEND THE MARTINEZ MUNICIPAL CODE BY: 1) MERGING MARTINEZ MUNICIPAL CODE CHAPTER 8.08 (TREES AND SHRUBS – PLANTING AND MAINTENANCE) AND 8.12 (TREES ON PRIVATE PROPERTY – PRESERVATION, PROTECTION AND REMOVAL), AMENDING THE DEFINITION OF PROTECTED TREE, ESTABLISHING A TREE REPLACEMENT RATIO, ESTABLISHING A LIST OF RECOMMENDED AND DISCOURAGED TREES, AND ESTABLISHING A TREE REPLACEMENT IN-LIEU FEE ; 2) AMENDING CHAPTER 22.04 (DEFINITIONS) AND CHAPTER 22.12 (RESIDENTIAL DISTRICTS) TO REVISE AND ESTABLISH NEW DEFINITIONS FOR APIARY, CHICKEN, AND COOP; AND 3) ADDING CHAPTER 22.58 (SMALL ANIMALS) TO ESTABLISH STANDARDS AND BEST PRACTICES FOR BEES AND CHICKENS PLANNING APPLICATION NO. 23PLN-0056

WHEREAS, the City of Martinez proposes a Municipal Code Amendment and Zoning Text Amendment to update the Martinez Municipal Code (“MMC”) regarding the keeping of small animals, such as chickens and bees, and tree protection; and

WHEREAS, the City seeks to maintain best practices for the keeping of small animals and the protection of trees within the City; and

WHEREAS, the City has received multiple requests from residents for clarity regarding the permissibility of maintaining apiaries in residential areas, and for clarity regarding the limitations on the keeping of chickens in residential areas; and

WHEREAS, City staff has determined that chickens and bees fall under the category of “Small Animal Farming” and “Agriculture – Large Scale”, a practice that is allowed in Agricultural Districts, the Alhambra Valley Districts and in Residential Districts (except for the R-1.5, R-2.5 and R-3.5 districts) on parcels that are 20,000 square feet or greater; and

WHEREAS, the City proposes Zoning Text Amendments to establish zoning regulations for small animals, including bees and chickens; and

WHEREAS, the City also seeks to update regulations related to tree protection to ensure the protection and conservation of specific trees within the City, based on best practices, as recommended by local arborists and the Arbor Day Foundation; and

WHEREAS, the Planning Commission held a public hearing on the proposed Zoning Text Amendments on November 14, 2023, during which all interested persons were heard, and adopted Planning Commission Resolution No. 23-16 recommending City Council adoption of the proposed Zoning Text Amendments; and

WHEREAS, the City Council held a public hearing on the proposed Zoning Text Amendments on December 6, 2023, at which time all interested parties had the opportunity to be heard; and

WHEREAS, proper notice of said hearing was given in all respects as required by law; and

WHEREAS, the City Council did hear and consider all said reports, recommendations, and testimony herein above set forth and used its independent judgement to evaluate the project.

NOW THEREFORE, the City Council of the City of Martinez does hereby ordain as follows:

SECTION I:

Pursuant to MMC Section 22.46.020, the City Council hereby finds that the Municipal Code Amendment and Zoning Text Amendments are consistent with the General Plan 2035 and all applicable Specific Plans in that they are consistent with applicable land use regulations and development policies.

SECTION II:

The California Environmental Quality Act ("CEQA"), together with State Guidelines require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. Pursuant to the CEQA, the City Council hereby finds the project categorically exempt from the requirements of CEQA pursuant to Section 15305 and Section 15061(b)(3) of the CEQA Guidelines, which exempts adoption of an ordinance entailing minor alterations in land use limitations and under the common-sense exemption as there is no possibility that the ordinance in question will have a significant effect on the environment.

SECTION III:

Chapter 8.08 (Trees and Shrubs – Planting and Maintenance) and Chapter 8.12 (Trees on Private Property – Preservation, Protection, and Removal) of Title 8 (Health and Safety) of the MMC are hereby proposed to be merged. MMC Chapter 8.12 is hereby repealed in its entirety.

SECTION IV:

Title 8 (Health and Safety) Chapter 8.08 of the MMC is hereby amended to read as follows:

CHAPTER 8.08 PROTECTED TREES

8.08.010 Purpose.

The purpose of this Chapter is to promote health, safety, and general welfare by providing for the regulation of planting, maintenance, and removal of protected trees within the City, and for the planting of trees throughout the City.

