

ORDINANCE NO. O-2017-05

AN ORDINANCE AMENDING CHAPTER 134 "VEGETATION" BY ADDING ARTICLE III "PUBLIC TREE CARE" TO THE CITY OF PHARR CODE OF ORDINANCES; TO PROVIDE FOR THE CARE OF PUBLIC TREES; TO CREATE A TREE ADVISORY BOARD; TO ESTABLISH PRACTICES GOVERNING THE PLANTING, CARE AND REMOVAL OF TREES ON PUBLIC PROPERTY; TO MAKE PROVISION FOR THE REMOVAL OF DISEASED TREES ON PRIVATE PROPERTY UNDER CERTAIN CONDITIONS; PROVIDING FOR A PENALTY FOR VIOLATIONS; PROVIDING FOR SAVINGS/REPEAL AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Pharr, Texas, recognizes that trees generally protect and enhance the quality of life and general welfare of the town; and

WHEREAS, the citizens of Pharr have long valued trees as a natural and often irreplaceable community resource and recognize them as assets for their beauty and service; and

WHEREAS, the City Commission of Pharr, Texas, has further determined that the protection and care of trees located on city property is essential to the present and future health, safety, and welfare of all citizens, and accordingly, have determined that the adoption and implementation of this "Public Tree Care" ordinance is meritorious and necessary.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PHARR, TEXAS, THAT:

ARTICLE III, PUBLIC TREE CARE

SECTION 134-80. DEFINITIONS.

As used in this Article, the following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except with the context clearly indicates a different meaning.

DAMAGE means any injury to or destruction of a tree, including but not limited to: 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; surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.

NUISANCE means any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or threatens public health, safety and welfare.

PARKWAY means the area along a public street between the curb and the sidewalk; or if there is no curb or sidewalk, the unpaved portion of the area between the street right-of-way line and the paved portion of the street or alley.

PUBLIC PROPERTY means all grounds and rights-of-way (ROWS) owned or maintained by the City.

PUBLIC TREE means any tree or woody vegetation on city-owned or city-maintained property or rights-of-way.

TOP OR TOPPING means the non-standard practice of cutting back of limbs to stubs within a tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

SECTION 134-81. PURPOSE.

To enhance the quality of life and the present and future health, safety, and welfare of all citizens, to enhance property values, and to ensure proper planting and care of trees on public property, the City Commission herein delegates the authority and responsibility for managing public trees, creates a Tree Advisory Board, establishes practices governing the planting and care of trees on public property, and makes provision for the emergency removal of trees on private property under certain conditions.

SECTION 134-81. TREE PLANTING AND CARE STANDARDS.

- (a) **Standards.** All planting and maintenance of public trees shall conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and shall follow all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.
- (b) **Requirements of franchise utility companies.** Franchise utility companies shall provide advance notice to the City of their intended non-emergency tree pruning schedule and location of impacted area. The maintenance of public trees for utility clearance shall conform to all applicable utility industry standards.
- (c) **Tree species list.** The Director shall develop and maintain an official list of desirable tree species for planting on public property in two size classes: Ornamental (20 feet or less in height at maturity) and Shade (greater than 20 feet at maturity). Only trees from this approved list may be planted without written approval from the Director.
- (d) **Planting distances.** The Director shall develop and maintain an official set of spacing requirements for the planting of trees on public property. No tree may be planted within the visibility triangle of a street intersection or within ten (10) feet of a fire hydrant.
- (e) **Planting trees under electric utility lines.** Only trees listed as Ornamental trees on the official city tree species list may be planted under or within fifteen (15) lateral feet of any overhead utility wire.
- (f) **Protection of public trees during construction.** Any person, firm, corporation, or

city department performing construction in the area of any public tree must employ appropriate measures to protect the tree, including, but not limited to, placing barriers around the tree to prevent any damage.

SECTION 134-83. ADJACENT OWNER RESPONSIBILITY.

- (a) The owner of land adjacent to any city street or highway, when acting within the provisions of this Ordinance, may plant and maintain trees in the adjacent parkway area. Property owners are responsible for the reasonable and routine maintenance of trees and other landscaping in the adjacent parkway area.
- (b) No property owner shall allow a tree, or other plant growing on his or her property or within the adjacent parkway to obstruct or interfere with pedestrians or the view of drivers, thereby creating a hazard. If an obstruction persists, the Director shall notify the property owner to prune or remove the tree or plant. If the owner fails to comply with the notice, the City may undertake the necessary work and charge the cost to the property owner.

SECTION 134-84. PROHIBITION AGAINST HARMING PUBLIC TREES.

