

Topic: Tree Preservation & Protection;
Landscaping; Natural Resource Protection
& Conservation
Resource Type: Regulations
State: Texas
Jurisdiction Type: Municipal
Municipality: City of Mansfield
Year (adopted, written, etc.): Unknown
Community Type - applicable to: Urban; Suburban
Title: City of Mansfield Natural Resources
Management Ordinance
Document Last Updated in Database: May 7, 2017

Abstract

This ordinance establishes criteria and regulations for the preservation of trees within the City. The purpose of this ordinance is to promote site planning which furthers the preservation of mature trees and natural areas, to protect trees during construction; to facilitate site design and construction, which contribute to the long term viability of existing trees. This ordinance also requires that persons must obtain a tree removal permit before cutting down, destroying, or removing any protected tree as defined by the ordinance.

Resource

NATURAL RESOURCES MANAGEMENT ORDINANCE

WHEREAS, the City of Mansfield, Texas, is a home rule City acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, trees are a valuable amenity to the urban environment and serve to create

greater human comfort by providing shade, cooling the air and otherwise tempering the effect of summer heat, thereby reducing the requirements for air conditioning and the subsequent depletion of scarce energy resources; and

WHEREAS, trees purify the air by filtering pollutants and dust and release oxygen into the air; and

WHEREAS, trees provide natural habitat for many species of small animals; and

WHEREAS, trees protect land and structures by reducing run-off, binding soil and minimizing flood damage; and

WHEREAS, trees are known to add dollar value to residential and commercial property and to increase income levels and tax revenues by attracting new business, industry and residents through improving a city's image; and

WHEREAS, the City of Mansfield desires to actively participate in the "Tree City U.S.A." program and the "Keep Mansfield Beautiful", program; and

WHEREAS, the City Council of the City of Mansfield has determined that tree preservation is necessary to adequately protect the public health, safety and welfare.

NATURAL RESOURCES MANAGEMENT ORDINANCE

A. Purpose and Intent.

The purpose of this ordinance is to promote site planning which furthers the preservation of mature trees and natural areas, to protect trees during construction; to facilitate site design and construction which contribute to the long term viability of existing trees; and to control the removal of trees when necessary. It is the further purpose of this ordinance to achieve the following broader objectives:

- Prohibit the indiscriminate clearing of property.
- Protect and increase the value of residential and commercial properties within the City.
- Maintain and enhance a positive image for the attraction of new business enterprises to the City.
- Protect healthy quality trees and promote the natural ecological environmental and aesthetic qualities of the City.

B. Definitions.

For the purpose of this ordinance, certain words or terms applicable hereto are defined as hereinafter provided. Words and terms used in this ordinance, but not defined in this ordinance shall have the meanings ascribed thereto in the Zoning Ordinance or other ordinances of the City. Words and terms defined in two ordinances shall be read in harmony unless there exists an irreconcilable conflict in which case the definition contained in this ordinance shall control. Words used in the present tense shall include the future, words used in the singular number shall include the plural number and words used in the plural shall include the singular. The word "shall" is mandatory and the word "may" is permissive. The word "City" means the City of Mansfield, Texas.

Agricultural Use: The use of land to produce plant or animal products, such as the growing of crops, raising and pasturing of livestock, or farming. It does not include the processing of plant or animal products after harvesting or the production of timber or forest products.

Buildable Area: That portion of a building site exclusive of the required yard areas on which structure or building improvements may be erected and including the actual structure, driveway, parking lot, pool and other construction as shown on a site plan.

Building Pad: The actual foundation area of a building and the area within six feet (6') of the foundation that is used for construction and grade transition.

Clear-Cutting: The removal of all of the trees or a significant majority of the trees within an area.

Critical Root Zone (CRZ): The area of undisturbed natural soil around a tree defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the dripline. (See Appendix A.)

Cut/Fill: Areas where the natural ground level has been excavated (cut) or fill brought in.

Drip Line: A vertical line run through the outermost portion of the canopy of a tree and extending to the ground. (See Appendix A.)