8.08.020 Street Tree Planting Plan.

The Public Works Department shall maintain a street tree planting plan for City streets. The plan shall provide a list of recommended tree species. The street tree planting plan may be amended with approval by the Public Works Director or designee.

8.08.030 Definitions.

"Certified Arborist" means someone who has successfully completed the requirements set by the Arborist Certification Board of the International Society of Arboriculture.

"Development" means any changes to private property which requires the issuance of a permit from the City which permit is subject the requirements of Title 15 (Buildings and Construction), Title 21 (Subdivision) and/or Title 22 (Zoning).

"Development Application" means an application for development requiring either ministerial or discretionary approvals including Design Review, Conditional Use Permits, Variances or Exceptions, Subdivisions, Planned Unit Developments, Amendments, building permits, and/or grading permits.

"Person" means any individual, agency, corporation, entity, or organization.

"Pruning Standards" means standards of pruning for certified arborists. Proper pruning is performed in a manner intended to achieve a specific goal while minimizing the negative effects on the tree. Excessive or improper pruning is that which employs techniques that result in negative physiological or structural impacts on the tree. Excessive and improper pruning includes topping or removing 25-percent or more, of the functioning leaf, stem, or root area.

"Routine Pruning" means the removal of dead or dying, diseased, weak, or objectionable branches of a tree in a scientific manner.

"Street Tree" means any tree located in a City street right-of-way.

"Tree" means a large woody perennial plant with one or more trunks, branches, and leaves, not including shrubs shaped to tree forms.

"Tree Maintenance" means regular pruning, fertilization, irrigation, and normal garden management practices necessary for plant growth.

"Tree Permit" means written authorization issued by the Community and Economic Development Director or designee to cut down, destroy, trim by topping, or remove a protected tree.

"Tree Removal" means the destruction of any tree by cutting, regrading, girdling, interfering with water supply, applying chemicals, or by other means.

"Topping" means the removal of the upper 25 percent or more of a tree's trunk(s) or primary leader.

"Undeveloped Property" means:

1. A parcel of private land which is vacant or a developed parcel which has remaining development potential;
2. A parcel of land which can be further divided in accordance with zoning regulations of the City;
3. A parcel of land on which the structures are proposed to be demolished or relocated.

8.08.040 Encroachment Permit.

No person shall remove, set out, or plant any street tree without first obtaining an encroachment permit from the Public Works Department. The Public Works Department shall review and approve the tree removal and/or proposed species, size, and location of proposed street trees.

8.08.044 Tree Permit Required.

- A. No person shall trench, grade, or fill within the dripline of any protected tree (as defined below) or cut down, destroy, trim by topping, or remove any protected tree on private property within the City without a Tree Permit, except as provided by this Chapter. A protected tree is one of the following:
1. On all properties within the City:
 - a. All oak trees and indigenous trees measuring 12 inches or more in diameter, measured 4 ½ feet from grade. Oak trees include but are not limited to: *Quercus agrifolia* (California or Coast Live Oak), *Quercus douglasi* (Blue Oak), *Quercus kelloggii* (California Black Oak), or *Quercus lobata* (Valley Oak). Indigenous trees include but are not limited to: *Sequoia Sempervirens* (Coast Redwood), *Alnus Rhombifolia* (White Alder), *Alnus Oregona* (Red Alder), *Acer Macrophyllum* (Bigleaf Maple), *Aesculus Californica* (California Buckeye), *Arbutus Menziesii* (Madrone), *Umbellularia Californica* (California Bay or Laurel), *Juglans Hindsii* (California Black Walnut), or *Platanus Racemosa* (California Sycamore).
 - b. Any tree shown to be preserved on an approved tentative map or development plan or required to be retained as a condition of approval.
 - c. Any tree required to be planted as a replacement for an unlawfully removed tree.
 - d. Any tree within the public right-of-way or private access easement.
 - e. Any tree within the Downtown Specific Plan area.
 2. On any of the properties specified in Subsection 3 below:
 - a. Any tree measuring 24 inches or more in diameter, measured 4 ½ feet from grade.
 - b. Any multi-stemmed tree where the sum of the individual trunks measure 24 inches or more in diameter measured 4 ½ feet from grade.
 - c. Any significant grouping of trees, including groves of four or more trees.
 3. Specified properties referred to in Subsection 2 above includes:
 - a. Any developed property within any commercial, professional office, or industrial zoning district.
 - b. Any undeveloped property within any zoning district.
 - c. Any area designated on the General Plan for recreational purposes or open space.
 - d. Any area designated in the General Plan Open Space Element as visually significant riparian or skyline vegetation and where the tree is adjacent to or part of a riparian, foothill woodland, or oak savanna area, or cultivated orchard (within the Open Space Element). Riparian trees include but are not limited to those listed as indigenous trees in Subsection A.1.a. above.