- (a) It shall be unlawful for any person, firm or corporation to damage, remove, or cause the damage or removal of a tree on public property without written permission from the Director.
- (b) It shall be unlawful for any person, firm or corporation to attach any cable, wire or signs or any other object to any street, park, or public tree.
- (c) It shall be unlawful for any person, firm or corporation to "top" any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical may be exempted from this provision at the determination of the Director.

SECTION 134-85. CERTAIN TREES DECLARED A NUISANCE.

- (a) Any tree, or limb thereof, on private property determined by the Director to have contracted a lethal, communicable disease or insect; to be dead or dying; to obstruct the view of traffic signs or the free passage of pedestrians or vehicles; or that threatens public health, safety, and welfare is declared a nuisance and the City may require its treatment or removal.
- (b) Private property owners have the duty, at their own expense, to remove or treat nuisance trees on their property. The City may remove such trees at the owner's expense if the owner does not comply with treatment and/or removal as specified by the Director within the written notification period.

SECTION 134-86. AUTHORITY AND POWER.

- (a) ***Delegation of authority and responsibility.*** The Development Services Director and/or his designee, hereinafter referred to as the "Director", shall have the authority and responsibility to plant, prune, maintain and remove trees and woody plants

growing in or upon all city streets, rights-of-ways, city parks, and other public property. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.

- (b) **Coordination among city departments.** All city departments will coordinate as necessary with the Director and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements and other public properties not under direct jurisdiction of the Director.
- (c) **Interference.** No person shall hinder, prevent, delay, or interfere with the Director or his agents while engaged in carrying out the execution or enforcement of this Ordinance.

SECTION 134-87. TREE ADVISORY BOARD.

The City Commission hereby creates a "Tree Advisory Board," hereinafter referred to as the "Board."

- (a) **Membership:** There is hereby created a Tree Advisory Board that functions as the Board. Such board shall be composed of nine (9) members approved of and appointed by board of commissioners [City Commission]. Members of the Board will serve without compensation. The Director and/or his designee, is automatically an ex officio member of the Tree Advisory Board without the right to vote.
- (b) **Duration of terms of office; transition procedure; filling of vacancies; reappointment:** Board members shall be appointed for a term of two years on a rotating basis and removable for cause by the appointing authority. In the event that a vacancy occurs on the board prior to the expiration of a full term, the board of commissioners [City Commission] shall appoint a new member/successor to complete the unexpired term. Any member of the board may be reappointed by the board of commissioners [City Commission] upon completion of a full term.
- (c) **Officers:** The chairman shall be appointed as per City of Pharr Ordinance O-2016-21, the appointment of vice-chairman and secretary shall be voted on at the first meeting in January for a term of one year. The vice-chairman is to preside in the absence of the chairman. The Director may be elected secretary of the board. Exception: Upon enactment of this ordinance, the enumerated officers shall be elected at the first regular meeting of the board.
- (d) **Citizen of Pharr:** Each member of the board shall be a resident citizen of the City of Pharr at the time of his/her appointment. A member of the board ceasing to reside in the city during his/her term of office shall immediately forfeit his/her office.
- (e) **Agendas:**
 - (1) Items may be placed on the agenda by the chairman, director of development services, the city manager or his designee or at the request of two or more board members. The requests must be at least five days before the meeting. Board members must consult with and receive input from the director of development

services. The director shall seek consultation from the city attorney as to the legalities of the agenda item(s) and whether it is within the board's discretion.

- (2) Staff shall assemble all regular meeting items as directed by city ordinance and internal city policy.
- (3) Posting of the agenda must comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).

(f) **Meetings:**

- (1) The Board shall meet a minimum of four times each year.
- (2) Board meetings shall be governed by Robert's Rules of Order.
- (3) All meetings shall be open to the public. The Board chair and/or Director may schedule additional meetings as needed. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep record of its examinations and other official actions, all of which shall be filed in the office of the board and shall be a public record. The director of planning of the City of Pharr shall be the custodian and possessor of the records and minutes of the Tree Advisory Board.
- (4) Meetings of the board may be held as often as necessary to conduct the business coming before the board at the call of the chairman and at such other times as the board may determine necessary. Special meetings may be called by the chairman or at the request of three (3) or more members. The call shall state the purpose of the meeting, the time and the date.
- (5) The board shall allow citizens to address the board on agenda items and during a period of the time set aside for citizen communications. The chairman may limit a speaker to three minutes, In the interest of fairness to applicants and appellants appearing before the board and those appearing in opposition to the same, no discussion shall be held by a member or members of his board with the applicant, appellant, or opposition, who is attempting to influence any board member concerning the application or other mater involving an applicant or appellant before the board either at home or office, or in person, by telephone, letter or electronic communication. All such discussions shall be held during a meeting at which the item is posted for discussion so that all members shall have the full benefit of such discussion.
- (6) Each person and board member attending a board meeting should observe proper decorum.

