

## CHAPTER 151

### TREES

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**151.01 DEFINITIONS.** For the purposes of this chapter, the following terms are defined:

1. “DBH” or “caliper” means the diameter of a tree at breast height (four feet, six inches).
2. “Park trees” means trees, shrubs, bushes, and all other woody vegetation located in public parks having individual names, and all areas owned by the City or to which the public has free access as a park, including trees, shrubs, bushes, and all other woody vegetation located in parkway easements along public streets designated as parkways.
3. “Parking” means that part of the street right-of-way in the City not covered by sidewalk and lying between the lot line and the curb line; or, on unpaved streets, that part of the street right-of-way lying between the lot line and that portion of the street usually traveled by vehicular traffic.
4. “Private trees” means trees, shrubs, bushes, and all other woody vegetation located on private property to which the City has no responsibility.
5. “Public right-of-way” means any publicly-owned property or easement area intended to provide for a public street, sidewalk or other public property, and includes, but is not limited to, the parking area between the curb of any public street and the adjacent public sidewalk.
6. “Street tree” means any tree, shrub, bush, or other woody vegetation has been approved by the City Council for a specific location in the public right-of-way parking and/or parkway easement.
7. “Topping” means the severe cutting back of limbs to stubs within the tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms, diseases or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this chapter at the determination of the City.

**151.02 PLANTING PROHIBITED.** No trees, shrubs, bushes, or woody vegetation shall be planted in any public right-of-way, including parking or within island medians of divided streets, located within the City except in compliance with the provisions of this chapter.

**151.03 PUBLIC TREE CARE.** Except as limited by Section 151.02 of this chapter, the City has the right to plant, prune, maintain and remove trees, plants, and shrubs within the lines

of all streets, avenues, stands and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

**151.04 STREET TREE PERMIT REQUIRED.** Any person proposing to plant a tree on or in a public right-of-way shall be required to obtain approval of permit from the City based on the process described herein:

1. Plan Submitted. Any person proposing to plant a tree on or in a public right-of-way shall first prepare a written plan which shall contain the following information:

A. The names and addresses of the person making the proposal and of all private property owners whose property is adjacent to or contiguous with the public right-of-way upon or in which the proposed trees are to be planted.

B. The location of the property where the proposed planting is to take place.

C. The type and number of trees proposed to be planted and a sketch or drawing showing how the plantings will be placed on the property. The sketch or drawing shall show distances between proposed trees and distances of proposed tree plantings from existing streets, sidewalks, traffic signs, utility lines, utility poles, hydrants and intersections.

D. The plan shall be signed by the person submitting the same.

2. Review of Plan. The City Public Works Director shall review each plan submitted and shall either approve it or deny it, in writing, within 30 days after it is received. If denied, the plan may be resubmitted with any modifications required by the Public Works Director. The decision of the Public Works Director shall be final.

3. Guidelines. No plan submitted pursuant to the provisions of this chapter shall be approved unless all of the following conditions are met:

A. Any tree proposed to be planted in accordance with the terms of this section must be of a type included on the list of tree species suitable for planting within the right-of-way, as established from time to time by resolution of the City Council, subsequent to a recommendation of the City Tree Board.

B. Trees must be spaced at least 15 feet apart, center to center.

C. Every tree to be planted must have a trunk diameter of at least one inch, measured 12 inches from the base.

D. Trees must be planted a minimum of:

(1) Five lineal feet from water service stop boxes.

(2) 10 lineal feet from water hydrants, utility poles, transformers, telephone junction boxes, manholes and driveway approaches.

(3) 20 lineal feet from traffic signs and street lights.

E. No tree shall be planted closer than three feet from the curb line and no closer than three feet from the edge of the sidewalk closest to the street. No tree shall be planted where there is, or will be at the tree's maturity, less than two and one-half feet of soil on all sides of such tree.

F. Trees shall not be permitted within 30 feet of the intersection of the rights-of-way of public streets or within 20 feet of the intersection of the curb

line of driveways of commercial, industrial or institutional properties with a public street.

