

10-1-10. - Right-of-way landscaping and development regulations; sight triangles.

(A) Right-of-way regulations.

1. Obstructions forbidden.

- (a) No person shall locate or maintain or cause to be placed, located or maintained, or allow to continue to exist, on or extending over onto city-held rights-of-way over his property or property under his control, any matter not naturally occurring or any plant without having received a permit for the same from the City manager or from the City Council. Each day such exists shall be a separate and distinct violation.
- (b) No person shall place or cause to be placed any material in a city-held right-of-way unless in compliance with this subsection.
- (c) Nothing in this subsection shall in any way restrain the City of Midland or the State of Texas from erecting traffic control devices and traffic signs. Neither shall this subsection prohibit any franchised utility of the City from installing any devices necessary to that utility if in conformance to the franchise agreement and operating agreements that utility has with the City.

2. Presumptions.

- (a) For purposes of this subsection, it shall be presumed that the owner of the abutting premises as well as any person in control thereof has caused the nonindigenous matter or any plant other than items listed in paragraph 4 of this subsection (A) to be placed, located or maintained, or allowed to exist, on his property over which the City holds a street right-of-way.
- (b) For the purposes of this subsection, it shall be presumed that any matter extending over a public sidewalk so as not to leave at least 60 percent or four feet, whichever is more, of the width of the sidewalk in contiguous feet clear to a height of at least seven feet above sidewalk level obstructs that sidewalk and is neither acceptable nor permissible under this subsection.
- (c) These presumptions are not conclusive and may be rebutted by a preponderance of the evidence.

3. Removal. The city manager is hereby authorized to remove any object in, over or upon the City-held rights-of-way which exist in violation of this Section.

4. Exceptions. It shall be an affirmative defense to any charge of placing or maintaining a right-of-way obstruction that such obstruction is of the following nature:

- (a) Mailboxes. Mailboxes which (i) do not occupy more than one foot of the width adjacent to one edge and one foot of the length of an improved sidewalk area for pedestrian use or more than two square feet not in an improved sidewalk area and (ii) which are

constructed of breakaway material which would not cause injury to the occupants of an automobile in the event of a collision with that mailbox by an automobile shall be allowed.

- (b) Turf grasses. Turf grasses such as Bermuda, zoysia, St. Augustine, fescues and similar species may be placed on any unimproved portion of a city-held right-of-way.
- (c) Low-lying vegetation. If an approved public sidewalk is in place where such is appropriate, living, healthy vegetation may be placed on the unimproved portions of city rights-of-way in the following locations and to the following heights above sidewalk level, or above the top of the curb level where no sidewalk is in place:
  - (1) Vegetation no more than 20 inches high may be placed on any unimproved portion of city-owned rights-of-way.
  - (2) If such vegetation is of a species which will never exceed 24 inches in height, such as tam junipers (*Juniperus tamisafora*), that vegetation may be placed on any unimproved portion of city-held rights-of-way to 24 inches in height.
  - (3) Vegetation no more than 36 inches high may be placed ten feet behind the curblines on the City-held rights-of-way adjacent to local and minor collector streets. Vegetation 36 inches high may be placed ten feet behind the curblines on city-held rights-of-way of major collector streets if the adjoining property is zoned and used for one- or two-family residences.
  - (4) Vegetation 36 inches high may be placed 15 feet behind the curblines on all city-held rights-of-way.
- (d) Trees. On unimproved city-held rights-of-way, on the sides, but not in the medians, of local streets and minor collector streets, living, healthy trees may be placed and maintained in the City-held rights-of-way; provided that approved curb, gutter and public sidewalks are in place and that the tree is located at least five feet behind the curblines. Furthermore, that tree must be free of branches and leaves below seven feet above sidewalk level. Immature trees may have branches and leaves below the minimum heights set herein if such trees are certified by the City manager not to cause a sight obstruction. The certification shall expire no later than the next December 31, or earlier if so set by the City manager for good cause, and may be withdrawn at any time. Furthermore, such trees may not be located so densely that their trunks create a sight obstruction.
- (e) Median vegetation. Within the medians of local streets and minor collector streets, any cultivated vegetation may be placed by a person holding a median development permit pursuant to paragraph 5(b) of this subsection (A); provided that vegetation is no closer than five feet to the nearest curblines nor closer than 30 feet to the nearest opening of that median for cross traffic. The opening of a median for cross traffic shall be measured from the curblines of the median extending into that opening at the furthest point.
- (f) Paving. Paving no higher than sidewalk level may be placed on any unimproved portion of city-held rights-of-way.