(g) **Parliamentary authority.** The rules contained in the current edition of Robert's Rules of Order shall govern the board in all cases to which they are applicable, except when inconsistent with these bylaws or with special rules of procedure which the board or city council may adopt.

(h) **Quorum:** Any four members shall constitute a quorum for the transaction of the

business. The affirmative vote of a majority of those attending any meeting at which there is a quorum present shall be necessary to pass any motion, recommendation or resolution of the Board.

- (i) **Duties:** The Board shall act in an advisory capacity to the Director and shall:
 - (1) Coordinate and promote Arbor Day activities;
 - (2) Review and update a five-year plan to plant and maintain trees on city property;
 - (3) Support public awareness and education programs relating to trees;
 - (4) Review city department concerns relating to tree care;
 - (5) Submit an annual report of its activities to the City Commission;
 - (6) Assist with the annual application to renew the Tree City USA designation;
 - (7) Develop of a list of recommended trees for planting on city property; and other duties that may be assigned by City Commission.

- (j) **Removal:** Any member of the board may be removed from office for any cause deemed by the board of commissioners [City Commission] to be sufficient for removal of said member. If a vacancy should exist in the board membership due to removal from office, resignation, death, refusal or inability to serve, the board of commissioners [City Commission] shall appoint a new member to fill the vacancy for the unexpired term.

- (k) **Attendance:** Two (2) consecutive absences that are not excused by the board, or the absence from more than 50 percent of the meetings in any calendar year, will automatically remove a member from the board.

- (l) **Fiscal restraints:** The board and its members have no authority to expend funds or to incur or make an obligation on behalf of the city unless authorize and approved by the board of commissioners. Board members may be reimbursed for expenses authorized and approved by the board of commissioners.

SECTION 134-88. VIOLATIONS AND PENALTY.

- (a) Any violation of this Ordinance by a person, firm, organization, entity or corporation shall be subject to both civil and criminal penalties. A criminal conviction shall be a Class "A" misdemeanor. A violator shall also be subject to the maximum penalties allowed by law for failing to appear in Court when charged with an offense as described herein.

- (b) A liable party shall be subject to a civil penalty up to and not to exceed five hundred dollars (\$500.00) for each separate violation and/or offense, or the maximum allowed by law as may be amended from time to time.

SECTION 134-89. APPEALS.

- (a) All appeals to any violation shall be heard by the *Board of Adjustment*.
- (b) Appeals to the *Board of Adjustment* may be made by any person aggrieved, or by any municipal officer, department, board or commission affected by any decision of the Director. Such appeal shall be filed with the *Board of Adjustment* by the director of planning within 15 days after the original decision. The appeal shall be accompanied by all papers constituting the record pertaining to such appeal.
- (c) All fees and costs associated with applying for an appeal of any violation to be heard before the *Board of Adjustment* shall be paid prior to any hearings.
- (d) Formal notice of the appeal shall be issued by the director of planning, such notice to specify the grounds upon which the appeal is made. The *Board of Adjustment* shall set a reasonable time for the hearing of the appeal.

SECTION 134-90. SAVINGS/REPEAL.

This Ordinance shall incorporate herein all other ordinances that exist in the Pharr Code of Ordinances not in direct conflict with this Ordinance as such are hereby repealed to the extent of the conflict, and this Ordinance shall supersede any provisions in conflict herewith. All other provisions of the above described ordinance shall remain in full force and effect.

SECTION 134-91. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed as separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 134-92. EFFECTIVE DATE.

- (a) This Ordinance shall take effect and be in force from and after its passage and approval on three (3) separate readings in accordance with Section 8, Article 3 of the Charter of the City of Pharr, Texas. Publication, if necessary, may also be in caption form as allowed under Section 9 of the Pharr City Charter.
- (b) This Ordinance may be published, after passage, in one issue of the official paper and shall take effect and be in full force from and after ten (10) days following such publication. Publication, if necessary, may also be in caption form as allowed under Section 9 of the Pharr City Charter.

PASSED AND APPROVED ON THE FIRST READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the 16TH day of JANUARY, 2017.

CITY OF PHARR



AMBROSIO HERNANDEZ
MAYOR

ATTEST:


HILDA PEDRAZA, CITY CLERK

PASSED AND APPROVED ON THE SECOND READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the 23RD day of JANUARY, 2017.

CITY OF PHARR



AMBROSIO HERNANDEZ
MAYOR

ATTEST:


HILDA PEDRAZA, CITY CLERK

PASSED AND APPROVED ON THE THIRD AND FINAL READING BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF PHARR, TEXAS, on this the 6TH day of FEBRUARY, 2017.

CITY OF PHARR



AMBROSIO HERNANDEZ
MAYOR

ATTEST:


HILDA PEDRAZA, CITY CLERK