

## Chapter 82 URBAN FOREST PRESERVATION AND ENHANCEMENT

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### Sec. 82-1. Purpose; findings.

- (a) *Purpose.* The purpose of this chapter is to preserve and enhance the urban forest of the city.
- (b) *Findings.* The city council has determined the following: The urban forest is of great value in the maintenance of public health and welfare. The urban forest can aid in the conservation of vital energy resources and natural resources and in the preservation of the city's heritage and quality of life. Trees are a valuable amenity to the urban environment, creating greater human comfort by providing shade, cooling the air through evaporation, restoring oxygen to the atmosphere, reducing glare, reducing noise levels, providing an ecological habitat for songbirds and other animal and plant species, providing for more effective transitions between different land uses and breaking the monotony of urbanized development, pre-development, or construction. The urban forest of the city should be preserved and enhanced, to the maximum extent feasible, consistent with the property rights of its citizens.

(Code 2003, § 22.001)

### Sec. 82-2. Definitions.

Unless the context otherwise clearly requires a different meaning, the following terms, as used in this chapter, shall have the meanings indicated below.

*Circumference* of a tree means the circumference of its trunk, measured as prescribed in the criteria manual and in figure 1 attached to the criteria manual. For conversion to diameter, the circumference can be divided by 3.142.

*Criteria manual* means the "criteria manual" dated February 1994, a copy of which is on file in the office of the city secretary, which is hereby approved, adopted and incorporated into this chapter by reference.

*Critical root zone* means, for any given tree, the area within a circle centered on the trunk location. The circle's diameter is one-half the sum of the broadest and the narrowest drip line diameters. See figure 1b attached to the criteria manual.

*Damage a tree* means to take any action which could result in a tree's death, either immediately or at any time within two years following the action. Some examples of such action, which are not intended to limit this definition, are as follows: severing the main trunk or large branches or large roots, girdling, poisoning, carving, mutilating, touching with live wires, piercing with nails or spikes, crushing or exposing the roots, digging or drilling any hole larger than three cubic feet (or a trench) within the critical root zone, covering a substantial part of the critical root zone or compacting a substantial part of the soil in the critical root zone.

*Large tree* means a tree with a circumference of 19 inches or more. In case a tree is removed, it is presumed to have been a large tree if the diameter of the stump is six inches or greater, measured in any direction.

*Located* a tree is "located" within an area if any part of its trunk is within the area at ground level.

*Low-value tree* means a tree included in "class IV" of the criteria manual (see appendix) which is evaluated by the urban forester under the criteria manual and assigned a total rating less than 30 (out of 40 possible points).

*Minimum planting standard* means the minimum standard for total number of trees which must be present on a site regardless of the number of pre-existing or replacement trees, as set forth in the criteria manual.

*Multiple-trunk tree* means a tree with two or more trunks visibly connected above the ground.

*Protected tree* includes:

- (1) A significant tree anywhere in the city;
- (2) A large tree located within any of the following:
  - a. A front yard;

- b. A street side yard (of corner sites); or
  - c. A right-of-way area ; and
- (3) When there is a permit in effect for development or pre-development activity on any subject site, "protected tree" includes all large trees located on that subject site.

*Qualified tree* means any tree listed in Class I or II of the criteria manual which has a trunk diameter of at least two inches, measured six inches above the ground.

*Remove* means to cut down, or remove a tree by any other means.

*Replacement tree* means a tree meeting the minimum criteria for replacement trees as set out in the criteria manual and this chapter.

*Right-of-way area* includes all parts of a street area, including:

- (1) The paved or improved roadway;
- (2) The sidewalks;
- (3) The curbs or ditches; and
- (4) All other paved or unpaved areas in the street area. The "right-of-way area" for an individual site includes only the area between the property line of the site and the centerline of the street area (i.e., the directly abutting area in the street area). A corner site has a right-of-way area both in front and on the side.

*Significant tree* means a large tree with circumference of 36 inches or more. In case a tree is removed, it is presumed to have been a significant tree if the diameter of the stump is 12 inches or greater, measured in any direction (Also see definition of large tree.).