Limits Of Construction: A delineation on the graphic exhibit which shows the boundary of the area within which all construction activity will occur.

Municipal/Public Domain Property: Examples of this would include City Hall, public parks, County property, Corps of Engineers property, State of Texas R.O.W., library, fire stations, water tower sites or similar properties.

Protective Fencing: Chain link fence, wire fence, orange vinyl construction fencing, snow fencing or other similar fencing with a four foot (4') approximate height.

Selective Thinning: The removal of selected trees from within a densely forested area.

Tree: Any self-supporting woody perennial plant which will attain a trunk diameter of two inches (2") or more when measured at a point four and one-half feet (4.5') above ground level and normally an overall height of at least fifteen feet (15') at maturity, usually with one (1) main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of oaks.

Tree Board: There is hereby created and established a City Tree Board. This Board shall be the Planning and Zoning Commission unless otherwise appointed by City Council.

Tree, Marginal: A tree which the City has determined may or may not be worthy of preservation depending on the individual characteristics of the tree. (See Appendix C.)

Tree, Park: Trees in public parks and all areas owned by the City to which the public has free access to as a park.

Tree, Protected: A quality tree that has a diameter of six inches (6") or greater; an understory tree that has a diameter of two inches (2") or greater; and a marginal tree that has a diameter of six inches (6") or greater that the Landscape Administrator has determined should be saved due to individual characteristics and/or location of the tree. The diameter of a tree shall be determined by measuring at four and one-half feet (4.5') above ground. For a multitrunk tree, the diameter shall be the total diameter of the largest trunk plus half (½) the diameter of each additional trunk.

Tree, Quality: A tree which the City has determined typically has significant positive characteristics worthy of preservation. (See Appendix C.)

Tree, Street: Trees on land lying between property lines on either side of all streets, alleys, avenues, lanes or ways within the City.

Tree Topping: The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Tree, Understory: A tree which the City has determined has significant positive characteristics worthy of preservation and that does not typically attain great size. (See Appendix C.)

C. General Provisions.

1. Clear-cutting: The clear-cutting of land as defined in this ordinance is prohibited.
2. Selective Thinning: The removal of selected trees from within a densely forested area when done in a professionally accepted manner shall be allowed as a single permit upon approval by the Landscape Administrator. Approval will only be granted when the Landscape Administrator determines that the selective thinning is being done in a manner that would enhance the environment and likelihood of survival for the remaining trees.
3. Ground Level Cuts: Where protected tree removal is allowed through exemption or by tree removal permit and the root system is intertwined with protected trees which are intended to be saved, the tree shall be removed by flush cutting with the natural level of the surrounding ground. Where stump removal is also desired, stump grinding shall be allowed, or upon approval of the Landscape Administrator, a trench may be cut between the two trees sufficient to cut the roots near the tree to be removed, thereby allowing removal of the remaining stump without destruction of the root system of the saved tree.

D. Tree Removal Permit Required.

No person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree situated on property regulated by this ordinance without first obtaining a tree removal permit unless otherwise specified in this ordinance.

E. New Developments.

All developments which have not submitted final construction plans as of the effective date of this ordinance shall be subject to the requirements for tree protection and replacement specified herein.

1. Residential Developments: All area within street right-of-ways, utility or drainage easements as shown on an approved final plat and area designated as cut/fill on the master construction plan approved by the Landscape Administrator shall be exempt from the tree protection and replacement requirements specified herein. The developer may request the Landscape Administrator to allow trees within potential building pad areas be included in the exemption described herein. All other area shall be subject to these requirements.

2. Non-residential Development: All area within street right-of-ways, utility or drainage easements as shown on an approved final plat, area designated as cut/fill on the master construction plan approved by the Landscape Administrator, plus fire lanes, parking areas and building pad as shown on an approved site plan shall be exempt from the tree protection and replacement requirements specified herein.

