



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
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San José, California 95113
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City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, Acting City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 29195**", the original copy of which is attached hereto, was passed for publication of title on the **18th day of December, 2012**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **8th day of January, 2013**, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, KHAMIS, LICCARDO,
NGUYEN, OLIVERIO, ROCHA; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said ordinance is effective as of **8th day of February, 2013**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **10th day of January, 2013**.

(SEAL)

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
ACTING CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 29195

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 13.32 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 13.32.020, 13.32.070, 13.32.090, 13.32.100, 13.32.110 AND 13.32.120, AND ADD SECTIONS 13.32.041 AND 13.32.095, AND AMENDING SECTIONS 20.100.140, 20.100.220 AND 20.100.300 OF CHAPTER 20.100 OF TITLE 20, ALL TO MODIFY THE TREE REMOVAL REQUIREMENTS FOR SINGLE-FAMILY RESIDENCES TO STREAMLINE THE PERMITTING PROCESS AND TO MODIFY THE PERMIT RECORDATION REQUIREMENTS FOR TREE REMOVAL AND CERTAIN OTHER PERMITS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 13.32.020 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.020 Definitions

Except where the context otherwise requires, the definitions contained in this Section shall govern the construction of this Chapter:

- A. "Certified arborist" means an individual who has demonstrated knowledge and competency of arboriculture through the obtainment of an arborist certification from the International Society of Arboriculture, or its successor organization if that organization no longer exists, or who is a member of the American Society of Consulting Arborists, or its successor organization if that organization no longer exists.

- B. "Dead tree" means a 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. "Director" means the Director of Planning, Building and Code Enforcement of the City of San José or such other person designated by the City Manager to administer and enforce the provisions of this Chapter.
- D. "Dripline" means the area around the base of a tree directly under the canopy cover of the tree and extending out as far as the canopy.
- E. "Live tree" means any tree that is not a dead tree.
- F. "Ordinance tree" means a tree defined in this section hereinbelow and whose removal or topping is covered by and subject to the provisions of this Chapter.
- G. "Remove" means eliminate, take away, uproot or destroy. 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.
- H. "Topping" 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.

- I. "Tree" means any live or dead woody perennial plant characterized by having a main stem or trunk which measures fifty-six (56) inches or more in circumference at a height of twenty-four (24) inches above natural grade slope. For purposes of this Chapter, a multi-trunk tree shall be considered a single tree and measurement of that tree shall include the sum of the circumference of the trunks of that tree at a height of twenty-four inches above natural grade slope. "Tree" shall include the plural of that term.

- J. "Unsuitable Tree" means a live tree or dead tree on a lot that is used for a one-family dwelling as defined in Section 20.200.320, where the tree is not a heritage tree as defined in Section 13.32.140, a candidate for heritage tree status, or a palm tree in the Palm Haven Conservation Area and meets at least one of the following criteria:
 1. The part of the tree trunk nearest to a one-family dwelling is five (5) feet or less from the nearest above-grade part of that one-family dwelling; or
 2. The part of the tree trunk nearest to a below-grade utility pipe or line of a one-family dwelling is five (5) feet or less from the centerline of that below-grade utility pipe or below-grade utility line of a one-family dwelling; or
 3. The tree belongs to a species that has been found by the City Council to be uniquely less compatible with the immediate environment because the species is invasive or non-native to the San José region or is susceptible to disease. Such tree species shall be placed on an Unsuitable Tree species list which shall be adopted by the City Council by resolution, which resolution may be amended from time to time to add or delete certain tree species.

SECTION 2. Chapter 13.32 of Title 13 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

13.32.041 Removal of Unsuitable Tree

It shall be unlawful for any person to remove, or cause to be removed, any Unsuitable Tree, as defined in Section 13.32.020, from any private parcel of land in the City unless a tree removal permit that allows the removal of that Unsuitable Tree has first been issued and accepted by the applicant pursuant to the provisions of this Chapter.

SECTION 3. Section 13.32.070 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.070 Permit application

- A. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any live tree that is not an Unsuitable Tree from any private parcel of land in the City, as set forth in Section 13.32.030, shall file a written application on a form provided by the Director, setting forth therein, among other things, the number, type, size and location of each tree and the reason for removal of each tree.