- B. Any person proposing to trench, grade, or fill within the dripline of any protected tree or cut down, destroy, trim by topping, or remove any protected tree located on private property shall apply to the Planning Division for a Tree Permit.
- C. The Tree Permit application shall be filed with the Planning Division, on a form established by the City, along with the application fee established by resolution. The Tree Permit application shall include the following information:
 - 1. The number, size (including height and diameter measured 4 ½ feet above grade), species, location, dripline, and condition of each tree proposed to be altered or removed;
 - 2. The reason(s) for proposed alteration or removal;
 - 3. A site plan showing the approximate location of all trees on the site, including those proposed to remain;
 - 4. Proposed method of tree alteration or removal;
 - 5. Information indicating the effect of tree alteration or removal on soil stability and erosion if located on a steep slope or near any creek;
 - 6. The signature of the property owner or if the permit is requested by someone other than the owner, a written authorization from the owner.
 - 7. Additional information as may be required by the City upon review of the above information.

8.08.045 Review of Tree Permit Application.

- A. Prior to making a decision, a representative of the Planning Division may make a site inspection and shall review the Tree Permit application using the criteria in Subsection C below.
- B. If the reasons for alteration or removal relate to the health of the tree, or if grading, trenching, or filling is proposed under the dripline of an existing tree and the Planning Division determines that more technical expertise is necessary to make the decision, a report prepared by an arborist may be required, to be paid for by the applicant.
- C. In granting or denying the Tree Permit, the following factors shall be considered:
 - 1. General.
 - a. The proximity and number of other trees in the vicinity; and
 - b. The relationship of the subject property to open space or open space plans and policies.
 - 2. Approval.
 - a. The arborist report indicates that the tree is in poor health and cannot be saved;
 - b. The tree is a public nuisance and is causing damage to public utilities or streets and sidewalks that cannot be mitigated by some other means (such as root barriers);
 - c. The tree is in danger of falling and cannot be saved by some other means (such as pruning);

- d. The tree is damaging existing private improvements on the lot, such as a building foundation, walls, patios, decks, roofs, and retaining walls;
- e. The tree is a species known to be highly combustible and is determined to be a fire hazard;
- f. The proposed tree species or the form of the tree does not merit saving (such as a tree stunted in growth or poorly formed);
- g. Reasonable development of the property would require the alteration or removal of the tree and this development could not be reasonably accommodated on another area of the lot.

3. Denial.

- a. The applicant seeks permission for the alteration or removal of a healthy tree that can be avoided by reasonable redesign of the site plan prior to project approval (for non-discretionary permits);
- b. It is reasonably likely that alteration or removal of the tree will cause problems with drainage, erosion control, land stability, windscreen, visual screening, and/or privacy and said problems cannot be mitigated as part of the proposed removal of the tree.
- c. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival.
- d. The value of the tree to the neighborhood in terms of visual effect, wind screening, privacy and neighboring vegetation is greater than the hardship to the owner.
- e. If the permit involves trenching or grading and there are other reasonable alternatives including an alternate route, use of retaining walls, use of pier and grade beam foundations and/or relocating site improvements.

D. Tree Permit Decision.

- 1. The Community and Economic Development Director or designee shall grant or deny Tree Permits in accordance with this Chapter. If a permit is granted, the Director or designee may impose conditions to ensure compliance with this Chapter. These conditions may include a requirement to replace any or all trees on a comparable ratio of either size or quantity, as outlined in Section 8.08.047. Tree Permits shall be valid for up to one year and may be renewed by the Director or designee upon request by the applicant.
- 2. If a permit is denied, the Director or designee shall state the reason for denial.
- 3. Notice of decision shall be provided in writing to the applicant.