*Street gutter flow line* means the street gutter flow line of the curb adjacent to and bordering upon a visibility triangle. If there is no curb, the height restrictions set forth in this chapter shall be based upon the actual level of the street area adjacent to and bordering upon the visibility triangle.

*Street side yard* means the setback area required by the zoning ordinance and measured from the side street line of a building site or a potential building site.

*Subject site* for any given development or pre-development activity, includes:

- (1) The building site or other site, upon which the development or pre-development activity would occur; plus
- (2) The right-of-way area for that site.

*Tree* means a woody plant having one well-defined stem or trunk, a defined crown and a mature height of at least eight feet.

*Tree disposition conditions* means conditions approved by the urban forester pertaining to the disposition and protection of trees when development or predevelopment activity occurs. See section 82-3.

*Tree permit* means a valid permit issued by the building official authorizing removal of or damage to a protected tree.

*Tree survey* is an on-the-ground survey containing the location of trees, their circumferences, types (species), crown areas (drip line) and other data, all as more particularly described in the criteria manual. Unless otherwise indicated in the criteria manual, the tree survey must depict for any given subject site:

- (1) Every large tree located in the subject site; and
- (2) Every large tree located elsewhere which has 30 percent or more of its critical root zone in such subject site.

*Tree trust* means any person or entity which meets all of the following criteria:

- (1) It is operated on a profit-making or not-for-profit basis;
- (2) The urban forester has determined that it has the resources, organization and expertise to plant and maintain trees successfully in an urban setting and in compliance with certificates issued to the city; and
- (3) The urban forester's determination has not been revoked or suspended.

*Urban Forest Enhancement Fund* or "UFEF" means the fund established as such by this chapter.

*Urban forester* means a person so designated and acting under this chapter.

*Visibility triangle* means the area at a street corner lying within a triangle beginning at the precise intersection point of the curbs of each of the two streets forming the corner and extending 20 feet along each curb line away from the curb intersection point, with the third side being determined by drawing a straight line connecting the ends of such 20-foot extensions. If there is no curb on such a street, the 20-foot line defined in zoning

ordinance shall follow the central flow line of the ditch paralleling the uncurbed street. The visibility triangle may include both public and private property.

(Code 2003, § 22.002; Ord. No. 1772, app. A, 8-16-2004)

**Sec. 82-3. Tree disposition; surveys.**

- (a) *General requirement.* Every permit for development or predevelopment activity must contain tree disposition conditions meeting the requirements of this section.
- (b) *Essential and mandatory conditions.* Tree disposition conditions are the most important means of protecting the urban forest of the city from unreasonable harm during development and predevelopment activity. Tree disposition conditions shall:
  - (1) Prohibit removal of or damage to any large tree, except:
    - a. Removal of a tree which is diseased, severely damaged or dead may be authorized;
    - b. Damage to or removal of a tree which causes an unreasonable impediment to the use and enjoyment of the applicant's property may be authorized; and
    - c. Damage to or removal of a low-value tree may be authorized.
  - (2) Require replacement trees, to the extent provided in the criteria manual, for any large trees authorized to be damaged or removed. Exception: No replacement is required for low-value trees.
  - (3) Require protection for large trees (and critical root zones). The conditions may specify the methods of protection to be used.
  - (4) Require that any authorized damage to trees be minimized and mitigated. The conditions may specify methods of mitigation to be used.
  - (5) Require, if there is major development, that the affected subject site attain a minimum planting standard of tree density as set forth in the criteria manual.
- (c) *Procedure.* The building official shall not issue any permit for any development or predevelopment activity unless all of the following have first occurred:
  - (1) *Tree survey.* The applicant must have filed a tree survey, and the urban forester must have approved it for compliance with this chapter.

- (2) *Tree disposition conditions.* Tree disposition conditions approved by the urban forester must have been inserted into the permit. The urban forester may require all persons owning land where a tree is located to agree to any removal of or damage to the tree authorized by the conditions.
- (d) *"Low-impact" exception.* Except for the requirement to insert the mandatory conditions, this section does not apply to a subject site, project or other activity that will not have any significant, adverse effect upon any large tree, as determined by the urban forester.

