

## ORDINANCE NO. 1091

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS REPEALING AND ADDING A NEW SECTION 10-1.09 TO THE LOS BANOS MUNICIPAL CODE PERTAINING TO HERITAGE TREES

The City Council of the City of Los Banos does ordain as follows:

Section 1. Section 10-1.09 of Title 10, Chapter 1 of the Los Banos Municipal Code is hereby repealed in its entirety and the following is adopted in its place:

Sec. 10-1.09 The designation and protection of Heritage Trees.

The following standards shall govern the treatment of Heritage Trees.

(a) Purpose. The purpose of these regulations is to protect certain trees in order to preserve cultural heritage, maintain and enhance the scenic beauty of the community, to provide shade, improve air quality, assist in abating soil and slope erosion and preserve and enhance property values, thus promoting the public health, safety and welfare.

(b) Applicability. These regulations regulate the maintenance and removal of trees that are sited on private property.

(c) Heritage Tree defined. As used in this Section "Heritage Tree" means: Upon nomination by any person and with the written consent of the property owner(s), any tree or group of trees recommended by the Parks and Recreation Commission and identified by City Council resolution upon a finding that the tree or group of trees:

(1) Is of historic value because of its association with a place, building, natural feature or event of local, regional, national or historic significance; or

(2) Is identified on any historic or cultural resources survey as a significant feature of a landmark, historic site or historic district; or

(3) Is representative of a significant period of the City's growth or development and was the result of a planting dedicated by citizens, civic groups or the City; or

(4) Is identified because of its age, beauty, and /or uniqueness, especially if representative of a species that has significance in natural history and/or ecology.

After City Council approval of a Heritage Tree designation, the City Clerk shall notify the property owner(s) in writing. A listing of trees so designated as a Heritage Tree, including the specific locations thereof, shall be kept by the Public Works and

Planning Departments. Once designated, a Heritage Tree shall be subject to the provisions of this section unless removed from the list of Heritage Trees by action of the City Council. The City Council may remove a tree from the list upon its own motion or upon written request by the property owner.

(d) Maintenance and preservation of Heritage Trees. Any person who owns, controls, has custody or possession of any real property within the city shall use reasonable efforts to maintain and preserve all Heritage Trees located thereon in a state of good health pursuant to the provisions of this Section. Failure to do so shall constitute a violation of this Section. Any person who conducts any grading, excavation, demolition or construction activity on property shall do so in such a manner as to not threaten the health or viability or cause the removal of any Heritage Tree. Any work performed within a radius of ten (10) times the diameter of the tree from the center of the trunk (i.e., the tree protection zone) shall require submittal of a tree protection plan for review and approval by the Director of Public Works or his or her designee prior to issuance of any permit for grading or construction. The tree protection plan shall be prepared by a certified arborist and shall address issues related to protective fencing and protective techniques to minimize impacts associated with grading, excavation, demolition and construction. The Director of Public Works or his or her designee may impose conditions on any city permit to assure compliance with this section.

(e) Removal and major pruning of Heritage Trees prohibited. It is unlawful for any person to remove, or cause to be removed any Heritage Tree from any parcel of property in the city, or prune more than one-fourth of the branches or roots within a twelve (12) month period, without obtaining a permit; provided, that in case of emergency, when a tree is imminently hazardous or dangerous to life or property, it may be removed by order of the Police Chief, Fire Chief, the Director of Public Works or their respective designees. Any person who vandalizes, grievously mutilates, destroys or unbalances a Heritage Tree without a permit or beyond the scope of an approved permit shall be in violation of this Section.