E. Appeals.

- 1. Any person may appeal the Director's or designee's decision to the City Council within ten days after the decision has been given or sent to the applicant. An appeal shall be set forth on a form provided by the City Clerk or designee.
- 2. Appeals shall be made in writing and state the specific reasons why the decision does not meet the criteria for granting or denial of a permit as stated in this Chapter.

8.08.046 Tree Protection.

A. Tree Protection Required. On all properties where trees are required to be saved during the course of development, the developer shall follow the following tree preservation standards:

1. Prior to the start of any clearing, stockpiling, trenching, grading, compaction, paving or change in ground elevation on a site with trees to be preserved, the applicant shall install fencing at the drip line or other area as determined by an arborist report of all trees adjacent to or in the area to be altered. Prior to grading or issuance of any permits the fences shall be inspected and the location thereof approved by City staff.
2. No grading, compaction, stockpiling, trenching, paving or change in ground elevation shall be permitted within the drip line unless indicated on the grading plans approved by the City and addressed in a report prepared by a licensed arborist. If grading or construction is approved within the dripline, the arborist may be required to be present during grading operations. The arborist shall have the authority to require protective measures to protect the roots and to stop construction if necessary to protect the trees. Upon completion of grading and construction, the arborist shall prepare a report outlining further methods required for tree protection if any are required.
3. No parking or storing vehicles, equipment, machinery or construction materials, construction trailers and no dumping of oils or chemicals shall be permitted within the drip line of any tree to be saved.

B. Deposit.

Prior to the issuance of any grading or building permit for a property where trees are required to be saved, the owner or developer may be required to deposit cash or other acceptable security with the City on a per tree basis in an amount determined by City Council resolution. The City shall hold the deposit for a two-year period to guarantee the health of the trees for a two-year period upon completion of construction. In addition, the applicant or developer may be required to enter into a tree maintenance agreement secured by said deposit/bond by which they shall agree to maintain said trees in a living and viable condition throughout the term of the agreement. This agreement may be transferred to any new owner of the property for the remaining length of the agreement.

C. Replacement.

The property owner or developer shall notify the Community and Economic Development Department of any damage that occurs to any tree during the construction process. The owner or developer shall repair any damage as determined by an arborist.

Any tree not approved for destruction or removal that dies or is significantly damaged as a result of construction or grading shall be replaced with a tree or trees of equivalent size and of a species approved by the Community and Economic Development Director or designee. If it is not possible or feasible to replace the tree, the Community and Economic Development

Director may accept the equivalent monetary value as determined by the City to be used for other related improvements such as replacement or addition of street trees in the area.

D. Stop Work / Development Moratorium for Intentional Harm to Protected Tree.

1. If any protected tree is damaged or destroyed during the course of construction, the City may stop further work on the project until measures to replace the tree or mitigate the damage have occurred.
2. No building or construction-related permits shall be issued, and no permits or use of the property shall be allowed for two years from the date of the intentional unpermitted damage, destruction, or removal of a protected tree. A development moratorium is an additional remedy to the Public Works Director, Community and Economic Development Director, or designee(s) in addition to any other penalties for unpermitted damage, destruction, or removal of a protected tree.

8.08.047 Protected Tree Replacement.

A. Protected Tree Replacement. When the removal or destruction of a protected tree is permitted, the applicant shall comply with the following replacement requirements or an alternative replacement ratio approved by the Public Works Director, Community and Economic Development Director, or designees:

1. One 15-gallon tree for each street tree;
2. One 15-gallon tree for each tree 24 inches in diameter or less;
3. Two 15-gallon trees for each tree greater than 24 inches in diameter.