G. No tree shall be permitted in any case which, because of its size or location, or because of its eventual growth, will interfere with street signs, fire hydrants, street lights, utility poles or utility lines; or which will create any hazard to the safe flow of traffic by obstructing vision or otherwise.

H. During the development, redevelopment, razing or renovating of any property, no more than 50 percent of the trees existing in the public right-of-way adjoining such property shall be cut, damaged or removed, nor shall any person excavate any ditch, tunnel or trench or lay any driveway within a radius of 20 feet from any tree in the public right-of-way. Provided, however, the Public Works Director may issue a special permit to allow cutting or removal of trees or excavation which would otherwise violate this provision on application therefor by the owner of the property and upon determination by the Public Works Director that variance from the provisions of this section is reasonably necessary to enable development of the property in accordance with previously approved development plans.

I. No person shall intentionally damage, cut, carve, attach any rope, wire, nails, advertising posters, or other contrivance to any tree in or on a public right-of-way; or allow any gaseous, liquid, chemical, or solid substance that is harmful to such trees to come into contact with them; or set fire to any such tree or part thereof, or cause or permit any burning which will damage any such tree or a part thereof.

J. Tree topping is not permitted on any tree in or on a public right-of-way.

4. Maintenance; Liability. Any person planting trees in or on a public right-of-way pursuant to this chapter and such person's successors in interest shall be and remain solely responsible for the proper maintenance of such tree or trees in compliance with this chapter and all other ordinances and regulations of the City. At the time that the request for approval for the planting of such trees is made, such person shall agree in writing, as a condition to such approval being given, to assume, pay and hold the City harmless from payment or liability for any damages of any nature whatsoever caused by the planting or maintenance of the trees.

#### **151.05 DUTY TO TRIM.**

1. All trees, shrubs, bushes, or woody vegetation; whether on public or private property; which have branches overhanging a public street or sidewalk shall be kept trimmed to a clearance height of 14 feet for branches overhanging a street and 10 feet for branches overhanging a sidewalk. It is the duty of any person owning or occupying real property adjoining a public street or sidewalk and on which there may be trees, shrubs, bushes, or woody vegetation to prune such plantings, at a minimum, in such a manner as to comply with this section, and in addition, to the extent necessary, to preclude any obstruction or shading of street lights, any obstruction to the passage of pedestrians on sidewalk, any obstruction to the vision of traffic signs, or of street or alley intersections.

2. It is the duty of any person owning or occupying real property adjoining a public street or sidewalk and on which there may be trees, shrubs, bushes, or woody

vegetation to remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public.

3. The City has the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a streetlight, interferes with the visibility of any traffic control device or sign, or violates the terms of this subsection.

#### **151.06 REMOVAL OF TREES AND STUMPS.**

1. **Dead or Diseased Tree Removal on Private Property.** The owner or person in possession of private property shall remove any trees constituting a hazard to life or property, or trees harboring insects or disease which constitute a potential threat to other trees within the City located on the private property within the City.

2. All trees removed from public right-of-way shall be completely removed below the surface of the ground so the top of the stump does not project above the surface of the ground; and shall be disposed of in a lawful manner.

**151.07 CITY ABATEMENT; ASSESSMENT OF COST.** If the abutting property owner or person in possession of the abutting property fails to trim the trees as required in Section 151.05 or remove trees and stumps as required in Section 151.06, the City may serve notice on the abutting property owner requiring the property owner to do so within 30 days. If the property owner fails to trim the trees within that time, the City may perform the required action and assess the costs against the abutting property for collection in the same manner as a property tax.

**151.08 NON-CONFORMING TREES IN PUBLIC RIGHT-OF-WAY.** Any existing tree with 50 percent or more of its trunk located within the public right-of-way at the time as of the effective date of the ordinance codified in this chapter shall be considered a non-conforming public tree. Maintenance of said non-conforming public tree shall be the responsibility of the City, including removal of said tree at the sole discretion of the City. Any existing tree with less than 50 percent of its trunk located within the public right-of-way at the time as of the effective date of the ordinance codified in this chapter shall be considered a non-conforming private tree. Maintenance of said non-conforming private tree shall be the responsibility of the property owner, provided however that should said non-conforming tree need to be removed due to a City construction project then the cost of such removal shall be the responsibility of the City.