(f) Tree permit required. Any person desiring to remove one or more Heritage Trees or perform major pruning shall apply for a permit pursuant to procedures established by the Director of Public Works and shall pay a fee established by the City Council. It is the joint responsibility of the property owner and party removing the Heritage Tree or trees, or portions thereof to obtain the permit. The Director of Public Works or his or her designee may only issue a permit for the removal or major pruning of a Heritage Tree if he or she determines there is good cause for such action. In determining whether there is good cause, the Director of Public Works or his or her designee shall give consideration to the following:

- (1) 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;

- (2) The necessity to remove the tree or trees in order to construct proposed improvements to the property;
- (3) The topography of the land and the effect of the removal of the tree on erosion, soil retention and diversion or increased flow of surface waters;
- (4) The long-term value of the species under consideration, particularly lifespan and growth rate;
- (5) The ecological value of the tree or group of trees, such as food, nesting, habitat, protection and shade for wildlife or other plant species;
- (6) The number, size, species, age distribution and location of existing trees in the area and the effect the removal would have upon shade, privacy impact and scenic beauty;
- (7) The number of trees the particular parcel can adequately support according to good arboricultural practices;
- (8) The availability of reasonable and feasible alternatives that would allow for the preservation of the tree(s).

(g) Hearings and Appeals. Hearings and appeals of the decision of the Public Works Director or his designee shall be conducted in the same manner as provided by Sections 9-3.2226 – 9-3.2228.

(h) Exceptions. Tree permits are not required and trees may be removed in compliance with the provisions of this section under the following provisions:

- (1) Removal of any tree on private property not classified or listed as a Heritage Tree.
- (2) Routine maintenance, including trimming of street trees and trimming of trees on private property by a utility company licensed by the Public Utilities Commission to maintain required clearances around utility installations.
- (3) Emergency circumstances, if personal injury or property damage is eminently threatened in the sole judgment of the Public Works Director, Planning Director, Police Chief, Fire Chief, or City Manager.
- (4) Removal of a Heritage Tree that is dead or so diseased or damaged that it is no longer viable, as determined by the Public Works Director.

(i) Heritage Tree protection guidelines. Development proposals shall protect and preserve Heritage Trees to the fullest extent possible. Care shall be exercised by all individuals, builders, contractors and others working near protected trees so that no

damage occurs to such trees. The following measures shall be used to preserve and protect the health of trees to remain, relocated trees and new trees planted to replace those removed.

(1) All trees to be saved shall be enclosed by a construction barrier placed around the protected zone of the tree, including but not limited to chain link fencing or other material acceptable to the Public Works Director, prior to the issuance of any grading or building permit and prior to the commencement of work. Barriers are to remain intact until construction is complete and may not be removed without the written consent of the Planning Director.

(2) When proposed development or other site work is to encroach into the protected zone of a tree, special measures shall be incorporated to allow for safe and healthy conditions for protected trees.

(3) Any excavation, cutting, filling, paving or construction of the existing ground surface within the protected zone of a tree shall be minimized. No adverse significant change in existing ground level shall occur within the drip line of a protected tree.

(4) Development proposals shall be configured to retain as many Heritage and significant trees as possible.

(5) Construction equipment and material shall not be stored within tree protection areas. No oil, gas, chemicals or other substances that may be harmful to trees shall be stored or dumped within the protected zone or any other location on the site from which such substances might enter the protected zone.

(6) Trenching within the protected zone of trees shall be avoided wherever possible. Trenching for utilities shall avoid major roots and, if avoidance is impractical, tunnels shall be made below roots. Trenching is to be consolidated to serve as many units as possible. Trenching within the protected zone shall be done by hand to minimize impacts.

(7) Additional measures may be imposed by the Public Works Director to protect and preserve the health of the trees to remain, relocated trees and new trees planted to replace those that are removed.

(j) Enforcement - Remedies for Violation. In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the City for violation of this section:

(1) Civil Penalties.

(a) As part of a civil action brought by the City, a court may assess against any person who commits, allows, or maintains a violation of any provision of this

Section a civil penalty in an amount not to exceed five thousand dollars per violation.

(b) Where the violation has resulted in damage, mutilation, disfigurement, or removal of a tree, whether through vandalism, improper pruning, or other actions, the civil penalty shall be in an amount not to exceed five thousand dollars per tree, or the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the City. Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal, published by the Council of Tree and Landscape Appraisers.

(2) Injunctive Relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

(3) Costs. In any civil action brought pursuant to this section in which the City prevails, the court shall award to the City all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including administrative costs incurred in prosecuting the action, and reasonable attorney fees.

Section 2. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 4. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post