3. Permit Requirements: A tree-removal permit shall not be required for removal of a protected tree within an area noted in Sections E.1 and E.2 above, however a permit must be obtained prior to the removal of any other protected tree on the property.

4. Landscape Administrator Review:

a. Residential Development: A developer shall be required to furnish a transparency of the proposed development showing all proposed improvements (e.g. right-of-ways, easements, lot patterns, cut/fill, etc.) with the submittal of a site plan, development plan, preliminary plat, or final plat, whichever occurs first. The transparency shall be on a sheet drawn to the scale of one inch equal to one hundred feet (1":100') or on a computer disk in the format of a commonly used Computer-Aided Design (CAD) program. The Landscape Administrator is authorized to require a tree survey meeting the requirements of Appendix D herein when determined to be needed to fully evaluate the impact on trees.

b. Non-Residential Development: A developer shall be required to furnish a

transparency of the proposed development showing all proposed improvements (e.g. right-of-ways, easements, lot patterns, cut/fill, fire lanes, parking areas and building pads, etc.) with the submittal of a site plan, development plan, construction plan, plot plan or building permit application, whichever occurs first. The

transparency shall be on a sheet drawn to a scale as required by the Landscape Administrator and in a format depicted in Section E.4.a above. The Landscape Administrator is authorized to require a tree survey meeting the requirements of Appendix D herein when determined to be needed to fully evaluate the impact on trees.

c. It is highly recommended that the developer consult with the Landscape

Administrator and submit the required transparency or survey for review as early as possible so as to minimize changes in preliminary or final plats and to determine that there is adequate area for the proposed improvements after tree protection and replacement have been taken into consideration.

d. The Landscape Administrator will evaluate the required transparency, survey or plan to determine that the developer has made a best good-faith effort at saving as many protected trees as possible. The Administrator will forward review comments to the Planning and Zoning Commission for consideration regarding denial or approval of the development. If the review involves a document that normally does not require Ordinance the approval of the Planning & Zoning Commission, the Administrator will follow the procedures in Section I herein.

5. Parking Area: When a non-residential development consists of extra parking spaces beyond 110% of the minimum parking spaces required by the Zoning Ordinance, the developer shall be required to replace a percentage of the trees removed or make a payment into the Tree Restoration Fund. The replacement trees shall be calculated by multiplying the total diameter of trees removed in all parking spaces by the percentage of said extra parking spaces to the total number of parking spaces (i.e. total diameter of trees removed x extra parking spaces ÷ total parking spaces). The replacement trees shall be provided in accordance with Section J herein.

F. Private Property.

1. Homestead: The owner of property which is used for an individual residence or homestead shall be exempt from the tree protection and replacement requirements specified herein.

2. Property Owned by Home Builder: All area within the building pad, driveway, sidewalks, patios, septic tank and lateral lines, parking area, pool and associated deck area as shown on a plot plan approved by the Landscape Administrator shall be exempt from the tree protection and replacement requirements specified herein. All other area of the lot shall be subject to these requirements.

a. Permit Requirements: A tree-removal permit shall not be required for removal of a protected tree within an area noted above, however a permit must be obtained prior to the removal of any other protected tree on the property.

b. Landscape Administrator Review: A transparency showing all proposed improvements shall be required with the submittal of building permit application.

The transparency shall be on a sheet drawn to a scale as required by the Landscape Administrator or on a computer disk in the format of a commonly used Computer-Aided Design (CAD) program. The Landscape Administrator is authorized to require a tree survey meeting the requirements of Appendix D herein when determined to be needed to fully evaluate the impact on trees.

3. Agricultural Property: The owner of property being actively used for agricultural purposes shall be permitted to remove up to seven (7) protected trees per calendar year without obtaining a permit. Protected trees removed in excess of seven will require permits. It is not the intent of this ordinance to prohibit the clearing of land for legitimate, agricultural use. The property owner shall request the Landscape Administrator to make an on-site inspection of the property to be cleared and provide the Landscape Administrator the purpose and reason for the clearing. If the Landscape Administrator determines the clearing of land to be for a legitimate, agricultural reason, he will issue a tree removal permit.

