

ORDINANCE NO. 21-297
CITY OF WOODCREEK, TEXAS

AMENDMENT TO CHAPTER 91 OF THE CODE OF ORDINANCES

AN ORDINANCE ESTABLISHING AN AMENDMENT FOR THE CITY OF WOODCREEK CODE OF ORDINANCES AMENDING CHAPTER 91 – TREES; TO ESTABLISH A TREE BOARD, TO DEFINE PROTECTED TREES, TO OUTLINE TREE PRESERVATION AND CARE, AND TO REGULATE THE ACTION ON DEAD OR DISEASED TREES ON PRIVATE PROPERTY; DEFINING TERMS, PROVIDING PENALTIES, AND PROVIDING FOR ENACTMENT, REPEALER, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE, AND FINDING PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Woodcreek (“City Council”) met on December 22, 2021 and voted to reinstate Ordinance 19-265;

WHEREAS, the City Council desires to declare the City proud of its trees and to be a protector of all trees;

The City Council finds that:

- (1) The urban forest has social, ecological, cultural, economic, historical, and aesthetic benefits for the citizens of Woodcreek.
- (2) A healthy urban forest enhances the health and welfare of the citizens of Woodcreek.
- (3) The urban forest is an asset and important part of the City's infrastructure that city policy seeks to protect.
- (4) The health of the urban forest is entrusted to the City Council for the benefit of current and future citizens of Woodcreek.
- (5) The potential for development to negatively impact the urban forest, including the largest and most significant trees, requires reasonable regulations.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Woodcreek:

1. FINDINGS OF FACTS

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

Chapter 91: Trees of the Code of Ordinances of the City of Woodcreek is amended as to read as Attachment A, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby authorized and directed to record and publish the language of Chapter 91, as amended by this Ordinance, in the City's Code of Ordinances.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon its passage and the publication of caption of this ordinance.

7. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed and attended by a quorum of the City Council, was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

PASSED & APPROVED this, the 22nd day of December, 2021, by a roll call vote:


Voting Yea: Mayor Pro Tem LeBrun, Councilmember Pulley, Councilmember Hines, Councilmember Grummert


Absent and not voting: Councilmember Brizendine

The motion carried with a 4-0-0 vote.

CITY OF WOODCREEK:

ATTEST:


Jeff Rasco, Mayor


Linda Land, City Secretary

Attachment A
City of Woodcreek – Code of Ordinances

CHAPTER 91: TREES

Section

- 91.01 Title
- 91.02 Purpose
- 91.03 Definitions
- 91.04 Establishment of a Tree Board
- 91.05 Tree Trimming Permit Required
- 91.06 Protected trees
- 91.07 Tree Preservation and Care
- 91.08 Certain trees declared a public nuisance
- 91.09 Inspections
- 91.10 Notice to owner
- 91.11 Abatement required; preventive measures; city may abate
- 91.11 Enforcement
- 91.12 Costs of preventive measures, treatment or removal and replacement
- 91.99 Penalty

§ 91.01 TITLE & JURISDICTION

This chapter shall be known and may be cited as the Tree Ordinance. Under the authority of sections 212.002 and 212.003 of the Local Government Code, Chapter 91: Trees, is applicable to both the City of Woodcreek and its ETJ.

(A) Rules of interpretation. Words and phrases used in this article shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number shall include the singular number (and vice versa), and words in the masculine gender shall include the feminine gender (and vice versa). The word “shall” is always mandatory, while the word “may” is merely directory. Headings and captions are for reference purposes only.

§ 91.02 PURPOSE.

The provisions of this chapter are deemed to be necessary to promote the health, safety, property and general welfare of the residents of the city.

§ 91.03 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in this chapter and not defined herein shall have their ordinarily accepted meaning.

Specific definitions. City Manager. The chief administrative officer of the city. City council. The governing body of the city, which includes the mayor. City permit. A city license, certificate, approval, registration, consent, permit, or other form of authorization required by a city ordinance, regulation, or rule in order to develop, construct, and operate the improvements on the property. Code. The Code of Ordinances enacted by the city, as may be amended from time to time.

Cedar (JUNIPERUS) Stand means a group of cedars where 65% are over 10 feet tall and range over an area at least 10 feet wide.

DBH (diameter at breast height). The tree trunk diameter of an existing tree measured in inches at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point beneath the split.

DISEASED TREES. Oaks infected by the fungus *Ceratocystis fagacearum*. Other trees infected by any disease rendering them unsustainable.

ESCROW. A deposit of a cash bond with the city in accordance with this article.

FIREWOOD. Branches and limbs larger than two inches in diameter cut from diseased oaks; also, such branches and limbs from an unknown source that may potentially harbor the oak wilt fungus.

