



CITY COUNCIL ACTION REPORT

February 24, 2009

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance and Administration
Carol K. Anderson, Parks and Recreation Director

SUBJECT: Possible Tree Ordinance Revisions

Background:

- At the June 5, 2006 meeting, revisions to Chapter 28 (Tree Ordinance) were presented to City Council. City Council postponed indefinitely the resolution to adopt the revisions.
- At the same meeting, a motion was made to request a special task force be appointed to review the proposed revisions. The resolution failed.
- At a recent City Council meeting, a council member indicated an interest in revisions to Chapter 28 (Tree Ordinance) the Tree Ordinance.
- City Council could direct staff to draft revisions to the tree ordinance with input on the revisions/changes to be included.

Financial Considerations:

- There are no financial considerations.

Legal Considerations:

- If changes to the ordinance are adopted, the ordinance then becomes enforceable on the effective date.

Policy Considerations:

- Changes to the tree ordinance are likely to change policy regarding tree regulations, maintenance, and landscape standards for private property owners and developers.
- Should council want changes/revisions to the tree ordinance, staff requests further information on what changes may be desirable.

CHAPTER 28 TREE REGULATIONS

1. Definitions. For the purposes of this chapter the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
 - (A) The word "tree" unless the context clearly indicates otherwise also means shrubs, bushes and all other woody vegetation. Specific enumeration herein is illustrative and not delimiting.
 - (B) The term "public utility" shall mean any person owning or operating any pole, line, pipe or conduit located in any public street or over or along any public easement or right-of-way for the transmission of electricity, gas, telephone service or telegraph service or any other means of electronic communication including the television transmission system and/or co-axial C.A.T.V. cable.
 - (C) The words "prohibited species" shall mean any tree of the following species:
 - 1) Acer Disycarpum (Silver Maple)
 - 2) Acer Negundo (Box Elder)
 - 3) Ailanthus Altissima (Tree of Heaven)
 - 4) Berberis Vulgaris (European Barberry)
 - 5) Catalpa Speciosa (Northern Catalpa)
 - 6) Juniperus Virginana (Eastern Red Cedar)
 - 7) Populus (Poplar)
 - 8) Salix (Willow)
 - 9) Ulmus Americanana (American Elm)
 - 10) Ulmus Parviflora (Chinese Elm)
 - (D) The word "Department" shall mean the Department of Parks and Recreation of the City of Troy.
 - (E) "Director" shall mean the Director of Parks and Recreation and any and all employees under his direction authorized by him to seek compliance with provisions of this Chapter.
 - (F) Provisions of this chapter, except as otherwise specifically stated herein, shall apply only to public streets, parkways, parks, and other land publicly owned or controlled by the City or to such land privately owned when such land comes within the purview of this chapter because of the maintenance or continuation of a hazard injurious to the public in general.

Chapter 28 - Tree Regulations

2. Responsibility. The Director shall be charged with the duty of enforcing the provisions of this chapter together with his duly appointed representative and employees operating under his direction. The Director shall have exclusive jurisdiction and supervision over all trees, other plants, and grassy areas planted or growing in public places.
- (A) Preserve or Remove. The Director shall have the authority and it shall be his duty to plant, trim, spray, preserve and remove trees and other plants and grassy areas in public places to insure safety or to preserve the symmetry and beauty of such public spaces.
- (B) Order to Preserve or Remove. The Director shall have the authority and it shall be his duty to order the trimming, preservation or removal of trees or plants on private property when he shall find such action necessary to public safety or to prevent the spread of disease or insects to public trees and places.
- (C) Supervision. The Director shall have the authority and it shall be his duty to supervise all work done under a permit issued in accordance with the terms of this chapter.
- (D) Issue Conditional Permits. The Director shall have the authority to affix reasonable conditions to the granting of a permit hereunder.

