

Sec. 32-6. - Trees, shrubs and plants in public property.

The director shall be clothed with authority over all trees, shrubs and plants of any kind and character which are now or may hereafter be planted in or along the streets or other public places of the city, the director being vested with full power, authority and jurisdiction over all planting of every kind and character lying outside of the property lines of privately owned property. It is hereby made the duty of the director:

- (1) To direct, regulate and encourage the planting, culture and preservation of shade and ornamental trees and plants in the streets and public places of the city;
- (2) To direct, regulate and encourage the pruning, spraying, cultivation and maintenance of such trees and plants, and to direct the time and method of pruning and trimming the same;
- (3) To remove or cause to be removed any tree or plant, or other obstruction, which in his judgment, would interfere with the development of adjoining trees or plants or with the free use of the streets or sidewalks;
- (4) To advise property owners with respect to the kinds of trees to plant or shrubbery desired in the particular street, and the method of planting the same;
- (5) To take all such measures as may be deemed necessary or desirable to control all dangerous insects, pests and plant diseases which may affect trees or shrubbery on the streets or other public places in the city;
- (6) To device plans for the planting of trees on and along the streets between the curbs and property lines within the city, where trees may be desirable;
- (7) To prescribe the character, kind, size, space and position of all trees so planted upon or along public streets or other public places;
- (8) To prevent the planting of trees, shrubs or other plants which are not in his judgment desirable; and
- (9) To plant or cause to be planted such trees in or along such streets or other public places as the director may deem proper.

(Code 1968, § 31-6; Ord. No. 81-1529, § 1, 8-11-81)

Cross reference— Authority of traffic engineer to remove plant growth constituting traffic hazards, § 45-17.

CHAPTER 33. PLANNING AND DEVELOPMENT

Sec. 33-101. - Definitions; figures; appendices.

- (a) As used in this article, the following terms shall have the meanings ascribed below unless the context of their usage clearly indicates another meaning:

Artificial lot means an area within the contiguous tract(s) or parcel(s) held under common ownership and designated on the building permit application that is delineated by the planning official for the sole purpose of satisfying the requirements of this article.

Association means a natural unit of vegetation characterized by a relatively uniform species composition and often dominated by a particular species.

Block face means that portion of a block that abuts a street between two intersecting streets.

Building setback area means the area of building line restrictions along a street as established by or pursuant to division 3 of article III of chapter 42 of this Code.

Building site means:

- (1) The tract or parcel of land which is designated on the building permit application, together with all contiguous tracts or parcels of land held under common ownership and any existing buildings and appurtenant parking;
- (2) If designated, an artificial lot contained therein and delineated by the planning official; or
- (3) A city-funded construction or reconstruction project that includes the entire width of the pavement of a public street and is at least 30 feet in length.

Caliper means the minimum diameter of a tree as measured six inches above the ambient grade for trees up to and including four inches in diameter, 12 inches above the ambient grade for trees having a diameter exceeding four inches but not exceeding eight inches and 54 inches above the ambient grade for trees having a diameter greater than eight inches.

Consumer price index means the "Consumer Price Index for all Urban Consumers" as established by the Bureau of Labor Statistics for the Department of Labor.

Corridor tree means a tree of a species listed on the street tree list that has a caliper of 20 inches or more and is situated in the building setback area along a local street or along a major thoroughfare, other than a portion of a major thoroughfare that has been designated as a green corridor.

Cost adjustment shall be the increase in any cost specified in this article as subject thereto and calculated by the percentage change in the Consumer Price Index for the period from January 2002 to the third month preceding the date the cost is payable where the sum of money is computed to the nearest cent according to the following formula:

$$(A/B-1) \times \text{Cost subject to adjustment}$$

In the foregoing formula:

'A' is the index value of the 'Consumer Price Index for All Urban Consumers, U.S. city average, All Items (1982-1984=100),' as published in the Monthly Labor Review by the Bureau of Labor Statistics of the Department of Labor of the United States of America

('index') applicable to the third month immediately preceding the month during which the computation is required to be performed.

'B' is the index value of such Index applicable to January 2002.

Deciduous plants means those which shed their leaves at one time each year, usually in the autumn.

Designated tree means a specific tree designated by the city council as having particular historical or arboricultural significance under section 33-103 of this Code.

Dripline means an imaginary circle drawn around a tree, extending to the tree's branching limit.

Esplanade means an unpaved area between two paved roadway sections.

