

ORDINANCE NO. 216

AN ORDINANCE TO AMEND CITY CODE SECTIONS §174.01 TREE BOARD, §151.46- §151.47 FENCES, §92.40-§92.42 WEEDS, §130.02 FIREARMS, §151.04 ZONING DEFINITIONS, §151.21 R-1 DISTRICT LOT REGULATIONS, §151.58 NONCONFORMING USES; AND TO ADD CITY CODE SECTION §174.02 TREE PROTECTION FOR THE CITY OF HOUSTON, COUNTY OF HOUSTON, STATE OF MINNESOTA

The City Council of the City of Houston does ordain:

SECTION 1: TREES

City Code §174.01 is hereby amended in its entirety, §174.02 is hereby added, and §92.02 is hereby replaced:

§174.01 TREE BOARD.

(A) *Authority and power.*

(1) There is hereby created and established a City Tree Board for the City of Houston, which shall consist of five members, one person being a council member, who shall be appointed by the Mayor with the approval of the City Council and shall serve without compensation. The term shall be 3 years;

(2) The Board shall choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members shall constitute a quorum for the transaction of any business;

(B) *Duties.*

(1) Recommend the adoption and alteration of all rules, regulations and ordinances which it shall from time to time deem in the public interest and most likely to enhance and beautify the urban forest, and for the purposes of carrying out this section;

(2) Recommend policies for the review and approval of capital projects where trees or other vegetation will be planted or removed on city property;

(3) Encourage landscaping, installation and maintenance on private property by providing information on the value of landscaping and on the proper planting and care of trees and other vegetation;

(4) In new subdivisions or when the development of commercial property occurs, the Tree Board will review landscaping plans and may require street trees to be planted in any of the streets, parking lots, parks and other public places abutting lands henceforth developed and/or subdivided.

(5) When an application for a conditional use permit or building permit is filed the Tree Board reviews the landscape improvement design and makes recommendations to the Zoning Administrator.

(6) Recommend policies and procedures to identify, mark, publicize and preserve historic and landmark trees on both public and private property. A tree may qualify as a landmark tree if it meets one or more of the following criteria: species rarity, old age, historical significance, abnormality, scenic enhancement;

(7) Promote appreciation of trees and the urban forest through annual Arbor Day observances and other activities in conjunction with the school district and community organizations;

(8) Review those portions of the city budget allocated for the planting and care of trees and other vegetation, and advise the Council on the appropriateness of the funding levels;

(9) Encourage improvement of the urban forest through planning, policy development and to recommend obtaining professional assistance when needed;

(10) Assist city departments in every way possible to enhance the urban forest in the city.

(11) In all instances, serve as an advocate of the city's urban forest.

(C) *Applicability.* This section provides full power and authority over all trees, plants and shrubs located within street right-of-ways, parks and public places of the city. However, it does not alleviate the responsibility of adjacent property owners for boulevard trees, shrubs, and the like even though herein designated as public trees.

(D) *Definitions.*

BOULEVARD. Area between curb and the private property line that is publicly owned.

BOULEVARD TREE. A tree, shrub, bush or other woody vegetation on land lying between property lines on either side of all streets, avenues, boulevards, or within the city.

CITY. The City of Houston, Minnesota

HAZARD TREE. Any tree or stump with an infectious disease or insect problem; dead or dying trees; a tree or limb(s) that obstruct street lights, traffic signs, the free passage of pedestrians or vehicles; a tree that poses a threat to safety and the like.

LARGE TREE. Any plant material that will grow to a height of over 50 feet.

MEDIUM TREE. Any plant material that will grow to a height of 30-50 feet.

PARK TREE. A tree, shrub, bush or other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

PRIVATE TREE. Any and all trees growing on private property within the city limits.

PUBLIC PROPERTY. Any area or building publicly owned including but not limited to: boulevards, parks, playgrounds, school sites, parkways and streets.

PUBLIC RIGHT-OF-WAY. Portion of property reserved for public use and accepted for such use by the city to provide circulation and travel to abutting properties, including, but not limited to, streets, alleys, sidewalks, provisions for public utilities, cut and fill slopes and open public spaces.

PUBLIC TREE. All trees growing on any street, park, or any public place owned and/or managed by the City of Houston.

PUBLIC UTILITY. Any public, private or cooperatively owned line, facility or system for producing, transmitting or distributing communications, power, electricity,

light, heat, gas, oil products, water, waste or stormwater, which directly or indirectly serves the public or any part thereof within the corporate limits of the city.

SMALL TREE. Any plant material that will grow to a height of 30 feet or less.

§174.02 TREE PROTECTION.

(A) *Statement of purpose.* It is the purpose of this section to promote and protect the public health, safety and general welfare by providing for the regulation of the planting, maintenance and removal of trees, shrubs, and other plants on public property within the city

(B) *Permits.* No species may be planted on or removed from public property within the City of Houston without approval and obtaining a permit. Prior to the Tree Board taking action, it shall review all requests for planting to assure that the species are appropriate. The person receiving the permit shall abide by the standards set forth in this section.