FUNGICIDE. A chemical treatment used on non-symptomatic or slightly symptomatic trees within the trench line that could be vulnerable to infection.

HERITAGE TREE.

- (1) Means a tree that has a trunk diameter of twenty-four (24) inches in caliper or greater measured at DBH;
- (2) A multi-trunked hardwood tree having a total trunk DBH of thirty (30) inches or more (not counting trunks less than eight (8) inches in diameter); or

And is one of the following species:

- a) Ash, Texas
- b) Cypress, Bald
- c) Elm, American

- d) Elm, Cedar
- e) Madrone, Texas
- f) Maple, Bigtooth
- g) All Oaks
- h) Pecan
- i) Walnut, Arizona
- j) Walnut, Eastern Black
- k) Cedar Stand, (Juniperus)

This list of eligible heritage tree species may be supplemented, but not reduced, as prescribed by rule.

LIVE OAKS. Members of a distinct group of the genus *Quercus* characterized by leathery oval leaves that includes two Texas species: plateau live oak (*Quercus fusiformis*) and coastal live oak (*Quercus virginiana*).

NATURAL AREA. An area where the naturally grown landscaping is left primarily undisturbed, except for the removal of poison ivy, greenbrier, and similar vegetation, oak wilt removal and/or prevention measures, and allowing for maintenance of the trees to maintain vigorous growth.

OAK WILT. A vascular wilt disease of oaks. The fungus responsible, *Ceratocystis fagacearum*, invades the water-conducting tissues of oak roots, trunks and limbs. *Ceratocystis fagacearum* does not actively grow anywhere in nature except in oak trees. Spores of this fungus can be moved around by certain insects and by humans.

OAK WILT CENTER. A site where the oak wilt fungus is spreading through the roots of diseased trees to infect healthy oaks, creating an area of sick, dead and dying oaks.

OWNER. A person with legal control over property in question, to include lessees. Person. A human individual, corporation, agency, unincorporated association, partnership, or sole proprietorship, or other legal entity.

PARK TREES Defined as trees, shrubs, bushes and all other woody vegetation in city parks having individual names, and all areas owned by the City, or to which the public has free access as a for use. (*Tree City USA*)

PREVENTIVE MEASURES. Actions that prevent the spread of oak wilt from diseased to healthy oaks, including but not limited to oak wilt suppression trench installation and the removal and destruction of diseased red oaks and firewood from any diseased oak.

PROTECTED TREE. Means a tree with a diameter of 19 inches in caliper or greater measured at DBH;

RED OAKS. Members of a distinct group of the genus *Quercus* characterized by lobed leaves tipped by small soft spines, including but not limited to Texas red oak (*Quercus texana*, also called *Quercus buckleyi*), Shumard oak (*Quercus shumardii*), Southern red oak (*Quercus falcata*), and blackjack oak (*Quercus marilandica*).

REMOVAL. Means an act that causes or may be reasonably expected to cause a tree to die, including uprooting, severing the main trunk; damaging the root system; and/or excessive pruning.

STREET TREES Defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side or the middle of all streets, avenues, or ways within the City. (*Tree City USA*) In keeping with the rural feel of the City of Woodcreek, all street trees currently existing inside roadways are hereby listed as “Designated” trees, subject to the protections of this ordinance.

SUBSTANTIALLY DEAD TREE. Trees in which more than 90% of the previously healthy branches have died due to any cause, or which have been certified by an arborist

SUSCEPTIBLE SPECIES. All varieties of the genus *Quercus* that may be infected and killed by *Ceratocystis fagacearum*, including live oaks and all species of red oaks.

TCEQ. The state commission on environmental quality, or its successor agency.

TREE BOARD. The City of Woodcreek Tree Board consisting of a minimum of seven members, citizens and residents of this city, who shall be appointed by the city council. The Parks & Recreation Board may substitute in this capacity.

TRENCHING. Short for **OAK WILT SUPPRESSION TRENCH INSTALLATION**, a method used to isolate the infected area between healthy and diseased trees. **TRENCHING** equipment is used to cut connecting roots so that the fungus cannot spread between trees.

WOODY DEBRIS. Branches and limbs smaller than two inches in diameter cut from diseased trees; also, such branches and limbs from an unknown source that may potentially harbor the oak wilt fungus.

§ 91.04 ESTABLISHMENT OF A TREE BOARD

(A) There is hereby created and established a City Tree Board, which shall consist of seven (7) members, five (5) regular members and two (2) alternates who are resident citizens and qualified voters of the City of Woodcreek. Each Council Member shall provide two names, one for regular appointment and one for alternate. Alternates will be drawn from the five candidates submitted by Council Members for appointment as alternates. The Parks & Recreation Board may serve as the Tree Board.

