

Chapter 111 TREE PRESERVATION AND PROTECTION*

***Cross references:** Buildings and building regulations, ch. 22; communication towers and structures, ch. 31; environment, ch. 42; floods, ch. 50; historical preservation, ch. 56; parks and recreation, ch. 74; planning, ch. 82; signs, ch. 90; streets, sidewalks and other public places, ch. 98; zoning, ch. 125.

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Sec. 111-1. Purpose.

The city lies in Galveston and Harris Counties, the beauty of which is greatly enhanced by the presence of a large number of majestic trees. The development of the city has resulted in the removal of a great number of these trees. Further uncontrolled and indiscriminate destruction of trees would detrimentally affect the safety and welfare of the citizens of the city. This preservation program outlined in this chapter contributes to the welfare and aesthetics of the community and retains the great historical and environmental value of these trees. This preservation and protection program applies solely to commercial development, as that term is defined in this chapter, subject to the exception contained in subsection 111-4(b)(7) of this chapter. This chapter sets forth the policy of the city to require the preservation of healthy trees unless reasonably and conforming use of the commercial property justifies the removal, cutting, pruning and/or encroachment into the protected zone of a tree.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)

Sec. 111-2. Definitions.

Circumference shall be measured 4 1/2 feet above the ground using an ordinary tape measure or diameter tape. Measurement is taken just above or below any unusual swells in the trunk, as closely as possible to the 4 1/2-foot level. For multiple-trunk trees, the trunk circumference is deemed to equal the circumference of the largest plus one-half the circumference of each additional trunk. Measurements should be accurate to the nearest one-half inch.

Commercial development shall mean any person planning to divide a tract of land into two or more parts; construct a building for direct or indirect sales of merchandise or to provide service to the public.

Cutting shall mean the detaching or separating, from a protected tree, any limb, branch or root. Cutting shall include pruning.

Damage shall mean any action undertaken which causes injury, death or disfigurement to a tree. This includes, but is not limited to, cutting, poisoning, over-watering, relocation or transplanting a protected tree, or trenching, excavating or paving within the protected zone of a tree.

Deadwood shall mean limbs, branches or a portion of a tree that contains no live foliage during a period of the year when they should be present.

Developed area shall mean the portion of a building site which includes the building footprint, flatwork (streets, drives, parking lots, sidewalks, etc.) and all other proposed improvements.

Drip line shall mean the outermost edge of a tree's canopy. When depicted on a map or plan, the drip line of a tree will generally appear as an irregularly-shaped circle that follows the contour of the tree's branches as seen from overhead.

Encroachment shall mean any intrusion or human activity into the protected zone of a tree including, but not limited to, pruning, grading, excavating, trenching, parking of vehicles, storage of materials or equipment, or the construction of structures or other improvements.

Person shall mean any natural person, partnership, firm, corporation, governmental agency or other legal entity.

Protected zone shall mean a specifically defined area totally encompassing a tree within which work activities are strictly controlled. When depicted on a map or plan, the

outermost edge of the protected zone will generally appear as an irregularly-shaped circle that follows the contour of the drip line. In no case shall the protected zone be less than eight feet from the trunk of a tree.

Removal shall mean the physical removal of a tree or causing the death of a tree through damaging, poisoning, or other direct or indirect action.

Routine maintenance shall mean actions needed for the continued good health of a tree including, but not limited to, removal of deadwood, insect control spraying and watering.

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

Tree disposition plan specifies how trees, on the tree list, will be protected from development and pre-development activity. The plan shall include preliminary route of utility lines. It shall specify which trees are to be relocated, removed or replaced. The plan shall include tree protected zone limits, as defined in this section, on trees that are over 19 inches in diameter and that are on the tree list as defined in this section. In addition, the plan should include a proposed developed area overlay, as defined in this section.

Tree list. Only those trees designated in this list are considered desirable and fall under this chapter. The city may designate additional trees at the request of the developer. Replacement trees shall be of the same species: Pecan, Cedar, Magnolia, Oak, Elm, Red Bud, Pines, Hickory, Maples.

Tree survey shall mean an on-the-ground survey drawing containing the location of the trees, their circumference, type (species) and protected zone limits.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)

Sec. 111-3. Tree preservation.