**151.09 PARKWAY AND BUFFER TREES.** Maintenance of any and all trees located within a parkway easement, buffer easement or similar landscape easement or within a buffer area required in conformance of Section 165.19 shall be the responsibility of the property owner. Parkway trees shall be maintained in a manner that preserves or enhance the symmetry and beauty of the parkway and/or buffer area. Trees shall be of a type included on the list of tree species suitable for planting within parkway or buffer easements unless otherwise approved by City Council on a site plan. Any parkway or buffer tree that has been removed for any reason shall be replaced as soon as practicable with a tree of the same species as the original tree unless otherwise approved by the City.

#### **151.10 LANDSCAPE PLAN.**

1. **Submission of Plan; Required Information.** In connection with the submission of a site plan, site plan amendment, or preliminary plat for approval by the Planning

and Zoning Commission and the Council, the applicant shall submit a landscape plan, which must contain, at a minimum, the following information:

- A. The location of all existing trees four inches in diameter or larger, when measured at the DBH, on public or private property, specifying the size, species and condition of such existing trees (any such existing trees to be removed shall be noted);
- B. The location of all new plant material to be planted on the property, shown by size and species; and
- C. A landscape plan filed in connection with a preliminary plat need only show the outline of existing trees and foliage, clarifying the drip line area of trees with the use of “clouded” areas of individual or clumping of trees. Existing tree areas to be protected shall be shaded. Existing tree areas to be removed by grading, construction of public improvements, or within the buildable area of each lot shall be hatched to clarify the limits of removal.
- D. A parkway easement having a minimum width of 15 feet shall be established on private lots abutting all public streets designated as parkways on the Comprehensive Plan and/or so designated on the approved preliminary plat. Said easement shall be designed to accommodate street trees, benches, bike rack, and similar amenities. Parkway easements shall be exclusive of public utility easements. A landscape plan shall be filed for each parkway showing the size and species of all plant materials and clarifying whether the trees will be planted by the developer at the time of plat construction or by the homebuilder prior to issuance of a certificate of occupancy. Tree species shall be in conformance with the list of acceptable trees approved by the City Council; a diversification of species along parkways is encouraged.

2. Preliminary Plat Evaluation; Considerations. In evaluating any preliminary plat or site plan for approval, the Commission and the Council shall consider the following issues addressed by the landscape plan:

- A. Whether an excessive or unnecessary number of existing trees are to be removed, taking into consideration the City’s goal of preserving existing trees and any reasonable alternatives available to the developer;
- B. All site plans in zoning districts shall be planted with a variety of trees and shrubs which are substantial in size and number, and are in accordance with the City’s policy on recommended trees;
- C. Whether the applicant has provided for the replacement of existing trees to be removed, at other locations on the property;
- D. Whether the landscaping provides a visual buffer, where necessary, from the surrounding property including headlight screening for streets; and
- E. Whether the streets, sidewalks and lots are laid out in a manner to preserve existing trees, where feasible, and whether the applicant has provided for fencing off or protecting trees during construction, to the extent feasible.
- F. Whether parkways are designed in accordance with the Comprehensive Plan.

3. Protection of Existing Trees Not Being Removed. Any and all existing trees which are not to be removed pursuant to the landscape plan shall be clearly identified

and, prior to the issuance of a grading permit, shall be protected at the construction site by fencing located around the drip line of the tree, where feasible, maximizing the protection of the root zone area of the tree. The foregoing fencing requirements may be waived or modified by the City if the trees to be saved are not located in an area where construction is occurring.

4. Grading Permits; Council Approval Before Permit Issuance. Prior to the issuance of any grading permit or demolition permit for the development of any property that will require site plan or plat approval, the applicant shall disclose to the City whether any existing tree, four inches in diameter or larger, when measured at the DBH, are to be removed. If any such trees are to be removed, the City shall not issue a grading permit or demolition permit until a site plan or preliminary plat has been approved by the Council. This is not to include occupied single-family dwellings or two-family dwellings.