(Code 2003, § 22.003)

#### **Sec. 82-4. Tree permits.**

- (a) *Permit required.* A tree permit is required for removal of or damage to any protected tree, unless the damage is separately authorized by tree disposition conditions as described above. See section 18-5 for a more particular description of the requirement for a tree permit.
- (b) *Criteria for issuance of permits.* The building official shall only issue a tree permit if subsections (1) and either (2) or (3) are present:
  - (1) *Application.* An application for the permit must be filed by the owner of the area where the tree is located. If the tree is located on a property boundary, all owners must join in the application.
  - (2) *Tree in poor condition; hazards; low-value trees.* The tree in question is diseased, severely damaged or dead, or the tree creates a hazard to human life or an existing building, or the tree is a low-value tree. In any of these cases, the permit shall be issued without special conditions or replacement requirement.
  - (3) *Tree as impediment to proposed use of the subject site.* The tree in question causes an unreasonable impediment to use and enjoyment of property. Any permit issued in this case shall be reviewed by the urban forester and shall require that any replacement trees required by this chapter be planted. If replacement trees are to be located on a subject site controlled by the permitted, the permit shall also require that they be thereafter maintained. If the permit would authorize damage to a protected tree, but not removal, the permit must contain conditions reasonably calculated to minimize the damage to the protected tree (and may require replacement trees).

(Code 2003, § 22.004)

## Sec. 82-5. Replacement trees.

- (a) *Number of replacement trees.* Tree disposition conditions and tree permits authorizing removal of or damage to large trees or protected trees shall normally require replacement by one or more newly-planted trees on the same subject site according to the "replacement inch" stipulations in the criteria manual. To the extent on-site replacement is not feasible, the permitted may choose to:
- (1) Plant and maintain off-site replacement trees within 1,000-feet of the subject site, subject to the provisions of the criteria manual;
  - (2) Provide a replacement-inch certificate from a tree trust or the UFEF, as provided in this section and the criteria manual; or
  - (3) Provide replacement inches by some combination of the foregoing methods.

Regardless of the method or methods chosen, the number of replacement inches planted on the subject site, plus those provided by alternate methods, must equal or exceed the number calculated according to the replacement inch stipulations in the criteria manual.

- (b) *Minimum size.* Replacement trees must normally have a trunk diameter of at least two inches measured six inches from the ground. If ten inches or more of replacement inches are required by a permit, one replacement tree for each ten inches must have a trunk diameter of at least four inches, measured six inches from the ground. Example: If 24 replacement inches are required, there must be at least two replacement trees with a trunk diameter of four inches or more. The urban forester may prescribe proportionally smaller trunk diameters for species of trees typically smaller than normal.
- (c) *Qualified trees under zoning ordinance.* To be a "qualified tree" under the zoning ordinance, a tree must comply with the definition of "qualified tree" set out in section 82-2.
- (d) *Standard of review.* The urban forester shall use reasonable best efforts to determine the type and number of replacement trees required in an attempt to minimize any undue burden resulting from this chapter.
- (e) *Trees in street areas.* Before authorizing the establishment or maintenance of a tree or decorative landscaping (or any related appurtenances such as lighting or a watering system) in a street area, the building official must:
- (1) Be satisfied that V.T.C.A., Transportation Code ch. 316 has been complied with; and

- (2) Determine there would be no violation of the provisions of this chapter relating to visibility triangles.

The building official is designated by the city council to make the determinations contemplated by V.T.C.A., Transportation Code § 316.003.

