

THE CITY OF THE COLONY, TEXAS

ORDINANCE NO. 09-1789

AN ORDINANCE OF THE CITY OF THE COLONY, TEXAS, AMENDING CHAPTER 2, ARTICLE II OF THE CODE OF ORDINANCES BY ADDING DIVISION 6 TO PROVIDE FOR A PUBLIC TREE ADVISORY BOARD; AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES BY ADDING ARTICLE X, SUPERVISION AND MAINTENANCE OF PUBLIC TREES, TO PROVIDE FOR THE CARE AND MAINTENANCE OF TREES ON PUBLIC PROPERTY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH AND EVERY OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of The Colony expends at least \$2.00 per capita annually for the care and maintenance of trees on public property; and

WHEREAS, the City of The Colony desires to protect trees on public property from unnecessary damage or destruction;

WHEREAS, the City of The Colony desires to develop and implement a policy for the care and maintenance of public trees, including definitive guidance for the planting, maintenance, and removal of a tree from public property, including street medians and parkways, parks, and other public places; and

WHEREAS, the City Council desires to create a Public Tree Advisory Board to develop an annual work plan for planting, maintaining, and removal of public trees.

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

SECTION 1. That Chapter 2, Article II of the City of The Colony’s Code of Ordinances be, and the same is, hereby amended by adding Division 6 to provide for a Public Tree Advisory Board, which shall read as follows:

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Secs. 2-270—2-275. Reserved.

DIVISION 6. PUBLIC TREE ADVISORY BOARD

Sec. 2-276. Advisory board created; membership term and qualifications.

(a) There is hereby created the public tree advisory board (the “board”). The board shall consist of at least five members and up to seven appointed by the city council for two-year staggered terms. For initial appointments to the board, two board members shall serve a one-year term, and three board members shall serve a two-year term; if the council chooses to appoint more than five members, the sixth member would serve a one-year term, and the seventh member would serve a two-year term. Thereafter, appointed board members shall serve two-year terms. The park development manager and the community services director shall serve as *ex officio* members of the board.

(b) Membership on the board shall be in accordance with the following:

- (1) No member of the board shall hold an elective office in the City;
- (2) Appointed members shall serve without compensation, but may be reimbursed for actual expenses as approved by the City Council;
- (3) The recommended but not mandatory composition of board membership shall include at least one member who has an expertise in arboriculture, urban forestry, or landscape architecture, and at least one member who is a resident of the City with an interest in trees that is entirely avocational; and
- (4) At least four of the members of the board shall reside in the City.

(c) In the event that a vacancy shall occur on the board during the term of any member, a successor shall be appointed by the City Council to serve the balance of the unexpired term.

Sec. 2-277. Operational rules and procedures; scheduled meetings.

(a) The board shall adopt operational rules and procedures for the conduct of its duties. The rules and procedures shall provide for the annual election of officers, and the conduct of regular and special meetings. The board shall keep minutes of its proceedings. A majority of the members shall be a quorum for the transaction of business.

(b) The board shall meet a minimum of four times a year. The director or chair of the board may schedule additional meetings as needed. All meetings shall be open to the public, and subject to the Texas Open Meetings Act.

(c) Any member who is absent from three consecutive regular meetings of the board without a satisfactory excuse shall be removed from the board by city council.

Sec. 2-278. Powers and duties.

(a) The board shall act in an advisory capacity to the city council and the city manager in all matters pertaining to the city's urban forest. The board does not have the power to obligate the city for any funds or expenditures or incur any debt on behalf of the city.

(b) The board shall study, investigate, plan, advise, report, and recommend any action, program, plan, or legislation that the board determines necessary or advisable for the care, preservation, pruning, planting, replanting, removal, or disposition of trees, shrubs, and other landscaping in public parks, street medians and parkways, and on other public property.

(c) The board shall develop and establish a tree management plan for the planting, maintenance, and replacement of trees in public parks, street medians and parkways, and other public areas. The board must annually review the tree management plan, and make any changes or modifications necessary or advisable to promote and protect trees on public property. The tree management plan will be presented annually to the city council for its approval. Once approved, the board has the responsibility to administer the plan in coordination with the parks and recreation department.

(d) The board may solicit for the city gifts, revenues, bequests, or endowments of money or property as donations or grants from persons, firms or corporations, subject to the guidance, approval, and acceptance by the city council.

(e) The board in conjunction with the community services director shall plan an annual Arbor Day celebration on behalf of the city.

(f) The board shall perform other functions involving the care and maintenance of trees located on public property requested by city council, the city manager, or the community services director.

(g) The city council shall have the right to review the conduct, acts, and decisions of the board. Any person may appeal from any ruling or order of the board to the city council, which may hear the matter and make a final determination.

Secs. 2-279—2-300. Reserved.”

SECTION 2. That Chapter 13 of the City of The Colony’s Code of Ordinances be, and the same is, hereby amended by adding Article X, “Supervision and Maintenance of Public Trees,” which shall read as follows:

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Secs. 13-105—13-115. Reserved

ARTICLE X. SUPERVISION AND MAINTENANCE OF PUBLIC TREES

Sec. 13-116. Definitions.

For the purposes of this article, the following terms, words, and phrases have the definitions herein ascribed to them:

Board shall mean the Public Tree Advisory Board.