Any person, as defined in section 111-2, who owns, controls or has custody or possession of any real property within the city that is improved or has been approved for development, or which is part of or associated with the city approved development of another piece of property, such as any parcel to be maintained as permanent open space or for recreational purposes, shall maintain all tree(s) located thereon in a state of good health. Intentional failure to do so shall constitute a violation of this chapter. Areas to be cleared for current or future development shall be preserved in accordance with the following requirements:

- (1) Any person desiring to cut down any mature tree(s) 24 inches in diameter or larger must obtain a permit from city council.
- (2) A minimum of 60 percent of the trees measuring 19 inches in diameter or larger, which types (species) are identified under section 111-2, shall be preserved if at all possible. If more than 40 percent of such trees are removed, then each diameter inch of the largest trees removed in excess of 40 percent must be replaced with a diameter ratio of 1.3 of new tree of a species included on the tree list or other trees approved by city council. Replacement trees shall be in increments of three inches. If this isn't feasible, the permittee may request, in the form of a letter addressed to the urban forester, a "replacement inch" certificate. The trees described in the certificate are treated the same as trees actually planted as of the date of the certificate. To be effective, the "replacement inch" certificate must state unconditionally:
 - a. The name of the applicant and the project to which the "replacement inches" apply.
 - b. The "replacement trees" will be planted within reasonable proximity of the subject site, and within the city limits, on or before a specified planting date, which must fall within 365 days following the date of the certificate.
 - c. That the "replacement trees" will be planted and maintained in accordance with the National Association of Arborists.
 - d. That all cost have been paid.
- (3) The developer may increase the minimum required landscaping percent as set forth in the commercial subdivision chapter, to offset the total number of replacement inches. Landscaping plan shall be approved by the urban forester, who at his discretion, may request plan to be submitted to city council for approval.
- (4) Permit validity. Tree disposition plan accepted in conjunction with a building permit, subdivision plan and site plan shall be valid for the period of the building permit or site plan validity.
- (5) Improvements within the drip line of a protected tree may occur provided the developer submit to the urban forester a site plan signed by a certified arborist indicating that the proposed improvements, within the drip line, will not adversely impact the tree(s) overall health and welfare. Encroachment into the drip line of a tree shall be limited to sidewalks, parking lots, private driveways and decks.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)

Sec. 111-4. Permit required, exemptions.

- (a) *Permit required.* No person (as defined in section 111-2) shall cut, remove, encroach into the protected zone or relocate any tree on any public or private property within the city unless a valid tree permit has been issued by the planning department. Before a permit can be issued, a tree disposition plan, as defined in section 111-2, and a tree survey must be provided. An application involving a limited portion of a site may be based on an exhibit showing only that portion of the site. The city may require the permittee to provide aerial photograph interpretation of the site for preliminary analysis of large scale developments. Request for aerial photos of the site are at the discretion of the city. Approval of the city council must be obtained to cut, remove, or relocate any mature tree with a diameter larger than 24 inches. Any variance request shall be approved by city council.
- (b) *Exemptions.* A permit is not required to cut or remove a tree(s) under the following circumstances:
- (1) Trees that do not exceed 19 inches in diameter when measured at a point 4 1/2 feet above the tree's natural grade on an undeveloped tract of land.
 - (2) Trees damaged by thunderstorms, windstorms, floods, earthquakes, fires or other natural disasters, and determined to be dangerous by a peace officer, fire fighter, civil defense official or code enforcement officer in their official capacity. The planning department shall be promptly notified of the nature of the emergency and action taken.
 - (3) When removal is determined necessary by fire department personnel actively engaged in fighting a fire.
 - (4) Trees planted, grown and/or held for sale as part of a licensed nursery business. This exemption is limited to trees with main trunks under ten inches in diameter.
 - (5) Public utilities holding a franchise from the city and city crews are exempted from this chapter for the purposes of clearing and maintaining such property as is necessary to provide safe and adequate service.
 - (6) If the tree is not on the tree list (section 111-2).
 - (7) Single lot owners, whose property is their primary residence or homestead and whose property is more than 100 acres may, at the discretion of the urban forester, be exempt.
 - (8) Trees damaged by disease or rot, which are deemed a hazard by the urban forester.

- (c) *Use of explosives.* All tree fellers, tree surgeons or anyone using explosives within the city limits in connection with the cutting down or removal of any tree shall first apply to the city for a permit to do so and shall furnish such bond or insurance as the urban forester shall deem necessary for the protection of the property owner or any other person from any possible damage as a result of such work.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)

Sec. 111-5. Processing of permits, standards for granting, or denying permits.

