

ARTICLE II. PUBLIC TREES*

***Cross references:** Administration, ch. 2; parks and recreation, ch. 54.

Sec. 90-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City horticulturist means the person within the department of parks and recreation or his or her representative assigned to carry out certain duties of this article.

Department of parks and recreation means the department under whose jurisdiction the master planning of parks and/or street trees fall.

Park means all public parks or public open spaces having individual names.

Property line means the right-of-way line of a street or highway.

Property owner means the person owning such property as shown by the city assessor's maps.

Public trees means all shade and ornamental trees growing on any public areas.

Street or *highway* means the entire width of every public way or right-of-way when any part thereof is open to the use of the public as a matter of right for purposes of vehicular and pedestrian traffic.

Treelawn means that part of a street or highway, not covered by a sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

(Code 1964, § 29-1; Ord. No. 2007-41, 5-29-07)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 90-27. Master street tree plan.

(a) The city horticulturist shall have the authority to formulate and administer a master street tree plan. The master street tree plan shall specify the species of trees to be planted on each of the streets or other public sites of the city. From and after the effective date of the master street tree plan or any amendment thereof, all planting shall conform thereto.

(b) The city horticulturist shall consider all existing and future utility and environmental factors when recommending a specific species for each of the streets and other public sites of the city.

(c) The city horticulturist shall have the authority to amend or add to the master street tree plan at any time that circumstances make it advisable.

(Code 1964, § 29-2; Ord. No. 2007-41, 5-29-07)

Sec. 90-28. Obstruction.

(a) *Duty of occupant.* It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees or other vegetation, to prune such trees or vegetation in such manner that they will not obstruct or

shade the streetlights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs or obstruct views of any street or alley intersection. Suggested minimum clearance of any overhanging portion thereof shall be ten feet over sidewalks and 12 feet over all streets except truck thoroughfares which shall have a clearance of 16 feet.

(b) *Notice to prune.* Should any person owning real property bordering on any street fail to prune trees, the department of public works with advice from the city horticulturist shall order such person within 14 days after receipt of written notice to so prune such trees.

(c) *Service of order.* The order required in this section shall be served by mailing a copy of the order by certified mail to the last-known address of the property owner.

(d) *Failure to comply.* When a person to whom an order is directed shall fail to comply within the specified time, the city may prune such trees, and the exact cost thereof shall be recoverable from such person so failing to comply through the city property taxes and/or filed as a lien against the real estate.

(Code 1964, § 29-3; Ord. No. 2007-41, 5-29-07)

Sec. 90-29. Abuse or mutilation of public trees.

(a) Unless specifically authorized in writing by the city horticulturist, no person shall damage, cut, carve, transplant, remove and/or otherwise alter any public tree; attach any rope, wire, nails, advertising posters or other contrivance to any public tree; allow any gas, liquid or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree. Any person violating the provisions of this section shall be guilty of a class 2 misdemeanor and, in addition thereto, shall be responsible for the cost of repair or replacement of any public tree so damaged.

(b) It shall be unlawful to top any street tree, park tree and/or any other tree on public property. "Topping" is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstruction where other pruning practices are impractical may be exempted from this subsection at the determination of the city horticulturist.

(Code 1964, § 29-4; Ord. No. 2007-41, 5-29-07)

Sec. 90-30. Protection of trees.

(a) All trees on any street or other publicly owned property near any excavation or construction of any building, structure or street work shall be guarded with a good substantial fence, frame or box not less than four feet high and eight feet square or at a distance in feet from the tree equal to the diameter of the trunk in inches dbh (diameter at breast height), whichever is greater. Said guarding shall be performed by the individual(s) conducting the excavation or construction, and done at the sole cost of the individual excavating or constructing. Under no circumstance shall the city be required to perform the guarding unless the city is the party conducting the excavation or construction alluded to herein. All building material, dirt or other debris shall be kept outside the barrier and adequacy of the guarding procedures and devices implemented according to this section will be determined under the sole discretion of the city horticulturist.