G. Municipal/Public Domain Property, Right-of-ways and Easements.

All construction and maintenance activities within municipal/public domain property, right of-ways or easements by the City, franchise utility companies or other entities shall be subject to the requirements for tree protection and replacement specified herein.

1. A tree removal permit shall not be required for removal of a protected tree. However no construction or maintenance activity that may cause the removal of a protected tree shall begin until construction plans showing protected trees to be removed and the location of replacement trees have been approved by the Landscape Administrator. Pruning activities by a utility shall be governed by the provisions of Section M.

2. Tree Board Responsibilities: It shall be the responsibility of the Tree Board to study, investigate, counsel and develop and/or update periodically, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees in parks, along streets and in other public areas. Such plan shall be presented to the Council, and when adopted, shall represent the comprehensive tree plan for the City.

3. Acceptable Trees: The Landscape Administrator shall maintain a list of trees acceptable for planting along streets, within parks or other public areas. Trees other than those listed as acceptable may only be planted upon approval of the Landscape Administrator.

4. Street Tree Spacing: The spacing of street trees shall be in accordance with recommendations of the Landscape Administrator. Closer spacings or group plantings may be approved by the Landscape Administrator in unique situations and when recommended by a registered Landscape Architect.

5. Public Tree Care: The City shall have the right to plant, prune, and maintain street trees and park trees within the lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public properties. The City may remove or cause or order to be removed any tree or part thereof, which is in an unsafe condition, or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or which is affected with any injurious fungus, insect or other pest.

H. Exceptions

A tree removal permit and tree protection and replacement requirements shall not be required under any of the following circumstances. The burden of proof as a qualified exemption is upon the remover of a tree. It is highly recommended that qualification as an exemption be determined with the Landscape Administrator prior to removal of any tree.

1. All construction activities for which final construction plans and building permit applications have been submitted prior to the effective date of this ordinance shall be exempt.

2. Diseased Trees: The tree is diseased, damaged beyond the point of recovery, or in danger of falling as determined by the Landscape Administrator prior to the removal of the tree. The removal of a diseased tree by the City or an individual is required to reduce the chance of spreading the disease to adjacent healthy trees.

3. Public Safety: The tree endangers the public health, welfare or safety and immediate removal is required.

4. Utility Service Interruption: The tree has disrupted a public utility service due to a tornado, storm, flood or other act of God. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.

5. Landscape Nursery: All licensed plant or tree nurseries shall be exempt from the requirements of this ordinance as they pertain to those trees planted and growing on the premises of said licensee that are so planted and growing for the sale or intended sale to the general public in the ordinary course of said licensee's business.

I. Permit Review and Approval Process.

1. Authority for Review: The Landscape Administrator shall be responsible for the review and approval of all requests for tree removal permits submitted in accordance with the requirements specified herein.

a. Deferrals: The Landscape Administrator may defer the approval of a tree removal permit to the Tree Board for any reason. All decisions made by the Tree Board shall be final.

b. Appeals: Any decision made by the Landscape Administrator may be appealed to the Tree Board. All decisions made by the Tree Board shall be final.

2. Submittal Requirements: The Landscape Administrator shall establish administrative procedures necessary to facilitate the implementation and enforcement of this ordinance.

a. Tree Removal Permit: A request for a tree removal permit must be submitted and approved prior to the removal of any protected tree in the City unless the tree is exempt under a provision of this ordinance.

b. Fees: All tree removal permits shall be accompanied by a payment made to the City in the amount specified by City Council.

c. Required Documents: Either a transparency or tree survey shall be required as determined by the Landscape Administrator and must include the items referenced in this ordinance and its appendices.

d. Permit Expiration: Permits for tree removal issued in connection with a building permit or site plan shall be valid for the period of that building permit's or site plan's validity. Permit(s) for tree removal not issued in connection with a building permit or a site plan shall become void one hundred eighty (180) days after the issue date on the permit.