B. Replacement Tree Species. Replacement tree species, except for street trees, are subject to approval of the Community and Economic Development Director or designee and shall be a species identified in the Tree List, on file with the Community and Economic Development Department. Prohibited replacement trees include trees that may pose a fire safety hazard, are invasive, or may otherwise pose a health impact on protected trees, including, but not limited to:

1. *Pyrus calleryana* (Bradford Pear)
2. *Sequoia sempervirens* (Coast redwood)
3. *Eucalyptus globulus* (Eucalyptus)
4. *Pyrus kawakamii* (Evergreen Pear)
5. *Ginkgo biloba* (female) (Mainerhair tree)
6. *Juniperus communis* L. (Juniper)
7. *Liquidambar styraciflua* (Liquidambar/Sweetgum)
8. *Pinus radiata* (Monterey Pine)
9. *Acer platanoides* (Norway maple)
10. *Populus* (Poplar)
11. *Ailanthus altissima* (Tree of Heaven)
12. Other species as determined by the Community and Economic Development Director or designee

- C. Tree Replacement Payment. If the property cannot accommodate a replacement tree, as a condition of the permit, the applicant shall make an in-lieu payment of an amount set by resolution by the City Council for each 15-gallon replacement tree. The in-lieu payment shall be used by the city for a tree education and planting program.

8.08.048 Exceptions.

A Tree Permit is not required for the following situations:

1. Any tree whose condition creates a hazardous situation which requires immediate action as determined by the Community and Development Director, Public Works Director, Police Department, Fire District, or designee(s).
2. Any tree whose removal was specifically approved as a part of an approved development plan, subdivision, or other discretionary project.

8.08.049 Property Proposed for Development.

- A. On any property proposed for development approval, tree alterations or removal shall be considered as a part of the project application.
- B. All trees proposed to be removed, altered, or otherwise affected by construction shall be clearly indicated on all grading and development plans. A tree survey shall be required as a part of the project application indicating the number, size, species and location of the dripline of all trees on the property. This survey shall be overlaid on the proposed grading and development plans. The plan shall include a tabulation of all trees proposed for removal.
- C. The granting or denial of a Tree Permit which is a part of a development proposal covered by this Chapter shall be governed by Section 8.08.045.C.3. A separate Tree Permit shall not be required.
- D. Any tree alteration or removal in violation of this Section may result in a development moratorium, pursuant to Section 8.08.046.D.2.

8.08.050 Street Tree Planting Standards.

- A. The street tree shall be planted normally at 40-foot intervals or alternative distance approved by the Public Works Director or designee.
- B. The street tree trunk at maturity shall not be within 1 ½ feet of public sidewalk, except in existing parkway areas as approved by the Public Works Department.
- C. The street tree roots shall not be within 10 feet of any sewer or water line, or gas line.
- D. The street tree trunk at maturity shall not be within five feet of a driveway, street corner, fire hydrant, or utility pole.
- E. A newly planted street tree shall be of the following minimum size: a diameter of one inch measured 4 feet, 6 inches above the grade and which has a maximum height of 8 feet or 15-gallon size.

8.08.070 Street Tree Removal.

A street tree not otherwise regulated may be removed with a permit, provided the tree is replaced in compliance with all provisions of this Section. All street trees removed shall be at the expense of the adjacent permit applicant.

8.08.080 Street Tree Installation Obligation.

All street trees installed pursuant to a request by the applicant pursuant to the provisions of this Chapter shall be at the expense of the applicant.

8.08.090 Street Tree Maintenance Obligation.

- A. Maintenance Duties. Street trees provide a benefit to the adjacent property owner(s) whose property fronts the area. Property owners whose property is adjacent to and fronts the area containing the street tree shall be responsible for all street tree maintenance. All maintenance shall conform to International Society of Arboriculture or National Arborist Association Standards.
- B. Scope of Duty. It shall be a public nuisance for property owners or persons in possession of street trees to permit branches of street trees to restrict access or impede the public use of adjacent sidewalks or streets, or prevent access of City street sweepers to clean the street.
In the event of such public nuisance, the responsible person shall receive a written notice of such nuisance directing that the tree shall be pruned appropriately within 10 days from receipt of notice. The City at its option may prune the tree, in the event the responsible person has not complied with the notice of public nuisance, at the cost of the responsible person.
- C. Sidewalk Damage. The property owner or person in possession of street trees responsible for maintenance of street trees shall also be responsible for sidewalk damage caused by street trees and shall be required to repair the sidewalk pursuant to Streets and Highways Code Sections 5601, et seq.