(Rev. 2-28-77)

3. Permits for Tree Planting, Care, Removal.

- (A) Preserve or Remove. No person shall trim, spray, preserve or remove trees, other plants and grassy areas in public places without first filing an application and procuring a permit from the Director.
- 1) Application Data. The application required herein shall state the number and kind of trees to be trimmed, sprayed, preserved or removed; the kind of treatment to be administered, the kind and condition of nearest trees upon the adjoining property; and such other information as the Director shall find reasonably necessary to a fair determination of whether a permit should be issued hereunder.
- 2) Standards for Issuance. The Director shall issue the permit provided for herein when he finds that the desired action or treatment is necessary and that the proposed method and workmanship are satisfactory and that such action is in conformance with this chapter.
- (B) Plant. No person shall plant or set out any tree or plant in a public place without first filing an application and procuring a permit from the Director.
- 1) Application Data. The application required herein shall state the number of trees or plants to be planted or set out, the location, grade and variety of each tree or plant, the method of planting, including the supplying of suitable soil and such other information that the Director shall find reasonably necessary to a fair determination of whether a permit shall be issued hereunder.

Chapter 28 - Tree Regulations

- 2) Standards for Issuance. The Director shall issue the permit provided for herein when he finds that the proposed plantings conform to the requirements of this chapter.
4. Public Tree Removal. The Department shall have the right to plant, trim, spray, preserve and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to insure safety or to preserve the symmetry and beauty of such public grounds. The Director may remove or cause or order to be removed, any tree or part thereof which is in any unsafe condition or which is prohibited species, or is affected with any injurious disease, fungus, insect or other pest. Whenever the Department shall remove any tree, plant or shrub, solely for the purpose of constructing any public work, the Director shall, if practicable, replace the same at public expense, at some nearby location by planting another tree, plant or shrub, not necessarily of the same type.
5. Duties of Private Owners. It shall be the duty of any person growing trees within the City:
 - (A) Trim. To trim his trees so as not to cause a hazard to public places or interfere with the proper lighting of public highways by the street lights, and so that a minimum clearance of any overhead portion thereof shall be eight (8) feet above the surface of the street or right-of-way. Said person shall 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 have the right to trim any tree or shrub on private property when it interferes with vehicular and/or pedestrian traffic in public places or the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign, such trimming to be confined to the area immediately above the right-of-way.
 - (B) Treat or Remove. To treat or remove any tree or plant so diseased or insect-ridden as to constitute a hazard to trees or plants in public places.
 - (C) Prohibited Species. To refrain from planting any of the following species:
 - (1) Acer Disycarpum (Silver Maple).
 - (2) Acer Negundo (Box Elder).
 - (3) Ailanthus Altissima (Tree of Heaven).
 - (4) Berberis Vulgaris (Eurpoean Barberry).
 - (5) Catalpa Speciosa (Northern Catalpa).
 - (6) Juniperus Virginana (Eastern Red Cedar).
 - (7) Populus (Poplar).
 - (8) Salix (Willow).
 - (9) Ulmus Americana (American Elm).
 - (10) Ulmus Parviflora (Chinese Elm).

Chapter 28 - Tree Regulations

- (D) **Tree Protection Prior to Development.** To prevent the unnecessary destruction of trees on land where a building permit or subdivision approval has not been issued, the destruction within any five (5) year period, of more than twenty-five (25) percent of the trees on any parcel of real property within the City, without prior approval of the director shall be prohibited.

(Rev. 6-5-89)

6. **Tree Protection. For All Trees in Public Places:** No person shall break, injure, mutilate, kill or destroy any tree or shrub, or set any fire within ten (10) feet of any tree or permit any fire, or the heat thereof, to injure any portion of any tree. No toxic chemicals or other injurious materials shall be allowed to seep, drain or be emptied on, near or about any tree. No electric wires or any other lines or wires shall be permitted to come in contact with any tree or shrub in any manner that shall cause damage thereto, and no person shall attach any electric insulation to any tree. No person shall use any tree as an anchor except by special written permit from the Director and no material shall be fastened to or hung on any tree. All persons having under their care, custody or control, facilities which may interfere with the trimming or removal of any tree, shall, after notice thereof by the Director, promptly abate such interference in such manner as shall permit the trimming or removal of such trees by the Department.
7. **Tree Protection During Development, For all Trees in Public Places:** During any building, renovating or razing operations, the builder shall erect and maintain suitable protective barriers around all trees and also for all trees specified to be maintained on private property, so as to prevent damage to said trees and shall not allow storage of equipment, materials, debris or fill to be placed in this area except as may be necessary for a reasonable time if no other storage space is available.
8. **Excavations Near Trees.** Excavations and driveways shall not be placed within five (5) feet of any existing tree without a written permit from the Director. Any person making such excavation or construction shall guard any tree within six (6) feet thereof with a good substantial frame box to be approved by the Director and all building material and other debris shall be kept at least four (4) feet from any tree.
9. **Covering Surface Near Trees.** No person shall place within the street right-of-way any stone, brick, sand, concrete or other materials which will in any way impede the full and free passage of water, air or fertilizer to the roots of any tree, except a sidewalk of authorized width and location.
10. **Regulations for Planting in a Public Place.** Work done under a permit issued hereunder shall be performed in strict accordance with the terms thereof and with the following regulations established for the planting, trimming and care of trees in public places:
- (A) Trees must not be less than one inch (1") in diameter of trunk one foot (1') above the ground.
- (B) All trees from two (2") to four (4") inches in diameter of trunk one foot (1') above the ground must be protected and supported by tree guards.
- (C) All cuts above one (1") high in diameter must be water-proofed.
- (D) All trees will be planted on fifty (50') foot centers, unless a special permit is obtained from the Director.