3. Action on Permit Application: The Landscape Administrator or the Tree Board shall grant a tree removal permit based on the following criteria:

a. Whether or not a reasonable accommodation or alternative solution can be made to accomplish the desired activity without the removal of the tree;

b. The cost of preserving the tree;

c. Whether the tree is worthy of preservation. Trees listed as marginal trees in Appendix C usually are not considered worthy of preservation depending on the individual characteristics of the tree;

d. The effect of the removal on erosion, soil moisture, retention, flow of surface waters, and drainage systems;

e. The need for buffering of residential areas from the noise, glare, and visual effects of nonresidential uses;

f. Whether the tree interferes with a utility service;

g. Whether the proposed tree replacement pursuant to the Tree Replacement Requirements hereof adequately mitigates the removal of the tree;

h. Whether the removal affects the public health, safety or welfare.

J. Tree Replacement Requirements.

1. Tree Replacement: In the event that it is necessary to remove a protected tree as specified in Section E through G herein, the party (other than franchise utility companies) removing the tree shall be required to replace the protected trees being removed with quality trees as defined herein. A sufficient number of trees shall be planted to equal or exceed the diameter (measured at 4.5' above ground level) of each tree removed. This mitigative measure is not meant to supplant good site planning. Tree replacement will be considered only after all design alternatives which could save more existing trees have been evaluated and reasonably rejected. Said replacement trees shall be a minimum of 3" diameter (measured at 1' above ground) and seven feet (7') in height when planted.

2. Replacement Procedures: At the time of review, the agent responsible for replacement, the time of replacement and the location of the new trees will be determined by the Landscape Administrator. The replacement trees shall be located on the subject site whenever possible. However if this is not feasible, the Landscape Administrator has the authority to allow the planting to take place on another property, including public property. Franchise utility companies shall be exempt from this requirement. If the Landscape Administrator approves the planting of replacement trees more than 30 days after the removal of protected trees, the applicant shall provide the Landscape Administrator with an affidavit that all replacement trees will be planted within six months. Any replacement tree required by this ordinance must be covered by a one-year warranty that is acceptable to the Landscape Administrator.

3. Tree Reforestation Fund: In a densely forested area, the applicant, upon approval of the Landscape Administrator, may make a payment into the Tree Reforestation Fund in lieu of planting the replacement tree on the subject site. The funds shall be used only for purchasing and planting trees on public property or acquiring wooded property which shall remain in a naturalistic state in perpetuity. The amount of the payment required for each replacement tree shall be calculated based on a schedule published annually by the Landscape Administrator which sets forth the average cost of a quality tree added to the average cost of planting a tree.

K. Additional Duties and Authorities of the Tree Board

The Tree Board shall have the responsibility to review and grant a tree removal permit for the following land use:

1. Any public or recreational use that is deemed acceptable to the Tree Board.
2. Any private use that is deemed acceptable to the Tree Board that usually requires large areas of open space.

3. In granting the tree removal permit, the Tree Board is authorized to impose whatever conditions of approval that is deemed necessary by the Tree Board.

L. Tree Protection.

A major purpose of this ordinance is to protect all protected trees which are not required to be removed to allow approved construction to occur. The following procedures are required:

1. Construction Plan Requirements: All construction plans shall include the requirements noted in Appendix E.

2. Prohibited Activities: The following activities shall be prohibited within the limits of the critical root zone of any protected tree subject to the requirements of this ordinance.

a. Material Storage: No materials intended for use in construction or waste materials accumulated due to excavation or demolition shall be placed within the limits of the critical root zone of any protected tree. However, this restriction shall not apply to material storage in areas exempt from the tree protection and replacement requirements (e.g. building pad, driveway, patios, parking lot, etc.)

b. Equipment Cleaning/Liquid Disposal: No equipment shall be cleaned or other liquids deposited or allowed to flow overland within the limits of the critical root zone of a protected tree. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.