Evergreen plants means those that do not lose all of their leaves at one time, though they shed their old leaves intermittently, as new leaves come out.

Existing vegetation to be preserved means any viable grouping of or single existing evergreen or deciduous trees and associated understory for which tree or buffer preservation credit is being requested.

Green corridor means any portion of a major thoroughfare that has been designated as a green corridor under section 33-104 of this Code.

Green corridor tree means a tree of a species listed on the street tree list that has a caliper of 15 inches or more and is situated in the building setback area of a green corridor.

Landscape buffer means the shielding or obscuring of one land use from another by the planting of evergreen trees or shrubs, or both, or the erection of a screening fence designed to minimize the transmission or propagation of noise, light, vibration, or dust, from traffic or other activity on one property to adjoining public or private properties.

Local street means a public street that is not a major thoroughfare.

Mulch means any covering except fresh grass clippings placed on soil to conserve moisture, minimize weed growth and protect plants from extremes in temperature.

Multifamily residential means any building, or portion thereof, which is designed, built, rented, leased, let out or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other, and shall include flats, apartments and a condominium created under chapter 82 of the Texas Property Code.

Nonresidential use means all uses other than single-family or multifamily residential use.

Parking lot means a paved, surfaced or leveled area designed and ordinarily used for accessory or public parking of motor vehicles, including commercial parking areas available for lease and leased premises available for public parking. The term shall not include parking garages.

Parking lot tree means a tree of a species listed on the parking lot tree list and includes both large and small parking lot trees as provided on the list.

Parking lot tree list means a list of trees issued and revised from time to time by the director of parks and recreation, which, based upon recognized arboricultural standards, shall designate trees that are required to be used for planting in parking lots. The director may only decline to include and may only remove otherwise suitable trees on the basis of health or disease concerns or warnings. The list shall be subdivided into large trees and small trees based upon canopy size characteristics.

Parking space means an individual vehicle parking space within a parking lot, which shall be computed on the basis of the provisions of chapter 26 of this Code.

Parkway means the area lying between the street curb or the edge of the roadway paving and the adjacent property line.

Parkway tree means a tree of a species listed on the street tree list that is situated in the parkway area adjacent to any tract or parcel of land and that has a caliper equal to or greater than 1½ inches.

Protected tree means a corridor tree, designated tree, green corridor tree or parkway tree.

Protected tree replacement requirement means the requirement established in section 33-105(b) or section 33-122(c), as applicable, of this Code.

Public street or right-of-way means the entire width between the boundary lines of every way which is held by the city, a county, the state or otherwise by the public in fee or dedication when any part thereof is open to the use of the public for purposes of vehicular travel.

Remove or **removal** means to take a tree away from its existing position, and includes such actions that may be reasonably expected to damage a tree sufficiently to cause it to die.

Roadway means that portion of a public street which is improved, designed, or ordinarily used for vehicular travel, exclusive of the curb, berm, or shoulder. In the event that a public street includes two or more separate roadways, "roadway" means each such roadway separately.

Root collar means an encircling structure of bandlike markings or a marked color change (from the tree bark) located at the highest part of the root system joining into the trunk of the tree at or slightly below the surrounding soil line.

Shrub means any plant, deciduous or evergreen, which is generally multistemmed and sold by height or spread and measured in inches or feet.

Sidewalk means the paved portion of a public street right-of-way which is between the curb lines, or the lateral lines of a roadway, and the adjacent property lines and is improved and designed for or is ordinarily used for pedestrian travel.

Single-family residential means a building (attached or detached) designed to contain one or two separate living units with facilities for living, sleeping, cooking or eating.

Specimen tree means an exemplary tree of good health and true to species habit and form, containing a minimum caliper of 1½ inches.

Street tree means a tree of a species listed on the street tree list.

Street tree list means a list of trees issued and revised from time to time by the director of parks and recreation, which, based upon recognized arboricultural standards, shall designate trees that are required to be used for planting adjacent to and within street rights-of-way within the city. The director may only decline to include and may only remove otherwise suitable trees on the basis of health or disease concerns or warnings. The list shall be subdivided into categories of trees that may be planted under power lines and trees that shall not be planted under power lines. The categories of trees that may be planted under power lines shall include live oak trees.

Temporary classroom building means a building(s) built on skids and which is utilized by a public school district for the purpose of eliminating the shortage of classrooms in order to bring the student/teacher ratio into compliance with state law.