Chapter 28 - Tree Regulations

- (E) No tree will be planted closer than three and one-half (3 1/2) feet to the curb, and no closer than three (3) feet to the sidewalk.
 - (F) No tree shall be planted on private property within thirty (30) feet of a tree planted in the right-of-way.
 - (G) No tree shall be planted within fifteen (15) feet either side of a driveway that opens onto a public street.
11. Corner Clearance. All shrubs and bushes located on the triangle formed by two (2) right-of-way lines at the intersection of two (2) streets and extending for a distance of twenty-five (25) feet each way from the intersection of the right-of-way lines on any corner lot within the city, shall not be permitted to grow to a height of more than thirty (30) inches from the established street grade, in order that the view of the driver of a vehicle approaching a street intersection shall not be obstructed.
- Trees may be planted and maintained on private property in this area, provided that all branches are trimmed to maintain a clear vision for a vertical height of eight (8) feet above the roadway surface. Any person failing to trim any trees, shrubs or bushes in conformity with this section shall be notified by the Director in the manner provided in Section 14 of this chapter, to do so and such notice shall require trimming in conformity with this section within the time prescribed in the notice as provided in Section 14 B of this Chapter. Upon the expiration of such period, the Director may cause the trimming to be done and the cost thereof may be collected from the owner of said property as provided for in Section 14 E of this chapter.
12. Private Trees - Disease and Infestations. When the Director shall discover that any tree growing on private property within the City is affected with any dangerous and infectious insect infestation or tree disease, he shall forthwith serve a written order upon the person in the manner specified in Section 14 of this chapter, describing the tree, its location and the nature of the infestation or tree disease, and ordering the person to take such measures as may be reasonably necessary. Such order may require the pruning, spraying or destruction of trees as may be reasonably necessary. Every such order shall be complied with within ten (10) days after service thereof, or within such additional time as may be stipulated in such order as provided in Section 14 B.
13. Dutch Elm Disease. Every elm tree, regardless of species or variety, infected with the fungus *ceratostomella ulmi*, commonly called dutch elm disease, shall be removed if on public property, within ten (10) days after the Director shall learn of the condition and, if on private property within the time prescribed in the order as specified in Section 14 B. No person shall possess, sell, give away or transport any elm afflicted with the fungus *ceratostomella ulmi* nor any wood from, or parts of, any tree so afflicted, except that wood, branches and roots of any tree so afflicted may be transported to a place for burning, if first sprayed thoroughly with a solution of sevin 50% wettable solution two (2) tbs/gal. in a manner approved by the Director.
14. Procedure Upon Order to Preserve or Remove. When the director or any one under his supervision and control shall find it necessary to order the trimming, preservation, or removal of trees or plants upon private property as authorized by this chapter herein he shall serve a written order to correct the dangerous condition upon the person.