(C) *Registration of tree care firms.* Any person, firm or corporation that provides tree care, tree trimming or removal of trees, limbs, branches, brush, or shrubs for hire must be registered with the Minnesota Commissioner of Agriculture under M.S. § 18G.07, as it may be amended from time to time.

(D) *Insurance.* Any contractor performing work on public property must first file evidence of possession of liability insurance in the minimum amounts of \$1,000,000 for bodily injury or death and \$100,000 property damage indemnifying the city or any person injured or damaged resulting from the work performed.

(E) *Public Trees - planting, pruning, and removal.*

(1) *Tree species.* The Tree Board develops and maintains a list of desirable trees for planting along streets in three size classes: small, medium and large. A list of trees not suitable for planting will also be created by the Tree Board. All Ash (*Fraxinus*) tree species are prohibited from being planted in the City.

(2) *Spacing.* The spacing of street trees will be in accordance with the three species size classes listed in this §174.01 Definitions, and no trees may be planted closer together than the following: small trees, 6 - 15 feet; medium trees, 30 - 40 feet; and large trees, 40 - 50 feet; except in special plantings designed or approved by the Tree Board.

(3) *Utilities.* It is recommended that no street trees other than those species listed herein as small trees may be planted under or within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility.

(4) *Distance from curb and sidewalk.* The distance trees may be planted from curbs or curb lines and sidewalks will be in accordance with the tree species size classes listed in §174.01 Definitions, and no trees may be planted closer to any curb or sidewalk than the following: small trees, two feet; medium trees, three feet; and large trees, four feet.

(5) *Distance from corners, fire hydrants and driveways.* No street tree shall be planted closer than 30 feet to any street corner, measured from the point of the nearest intersecting curbs or curb lines. No street tree shall be planted closer than ten feet to any fire hydrant, nor five feet from any driveway or walkway.

(6) *Care of street trees.* The City of Houston shall have the right to plant, prune, maintain, 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 the public safety or to preserve or enhance the symmetry and beauty of such public grounds.

(7) *Removal of trees endangering utilities or other public improvements.* The city Tree Board may remove, cause or order to be removed any tree, stump or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewer, electric power lines, gas lines, water lines, or other public improvement, or is affected with any injurious fungus, insect, or other pest. Every tree overhanging any street or right-of-way within the city shall be pruned so that the branches shall not obstruct the light from any street lamp or obstruct the view of any street, intersection and so that there shall be a clear space of at least 12 feet above the street or eight feet above the sidewalk. Dead, diseased, or dangerous trees, or broken or decayed limbs which endanger the safety of the public shall be removed.

(8) *Topping.* It shall be unlawful for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Topping is defined as 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. 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 section at the determination of the city Tree Inspector.

(9) *Planting and maintaining public trees:* The city will provide Urban Forestry Standards and Specifications which shall be used as a guideline for planting and pruning public trees.

(F) *Public Nuisance.*

(1) Public nuisance defined and designated. The following are defined and declared to be public nuisances under this chapter:

(a) Any tree or shrub located on private or public property having a destructive or communicable disease or other pestilence which endangers the growth, health, life or well-being of trees, shrubs or plants in the city or which is capable of causing an epidemic spread of a communicable disease or insect infestation;

(b) The roots of any tree or shrub, located on private or public property, which cause the surface of the public street, curb or sidewalk to be upheaved or otherwise disturbed;

(c) Any tree, shrub or portion thereof located on private or public property which, by reason of location or condition, constitutes an imminent danger to the health, safety or well-being of the general public on city property.

(2) It is unlawful for any person, either as owner, agent or occupant, to create, or aid in creating or contributing to or to maintain a public nuisance.

(3) Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of public nuisance caused by a communicable disease or other pestilence shall report the same to the city.

(G) *Private property owner responsibilities.*

(1) Periodic watering and fertilization of street trees when necessary to maintain good health and vigor;

(2) Protection of street trees against damage caused by lawnmowers, weed trimmers, snow blowers and similar equipment.

(3) Protection of public trees near construction activities. Any tree located on city property in the immediate vicinity of any excavation, demolition or construction site of any building, structure, street or utilities work which has potential for injury, shall be protected from such injury.

(4) Removal of private or public trees, limbs, or roots to eliminate a public nuisance. In the event that the city Tree Inspector must condemn a street tree because of unsafe conditions or that the tree or stump is diseased, the city will cover 50% of the cost of removal with the other 50% to be paid by the landowner.

(5) For public trees that are not a public nuisance, the Tree Board may approve a permit for removal of public trees and as a condition, the permittee may be required to compensate the city for the value of the tree(s) removed either by replacement thereof or by monetary assessment.

(6) All Ash (*Fraxinus*) tree species are prohibited from being planted in the City.

