

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 9, HEALTH AND SAFETY, OF THE EL PASO CITY CODE BY ADDING CHAPTER 9.11, TREE CARE, WHICH WILL DEFINE THE CARE, DESTRUCTION AND PLANTING OF TREES LOCATED ON CITY PROPERTY AND TO PREVENT CERTAIN HAZARDS AND NUISANCES CREATED BY TREES LOCATED ON PRIVATE PROPERTY, THE PENALTY BEING AS PROVIDED IN CHAPTER 1.08 (GENERAL PENALTY) OF THE EL PASO CITY CODE.

WHEREAS, trees are desirable in our community because they provide shade, beauty, land and wind protection; and,

WHEREAS, trees also filter air, muffle noises, protect soil, create habitat for birds and small animals; and,

WHEREAS, large healthy trees make El Paso more attractive to visitors and foster economic development; and,

WHEREAS, it is necessary for the protection of the general public to require private property owners to abate nuisances and pests that are harmful to trees; and,

WHEREAS, it is necessary for the protection of the general public to require private property owners to abate hazardous conditions created by trees located on private property; and,

WHEREAS, the El Paso City Council finds that the promotion of the preservation, education, protection and replacement of trees located on City property is of a benefit to the public health, safety and welfare and promotes economic growth,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

1. That Title 9 (Health and Safety) of the El Paso City Code be amended by adding the following Chapter:

Chapter 9.11, Tree Care

A. Purpose. The purpose of this Chapter is to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees located on public property and to prohibit nuisances or hazards caused by trees located on private and public property within the limits of the City of El Paso.

B. Applicability. This ordinance applies to all trees located within public property and to trees located on public or private property that create a hazardous condition or nuisance to the general public.

C. Arborist. The Arborist shall work with the Parks and Recreation Department and the Streets Department to accomplish all duties that may be required to comply with this Chapter of the City Code.

D. Definitions: The following definitions apply under this Chapter:

1. ARBORICULTURAL SPECIFICATIONS MANUAL is the manual containing regulations and standards for the planting, maintenance, and removal of trees located on public property. The Manual shall be approved by the Developing Coordinating Committee.

2. DAMAGE shall include, but not be limited to, the uprooting of a tree, severance of the root or branch system, the compaction of soil around a tree, a substantial change in the natural grade above a root system or around a trunk, or excessive pruning of living tissue.

3. PUBLIC PROPERTY shall mean all grounds owned and controlled by the City of El Paso and where the City has the responsibility of maintenance.

4. PUBLIC TREE shall mean any tree with at least two-thirds of its trunk on public property.

5. TOPPING is defined as the severe reduction of the tree's size using heading cuts that shorten limbs or branches back to a predetermined crown size or limit with the result of reducing the natural canopy or disfigure the tree.

6. TREE shall mean any self-supporting woody perennial plant typically having a mature trunk(s) diameter of at least three inches measured at 12 inches above grade.

7. UTILITY shall mean public utilities, businesses or organizations in the business of supplying communications services, electrical energy, gas, heat, steam, water, or sewage disposal and treatment.

E. Arborist. The City Arborist shall

a. administer the Tree Care Ordinance,

b. administer the Community Forestry Action Plan,

c. assist the Tree Board in carrying out the duties and responsibilities as specified in the Tree Board Ordinance and

d. administer and, in consultation with the Tree Board, periodically review and revise as necessary the provisions of the Arboricultural Specifications Manual.

F. Trees Located on Public Property

1. Destruction or Damage of Trees Prohibited. It shall be unlawful for any person to intentionally damage, cut, carve, abuse, poison or otherwise harm or injure any tree located on public property. This section does not apply to persons authorized by the City who are taking actions necessary for the preservation and safety of the public or the proper care or maintenance of any tree in accordance with the Arboricultural Specifications Manual. The City of El Paso and its authorized agents, employees, and contractors shall have the authority to trim or remove any trees within public property.

2. Maintenance of Trees.

a. The City may plant, prune, maintain and remove trees, plants and shrubs within the lines of all public property, as are necessary to preserve the aesthetic value of such public areas and for the health and safety of the public and trees. Such planting, maintenance or removal will be done in accordance with Arboricultural Specifications Manual.

b. Utilities. No public or private tree other than those species that may attain a mature height no greater than 10 feet below an existing overhead utility wire may be planted under or within 10 feet of any overhead utility wire on public property. Tree limbs that grow near high voltage electrical conductors shall be maintained clear of such conductors in compliance with the franchise agreements between the City and the utility company.

c. Tree Topping. No tree located on public property shall be topped. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be crown reduced where necessary to protect the public health, safety and welfare.

d. Tree protection zone. Whenever city department plans to do construction work around any public tree, proper safe guards and root protection zones as outlined in the Arboricultural Specifications Manual must be approved by the City Arborist.

e. Jurisdiction over public property. The Directors of the Street Department and Parks Department or his or her designee shall have the power to perform accepted tree care in accordance with the Arboricultural Specifications Manual. If any tree or any part thereof is in unsafe condition, or is injurious to the common good, or to the sewer pipes, pavements or improvements, or is infested by disease or insects which are dangerous to other trees, the City Arborist may remove such trees or part thereof, or spray such tree, or order such tree, or part thereof removed.