Total tree planting requirement means the total number of trees, if any, that must be planted under this article, excluding any which might be planted as part of a landscape buffer and further excluding the protected tree replacement requirement.

Total tree requirement means the total number of trees that must be provided under this article, excluding any which might be provided as part of a landscape buffer, and further excluding the protected tree replacement requirement. This sum shall be made up of:

- (1) Any street and parking lot trees to be planted; and
- (2) Planting equivalency credits earned pursuant to section 33-123

Tree means any evergreen or deciduous tree which at the time of planting has a caliper equal to or greater than 1½ inches as measured six inches above the root collar, which is not less than six feet in height as measured from the root collar, and which meets the Standard for Nursery Stock Specifications as established by the American Association of Nurserymen (1986 ed.).

Understory means the small tree, shrub and grass constituents of a plant association, excluding canopy vegetation.

Visibility triangle means the triangular area adjacent to the intersection of any public street or public alley within which no obstruction may be placed which would block the sight lines for vehicular traffic. The triangle is established by measuring a distance of 45 feet from the intersection of the extended curb or edge of the pavement of major thoroughfares, and 25 feet from the extended edge of the curb or pavement of local streets. A straight line connecting the ends of each measured distance which forms the hypotenuse shall establish the visibility triangle (see figure A). The visibility triangle shall not contain any visual or physical impediments or obstructions to the vertical view between 30 inches and seven feet in height.

- (b) All references in this article to letter-designated or letter-and-number designated figures or appendices shall mean the applicable figure or appendix as attached to Ordinance No. 91-1701.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-84, §§ 2—4, 2-11-09; Ord. No. 09-1266, § 2, 12-9-09)

Sec. 33-102. - Application.

This article is applicable to all persons, including, without limitation, the city and other governmental agencies and entities, except that its application shall not extend to real property owned or controlled by the State of Texas or the United States of America.

(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-103. - Designation of trees.

(a) The city council may by motion designate a tree that:

- (1) Has historical significance arising from any historical event or events that are associated with the tree; or
- (2) Has arboricultural significance as listed on the county, state or national tree register by American Forests, the Texas Forest Service, the Park People or an equivalent arboricultural organization.

(b) No tree shall be designated except upon application made or joined by the owner of the tree, which application shall be filed with the planning official in such form as the planning official may require and shall set forth and document the grounds for the requested designation.

(c) The planning official shall review each application that is received and shall return any application that is determined to be incomplete or inconsistent with the requirements of this section. A complete and consistent application that is based upon historical significance shall be submitted for review by the Houston archaeological and historical commission, which shall review the same and provide its response, if any, to the planning official within 45 days. A complete and consistent application that is based upon arboricultural significance shall be submitted for review by the parks and recreation director who shall review the same and provide his response, if any, within 15 days. The planning official shall submit comments of the commission or the parks and recreation director to the city council together with the planning official's own recommendation for approval or denial.

(d) The city council shall consider each application on the basis of the application itself and the recommendations and comments provided. City council shall not be obligated to conduct any hearing on the matter, provided that interested persons may make an appearance on the matter under city council rule 8 or may submit written comments to the city secretary for distribution to the council members.

(e) The city council shall approve or disapprove an application that is referred by the planning official by motion. The decision of the city council shall be final, and if the application is disapproved, another application for designation of the same tree may not be considered for a period of three years.

- (f) To the extent permitted by laws governing the filing of documents in county real property records, a notice setting forth each tree designation shall be filed in the real property records of the county in which the tree is situated.

(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-104. - Green corridors.