Damage shall mean any injury to or destruction of a tree, including but not limited to damage caused by: uprooting; severance of all or part the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk; pruning or removal of more than 25 percent of the living tissue; surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.

Ornamental tree shall mean a tree generally planted for aesthetic value and usually between ten feet (10’) and twenty-five feet (25’) tall.

Public property shall mean real property owned or controlled by the City with unrestricted public access, excluding a utility or drainage easement on private property.

Public tree shall mean a tree with at least two-thirds of its trunk diameter on public property.

Shrub shall mean a woody plant that produces branches or shoots at or near the base and is generally less than fifteen feet (15’) tall.

Tree shall mean a self-supporting woody perennial plant, with a primary stem and a mature size of at least ten feet (10’) tall. The main stem (trunk) diameter shall be at least three inches (3”) measured at twelve inches (12”) above grade. If multi-trunked, take the full measurement of the largest trunk and half the measurement of each of the remaining trunks.

Urban Forest shall mean all trees, vegetation, and wildlife within The Colony city limits and ETJ. This includes, but is not limited to, trees on public and private

land, along streets, in residential areas, parks and commercial developments, and in other locations within our community.

Sec. 13-117. Authority.

(a) The board shall administer and implement the tree management plan approved by council for the planting, maintenance, and replacement of trees, shrubs, and other plants in public parks, street medians and parkways, and other public areas.

(b) The community services director and/or his designee is authorized to plant, preserve, spray, prune, trim, cable or remove any tree, shrub or plant on public property along any street, alley, avenue, lane, or square, and on any parkland or other public property belonging to the city. If any public tree or any part thereof is in an unsafe condition, or creates an unsafe condition, or is injurious to the common good, or hinders maintenance and/or operations of streets, utilities, sidewalks or other improvements, or is infested and dangerous to other trees, the community services director and/or his designee has the authority to remove or cause to be removed such tree or part thereof.

(c) It shall be unlawful for any person to prevent, delay or interfere with the board or authorized personnel while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any public trees and park trees as authorized by the tree management plan.

(d) Public Works projects including improvements, maintenance or construction of public infrastructure, shall protect the urban forest in accordance with this ordinance and the tree protection ordinance and coordinate tree care activities for infrastructure projects with the community services director and/or his designee.

Sec. 13-118. Care and maintenance of public trees.

(a) The city shall have authority and responsibility to cut, trim, prune spray or remove any tree on public property as may be necessary to insure public safety

(b) Any person wishing to plant or remove a tree on public property or in a public easement must seek administrative approval from the board. Any tree planted or damaged in violation of this article may be corrected at the person's expense.

(c) A property owner whose land abuts public property along a street or other public way shall provide reasonable routine maintenance of a tree under CITY OF THE COLONY CODE OF ORDINANCES, CHAPTER 10, ARTICLE 1, SECTION 10-10 (a) and (b) shall properly prune, spray, trim,

and otherwise maintain the tree or other landscaping in accordance with this article and SECTION 10-10 (c) and (h).

(1) Regular and routine maintenance in accordance with ANSI A-300 Tree Care Standards shall not require approval from the board.

(2) Failure by the property owner to provide the necessary tree care to protect the public will result in the City providing the necessary care and billing the property owner for the required services.

(d) Any person performing construction in the area of any public tree, shrub, or plant must employ appropriate measures to protect the tree, shrub, or plant, including but not limited to placing barriers around the tree, shrub, or plant to prevent any damage.

(e) It shall be unlawful for any person without authorization from the City to:

(1) place, maintain, or permit a tree or plant to obstruct a public way, or otherwise prevent public use of public property;

(2) attach any cable, wire, rope, sign or any other thing to any public tree;

(3) plant, transplant, remove, paint or spray any tree, plant or shrub on any public property;

(4) damage, cut, or carve any public tree;

(5) recklessly cause or allow a harmful substance to contact a public tree;

(6) set fire to a public tree or recklessly permit a fire to burn that could damage a public tree;

(7) place or store an impervious cover or material that impedes the passage of water, air, or nutrients to the roots of a public tree; or

(8) park heavy equipment within the dripline of public trees, except on paved surfaces.

Sec. 13-119. Violations; penalties; damages.

(a) It shall be unlawful for any person to violate any of the provisions of this article, and any such person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is

committed, continued, or permitted, as well as for each public tree affected. Each offense is punishable by a fine not to exceed \$2,000.00.

(b) The City may seek damages against any person causing injury or destruction of a public tree, including but not limited to the costs for treatment or removal and replacement of the tree, and/or any loss of tree value. This remedy is cumulative of any other remedy available to the City.

Sec. 13-120. Authority, Enforcement

The City Manager or his designee has the power and authority to issue a notice or citation to any person in violation of any provision of this Article.”

SECTION 3. That all ordinances of the City of The Colony, Texas in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of The Colony, Texas not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. If any section, article paragraph, sentence, clause, phrase or word in this ordinance, or application thereto any persons or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 5. Any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of The Colony, Texas, shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense. Every day a violation occurs shall constitute a separate offense.

SECTION 6. This Ordinance shall become effective from and after its date of passage in accordance with law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS THIS 5th day of January 2009.

/s/John Dillard, Mayor

ATTEST:

/s/Christie Wilson, City Secretary

APPROVED AS TO FORM:

/s/Robert E. Hager, City Attorney
(REH/KRL/cgo 09/15/2008)