G. Trees Located on Private Property

Public nuisances on private property. It is unlawful for a property owner to cause, create, keep, or otherwise permit transmissible disease infections or insect infestations of trees on private property. Transmissible disease infections or insect infestations of trees are declared a nuisance.

a. *Authority of City.* The city may order that the property owner or agent of the owner of any tree(s) located on private property, infected by transmissible disease or infested with insects, treat or allow the city to treat the infected or infested tree(s) located on private property. Upon complaint or observation meriting further inspection. The city shall have the authority to enter upon private lands to make field inspections, including the removal of specimens for any laboratory analysis that may be necessary to determine the presence of a transmissible infection or infestation.

b. *Issuance of Order.* When the City determines that an infectious disease or insect infestation is present, the City shall assess the need for immediate action to curb the spread of the infection or infestation to city trees. If the infection or infestation warrants immediate action to prevent spread to city trees, the city may order the property owner to immediately treat, remove or dispose of the infected or infested trees, or allow the city to do so. If the infection or infestation does not warrant drastic action, the city may order that the property owner or agent of the owner treat, or remove and dispose of the infected or infested trees within a specified time, but not less than 30 days. The city's order shall be issued by certified mail (return receipt requested). If the owner or agent of the owner does not satisfactorily complete the necessary work within the time allowed by the city's order, the city may enter upon the property to treat, to remove, or to destroy the infected or infested tree(s) by approved practice.

c. *Property Owner Appeal of Order.* If the Property Owner wishes to appeal the City's order on the basis that the tree is not infested or infected, such appeal must be received by the Director of the City's Street Department within ten days of receipt of the City's order. The appeal must be in writing. Once the appeal is received by the Director, the Director shall notify the Appeal Board so that the Board may schedule a date for the appeal to be heard. The Appeal Board shall consist of the Director or Department Head, or their designee, of each of the following departments: Building, Planning and Inspections Department, Street Department, Parks and Recreation Department, Environmental Services and the City County Health Department. An official from the Texas Forest Service may serve in an ex-officio member, without the right to vote, nor shall they be counted for purposes of establishing a quorum. The Director of the Street Department will be responsible for notifying the Property Owner of the appeal date, providing all the necessary documents to the Board, and conducting the appeal. The Board shall render a decision based on all the evidence and documentation presented. The decision of the Board shall be final. The Director of the Street Department shall notify the property owner in writing of the Board's decision.

d. *City Abatement of Infestation.* If the property owner fails to complete any work required to be done by the City within the time specified, the City may cause the work to be done and the cost of the same shall be assessed against the property owner. Any notice given pursuant to this

section shall state that if the work required is not done within the time specified, the city will cause the same to be done at the expense of the property owner. A statement of the costs incurred by the city shall be mailed to the property owner and such statement shall be paid within thirty (30) days of the date of mailing thereof. If any property owner is unable to pay the cost of such work within thirty (30) days, he may enter into an agreement for the payment of the same in monthly installments.

If the property owner fails to pay the costs incurred by the city or fails to enter into an agreement for payment of the costs and pay such cost in accordance with the agreement, civil action by the city to recover the costs may be pursued and the city attorney is hereby authorized, without further authorization from city council, to institute any civil suit necessary to recover the costs incurred by the City, to include costs associated with the civil suit.

H. Any person who shall cause, create, keep, or otherwise permit a nuisance declared under this Chapter or any person who intentionally damages, cuts, carves, abuses poisons or otherwise harms or injures any tree located on public property shall be guilty of a misdemeanor, and upon conviction thereof shall be fined as provided in Sections 1.08.010, 1.08.020 and 1.08.030. Each day that such nuisance shall continue shall constitute a separate offense; provided, the imposition of a penalty hereunder shall not abrogate the right of the city to cause the abatement of any nuisance

2. Except as expressly amended herein, all other provisions of Title 9, Health and Safety, of the City Code of the City of El Paso shall remain in full force and effect.

EXECUTED this _____ day of _____, 2007.

THE CITY OF EL PASO

John Cook

Mayor

ATTEST:

Richarda Duffy Momsen

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar

Assistant City Attorney

Norman C. Merrifield, Ed.D., Director

Parks and Recreation Department