- (a) A green corridor may be designated in accordance with this section.
- (b) In this section, a tract or parcel of land and its contiguous parkway that is devoted by actual use or by valid deed restrictions or covenants running with the land to single-family residential use is referred to as a "single-family property." The provisions of this section shall not be construed to prohibit a single-family property from being physically situated within a green corridor. However, a single-family property shall not be subject to any requirement created by the green corridor designation.
- (c) Each green corridor shall consist of the right-of-way of a major thoroughfare and building setback areas of abutting and contiguous properties. A green corridor shall be not less than one mile long.
- (d) A green corridor may be designated by the city council by motion following a hearing and determination that designation of the green corridor would significantly enhance the beautification of the city. Trees within the green corridor shall be entitled to enhanced protection as provided in this article, and the city council may, in designating the green corridor, specify one or more particular species, varieties, and/or colors of trees to be planted, to the exclusion of others within the green corridor. Additionally, green corridors may be given priority for expenditure of city moneys for street tree planting, to the extent permitted by law.
- (e) Petitions for the designation of a green corridor shall be submitted to the city secretary upon a form promulgated by the planning official for that purpose. Each petition shall be joined and signed by the owners of properties representing three quarters of the front footage of tracts or parcels that would abut the major thoroughfare in the proposed green corridor, single-family properties and their owners excluded. All required signatures must be collected within a period of time not exceeding 90 days, and the petition must be filed with the city secretary not later than the fifteenth day after the last date of any property owner's signature on the petition.
- (f) The city council shall conduct a hearing regarding each petition within 90 days following the date of its filing. Written notice of the hearing shall be given by the planning official in such manner as the city council may specify in the call for the hearing. Any person may present testimony at the hearing. Additionally, written comments may be provided to the city secretary for distribution to council members. If a petition is disapproved, another petition for designation of the same or substantially the same green corridor shall not be considered for a period of three years.
- (g) Nothing in this section shall be construed to prohibit the city council from waiving any irregularity in any petition or from designating any green corridor for which a petition has not been presented.

(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-105. - Removal of protected trees.

(a) The provisions of this section shall be applicable to the removal of a protected tree unless:

- (1) The tree is situated upon the site of a construction or enlargement of a building or parking lot such that division 2 of this article is applicable; or
- (2) The tree is not a designated tree and is situated upon a tract or parcel of land devoted by use or by valid deed restrictions or covenants running with the land to single-family residential use;

and the term "protected tree" is so restricted as used in this section.

(b) No person shall cause a protected tree to be removed without complying with a protected tree replacement requirement, which may be satisfied as follows:

(1) By the planting anywhere on the tract or parcel of land where the protected tree to be removed is situated or in the adjacent parkway area of additional trees on the basis of one caliper inch of tree planted for one caliper inch of tree removed;

(2) By contributing to the fund created under section 33-123(a)(2) of this Code an amount equal to:

- a. If the tree is a parkway tree, \$225.00 per caliper inch of tree removed for a 6 inch caliper tree and smaller, \$375.00 per caliper inch of tree removed for over six inch and up to 12 inch caliper trees, and \$500.00 per caliper inch of tree removed for over 12 inch caliper trees; or
- b. If the tree is a corridor tree or green corridor tree, \$103.00 per caliper inch of tree removed; or
- c. A combination of the foregoing;

any or all of which shall be subject to a cost adjustment from January 2002 in accordance with the formula established in the definition of the term "cost adjustment."

Installation of trees provided shall be subject to the planting standards established in division 2 of this article, and the trees shall be planted within 30 days following the removal of the tree unless a documented assurance of planting is provided to the department with the notice, in which case the trees shall be placed within six months of the removal of the trees. A documented assurance may be provided in the same manner as under section 33-132(b) of this Code. A variance may be requested in the same manner provided in sections 33-135 through 33-137 of this Code. Additionally, the mitigation provisions of section 33-138 of this Code shall be applicable to trees that are provided in order to satisfy a protected tree replacement requirement.

- (c) No person shall cause a protected tree to be removed without first filing with the department a written notice of removal of the protected tree, which must be filed at least 20 days prior to the removal. The notice shall include a map depicting the tract or parcel of land upon which the protected tree or trees to be removed are situated and shall demonstrate the manner in which the protected tree replacement requirement will be provided.
- (d) It is an affirmative defense to prosecution under this section that the protected tree sustained damage from fire, wind storm, accident or other cause such that the protected tree became an immediate threat to persons or property, provided that the owner of the tree caused the circumstances to be documented and filed written notice of the removal with the department within ten days following the removal of the tree.
- (e) It is a defense to prosecution under this section that the protected tree was removed by or on behalf of a public utility or a governmental entity and that its removal without notice was reasonably required for the maintenance or installation of public facilities or utility systems.
- (f) The planning official shall promulgate forms of notices and procedures under this section. A map need not be prepared in the form of a survey map, provided that it shall provide sufficient information to unmistakably identify the protected tree that is to be removed and the location of any tree that is to be planted in order to provide the protected tree replacement requirement, as well as the species and caliper of each tree. If the owner elects to make a contribution to the fund created under section 33-123(a)(2) of this Code, then the contribution shall be tendered with the notice. No provision of this section shall be construed to require city personnel to review any notice filed under this section for accuracy or sufficiency or to perform any site inspection of trees for which notices are filed.
- (g) No provision of this article shall be deemed to excuse compliance with article VI of this chapter. If a notice of removal calls for the removal of a tree situated in a public right-of-way that is protected under article VI, then written permission for its removal issued by the department of parks and recreation shall be submitted with the notice of removal that is required under subsection (c), above.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-84, § 5, 2-11-09)

Sec. 33-106. - Cumulative effect.