(7) Any tree or shrub situated upon private property, but so situated as to extend its branches over the improved portion of a public street or highway easement, shall be so trimmed by the owner of the real property upon which the same is located, so that there is a clear height of at least 12 feet over that portion of such easement that is used for vehicular traffic and at least eight feet over that portion of such easement used for pedestrian travel; and such persons shall remove the dead or diseased branches or stubs of trees which are or may become hazardous to the public use of such easement. Any trees obstructing traffic control signs or devices from the view of the pedestrian or motorist shall be pruned to a height: established by the City Tree Inspector to insure proper safety for motorists or pedestrians.

(H) *Tree Inspector.* The Council may appoint a Tree Inspector to coordinate the activities of the city relating trees. The Tree Inspector is authorized to enforce or cause to be enforced the duties incident to the tree policy adopted by the Council. The term *TREE INSPECTOR* includes any person designated by Council or the Tree Inspector to carry out activities authorized in this section.

(I) *Inspection and application of control measures.* The Tree Inspector shall have the power to take all reasonable precautions to prevent the maintenance of public nuisances and may enforce the provisions relating to abatement in this section.

(1) Except in situations of imminent danger to human life and safety, the Tree Inspector shall not enter private property for the purpose of inspecting or preventing maintenance of public nuisances without the permission of the owner, resident or other person in control of the property, unless the Tree Inspector has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.

(2) No person, firm, or corporation shall interfere with the Tree Inspector acting under his authority while engaged in activities authorized by this section.

(3) The City Tree Inspector shall have the authority to order the trimming, treatment, and removal of trees, shrubs or plants upon private property when such action is necessary to prevent a public nuisance.

(J) *Standard abatement procedure.* Whenever a Tree Inspector determines with reasonable certainty that a public nuisance as described by this section is being maintained or exists on premises in the city, the Tree Inspector is authorized to abate a public nuisance according to the following procedure.

(1) The Tree Inspector will notify in writing the owner of record of the premises of such fact and order that the nuisance be terminated or abated. The notice must be given in person or by mail. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be filed with the City Clerk.

(2) The notice of abatement shall state that unless the public nuisance is abated by the owner or occupant, it will be abated by the city at the expense of the owner. The notice shall specify the control measures to be taken to abate the nuisance, and provide a reasonable amount of time to abate the nuisance. The notice will also state that the owner or occupant has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the City Clerk within seven days after service of the notice, or before the date by which abatement must be completed, whichever comes first.

(3) If no timely appeal is submitted, and the notice of abatement and its prescribed control measures are not complied with within the time provided by the notice or any additional time granted, the Tree Inspector or designated person shall have the authority to request permission and enter the property to carry out abatement in accordance with the notice of abatement. If permission is not granted, the Tree Inspector shall make a recommendation to the City Council to obtain an administrative search warrant to carry out abatement.

(4) In addition, should the appropriate abatement procedure be removal and the tree(s) and/or hedge(s) be within the limits of a highway in a rural area within the city's jurisdiction, M.S. § 160.22, as it may be amended from time to time, shall be complied with as necessary.

(K) *Appeal procedure.* If the City Clerk receives a written request for a hearing on the question of whether a public nuisance in fact exists, the City Council shall hold a hearing at the next regularly scheduled meeting. The Council may modify the abatement notice or extend the time by which abatement must be completed. Each owner, agent of the owner, occupant and lienholder of the subject property or properties in attendance, if any, shall be given the opportunity to present evidence at the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.

(L) *Abatement procedure in event of imminent danger.*

(1) If the Tree Inspector determines that the danger of infestation to other shade trees is imminent and delay in control measures may put public health, safety or welfare in immediate danger, the Tree Inspector may provide for abatement without notice or other process. The Tree Inspector must reasonably attempt to notify the owner or occupant of the affected property of the intended action and the right to appeal the abatement and any cost recovery at the next regularly scheduled City Council meeting.

(2) Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.

(M) Recovery of cost of abatement; liability and assessment.

(1) The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the City Clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the City Clerk.

(2) After notice and hearing as provided in M.S. § 429.061, as it may be amended from time to time, the City Clerk may list the total unpaid charges along with all other charges as well as other charges for current services to be assessed under M.S. § 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then certify the charges against the property under that statute and other pertinent statutes to the County Auditor for collection along with current taxes the following year or in annual installments as the City Council may determine in each case.

(N) Penalty.

(1) Any person, firm, or corporation who violates any provision of this section shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this section, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than \$1,000, or both.

(2) Upon conviction of a misdemeanor, the costs of prosecution may be added. Appropriate restitution will be requested by the City to cover the cost of repair or replacement to mitigate the injury, mutilation, loss or death of a public tree, shrub, or other plant. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(3) The failure of any officer or employee of the city to perform any official duty imposed by this section shall not subject the officer or employee to the penalty imposed for a violation.

(4) In addition to any penalties provided for in this section, if any person, firm or corporation fails to comply with any provision of this section, the City Council or any official designated by it, may institute appropriate proceedings at law or at equity to restrain, correct or abate the violation.