8.08.091 Abuse or Mutilation of Protected Trees.

- A. Topping of Protected Trees. This practice will only be permitted when a property owner has a copy of a Certified Arborist report attached to an approval permit.
- B. No person may:
 - 1. Abuse, mutilate or destroy street trees.
 - 2. Attach or place a rope or twine (other than a rope or twine typically used to support a young or broken tree) sign, poster, handbill, paint or other substance, structure, or thing to or on a street tree.
 - 3. Allow a gaseous liquid or solid substance which is harmful come in contact with a street tree.

8.08.100 Moving Buildings.

No person, firm, or corporation shall move any building, house, or portion thereof without notifying the Public Works Director or designee at least three days in advance of such moving. The notice shall designate the route to be followed and all other details, pertinent to such work. The Public Works Director or designee shall have the authority to change such route and designate on which, in his opinion, will cause less damage to trees, shrubs, or plants owned by the City along and adjacent to the route. If necessary to protect such trees, shrubs, or plants, the Public Works Director or designee may require that the house, building, or portions thereof be cut into segments small enough to fit the available width between such trees, shrubs, or plants along the designated route. As a condition to approving any route for the moving of any building, house, or portion thereof, the Public Works Director or designee may require the person, firm, or corporation doing such work to enter into an agreement to pay all costs incurred for any labor, equipment, or materials used to protect or preserve such trees, shrubs or plants either before or after such moving.

8.08.101 Administration.

The Public Works Director or designee shall plan, administer, control, and regulate the street tree programs at the City in accordance with this Chapter. The Director or designee shall develop policies and procedures to implement this Chapter. The policies and procedures shall include an annual tree maintenance work plan and an inventory that defines community tree needs.

8.08.102 Authority of Public Works Director.

The Public Works Director or designee has the authority to maintain and care for street trees. The Director shall develop a program to encourage planting of approved street trees throughout the City. The Director has the authority to require that street trees be planted on all streets.

8.08.103 Open Ground for Trees.

No person may place or maintain a stone, cement, or other substance so that it impedes the full access of water or air to a street tree.

8.08.104 Penalty for Violation.**A. Misdemeanor.**

1. Violation of this Chapter constitutes a misdemeanor punishable as such.
2. Each tree damaged or removed in violation of this Chapter shall constitute a separate offense.

B. Joint and Several Liability. If two or more persons are responsible for any violation of the provisions of this Chapter, they shall be jointly and severally liable for the penalties and remedies set forth herein. In this connection, the person(s) who actually performs the removal, damage, or cutting of a tree in violation of this Chapter shall be liable for the penalties, punishment, and remedies specified in 8.08.104.A and C, irrespective of whether or not such conduct was authorized, directed, or permitted by any other person.

C. Restitution/Mitigation.

1. In addition to and not in lieu of the criminal penalties set forth in subsection A above, any person who damages or removes a tree or causes the damage or removal of a tree in violation of this Chapter shall be civilly liable to the City for (i) providing and planting a replacement tree of value equal to the tree so damaged or removed or (ii) a payment to the City of a monetary penalty equal to such value. Said value shall be determined by City Council resolution.
2. Any person who violates any provision of this Chapter is liable in a civil action brought by the City Attorney to collect the replacement fees as listed above.
3. Amounts recovered under this section shall be deposited into a fund which shall be used exclusively for the planting of trees in public places in the City and for tree related educational projects or programs.

D. Violation/City Approvals.

1. For as long as Section 8.08.104(C)(1) has not been complied with, the owner, owner's agent, or occupant of any property on which a violation of the provisions of this Chapter was committed shall be precluded from applying for any approval or permit issued by the City for the development or further improvement of such property. Prohibited approvals or permits shall include, but not be limited to, conditional use permits, tentative maps, variances, design review approvals, building permits, demolition permits, or grading permits. The provisions of this Chapter shall not apply to any approval or permit which is needed or required to maintain the health or safety of those occupying existing improvements on the property.
2. Before criminal or civil proceedings may be initiated against the suspected violator, or before the City may institute the application preclusion specified in Subsection D(1), above, a hearing shall be scheduled with the Zoning Administrator, on the alleged violation, giving the property owner notice thereof and a summary of the facts which indicated a violation has occurred. Said notice and hearing shall comply with any other procedural due process requirements that are determined to be applicable. Following the hearing at which the owner or any other interested party may present testimony and evidence, the Zoning Administrator shall determine whether a violation has occurred on the property. Notice of a violation and the restriction of development of the property shall be recorded in the office of the county recorder to implement the provisions of this section. If no violation of this Chapter is determined to have occurred or have been perpetrated by the persons notified of said proceedings, then no criminal or civil proceedings may be initiated against said persons under Section 8.08.104, and the City may not apply the application preclusion described in Section 8.08.104.D.1, above.