c. Tree Attachments: No signs, wires or other attachments, other than those of a protective nature shall be attached to any protected tree.

d. Vehicular Traffic: No vehicular and/or construction equipment traffic or parking shall take place within the limits of the critical root zone of any protected tree other than on an existing street pavement. This restriction does not apply to single incident access within the critical root zone for purposes of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance or emergency restoration of utility service or routine mowing operations.

e. Grade Changes: No grade changes shall be allowed within the limits of the critical root zone of any protected tree unless adequate construction methods are approved by the Landscape Administrator or if grading is as directed by the city's drainage inspector.

f. Impervious Paving: No paving with asphalt, concrete or other impervious materials in a manner which may reasonably be expected to kill a tree shall be placed within the limits of the critical root zone of a protected tree except as otherwise allowed in this ordinance.

3. Preserved Tree: A protected tree shall be considered to be preserved only if a minimum of 75% of the critical root zone is maintained at undisturbed natural grade and no more than 25% of the canopy is removed due to building encroachment.

4. Prior to Construction: The following procedures shall be followed on all types of construction projects (i.e. residential subdivisions, commercial, multi-family, industrial developments, residential builders and municipal/public).

a. Tree Flagging or Marking: Trees that are approved by the Landscape Administrator for removal shall be flagged with bright fluorescent orange vinyl tape wrapped around the main trunk or marked with bright fluorescent orange paint at a height of 4' or more such that it is very visible to workers operating construction equipment. This shall not include the flagging or marking of all protected trees adjacent to right-of way within approved residential subdivisions during the construction of the roadway. Trees that are not flagged or marked shall be saved and protected by fencing in accordance with the requirements hereinafter.

b. Protective Fencing: In those situations where a protected tree is so close to the construction area that construction equipment might infringe on the root system or is within twenty feet (20') of the construction area, a protective fencing shall be required between the outer limits of the critical root zone of the tree and the construction activity area. Four feet (4') high protective fencing shall be supported at a maximum of 10' intervals by approved methods. All protective fencing shall be in place prior to commencement of any site work and remain in place until all exterior work has been completed.

c. Bark Protection: In situations where a protected tree remains in the immediate area of intended construction, the tree shall be protected by enclosing the entire circumference of the tree with 2" x 4" lumber encircled with wire or other means that do not damage the tree. The intent here is to protect the bark of the tree against incidental contact by construction equipment.

5. Permanent Construction Methods

a. Boring: Where it is not possible to trench around the critical root zone of a protected tree, boring of utilities under the protected tree shall be required. The length of the bore shall at least be the width of the critical root zone and the depth of the bore shall at least be twenty-four inches (24").

b. Grade Change: In situations where the grade change within the critical root zone of a protected tree exceeds the limits noted in Section L.2.e herein, the procedures noted in the City standard detail sheet shall be required.

c. Trenching: All trenching shall be designed to avoid trenching across the critical root zone of any protected tree. Although this section is not intended to prohibit the placement of underground services such as electric, phone, gas, etc., the placement

of these utilities is encouraged to be located outside of the critical root zone of protected trees. Irrigation system trenching shall be placed outside of the critical root zone with only the minimum required single head supply line allowed within that area placed radially to the tree trunk.

d. Root Pruning: All roots 2" or larger in diameter which are exposed as a result of trenching or other excavation shall be cut off square with a sharp medium tooth saw and covered with pruning compound within 2 hours of initial exposure.

M. Tree Pruning Restrictions.

1. General: No protected tree should be pruned in a manner which significantly disfigures the tree without proper cause or in a manner which would reasonably lead to the death of the tree.

2. Permit Requirements: All franchise utility companies shall be required to maintain at the City a set of pruning specifications (updated annually) to be followed by all pruning contractors working for the company within the City. Prior to beginning any pruning not requested by the owner of the tree, the contractor for a non-franchise entity shall submit to the City an application for a pruning permit for approval. Utility companies may prune trees as necessary to maintain safe and reliable service or to re-establish disrupted electric service without obtaining a permit.