5. Certificate of Occupancy; Trees Required for Residential Uses. Prior to the issuance of a permanent certificate of occupancy for any new one- and two-family residential home, all trees required by Section 151.11 of this chapter shall have been planted. Prior to the issuance of a certificate of occupancy for any new multiple-family dwelling, each multiple-family residential dwelling unit shall have all of the adjacent planting materials as shown on the approved site plan and deemed by the Building Inspector to be closest to said dwelling unit.

6. Illegal Tree Removal; Remedial Action. If any trees are removed in violation of an approved site plan or plat, the owner or developer shall plant three times such number of trees, of equal caliper, on such plat or site plan. If it is impractical to replace such a tree with an equal caliper tree, then several trees of a smaller caliper, totaling, in aggregate, the caliper of the improperly removed tree, shall be required. The specific number and size of such trees shall be determined by the City. For purposes of example only, if one eight-inch caliper tree is improperly removed, the City may require: (i) that three eight-inch caliper trees be planted; (ii) that six four-inch caliper trees be planted; or (iii) that 12 two-inch caliper trees be planted. If it is impractical to place all of such trees on that particular plat or site plan, the City may require that some of the trees be planted on public property, such as in a park.

7. Diseased or Damaged Plantings; Replacement. If any trees, vegetation or other landscape materials shown on an approved landscape plan shall become diseased or substantially damaged at any time after the landscape plan is approved, the owner of the property shall promptly replace such trees, vegetation, or landscape material to bring the property in compliance with the landscape plan.

**151.11 TREES REQUIRED WITH BUILDING PERMIT FOR ONE- AND TWO-FAMILY HOMES.** In conjunction with a building permit for any new single-family home, one overstory tree shall be planted in the front yard prior to issuance of a permanent certificate of occupancy for said home. In conjunction with a building permit for any new two-family home, two trees shall be planted in the front yard, with one tree in front of each dwelling unit, prior to issuance of a permanent certificate of occupancy for said homes. The required trees for the two-family home may be either two overstory trees or one overstory and one understory trees. All trees required by this section shall be from the list of suitable trees as approved by City Council, provided, however, that species selection shall be the responsibility of the property owner based on site considerations. All trees required by this section shall be not less than one-inch caliper. In cases where there are existing trees in the front yard of any single-family or two-family home, deemed to be suitable in terms of condition and species by the City Manager

or designee thereof, the requirement for new overstory trees may be reduced or waived by the City Manager.

**151.12 TREE PLANTING GUIDELINES.** Trees that are required to be planted on private property by a developer in conjunction with a subdivision plat as required by Chapter 170; by a developer in conjunction with a site plan as required by Chapter 157; or by a property owner or homebuilder in conjunction with a building permit as required by Section 151.11 shall be planted in conformance with the following guidelines. Trees not required by City Code that property owners choose to plant on their own property do not need to be planted by these guidelines.

1. All required trees shall be delivered to the site as balled-and-burlapped trees or via tree spade. Trees in containers shall not be considered acceptable.
2. The developer or property owner shall be responsible for regular watering of said required trees. Gator bags, perforated buckets, or similar means of slow release watering are recommended.
3. All required trees shall be mulched with wood chips, bark, or similar material designed to prevent excessive evaporation.
4. All required trees shall be staked for a period of one year following planting.

**151.13 ENFORCEMENT.** Unless another penalty is expressly provided by this chapter for any particular provision or section, any violation of this chapter is declared to be a municipal infraction. The rights and remedies of the City hereunder are in addition to, and not in substitution of, any other or further rights or remedies the City may have under this Code of Ordinances or State law.

**151.14 TREE SERVICE BUSINESSES.** Any person owning or operating a tree service business within the City shall obtain, maintain, and provide to the Clerk evidence of liability insurance coverage covering all risk of damage or liability arising out of the conduct of such business in minimum amounts of \$100,000.00 for property damage and \$300,000.00 for injury to or death of any one person. Proof of such coverage delivered to the Clerk shall be a prerequisite to the conduct by any person of a tree service business in the City.

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