- B. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any dead tree that is not an Unsuitable Tree from any private parcel of land in the City, as set forth in Section 13.32.040, shall file a written application on a form provided by the Director, setting forth therein, among other things, the number, type, size and location of each tree, the reason for removal of each tree, and the certified arborist's report assessing the condition of tree and the time frame in which the assessment occurred.

- C. Any person, unless required to do so by the provisions of Chapter 13.28, desiring to remove any Unsuitable Tree from any private parcel of land in the City, as set forth in Section 13.32.041, shall file a written application on a form provided by the Director, setting forth therein, among other things, the number, type, size and location of each Unsuitable Tree, and information clearly establishing that the tree qualifies as an Unsuitable Tree.

SECTION 4. Section 13.32.090 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.090 Review of Permit Application - General

- A. The provisions of this Section shall apply to tree removal permit applications for trees that are not Unsuitable Trees as defined in Section 13.32.200, subject to the provisions of Section 13.32.095.D below.
- B. The Director shall conduct an investigation on each application for a tree removal permit accepted for filing.
- C. Each such investigation shall include an opportunity for the following persons to appear before and be heard by the Director on the condition of the tree and whether it should be removed: (1) the applicant, and (2) the owners and occupants of property contiguous to the parcel upon which the tree or trees proposed to be removed is or are located or directly across a public street which abuts such parcel.
- D. The Director shall not act upon any tree removal permit application until and unless the Director has first given the applicant, owners and occupants an opportunity to be heard thereon.

- E. Notice of the time and place at which the applicant, owners and occupants may appear before the Director and be heard on the application shall be given by mailing the same to the applicant, postage prepaid at the address shown for such purposes on the application, to such owners postage prepaid at their last known address as the same appears upon the last equalized assessment rolls of the County of Santa Clara, and to such occupants postage prepaid at the address of the parcel on which the said tree or trees to be removed is or are located and at the address of the parcel directly across the public street which abuts such parcel on which said tree or trees is or are located. All such notices shall be mailed at least five (5) days before the date on which the applicant, owners and occupants will be heard.

- F. The form of the notice shall be as prescribed by the Director.

SECTION 5. Chapter 13.32 of Title 13 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

13.32.095 Review of Permit Application – Administrative Procedures for Unsuitable Trees

- A. The Director shall review each application for a tree removal permit for an Unsuitable Tree accepted for filing.

- B. The Director may, in the Director's sole discretion, approve a tree removal permit for an Unsuitable Tree.

- C. The Director's decision pursuant to this Section is an administrative determination and requires no hearing or notice.

- D. The action of the Director is final. If the application is denied, nothing in this Section shall preclude the applicant from filing, and such applicant may file, an

application for a tree removal permit for live trees or dead trees that are not Unsuitable Trees pursuant to this Chapter.

SECTION 6. Section 13.32.100 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.100 Permit Findings

- A. Neither the Director nor the Planning Commission on appeal shall issue a permit for the removal of any tree, other than an Unsuitable Tree, on any private parcel of land in the City unless the Director or the Commission on appeal makes at least one of the following findings:
1. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this Chapter as set forth in Section 13.32.010; or
 2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
 3. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal; or
- B. In connection with an application to remove a dead tree, the Director or the Planning Commission on appeal shall consider whether the subject tree was in any way injured, removed or caused to be injured or removed by the applicant, in addition to the findings required to be set forth pursuant to the provisions hereinabove.

- C. The Planning Director shall not issue a permit for the removal of an Unsuitable Tree on any private parcel of land in the City unless the Director finds that the tree is an Unsuitable Tree as defined in Section 13.32.200.

SECTION 7. Section 13.32.110 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.110 Action on a Permit

- A. In taking action on a tree removal permit application, the Director or the Planning Commission on appeal, if applicable, may deny the application or issue a tree removal permit for one or more trees and concurrently deny removal for one or more trees.
- B. The Director or the Planning Commission on appeal, if applicable, may make any permit that they issue subject to such terms, provisions and conditions as they may deem reasonably necessary to secure the general purposes of this Chapter.
- C. The Director or the Planning Commission on appeal, if applicable, shall impose as a condition on the issuance of any permit for the removal of any tree the requirement that a suitable replacement tree or trees as determined by the Director or the Planning Commission on appeal be or cause to be provided, installed and maintained by the permittee at no cost to the City.
- D. The replacement tree requirement set forth in this Section shall be roughly proportionate to the tree replacement needed to alleviate and address the burdens and other impacts created by allowing the removal of the tree or trees under the permit, except that the Director or the Planning Commission on appeal may increase by a reasonable amount the number of replacement trees to be provided, installed and maintained by the permittee where it is specifically found

based upon evidence in the record that the permittee injured or removed or caused the injury or removal of a dead tree that is a subject of the permit without first obtaining a tree removal permit.