- (f) *Replacement inch certificates.* If a tree trust or the UFEF issues an effective "replacement inch" certificate to the city, as provided in the criteria manual, the "replacement inches" described in the certificate are treated the same as replacement tree inches actually planted as of the date of the certificate.
- (g) *Replacement inch credits.* An owner of a site in the city who plants a class I or class II tree on that site is eligible to receive a credit for future "replacement inches." The owner may use the credit to offset the number of "replacement inches" assessed for protected trees removed from the same site at any time in the future. Credits are subject to the following:
  - (1) *Issuance.* Credits are only available for trees registered with the urban forester within 30 days following the day they are planted. Registration requires application and proof of planting. The registration form shall specify the size and species of each tree planted and its location on the site.
  - (2) *Measurement.* The number of replacement inches actually credited is determined by the urban forester at the time an offset is requested, based on the health and size of the previously-registered trees and applying the provisions of the criteria manual regarding calculation of replacement inches.
  - (3) *Transferability.* Credits are not transferable to another site but may be claimed by subsequent owners of the same site.
  - (4) *Record.* The city is not responsible for keeping registration or other records of credits. A person claiming a credit must present documents to show that the credit is available and applicable.
- (h) *Urban Forest Enhancement Fund.* The urban forest enhancement fund (UFEF) of the city is hereby established. The UFEF is subject to all restrictions on public funds and other funds of the city, including the requirement for annual budgeting. However, money in the UFEF may only be budgeted and spent for the following purposes:
  - (1) Purchasing, planting or otherwise providing trees in public spaces in the city;
  - (2) Maintaining or otherwise enhancing trees in public spaces in the city; or
  - (3) Matters necessary or incidental to the above.



Deposits may be made into the UFEF by gift or other transfer. The director of finance is authorized to accept such deposits on behalf of the city and to issue:

- (1) Acknowledgments in the name of the city; and
- (2) "Replacement inch" certificates as provided in the criteria manual.

(Code 2003, § 22.005; Ord. No. 1772, app. A, 8-16-2004)

### **Sec. 82-6. Protective fencing.**

- (a) *Fences required.* Unless otherwise specified in the applicable tree disposition conditions, each protected tree to be preserved must be fenced during development or predevelopment activity.
- (b) *Fence criteria.* The tree disposition conditions shall specify protective fencing of the critical root zone whenever reasonably practicable, unless a different area is prescribed in accordance with the criteria manual. Unless the tree disposition conditions specify otherwise:
  - (1) A six-foot or higher fence must surround each protected tree or group of protected trees, effectively preventing people, machinery, trash, material and other items from occupying the area within the protective fencing;
  - (2) The fence must be constructed of durable, highly visible materials supported on poles firmly set in the ground;
  - (3) The fence must be able to resist intrusions and impacts likely to be encountered on a construction site;
  - (4) The fence may incorporate existing fences or walls as well as temporary fencing; and
  - (5) Each fence must display a prominent warning sign as set forth in the criteria manual.
- (c) *Fence permit.* A separate fence permit is not required for construction of a fence under this section, if a permit for the work is in effect and includes tree disposition conditions.
- (d) *Trash, storage prohibited.* It shall be unlawful for any person to use the area within the protective fencing, required by this section, for trash disposal, storage, vehicle parking or any other use that could adversely affect tree roots.

(Code 2003, § 22.006)

### **Sec. 82-7. Visibility triangles.**

It shall be unlawful for any person to plant, grow or maintain any plant, except a tree, within a visibility triangle, if the plant has (or probably will have) a height greater than three feet above the street gutter flow line. It shall be unlawful for any person to plant, grow or maintain a tree which has branches or foliage within or above a visibility triangle at a height lower than 15 feet above the street gutter flow line. It is presumed that a person who owns or controls real property within the city maintains all trees and plants on that property. The city may enter a visibility triangle and remove growths prohibited by this section, and there shall be no liability to others for taking or not taking such action.

(Code 2003, § 22.007)

### **Sec. 82-8. Administration; appeals, etc.**

- (a) *Urban forester.* The city manager shall appoint an experienced and qualified person to be chief urban forester for the city, which shall be a full-time, city employee position. The city manager may designate one or more other urban foresters to act in the absence of the chief; persons so designated may not necessarily be employees of the city, but the city manager shall make an adequate provision for obtaining their services by contract if they are not city employees. A person designated as urban forester must hold at least a bachelor's degree from an accredited four-year college or university in urban forestry or arboriculture or must have equivalent skills and experience.
- (b) *Referral; duties.* The building official shall refer tree surveys, tree disposition conditions and applications for tree permits to a designated urban forester, who shall work with the applicant and other city departments as required to administer the provisions of this chapter. The urban forester may establish categories of simple, routine or low-risk surveys, plans and applications, which may be handled summarily, without submission to the urban forester. The fees for such applications may be reduced accordingly, if so provided in the fee schedule.
- (c) *Applicability to city projects.* For all city projects that may impact large trees, the appropriate documents (tree permits, tree surveys and tree disposition conditions) shall, whenever practicable, be submitted to the urban forester for evaluation and recommendations, prior to public hearings (if held) or final decisions taken by city council or city staff. City approval of a city-owned subject site or project shall constitute approval for actions affecting the trees. City-owned subject sites or projects shall follow the same guidelines for tree replacement as private subject sites or projects, except as authorized by the city council.

