

ORDINANCE NO. 3611 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMENDING MONTEREY CITY CODE SECTIONS 37-10, 37-11 AND 37-13 TO MAKE APPEALS OF CITY FORESTER TREE PERMIT DECISIONS HEARD BY THE APPEALS HEARING BOARD AND UPDATING REFERENCES TO CURRENT CITY DEPARTMENT TITLES.

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, currently Chapter 37 of the City Code provides that all tree permits are appealable to the Architectural Review Committee;

WHEREAS, it is more appropriate for non-development related tree permit appeals to be heard by the City's general appellate body, the Appeals Hearing Board;

WHEREAS, since the last update to Chapter 37, a number of City departments and staff titles have changed and updating these to match the current structure of the City will make the Chapter easier to administer and foster greater transparency;

WHEREAS, the ordinance is categorically exempt from the California Environmental Quality Act (CEQA) because the project proposes minor administrative changes to the City Code so that tree permit appeals will be heard by the Appeals Hearing Board instead of the Architectural Review Committee. The City Council finds the project categorically exempt under the CEQA Guidelines, which include classes of projects that the Secretary for Resources has determined not to have a significant effect on the environment and which are, therefore, exempt from the provisions of CEQA. The project is exempt under CEQA Guideline Section 15307 as an action taken to assure the maintenance, restoration, enhancement or protection of a natural resource where the regulatory process involves procedures for protection of the environment. The project is also exempt under Section 15308, as an action taken to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The adoption of this Ordinance will maintain all of the current protections of tree resources, including all permit requirements and standards, and will not result in cumulative adverse environmental impacts. Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2.

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The environment is not particularly sensitive because the project is a City

Code amendment relating to which City board will hear tree permit appeals. Therefore, impacts would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The proposed ordinance will not result in a cumulative impact as the project is purely an administrative City Code amendment relating to the appropriate appellate body. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The proposed ordinance will result in the Appeals Hearing Board hearing non-development related tree permit appeals while maintaining all of the current protections of tree resources, including all permit requirements and standards. No significant impact is anticipated as the project is purely an administrative City Code amendment relating to the appropriate appellate body. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The project is purely an administrative City Code amendment relating to the appropriate appellate body for tree permit appeals, which would not damage scenic resources. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The project is purely an administrative City Code amendment relating to the appropriate appellate body for tree permit appeals. Therefore, impacts to hazardous waste sites would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The project is purely an administrative City Code amendment relating to the appropriate appellate body for tree permit appeals. Therefore, impacts to historic resources would not occur. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 37, Section 10 is hereby amended to read as follows:

“Sec. 37-10. Processing of permits; standards for permits.

Permits are required to be approved before a protected tree may be removed. The City Forester shall review and approve protected tree removals except that the Community Development Department shall review and approve tree removals related to new development, which as used in this Chapter shall mean any project requiring the construction of new commercial, residential, or mixed-use structures and/or additions thereto. Permit requirements, review procedures and standards for issuing permits are as follows:

A. Application. A person who desires to move or remove a protected tree on any private parcel shall secure a permit from the City on an application provided by the City, accompanied by the required fee. The application shall contain the number, species, size, and location of the tree or trees involved, a statement of the reason for the requested action, and any other pertinent information determined necessary by the City.

Upon receipt of an application for a permit, the City Forester, Community Development Department, or designated representative shall review the application for accuracy and completeness and make an inspection of the subject tree(s). The application shall be processed as follows:

1. If the application is incomplete it will be returned to the applicant and no action will be taken until all information needed to locate and identify the subject tree(s) and assess the basis for the request has been received.
2. If the City Forester determines that the request is based on considerations regarding tree health or tree safety, the application will be evaluated by the City Forester for a decision pursuant to subsection B.
3. If the City Forester determines that the request is based on considerations other than tree health or tree safety, the application will be denied or referred to the Appeals Hearing Board for a decision.
4. If the tree removal is proposed to clear vacant property or to provide room for a new development, the application shall require submittal of a concurrent development plan to the Community Development Department.
5. If the tree removal application is submitted with concurrent development plans, it shall be referred to the Community Development Department, which may consult with the City Forester, for review in accordance with the City's Zoning Ordinance, Monterey City Code, Chapter 38. In situations where a healthy tree(s) prevents reasonable development of permitted uses, the tree may be approved for removal. Existing development on similar sites in the same zone and having similar topographic and vegetation characteristics shall be considered when determining reasonable development of permitted uses.

B. Standards for City Forester's Review. A tree removal permit may be approved, denied, or conditionally approved based on the criteria set forth in this section. Decisions of the City Forester shall include findings and indicate specific standards that were identified to support the decision.

1. The condition of the tree with respect to disease; hazardous conditions caused by the tree including but not limited to its proximity to existing structures or high pedestrian traffic areas such as parking lots, playgrounds and pedestrian walkways; its status as an undesirable non-native species; or its interference with utility services that cannot be controlled or remedied through reasonable preservation and/or preventive procedures and practices.
2. The condition of the tree as a host to a plant, or insect, or other parasitic organism which endangers other adjacent healthy trees.
3. The number of healthy trees the parcel is able to support as determined by the City Forester based on such considerations as tree species, growth characteristics, general health of the stand, tree age, solar orientation and soil condition.
4. The acceptance of mitigation measures including, but not limited to, those set forth in section 37-11 below.
5. The value and importance of the tree on the site or in the community, based on such factors as its service as part of a windbreak system, its assistance in drainage or in the avoidance of soil erosion, its service as a component of a wildlife habitat, or its role in maintaining the existing urban forest.