SECTION 8. Section 13.32.120 of Chapter 13.32 of Title 13 of the San José Municipal Code is amended to read as follows:

13.32.120 Appeal Procedures

- A. Except for actions of the Director on Unsuitable Trees, any action of the Director may be appealed to the Planning Commission by the applicant or by any of the property owners or occupants of the parcels of land adjacent to or across the street from the property upon which the tree or trees proposed for removal are located. The person making the appeal shall do so by filing a written notice of appeal within ten (10) days after notice of such action is mailed to the applicant at the address shown for such purpose on his application and to such owners mentioned in Section 13.32.090 at their last known address as the same appears upon the last equalized assessment rolls of the County and to such occupants mentioned in Section 13.32.090 at the address of the parcel on which the tree or trees to be removed is or are located and at the address of the parcel directly across the public street which abuts such parcel on which said tree or trees is or are located.
- B. Such notice of appeal shall be filed with the Director on a form furnished by the Director. The information and data required to be set forth in the form shall be as prescribed by the Director. The Director may refuse to accept any such notice of appeal unless the notice is signed and all data is set forth and shown as required by the form.
- C. When such notice of appeal has been accepted and filed by the Director, within the time provided, the Director shall, subject to the applicable rules of the

Planning Commission, set a date of hearing thereon by the Planning Commission and notify the Planning Commission of such setting. Such date of hearing shall be not less than fifteen (15) days nor more than thirty (30) days after the notice of appeal was accepted and filed.

- D. The Director shall give notice of the hearing to the appellant or appellants, and the applicant, owners and occupants by mailing same at least five (5) days before the date set for hearing, to the appellant or appellants at the address shown for such purpose on his or their notice of appeal, and to the applicant, owners and occupants at the address to which the Director's action was mailed and said director shall also file with the Planning Commission at its hearing on appeal the application, notice of appeal, the action appealed from, and all other things filed with the Director in connection with the application.
- E. The Planning Commission shall hear all matters on appeal de novo and shall take action within a reasonable time after conclusion of its hearing.

SECTION 9. Section 20.100.140 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.140 Concurrent Review

- A. Whenever applications, for the same site have been filed for one or more development permits or approvals required by this title, such development permit or approvals may be reviewed and acted on in a unified process. Determinations of public convenience or necessity governed by Chapter 6.84 of Title 6 of the San José Municipal Code may be included in the unified process. Tree removal permits governed by Chapter 13.32 of Title 13 of the San José Municipal Code may be included in the unified process. Subdivision approvals governed by Title 19 of the San José Municipal Code may be included in the unified process.

- B. The unified process shall use the procedures required for the highest level permit or approval. Permits and approvals are ranked as follows with the highest level permit or approval listed first: Rezoning, Conditional Use Permit; Subdivisions; Determination of Public Convenience or Necessity; Planned Development Permit; Special Use Permit; Site Development Permit; Single-Family House Permit-Director's Decision; Development Exception; Development Variance; Sidewalk Café Permit; Tree Removal Permit-Director's Decision; Single-Family House Permit-Administrative Decision; and Tree Removal Permit-Administrative Decision.
- C. The hearing body shall make the findings, if any, applicable to each permit or approval.

SECTION 10. Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.220 Appeal - Hearing Body

Decisions on permits or approvals pursuant to this chapter are subject to appeal as set forth in Table 20-260 which lists the initial decision maker and the decision making body which will hear any appeal.