The protections afforded to trees under this article are cumulative of other provisions of this Code, including, but not limited to, sections 32-6 and 45-17 and Article VI of this chapter. Without limitation of the foregoing, nothing in this article shall be construed to authorize the removal or damaging of a tree growing in whole or in part within a public street that is subject to protection under article VI without full compliance with the provisions of article VI.

(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-107. - Tree protection; affirmative defense.

No person shall perform or cause or allow to be performed any construction activity, including, without limitation, construction or repair of buildings or other structures, installation or repair of utilities, or installation or repair of streets or sidewalks within the dripline circle area of any protected tree that is not to be removed, without complying with the applicable provisions of Chapter 16 of the Infrastructure Design Manual promulgated by the director of the public works

and engineering department with respect to any protected tree. It is an affirmative defense to prosecution under this section that the construction activity is an emergency repair of utilities on public or private property."

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-84, § 6, 2-11-09)

Sec. 33-108. - Records.

(a) Notices, maps, applications, landscape plans and other documents received by the city under this article are governmental records, and any person providing a false governmental document shall be subject to prosecution as provided by the Texas Penal Code.

(b) Governmental records received by the city under this article are subject to public inspection and copying as provide by law.

(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-109. - Penalty.

This article is subject to the provisions of section 1-6 of this Code, and violations shall be punishable by a fine of up to \$500.00 as provided therein.

(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-110. - Single-family residential properties.

(a) While single family residential properties are not subject to the requirements of division 2 of this article, it is the policy and requirement of the city that no final building permit inspection approval shall be given by the building official for construction of a new single-family residential house unless the property owner has complied with this section by preserving or planting a tree or trees or obtaining credit therefor, as follows:

(1) The required tree or trees, whether planted or preserved, shall be 1½ inches caliper size or larger.

(2) The required tree or trees may be either new trees that are planted in compliance with this article or trees already existing on the building site or abutting street right-of-way as hereinbelow provided that have been preserved in accordance with this article.

(3) The required tree or trees, whether newly planted or preserved, must be of species listed on the street tree list or the parking lot tree list.

(4) Except as provided in subsection (b), below, the requirement for building sites less than 5,000 square feet in size is:

a. Planting or preservation of one tree of 1½-inch caliper or larger;

b. If the tree is an existing tree that is preserved, then it may be situated anywhere on the building site or in the abutting street right-of-way;

- c. If the tree is a newly planted tree, then it shall be planted in the abutting street right-of-way, unless the planning official authorizes it to be planted elsewhere on the building site upon determination after consulting with the parks and recreation director or his designee that no suitable planting site exists in the abutting street right-of-way.
- (5) Except as provided in subsection (b), below, the requirement for building sites 5,000 square feet or greater in size is:
- a. Planting of two new trees of 1½-inch caliper or larger; if this option is selected, then one tree must be planted in the abutting street right-of-way and the other planted either in the abutting street right-of-way or elsewhere on the building site;
 - b. Planting of one new tree of four-inch caliper or larger; if this option is selected, then the tree shall be planted in the abutting street right-of-way, unless the planning official authorizes it to be planted elsewhere on the building site with the written concurrence of the director of parks and recreation or his designee upon determination that no suitable planting site exists in the abutting street right-of-way;
 - c. Preservation of one existing tree of 1½-inch caliper or larger and planting of one new tree of 1½-inch caliper or larger; if this option is selected, then one tree must be preserved or planted in the abutting street right-of-way and the other tree shall be preserved or planted in either the abutting street right-of-way or elsewhere on the building site; or
 - d. Preservation of two existing trees of 1½-[inch] caliper or larger; if this option is selected, then both trees must be situated in the combined area created by the abutting street right-of-way and the building set back area of the building site.
- (b) After consulting with the director of parks and recreation or his designee, the director may excuse the planting or preservation of the tree or trees otherwise required under this section and instead authorize the property owner to purchase credits under section 33-123 of this Code upon determination that the size and configuration of the property and the house do not afford sufficient space for the planting or preservation of even one tree.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 04-1015, § 24, 9-27-04)