3. Allowed Pruning: The Landscape Administrator may approve pruning of a protected tree in cases where protected trees must be strategically pruned to allow construction or demolition of a structure. When allowed, all pruning shall be in accordance with Section L.3 above, approved Arboricultural techniques and the recommendations of Appendix F.

This section is not intended to require a tree permit for reasonable pruning performed or contracted to be performed by the owner of the tree when unrelated to construction activity.

4. Required Pruning: The owners of all trees adjacent to public right-of-way shall be required to maintain a minimum clearance of ten feet (10') above the traveled pavement or curb of a public street. Said owners shall also remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public.

The City shall also have the right to prune trees overhanging within public right-of-way which interfere with the proper spread of light along the street from a street light or interfere with visibility of any traffic control device or sign or as necessary to preserve the public safety.

5. Tree Topping: It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other

obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Landscape Administrator.

N. Tree Planting Restrictions.

1. Overhead Lines: Any required replacement trees shall not be planted within an area such that the mature canopy of the tree will be within ten feet (10') of overhead utility lines.

2. Proximity to Utilities: Any required replacement trees or street trees shall not be planted within five feet (5') of electrical facilities (underground or surface), public utility lines, including water lines, sewer lines, transmission lines or other utilities. No trees shall be planted within ten feet (10') of a fire hydrant. Shrubs will be permitted outside of the minimum clearance of surface electrical facilities established by the franchise electrical company.

3. Street Corners: No street tree shall be planted closer than twenty-five feet (25') of any street corner, measured from the point of nearest intersecting curbs or curblines.

O. Enforcement.

1. Building Permit: No building permit shall be issued unless the applicant signs an application or permit request which states that all construction activities shall meet the requirements of this ordinance. The Building Official shall make available to the applicant a copy of this ordinance or a condensed summary of the relevant aspects pertaining to the type of permit requested.

2. Acceptance of Improvements: No acceptance of public improvements shall be authorized until all fines for violations of this ordinance have been paid to the City or otherwise disposed of through the Municipal Court. No acceptance of public improvements shall be authorized until all replacement trees have been planted or appropriate payments have been made to the Tree Reforestation Fund.

3. Certificate Of Occupancy: No Certificate of Occupancy shall be issued until all fines for violations of this ordinance have been paid to the City or otherwise disposed of through the Municipal Court. No Certificate of Occupancy shall be issued until all replacement trees have been planted or appropriate payments have been made to the Tree Reforestation Fund.

4. Notwithstanding the above provisions, public improvements may be accepted and Certificate of Occupancy may be issued before all trees have been replaced if a fiscal security is posted in an amount equal to the prevailing rate for installed trees with a one

(1) year guarantee, plus fifteen percent (15%) to cover administrative costs.

P. Conflicting Ordinances

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

Q. Severability

Should any paragraph, sentence, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the

validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

R. Penalty

1. Any person, firm, corporation, agent, or employee thereof who violates the provisions of Section D through H of this ordinance shall be guilty of a misdemeanor and upon conviction hereof shall be fined not to exceed One Hundred Dollars (\$100.00) per diameter inch of the tree(s) removed or damaged.

2. Any person, firm, corporation, agent or employee thereof who violates any other provisions of this ordinance shall be guilty of a misdemeanor and upon conviction hereof shall be fined not to exceed Five Hundred Dollars (\$500.00) for each incident. The unlawful injury, destruction or removal of each protected tree shall be considered a separate incident and each incident subjects the violator to the maximum penalty set forth herein per tree.

3. Removal of Public Trees: It shall be deemed a violation of this ordinance for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the City without first procuring approval from the Landscape Administrator.

S. Appendices

It is anticipated that the following appendices will be changed periodically by the Landscape Administrator in response to changes in the administration of this ordinance.

T. Effective Date

This ordinance shall take effect immediately from and after its passage on third and final reading and the publication of the caption, as the law and charter in such cases provide.

(Appendices omitted)