Table 20-260 Appeal Hearing Body		
Application	Initial Decision Making Body	Appeal Decision Making Body
Administrative Permit	Director of Planning	No Appeal
Site Development Permit	Director of Planning	Planning Commission
Site Development Permit - Projects within Downtown Districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council
Single-Family House Permit	Director of Planning	
Administrative Decision	Director of Planning	No Appeal

Director's Hearing	Director of Planning	Planning Commission
Planned Development Permit	Director of Planning	Planning Commission
Special Use Permit	Director of Planning	Planning Commission
Conditional Use Permit	Planning Commission	City Council
Conditional Use Permit - Drinking Establishments with an approved maximum occupancy load of over 250 persons that operate between 12:00 midnight and 6:00 a.m.	City Council	No Appeal
Conditional Use Permit involving off-premises sale of alcoholic beverages requiring a determination under Chapter 6.84 where findings required by Planning Commission under Section 6.84.030.B.1. through 4. cannot be made	City Council	No Appeal
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk Café Permit	Director of Planning	City Council
Tree Removal Permit	Director of Planning	
Administrative Decision	Director of Planning	No Appeal
Director's Hearing	Director of Planning	Planning Commission
Zoning Code Verification Certificate	Director of Planning	No Appeal

SECTION 11. Section 20.100.300 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.300 Recordation

- A. Within thirty (30) days of the permit or other approval becoming effective, in accordance with the provisions of Section 20.100.290, fulfillment of all conditions precedent to release pursuant to this Chapter and the payment of fees, a certificate identifying the permit or other approval shall be recorded by the City.

The permit or other approval and the rights and restrictions therein shall run with the land to the fullest extent allowed by law.

- B. If any permit or other approval is revoked after a hearing on an order to show cause pursuant to this Chapter, a certificate of revocation shall be recorded with the County Recorder's Office.

- C. The provisions of Subsection 20.100.300.A and B above shall not apply to the following permits:
 - 1. Administrative Permits that do not include the installation of utility structures; or
 - 2. Tree Removal Permits; or
 - 3. Special Use Permits that only include demolition of existing buildings or structures; or
 - 4. Planned Development Permits that only include demolition of existing buildings or structures.

PASSED FOR PUBLICATION of title this 18th day of December, 2012, by the following vote:

AYES: CAMPOS, CHU, HERRERA, LICCARDO, NGUYEN,
OLIVERIO, PYLE, ROCHA; REED.

NOES: NONE.

ABSENT: CONSTANT, KALRA.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



Toni J. Taber, CMC
Acting City Clerk

SAN JOSE POST-RECORD

95 S. Market St., Ste. 535, SAN JOSE, CA 95113
Telephone (408) 287-4866 / Fax (408) 287-2544

SUZANNE GUZZETTA
SAN JOSE CITY CLERK
200 E. SANTA CLARA ST.
SAN JOSE, CA - 95113

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California)
County of SANTA CLARA) ss

Notice Type: GORSJ - SAN JOSE ORDINANCE (1 PUB)

Ad Description:
ORDINANCE #29195

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN JOSE POST-RECORD, a newspaper published in the English language in the city of SAN JOSE, county of SANTA CLARA, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SANTA CLARA, State of California, under date 02/03/1922, Case No. 27844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

12/21/2012

Executed on: 12/21/2012
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.


Veronica

Signature

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This space for filing stamp only
San Jose City Clerk

2013 JAN 18 PM 2:27

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CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

ORDINANCE NO. 29195

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 13.32 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 13.32.020, 13.32.070, 13.32.090, 13.32.100, 13.32.110 AND 13.32.120, AND ADD SECTIONS 13.32.041 AND 13.32.095, AND AMENDING SECTIONS 20.100.140, 20.100.220, AND 20.100.300 OF CHAPTER 20.100 OF TITLE 20, ALL TO MODIFY THE TREE REMOVAL REQUIREMENTS FOR SINGLE-FAMILY RESIDENCES TO STREAMLINE THE PERMITTING PROCESS AND TO MODIFY THE PERMIT RECORDATION REQUIREMENTS FOR TREE REMOVAL AND CERTAIN OTHER PERMITS PASSED FOR PUBLICATION of title this 18th day of December, 2012, by the following vote:
AYES: CAMPOS, CHU, HERRERA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED, ROCHA
NOES: NONE
ABSENT: CONSTANT, KALRA
DISQUALIFIED: NONE.

CHUCK REED
Mayor
ATTEST:
DENNIS HAWKINS, CMC
City Clerk
12/21/12

SJ-2424329#