(b) No person shall excavate any ditches, tunnels, trenches or lay any drive within a radius of ten feet from any public tree without first obtaining written approval from the city horticulturist's office.

(c) The public works department of the city shall notify the city horticulturist in advance of any applications for new curb, gutter, sidewalks, and/or driveway installations, and/or other improvements which might require the removal of and/or cause injury to any street tree, and/or its root system, and/or interfere with the fulfillment of the street tree plan, and/or require the planting or cultivation of trees on public property.

(Code 1964, § 29-5; Ord. No. 2007-41, 5-29-07)

Sec. 90-31. Placing materials on public property.

No person shall deposit, place, store or maintain upon any public place of the city any stone, brick, sand, concrete or other materials which may impede the free passage of water, air and fertilizer to the root of any tree growing thereon except by written permit of the department of parks and recreation.

(Code 1964, § 29-6; Ord. No. 2007-41, 5-29-07)

Sec. 90-32. Planting in rights-of-way.

(a) It shall be unlawful for any person to plant or cultivate any trees within a public right-of-way without first obtaining a permit therefor from the city horticulturist.

(b) The application for a permit to plant a tree under the provisions of this article shall state the number of trees to be set out, the location, species, cultivar or variety of each tree, and such other information as the city horticulturist shall find reasonably necessary to a fair determination of whether a permit should be issued.

(c) The city horticulturist shall issue the permit required by this article if, in his judgment, the proposed work is desirable and the method of workmanship meets the standards of the city's tree planting specifications.

(d) The right is reserved to the city at any time to trim, prune or remove such tree, shrub, plant or other vegetation without notice to any abutting property owner.

(e) Whenever any tree shall be planted or set out in conflict with the provisions of this chapter, it shall be lawful for the city horticulturist to remove or cause removal of said trees; and the cost thereof shall be recoverable from the person(s) responsible for such planting.

(Code 1964, § 29-7; Ord. No. 2007-41, 5-29-07)

Sec. 90-33. Pruning; removal; replanting; replacement.

(a) No person shall prune, remove, disturb, and/or otherwise alter a tree from the treelawn for any reason without first filing an application and procuring a permit from the city horticulturist.

(b) The city horticulturist shall not remove or permit removal of all or any part of any tree from any street, alley, right of way or easement, or public place owned by the city, unless he has determined that such tree is:

(1) Significantly interfering with new construction;

(2) Irreversibly infected with disease;

(3) Irreversibly infected with injurious insects or pests;

(4) Is endangering or is likely to endanger streets, highways, sidewalks, sewers, utility installations, property, vehicles or the traveling public; and/or

(5) Is dead.

(c) Wherever it is deemed necessary by the city to remove a tree from a treelawn in connection with construction, such as the paving of a street, or the paving or widening of the portion of a street or highway used for vehicular traffic, the city shall replant such trees or replace them whenever possible.

(d) If it is determined that a tree should be removed from a treelawn due to construction requested by an individual or any other entity, other than the city, the person or property owner shall bear the cost of removal and replacement of all trees removed; the work shall be completed to the satisfaction of the city horticulturist and abide by the city's tree removal and planting specifications.

(e) All stumps of trees removed from public property shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

(Code 1964, § 29-8; Ord. No. 2007-41, 5-29-07)

Sec. 90-34. Timing of applications for permits.

Applications for permits required by the provisions of this article shall be made at the office of the city horticulturist not less than 72 hours in advance of the time the work is to be done.

(Code 1964, § 29-9; Ord. No. 2007-41, 5-29-07)

Sec. 90-35. Review by city manager.

The city manager shall have the right to review the decisions of the city horticulturist pursuant to this article. Any person may appeal from any ruling or order of the city horticulturist to the city manager who may hear the matter and make the final decision.

(Code 1964, § 29-10; Ord. No. 2007-41, 5-29-07)

Cross references: City manager, § 2-166 et seq.

Sec. 90-36. Voidance.

Any permits issued under the provisions of this article shall be void if its terms are violated.

(Ord. No. 2007-41, 5-29-07)