- (a) *Processing.* The applicant shall furnish all necessary information as required by the planning department. The urban forester may approve, deny or conditionally approve a request for removal of three or fewer trees on a single parcel. For requests involving three or fewer trees, the decision of the urban forester may be appealed to the director of general services and the director's decision may be appealed to the city council pursuant to the provisions of this Code. Any request for removal of four or more trees on a single parcel shall be reviewed by the director of public works, who shall make recommendations to the city council, which shall approve or deny the permit.
- (b) *Standards.* A tree permit may be approved based upon one or more of the following findings by the decision maker:
- (1) The condition or location of the tree required the cutting to maintain or aid its health, balance, or structure;
 - (2) The condition of the tree with respect to disease (as certified by a tree expert acceptable to the city), danger of falling, proximity to existing structures, high pedestrian traffic areas (such as parking lots or pedestrian walkways) or interference with utility services, which cannot be controlled or remedied through reasonable and/or preventative procedures and practices; or
 - (3) When necessary to remove, relocate, cut or encroach into the protected zone of a tree to enable the reasonable and conforming use of the subject property, which is otherwise prevented by the presence of the tree.
- (c) *Circumstances under which reduction allowed.* Permittee may be allowed a reduction in the number and size of the replacement trees if applicant clearly demonstrates to city council that one or more of the following sets of circumstances is present: (i) there is insufficient available space on the affected subject site for all the replacements initially calculated, taking into account the space ultimately needed for trees upon maturity, (ii) there are sufficient remaining trees on the affected subject site to maintain cover and diversity in the city as a whole, or (iii) the number

of replacements calculated by the formula is unreasonably large, and the urban forest would not be substantially affected if the reduction was allowed.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)

Sec. 111-6. Conditions of removal.

Conditions may be imposed on the permit at the discretion of the decision maker including, but not limited to, one or more of the following:

- (1) A condition requiring the replacement or placement of additional trees on the subject property to offset the impact associated with the loss of a tree, limbs, or encroachment into the protected zone of a tree;
- (2) A condition requiring the relocating of a tree on-site or off-site, or the planting of a new tree off-site to offset the loss of a tree;
- (3) A condition requiring an objectively observable maintenance and care program be initiated to insure the continued health and care of tree(s) on the property; or
- (4) A condition requiring payment of a fee or donation of a boxed tree to the city or other public agency to be used elsewhere in the city.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)

Sec. 111-7. Nonliability of city.

Nothing in this chapter shall be deemed to impose any liability for damages or a duty of care and maintenance upon the city or upon any of its officers or employees. The person in possession of any public property or the owner of any private property shall have a duty to keep the tree(s) upon their property and under their control in a safe and healthy condition. Except as provided in section 111-5 of this chapter, any person who feels a tree located on property possessed, owned or controlled by them is a danger to the safety of any persons or to structural improvements on-site or off-site, shall have an obligation to secure the area around the tree or support the tree as appropriate to safeguard both persons and improvements from harm.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)

Sec. 111-8. Enforcement.

Any person who intentionally cuts, damages, moves or removes any tree within the city or encroaches into the drip line of a tree in violation of this chapter shall be deemed guilty of a general misdemeanor (each tree will be a separate offense) and upon conviction the permit will be revoked and may be punished up to the maximum allowable by law.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)

Sec. 111-9. Defense.

- (a) It shall be a defense to prosecution under this chapter that enforcement of this chapter would work an undue economic hardship, thus leading to inverse condemnation.
- (b) Violation, restitution. It has been determined that the trees within the city are valuable assets to the citizens of this community and as a result of the loss or damage to any of these trees, the public should be compensated. In addition to any penalties provided by subsection (a) of this section, any person who cuts, damages or removes any tree in violation of the terms of this chapter is responsible for proper restitution and may be required to replace the tree(s) so removed or damaged, by the donation of or by replanting two or more trees of reasonable equivalent size and value to the tree damaged or removed. The municipal court judge will have sole discretion as to the number, size, and location of said equivalent replacement trees and shall rule accordingly.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)

Sec. 111-10. Incentive to developers.

To give an incentive to developers who preserve trees, the planning commission is authorized to recommend and the city council is authorized to grant variances on parking lot requirements, set back requirements, driveway requirements and green space requirements.

(Ord. No. 97-55, § 2, 10-28-1997; Ord. No. 98-16, § 2, 5-12-1998; Ord. No. 98-26, § 2, 7-14-1998)