E. Liability for Costs.

1. Any person criminally or civilly liable hereunder shall further be liable for all costs incurred by the City in connection with the investigation and enforcement of the violation.

8.08.105 Civil Sanction.

In addition to paying the penalties for violation of this Chapter, a person who removes or destroys a tree in violation of this Chapter shall at the option of the City either:

- A. Replace the tree with one of a similar kind and size; or
- B. Compensate the City for the value of the tree(s). The value of the tree shall be based upon the opinion of an arborist.

8.08.106 Public Utilities.

When a tree interferes with and interrupts service of a public utility company providing gas, water, electricity, telephone, telegraph, or cable service within the City, the City may, without first obtaining a permit trim or remove branches of trees to the extent necessary to restore service.

SECTION V:

The definitions in Chapter 22.04 (Definitions) of Title 22 (Zoning) of the MMC are hereby amended to read as follows:

22.04.027 - Agriculture - Large Scale.

"Large scale agriculture" means general farming, wholesale horticulture, viticulture and floriculture, dairying, livestock production, fur farms, chicken raising, animal breeding, aviaries, apiaries, forestry, and similar agricultural uses.

22.04.050.5 – Apiary.

"Apiary" means the assembly of one or more colonies of honey bees at a single location.

22.04.091.5 – Chicken.

"Chicken" means any domesticated chicken excluding roosters, kept for the primary purpose of egg production, meat, or as a pet.

22.04.111.5 – Coop.

"Coop" means a roofed structure where chickens typically roost.

22.04.482 – Small Animal Farming.

"Small animal farming" means the raising of chickens, rabbits and other grain-fed rodents and birds.

SECTION VI:

Chapter 22.12 (Residential Districts) of Title 22 (Zoning) of the MMC are hereby amended to read as follows:

22.12.080 - Permitted Uses.

The following uses shall be permitted:

- F. Except for the R-1.5, R-2.5, and R-3.5 districts, the raising of small animals, subject to the provisions of Chapter 22.58 (Small Animals);

SECTION VII:

Title 22 (Zoning) of the MMC is hereby amended to add Chapter 22.58 (Small Animals) as follows:

CHAPTER 22.58 SMALL ANIMALS**22.58.010 Purpose**

The purpose of this Chapter is to maintain the semi-rural quality of Martinez and promote sustainability by allowing small farm animals, while protecting the health, safety, and general welfare of the community.

22.58.020 Apiary**A. Permitted Uses.**

1. Apiaries may occur on parcels within the Residential, Commercial, Industrial, and Agricultural zoning districts.
2. Apiaries shall be registered with the Contra Costa County Agricultural Commissioner.

B. Beekeeping Standards.

1. Quantity of Hives. The maximum number of beehives permitted on a given parcel is based on gross lot area and can be found in Table 22.58.020 below.

Table 22.58.020: Maximum Number of Beehives Allowed	
Gross Lot Area	Maximum Number of Beehives Permitted
Between 5,000 square feet and 10,000 square feet	4
Between 10,001 square feet and 20,000 square feet	6
Between 20,001 square feet and 40,000 square feet	8
Between 40,001 square feet and 200,000 square feet	10
Greater than 200,001 square feet	40

2. Nucleus. For each beehive kept on a lot in accordance with Table 22.58.020, one nucleus hive may also be kept on the lot.
3. Dimensions and Height. A beehive shall not exceed six square feet. Beehives may be stacked and/or placed on a stand provided the cumulative height does not exceed six feet.
4. Flyway Barrier. All properties on which honeybees are kept must have a flyaway barrier installed between the beehive and property line shared with adjacent residence. The flyway barrier shall be:
 - a. A minimum six feet high, consisting of a solid wall or fence or dense vegetation, and
 - b. A minimum of the same length as the beehive box(es)

C. Water Source. All properties on which honey bee colonies are kept must have adequate water sources on the property. Adequate sources of water provide both an amount of fresh water necessary for the amount of honey bees or honey bee colonies and a method for the honey bees to be able to gain a good footing to obtain the water.