Chapter 28 - Tree Regulations

- (A) Method of Service. Such order required herein shall be served in one of the following ways.
- (1) By making personal delivery of the order to the person responsible.
 - (2) By leaving the order with some person of suitable age and discretion upon the premises.
 - (3) By mailing a copy of the order to the last known address of the owner of the premises by receipted mail.
 - (4) By affixing a copy of the order to the door at the entrance to the premises in violation.
 - (5) By publishing the order in a local paper once a week for three (3) successive weeks.
- (B) Time for Compliance. Such order required herein shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In no case shall the time limit be less than ten (10) days, except in case of extreme danger, nor more than thirty (30) days. In case of extreme danger to persons or public property and eliminate or abate the hazard or danger and assess the costs to the owner as provided in Section 14(E) of this Chapter. An extreme danger shall be described as any situation or occurrence which would cause an immediate danger to the life and limb of any person upon any public way within the City of Troy.
- (C) Appeal from Order. A person to whom such order is directed shall have the right, within forty-eight (48) hours of service of such order, to appeal to the City Manager of the City of Troy who shall review such order within five (5) working days and file his decision thereon with the City Clerk with a copy to the appellant which shall be served in any of the methods herein provided in paragraph (A) hereof, unless the order is revoked or modified it shall remain in full force and shall be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with such order within ten (10) working days or such additional time as prescribed in the order after an appeal shall have been determined.
- In case of extreme danger, as described above, the director shall have the authority to require compliance immediately upon service of the order which expressly dictates that the matter is of extreme danger.
- (D) Failure to Comply. When a person to whom an order is directed shall fail to comply within the specified time, the director shall remedy the conditions or contract with others for such purpose and charge the costs thereof to the person to whom the order is directed. The person remedying the condition under a contract made hereunder shall be authorized to enter the premises for that purpose.

Chapter 28 - Tree Regulations

- (E) **Lien Against Property.** If the cost of remedying a condition is not paid within (30) days after receipt of a statement, therefore, from the City Treasurer, such cost shall be levied against the property upon which said hazard exists or existed. Levying of such cost shall be certified by the Director to the City Treasurer and shall thereupon become a lien upon such property, and shall be included in the next tax bill rendered to the owner or owners thereof unless paid before, and shall be collected in the same manner as other taxes against such property.

(Rev. 6-5-89)

15. **Private Trees - Inspection.** The Director and his representatives and employees shall have the authority to enter upon private premises for the purpose of examining any trees, shrubs, plants, or vines for the presence of destructive insects or plant diseases. No damages shall be awarded for the destruction of any tree, shrub, or plant or fruit or injury to the same, if done by the Director or those under his direction in accordance with this chapter.
16. **Lawn Extensions.** On residential streets, the abutting owner or occupants may maintain a planting strip on the lawn extension between the sidewalk and the street therein in conformity with this chapter. No person shall willfully injure or destroy any grass, flower or tree upon any such planting strip or throw papers, refuse, or any other thing thereon. No person shall drive an automobile, bicycle or any other vehicle upon or over any such planting strip.
17. **Private Utilities.**
- (A) **Overhead Lines Trimming Permits.** The Director shall grant permission to public utilities to trim and keep trimmed all trees within the streets, alleys, parks and public places of the City, in such a manner as shall keep the overhead lines of such public utilities safe and accessible. Such trimming shall be done in accordance with approved practices and under the general direction of the Department. Said permission, as provided for in this section, shall require reasonable prior notice to the City before any work is commenced thereunder. Provided, however, that in the event of an emergency requiring immediate maintenance work on the overhead lines of said public utilities, prior notice of commencing work under said permit shall not be required. The word "emergency" as used in this section, shall be defined to mean the occurrence or happening of an event which could not be prevented by the exercise of reasonable care and foresight, which might cause damage to the overhead lines of the public utilities.
- (B) **Gas Main Leakage.** Gas pipes or mains within any public right-of-way or on any public property shall be so maintained as to avoid any leakage therefrom. In the event a leak exists or occurs, it shall be reported to the owner of such pipe and main, and the leak shall be repaired within twenty-four (24) hours. Any damage to trees, shrubbery or grass resulting from the escape of gas from a pipe or main shall be repaired, and the cost of the work, including the cost of removal and the replacement of any trees, shall be levied against the owner of the pipe or main causing the damage.
18. **Rules and Regulations.** The Director shall make such rules and regulations supplementary to this chapter not in conflict herewith, as he may from time to time deem necessary. No person shall fail to obey any rule or regulation effective hereunder.

(Rev. 3-26-79)