- (d) *Reference and training.* The city manager is authorized to obtain training and reference materials for the building official and other city staff members who may be called upon to enforce this chapter. The building official is authorized to maintain reference materials on file and to make them available, without charge, to persons who request information in connection with construction or other activities within the city that could affect the urban forest.
- (e) *Cooperation.* It is the desire of the city to establish a cooperative working relationship with persons seeking to improve property within the city. Interested persons are invited and encouraged to meet and confer with city staff and to retain the services of expert foresters to provide advice and assistance to themselves and the city. The urban forester shall use reasonable best efforts to determine the type and amount of replacement trees required in an attempt to minimize any undue burden resulting from this chapter.
- (f) *Decisions and appeals.* When making decisions or performing other duties under this chapter, the urban forest and the building official both shall be subject to the standards and procedures generally applicable to the building official under this chapter. Appeals of decisions made by either the building official or the urban forester, and applications for variances, are heard by the building and standards commission, in accordance with this chapter. Notwithstanding any other provision to the contrary, the commission, when considering an application for a variance:
  - (1) Shall take into account efforts to avoid or mitigate removal of and damage to trees, particularly trees highly-evaluated under the criteria manual; and
  - (2) May take into account the financial cost of compliance with this chapter, particularly as it compares to the cost of other work the applicant may be proposing.

(Code 2003, § 22.008)

### **Sec. 82-9. Violations.**

- (a) *Removal, damaging, killing of protected trees.* Except as authorized by a tree permit, it shall be unlawful, within the city:
  - (1) For a person to remove or damage a protected tree intentionally or knowingly;
  - (2) For a person, who owns or controls any site, intentionally or knowingly to cause or allow a protected tree to be removed or damaged, if it is located within that site or the right-of-way area of that site.
- (b) *Affirmative defenses.* It shall be an affirmative defense to prosecution under this chapter for removing, damaging or killing a tree, that:

- (1) Tree disposition conditions (contained in a building or other permit) authorized the conduct in question;
- (2) All of the following four circumstances were present:
  - a. Immediate action to remove, damage or kill the tree in question was necessary to prevent harm to people or property;
  - b. A permit application was filed within ten days thereafter;
  - c. An appropriate permit or amendment was obtained; and
  - d. There was full compliance with all conditions of the permit or amendment.
- (c) *Conditions.* It shall be unlawful for any person who applies for or receives a permit regulated by this chapter to fail or to refuse to comply with a condition of the permit or this chapter. Any related permit for the subject site in question may be withheld until the condition is complied with to the satisfaction of the urban forester, building official or any other city staff members who are called upon to enforce this chapter. All permits are subject to revocation or suspension as provided for in chapter 18.

(Code 2003, § 22.509)

**Sec. 82-10. Other regulations; conditions.**

- (a) *Conflicts with other regulations.* In any case where another city ordinance, rule or regulation would require the removal, damage or death of a large tree, under circumstances where this chapter would prohibit such action, it is the intent of the city council that all of the applicable regulations shall be read together and harmonized so that, if reasonably practicable, the large tree is not removed, damaged or killed.
- (b) *Liberal interpretations authorized.* All city officials, boards and commissions are authorized and encouraged to interpret other ordinances, rules and regulations liberally in order to minimize conflicts with this chapter and to protect existing large trees, except in circumstances where there might be hazards to persons or property.
- (c) *Variations.* The need to protect or preserve a large tree shall be considered a sufficient "hardship" in all cases where a hardship is required for the issuance of a variance under city ordinances, unless additional grounds are required by state law.

(Code 2003, § 22.510)