D. Location.

1. Beehives shall be located in the rear or side yard of a parcel
2. Beehives shall be set back a minimum of twenty-five feet from public rights-of-way and private streets.
3. Buildings or structures housing beehives shall comply with the accessory structure setbacks of the applicable zoning district.
4. Beehives must be located closer to the primary residence or structure of the subject property than to any primary structure on adjacent parcels.

E. Exceptions.

1. In Agricultural zoning districts, one beehive for every 5,000 square feet of gross lot area is permitted, or the quantity of bee hives based on Table 22.58.020, whichever is greater.
2. In Commercial and Industrial zoning districts, the twenty-five foot setback is not required for rooftop beehives only.
3. The following conditional uses shall be permitted upon the granting of a conditional use permit in accord with the provisions of Chapter 22.40 of this Title:
 - a. Quantity of beehives per parcel.
 - b. Location of beehives.
4. An application seeking an exception from this Chapter may be filed using the form provided by the Planning Division, along with the required fee.

22.58.030 – Chickens.

A. Standards.

1. The keeping of chickens is only permitted in Residential and Agricultural zoning districts.
2. Chickens or eggs shall not be sold for commercial purposes in Residential zoning districts.
3. The maximum number of chickens permitted on a given parcel is based on gross lot area and can be found in the Table 22.58.030 below.

Table 22.58.030: Maximum Number of Chickens Allowed	
Gross Lot Area	Maximum Number of Chickens Permitted
Between 4,000 square feet and 10,000 square feet	8
Between 10,001 square feet and 20,000 square feet	12

Between 20,001 square feet and 40,000 square feet	16
Greater than 40,001 square feet	20

B. Prohibited.

1. Roosters and other animals that produce noise and/or create a nuisance to neighboring residents as determined by the Noise Control Officer are prohibited.

C. Enclosures.

1. Chickens shall be kept within an enclosed structure or fenced area at all times.
2. Chickens shall have access to a coop, cage, or similar structure, which:
 - a. Must be kept in a clean and sanitary condition, free from odor, pests, and vermin.
 - b. Has a minimum area of three-square feet per chicken in a coop, cage, or similar structure.
 - c. Is located within a rear or side yard.
 - d. Meets the minimum required setbacks for accessory structures.
 - e. Is located closer to the primary residence or structure of the chicken owner than to any adjacent or neighboring primary structure.
 - f. Is roofed.
3. Coops and cages do not count towards lot coverage limits.
4. Animal feed shall be stored in a rodent-proof and predator-proof container.

SECTION XIII: SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Martinez hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

SECTION XIV: PUBLICATION AND EFFECTIVE DATE.

This ordinance shall become effective 30 days after the date of adoption. At least five days prior to its final adoption, a certified copy of the full text of this ordinance shall be posted in the office of the City Clerk. Within fifteen days after adoption, the City Clerk shall publish a summary of this ordinance with the names of those City Council members voting for or against the ordinance in a newspaper of general circulation published and circulated in the City of Martinez. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted ordinance.

APPROVED



BRIANNE ZORN
MAYOR

ATTEST



KAT GALILEO
ASSISTANT CITY CLERK

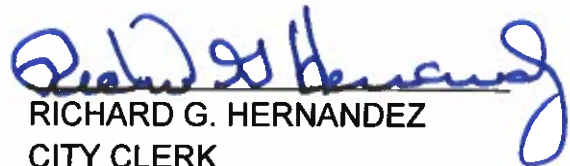
I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance that was duly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 6th day of December, 2023, and adopted at a regular meeting of the City Council of the City of Martinez, held on the 20th day of December, 2023, by the following vote:

AYES: Councilmembers Jay Howard, Mark Ross, Satinder S. Malhi;
Vice Mayor Debbie McKillop, Mayor Brianne Zorn

NOES: None

ABSTAIN: None

ABSENT: None



RICHARD G. HERNANDEZ
CITY CLERK

Approved as to form:



TERRI HIGHSMITH
CITY ATTORNEY

