

## **ARTICLE VI. PROTECTION OF CERTAIN TREES**

### **Sec. 33-151. - Definitions**

As used in this article, the following words shall have the meanings ascribed in this section:

**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.

**Director** means the director of parks and recreation or the director's designee.

**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.

**Street** 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.

**Tree** means and includes:

- (1) Any tree of a size 20 caliper inches or more of any species; or
- (2) Any tree of a size of 1½ caliper inches or more of any species included on the street tree list that is promulgated under article V of this chapter.

(Ord. No. 03-159, § 7, 2-12-03; Ord. No. 09-84, §§ 14, 15, 2-11-09)

### **Sec. 33-152. - Removal of a tree.**

Except as may otherwise be provided in this article, it shall be unlawful for any person to remove any tree or to cause, permit or suffer the removal of any tree that is situated in whole or in substantial part within a street or to perform 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 tree that is situated in whole or in substantial part within a street. The determination of whether the tree is situated in whole or in substantial part in the street shall be based upon the location of the trunk of the tree at ground level. For purposes of the foregoing requirements, a tree shall be considered to be in substantial part within a street if one-half or more of the area of the trunk of the tree is situated in the street as determined at the point where the trunk intersects the ground.

(Ord. No. 03-159, § 7, 2-12-03; Ord. No. 09-84, § 16, 2-11-09)

### **Sec. 33-153. - Affirmative defenses.**

It is an affirmative defense to prosecution under section 33-152 of this Code that:

- (1) The person complied with the provisions of Chapter 16 of the Infrastructure Design Manual promulgated by the director of the department of public works and engineering;
- (2) The person had the prior written permission of the director for the action taken and that the action taken was consistent with the terms of the director's written permission; or
- (3) The person reasonably removed the tree in order to conduct emergency repairs of utilities located on public or private property.

(Ord. No. 03-159, § 7, 2-12-03; Ord. No. 09-84, § 17, 2-11-09)

**Sec. 33-154. - Affirmative defense; house movers.**

It is an affirmative defense to prosecution under section 33-152 of this Code that the person is a house mover who holds a license under article III of chapter 10 of this Code, and that the person removed a tree in order to move a house, provided that the house was being moved in accordance with all applicable requirements of the said article upon a route authorized in a permit issued by the building official thereunder, and further provided, with respect to any tree that is removed, that the person had the prior written permission of the director for the action taken and that the action taken was consistent with the terms of the director's written permission. This defense shall extend to agents and employees of the house mover.

(Ord. No. 03-159, § 7, 2-12-03; Ord. No. 09-84, § 18, 2-11-09)

**Sec. 33-155. - Procedure for permission.**

For purposes of sections 33-153 or 33-154 of this Code a person may obtain the director's permission by making written application. The application shall be made in accordance with regulations promulgated for that purpose by the director and in a form provided in the regulations. In considering whether or not to grant the approval, the director shall consider the age and condition of the tree. The director shall consult with the planning official and shall also consider whether the requested action is reasonably required, considering other alternatives that may exist, if the request is for the purpose of installing or maintaining public utilities and access lines thereto, constructing or maintaining driveways, alleys or streets, constructing or maintaining sidewalks or preventing visual obstruction of a street or driveway intersection. The director, in consultation with the planning official, may also authorize the removal of a tree to facilitate development of the abutting property if the tree extends in part beyond the building set back line established by law or deed restriction and the director and the planning official determine that the requested action is reasonably required in order to make beneficial use of the property. In the event that the director proposes to deny an application, then the director shall ensure that the applicant is afforded the opportunity for an informal hearing to be conducted as provided in the director's regulations before the decision to deny the application is made final.

(Ord. No. 03-159, § 7, 2-12-03; Ord. No. 09-84, § 19, 2-11-09)

**Sec. 33-156. - Educational intent.**

The intent of this article is to result in compliance through public assistance and education. Upon request, the director shall, without charge therefor, provide assistance in identifying tree

species, training and/or instructional materials with respect to proper practices for tree pruning and other reasonable assistance for the purpose of ensuring compliance with this article.

(Ord. No. 03-159, § 7, 2-12-03)

**Sec. 33-157. - Provisions cumulative.**

The provisions of this article are cumulative of state laws and are also expressly made cumulative of the provisions of article V of this chapter. To the extent that any tree governed by this section is also subject to regulation under article V, then both the provisions of this article and of article V shall be applicable. The director and the planning official shall establish procedures under which removal notices and landscape plans that are required to be filed under article V may be combined with or jointly filed with applications filed under section 33-155 of this Code, above.

(Ord. No. 03-159, § 7, 2-12-03)

**Sec. 33-158. - Penalty; civil remedies.**

Violation of this article shall be punishable by a fine of up to \$500.00, as more particularly provided in section 1-6 of this Code, and each tree that is unlawfully removed shall constitute a separate offense. Criminal prosecution shall not preclude civil action by the city to recover for the damage to or loss of the tree, and the city attorney is hereby authorized, without further authorization from city council to institute and prosecute a lawsuit against any person who removes a tree without permission or authorization as required under this section to recover the reasonable value of the tree or damage thereto.

(Ord. No. 03-159, § 7, 2-12-03; Ord. No. 09-84, § 20, 2-11-09)

**Sec. 33-159. - Deferred disposition.**

In keeping with the policy of education and street tree protection that is the underlying purpose of this article, the municipal courts are urged to consider deferred dispositions under article 45.54 of the Texas Code of Criminal Procedure whenever the circumstances warrant deferred dispositions. Conditions of deferral may include the defendants' replacing or repairing damaged trees wherever practicable and participating in community service programs for the planting and care of trees.

(Ord. No. 09-84, § 21, 2-11-09)

**Sec. 33-160. - Tree replacement requirement.**

- (a) Notwithstanding anything to the contrary in this article, no person shall cause a tree that is situated in whole or in substantial part within a street to be removed without complying with a tree replacement requirement, which may be satisfied as follows:
- (1) By the planting in the area adjacent to the street of additional trees from the street tree list 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 \$225.00 per caliper inch of tree removed for a six inch caliper trees 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

(3) By a combination of the foregoing.

Installation of trees provided shall be subject to the planting standards established in division 2 of article V of chapter 33, 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.

- (b) No person shall cause a tree to be removed without first filing with the department a written notice of removal of the 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 tree or trees to be removed are situated and shall demonstrate the manner in which the tree replacement requirement will be provided.
- (c) It is an affirmative defense to prosecution under this section that the tree sustained damage from fire, wind storm, accident or other natural cause such that the 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.
- (d) It is a defense to prosecution under this section that the 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.
- (e) 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 tree that is to be removed and the location of any tree that is to be planted in order to provide the 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.

(Ord. No. 09-84, § 22, 2-11-09)

**Secs. 33-161—33-200. - Reserved.**