SECTION 3: Monterey City Code, Chapter 37, Section 11 is hereby amended to read as follows:

"Sec. 37-11. Conditions of Removal/Mitigation Measures.

If it is determined after inspection of the property by the City Forester, Community Development Department, or Appeals Hearing Board that the adverse effects of tree removal can be mitigated, conditions may be imposed on the removal based on, but not limited to, one or more of the following standards:

A. *No replacement tree.* Applications approved by the City Forester based on the determination that the tree(s) should be removed to relieve overcrowding and removal will improve the health and vigor of adjacent trees shall not require replacement.

B. *One replacement tree.* Applications approved by the City Forester based on the determination that the tree(s) should be removed for reasons of health, safety, proximity to existing structures, walkways and/or traffic areas, or by the condition of the tree as a host to a plant or insect or disease which endangers other adjacent healthy trees, and where the impact cannot be mitigated without removal, shall require replacement at a ratio of one replacement for each removal in a size and species selected by the City Forester. The replacement tree shall be planted preferably on-site.

C. *Up to 3 replacement trees.* Applications approved by the Community Development Department or by the Appeals Hearing Board upon appeal or referral from the City Forester, or as part of a concurrent development application, shall be subject to conditions that require up to three (3) replacement trees for each removal, in a size and species selected by the City Forester. The replacement trees shall be planted preferably on-site.

D. *Payment in lieu of replacement.* As an alternative to on-site planting, an applicant may request to submit payment to the City of Monterey of costs equivalent to the value of the removed tree(s) or the cost of the numbers of replacement tree(s) as determined by City Council Resolution. The value of the tree(s) shall be established and conform to standards adopted by City Council Resolution. The payment shall be used to plant additional trees off-site in a location approved by the City Forester.

E. *Payment in lieu of maintenance.* Requiring payment to the City of Monterey equivalent to the cost of two years' maintenance by City of the removed tree(s), said payment to be used to fund the maintenance of additional trees planted off-site.

F. *Maintenance and Care Program.* Requiring an objectively observable maintenance and care program be initiated to insure the continued health and care of other trees on the property.

G. *Replacement tree maintenance.* All trees required to be planted on-site as replacement trees shall be required to be maintained and replaced if they do not survive or they are removed.”

SECTION 4: Monterey City Code, Chapter 37, Section 13 is hereby amended to read as follows:

“Sec. 37-13. Appeals.

A. Appeals of Community Development Department development-related tree permit approvals, conditional approvals, or denials shall be handled pursuant to the applicable development permit appeal provisions contained in Chapter 38 of the City Code.

B. *Procedures for Appeals Hearing Board Review.* Appeals of City Forester tree permit approvals, conditional approvals, or denials shall be heard by the Appeals Hearing Board. An appeal may be brought by any interested party and shall be in writing upon forms provided by the City, accompanied by the required fee, which shall be established by the City Council, and must be filed with the Department of Parks and Recreation within 10 calendar days from the date of the City Forester's decision to approve, deny or condition the permit. If no appeal is filed within this time period, the City Forester's permitting decision shall become final. The following procedures shall apply to tree permit appeals before the Appeals Hearing Board:

1. Upon receiving a written request for hearing, the Secretary of the Board shall set a time and place for the hearing not less than 10 days nor more than 60 days thereafter. Notice of the time, date, and place of such hearing shall be mailed to the appellant, to the applicant, and to any other person who has requested such notice in writing.
2. De Novo Hearing. The Appeals Hearing Board shall hear the appeal as a new matter. The original applicant has the burden of proof.
3. An appeal stays all actions and rights on the matter being appealed unless it is determined and certified by the City Forester that a stay would cause imminent peril to life and property.
4. The hearing shall be conducted with a staff presentation of the matter prior to the public hearing. Any member of the public, including the

appellant, if applicable, and the applicant shall have the right to be heard by the reviewing body either in person or by counsel. Formal rules of evidence and discovery do not apply in the proceedings under this Section and the Board may consider any evidence or information deemed relevant and reasonably reliable.

C. *Standards for Appeals Hearing Board Review.* The Appeals Hearing Board may approve, deny, or conditionally approve the application, based on the criteria set forth in this section. Decisions of the Board shall consider the information and input from City staff and the City Forester and, in addition to criteria related to tree health and tree safety, may render its decision based on the following standards:

1. The visual prominence, value and importance of the tree on the site or in the community.
2. The tree's contribution to the aesthetic beauty of the area and the effect its removal would have on the neighboring property values.
3. Evidence or testimony presented by the applicant that demonstrates the extent of concern or anxiety caused by the tree.
4. The acceptance of mitigation measures including, but not limited to, those set forth in Section 37-11.

D. Notice of the decision of the Board shall be provided to the appellant, where applicable, and the applicant in the same manner as the notice of the hearing. The decision of the Board shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6."

SECTION 5: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 6: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 18th day of February, 2020, by the following vote:

AYES:	3	COUNCILMEMBERS:	Albert, Haffa, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	2	COUNCILMEMBERS:	Smith, Williamson
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:



Mayor of said City

ATTEST



City Clerk thereof