(B) Appointments to the Board shall be for staggered two (2) year terms. Upon initial appointment, three (3) members shall serve for two (2) years and two members shall serve for one (1) year. Both alternates shall serve for a two (2) year term. The determination will be made by drawing names with the first three selected for the full two-year term. After initial appointment, all members shall serve for two (2) years. If a vacancy occurs on the Board, at the first regular meeting of the City Council after notification of the vacancy, the Council Member

who originally appointed that member shall appoint a person, with approval of the Council, to fill the unexpired term

(C) Members of the board shall serve without compensation

(D) It shall be the responsibility of the Board to study, investigate, council and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the City Council and upon their acceptance and approval shall constitute the official comprehensive city tree plan for the City.

The Board, when requested by the City Commission, shall consider, investigate, make finding, report and recommend upon any special matter of question coming within the scope of its work.

(E) The Board shall choose its own officers, make its own rules and regulations and keep minutes of its proceedings. A majority of the members shall be a quorum for the transaction of business.

§ 91.05 TREE-TRIMMING PERMIT REQUIRED.

No property owner, person, individual, firm, corporation, contractor, landscape contractor, tree trimmer, builder, utility service or any other type of business entity shall trim, prune or remove any tree within the city without having first obtained a permit from the city. Permits shall be issued based on the current fee schedule. Permits shall be effective for 30 days from the date of issuance and shall apply only to the lot or parcel of land for which it is issued. The permit shall be posted in a place where it can be seen from the nearest street while the work is in process.

§ 91.06 PROTECTED TREES

This section applies to all commercial and residential developments or subdivisions within the incorporated municipal boundaries (i.e., city limits and ETJ) for which site plan approval by the city is required under the city's Code of Ordinances. This article applies to actions taken after the date of enactment.

(A) TREE FUND A fund is hereby created in which any cash-in-lieu paid to the city pursuant to the mandates of this article shall be deposited. The fund will be administered by the Tree Board and may be drawn upon by the city to implement landscaping improvements on city land and city-controlled rights-of-way.

(B) Damaging or removing trees. No person shall damage or remove protected or heritage trees, in violation of this article.

§ 91.07 TREE PRESERVATION AND CARE

(A) A grading and tree survey shall be submitted with all commercial and subdivision development site plans.

(1) The tree survey shall include all existing, live, healthy trees with a fourteen-inch DBH in diameter and larger. The survey shall indicate the size (DBH) and species of tree. Trees observed to be distressed will be indicated with an asterisk on the tree list. Trees

shall be represented by circles using the formula of one (1) foot of radius for every 1 inch of trunk diameter. Unbroken circles indicate trees that are to remain. Dashed circles indicate trees that are to be removed (including trees identified to be distressed).

(2) Healthy designated Heritage and Protected trees that require removal to accommodate the development shall be replaced at a ratio of 1:1, or cash-in-lieu may be paid to the city Tree Fund, the amount equal to the cost of nursery stock required to replace the caliper amounts lost and the cost of installation on a per-unit basis, not to exceed one hundred dollars (\$100.00) per caliper inch or six thousand dollars (\$6,000.00) per acre (prorated for sites of more or less than one acre) for the entire site. Trees identified as distressed shall not be included in tree preservation requirements evaluation.

(3) Pre- and post-construction fertilization is required for existing trees that will be or have been disturbed by construction activities, including disturbance of the critical root zone. Fertilizers must be phosphate-free.

(4) The planting, preserving, and maintaining of trees which are contagiously diseased trees, or the storage of cut oak unless first determined by a certified arborist to be devoid of oak wilt or properly treated, shall be deemed a public nuisance and is prohibited.

(5) During construction, take measures to protect trees, including rigid fencing, shielding, and signage, as necessary. Rigid fencing shall be placed with a radius of at least ten (10) feet from the trunk or at the critical root zone, whichever is greater, unless property lines or other features prohibit a complete radius. Rigid fencing shall consist of chain-link or wood fencing not less than four (4) feet high at the drip line of the tree. Stakes shall be no more than six (6) feet apart and at least one and one-half (1-1/2) deep into the ground. Rigid fencing shall be at least three (3) feet in height.

(6) The city manager or designee shall inspect and approve installed tree protection before issuance of any permit to commence with any construction activity.

(7) Tree protection shall remain in place until final landscaping installation as approved by the city manager or designee.

(8) Parking or storing of vehicles, equipment or materials allowed within the critical root zone is prohibited.