- (g) Central business district trees. Living, healthy, single-trunk trees may be placed in the rights-of-way of the central business district area of the City where approved public sidewalks are in place under conditions specified in this subparagraph. The central business district area of the City is defined as that area zoned C-1 Central Area District, except for the rights-of-way of any street with a speed limit in excess of 30 miles per hour. The trunks of such trees must be no closer than 18 feet apart. The trees must be clear of leaves and branches to a distance of seven feet above sidewalk level. A protective covering must be placed around the base of such trees such as is safe for expected pedestrian traffic if the tree is placed within an improved sidewalk area. Within one side of any one street block, the trunks of any trees in the rights-of-way must be to the greatest extent practical equidistant from the curblines, such distance to be specified by the City manager upon request of a party wishing to place such a tree. That distance shall be as near as is practical to the distance of existing trees within that block side taking into consideration the public needs for the particular area. Such trees must be of a deep-rooted species which is not likely to disrupt the surface of the surrounding sidewalk, curb, gutter and street by the tree's root activity. No shallow-rooted trees, such as mulberries (*Morus alba*), shall be allowed pursuant to this subparagraph. Neither shall any tree be allowed hereunder which has brittle branches or produces any poisonous fruit or bears thorns. No tree shall be allowed which sheds matter which, due to the shed matter's size, quantity or nature, would pose a hazard to vehicular or pedestrian traffic or create an unsanitary or unsightly condition. The city manager shall publish lists of several trees which conform and those that do not conform to the standards herein and shall evaluate any other species for conformity with this paragraph upon request of any person wishing to plant such a tree. No tree authorized hereunder shall occlude access to a parking meter, parking space, driveway, parking facility, public alley or public or private access.
- (h) Decorative construction. Any wall or other construction or item of masonry, wood, earth, stone, plastic or similar constituency shall be allowed to heights specified below. However, none of such construction may contain sharp, pointed or jagged surfaces such as could cut or injure persons touching or falling against the same. Public sidewalks, curbs, and gutters must be in place. The allowed height of such construction shall be:
- (1) Along local and minor collector streets, up to an imaginary line 18 inches above sidewalk level from the property line to a point five feet behind the curblines, continuing from that point downward to zero inches at the back of the curb; or
  - (2) Along major collector and arterial streets, up to an imaginary line 18 inches above sidewalk level extending from the property line to a point 15 feet behind the curblines, continuing from that point downward to zero inches at the curblines.
- (i) Existing vegetation.
- (1) Trees and shrubs in a living and healthy condition existing in the public rights-of-way at the time of the enactment of this Code Section shall be allowed to continue to exist except as provided below. Should any person claim a tree or shrub is covered by this subparagraph, the burden of proof shall be upon that person to establish such. No new or replacement tree or shrub shall be authorized hereunder.

- (2) Should the City manager at any time determine that a tree or shrub excepted under this subparagraph fails to meet the traffic and pedestrian safety conditions of parts 5(a)(1)(aa), (bb), (cc) or (dd) of this subsection (A), then the exception of this subparagraph shall terminate, subject to the appeal procedures of paragraph (A)8 as to the City manager's findings, unless the owner of the abutting premises:
- (aa) Immediately brings such tree or shrub into conformance with the referenced Code provisions; or
  - (bb) Executes an agreement as a covenant running with the land to indemnify the City for any liability that may be imposed on it because of the tree or shrub and supplies the City perpetually with a liability insurance policy on the tree or shrub. That policy must name the City as an additional insured and be conditioned that 60 days' notice to the City must be given before cancellation is effective. That policy must have limits no less than the maximum tort liability of municipalities as set by the Texas legislature.
- (3) Should the City manager determine that a hereunder excepted tree or shrub constitutes an imminent traffic safety hazard, the exception shall terminate as to that tree or shrub and the City manager may remove the tree or shrub without opportunity of the abutting owner to save the exception by supplying indemnity or insurance.
- (j) Nothing in this paragraph shall authorize any violation of the sight triangle as described in subsection (B) of this Section. Nor shall this paragraph authorize any obstruction to an improved or planned sidewalk or roadway, nor obstruction of the view of any traffic control device. Nor shall this paragraph authorize any unsightly matter or violation of the health and sanitation codes of the City.