(B) For all commercial and residential developments or subdivisions, during extreme drought classifications for this region as determined by the National Drought Mitigation Center, the city manager, or designee, may accept a fiscal deposit of the amount equal to the cost of purchasing and installing the trees and other required landscaping into the city's drought tree fund in lieu of the installation of trees and other landscaping required by this chapter for the issuance of a certificate of occupancy permit, or the city manager or designee may accept an escrow equal to the cost of purchasing and installing the trees and other required landscaping. The city shall only accept the fiscal deposit or escrow if an erosion control plan consistent with section xxx of this code has been reviewed and accepted by the city manager or designee. Failure to maintain and adhere to an approved erosion control plan during periods of extreme drought classification shall be deemed a violation and the fines and penalties under section xxx of this article shall apply.

- (1) Persons requesting that the city accept a fiscal deposit in lieu to the Tree Fund shall provide the city with written documentation from an entity that sells tree the cost of purchasing and installing the trees and other landscaping required by this chapter.
- (2) If no cost for the installation of trees required by this chapter is provided to the city, the city shall require sixty-six (66) percent of the cost of the tree to be paid as the installation cost in addition to the cost to purchase the tree.
- (3) Any fiscal deposits for trees paid to the city pursuant to this section shall be held in escrow. The escrow may be drawn upon by the city to implement tree requirements for the depositing property owner, or the funds shall be released to the depositing property owner to implement tree requirements within thirty (30) days when the drought mitigation center determines that this region is no longer in an extreme drought condition or higher classification. Failure to implement the tree requirements within thirty (30) days of release of the fiscal deposit to the depositing property owner shall be deemed a violation and the fines and penalties under section xxx of this article shall apply.
- (4) Whenever necessary to enforce any provision of this article or implement tree requirements on the depositing property owner's property, city staff, or the city's contractor, may enter upon depositing property owner's property at any reasonable time to inspect or perform any duty imposed by this article during an extreme drought classification for this region. If entry is refused, the city shall have recourse to every remedy provided by law and equity to gain entry.
- (5) The city is the custodian of any cash funds or bonds on deposit in the property owner's escrow account. The city has a fiduciary duty to the depositing property owner and may dispose of the escrowed funds only in accordance with this section.

(C) PUBLIC TREE CARE The City 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 public safety or to preserve or enhance the symmetry and beauty of such public grounds. All such work will be conducted under the auspices of the Tree Board.

The City Tree Board 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 is affected with any injurious fungus, insect or other pest. *(Adapted from Tree City USA)*

(D) PRIVATE TREE CARE Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct view of any street intersection and so that there shall be a clear space of eight feet (8') above the surface of the street, sidewalk or right of way. Said owners 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 prune any tree or shrub on private property when it interferes visibility of any traffic control device or sign. The City will notify citizens of intent to prune trees or shrubs at least 7 days in advance of commencing this work. *(Adapted from Tree City USA)*

(E) OAK WILT REPORTING. Any person who discovers or suspects the presence of oak wilt infestation or an oak wilt infected tree shall report that information to the City Manager/Administrator within ten (10) business days.

§ 91.08 DEAD OR DISEASED TREE REMOVAL ON PRIVATE PROPERTY

(A) All oak trees diseases with oak wilt, alive, dead or substantially dead, and all wood from oak trees diseased with oak wilt to which any bark is still attached, are hereby declared to be public nuisances

(B) The City shall have the right to cause the removal of any dead or diseased trees on private property within the city, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the city. The City Tree Board will notify in writing the owners of such trees. Removal shall be done by said owners at their own expense within sixty days after the date of service of notice. In the event of failure of owners to comply with such provisions, the City shall have the authority to remove such trees and charge the cost of removal on the owners' property tax notice. *(Tree City USA)*

(C) A person may, without a variance, remove a damaged heritage or protected tree that is an imminent hazard to life or property if the tree is removed within seven days of being damaged. The director may extend this deadline for widespread and extensive storm damage.

(D) The Tree Board may grant a variance for removal of a heritage or protected tree after determining the tree:

- (1) is dead;
- (2) is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree; or
- (3) is diseased and:
 - (a) restoration to sound condition is not practicable; or
 - (b) the disease may be transmitted to other trees and endanger their health.

No application fee and no mitigation are required for a variance request under subsection.

§ 91.06 INSPECTIONS FOR OAK WILT.

(A) The city and the Texas A&M Forest Service, and their agents are authorized and empowered to enter upon any lot or parcel of land in the city at any reasonable hour for the purpose of inspecting any oak tree(s) or dead oak wood situated thereon.

(B) If such premises are occupied, the above personnel shall first present credentials and request entry.

(C) If such premises are unoccupied, the city shall first make a reasonable effort to locate the owner or other persons who have charge or control of the premises and request cooperation for entry.

(D) Permission of the owner, occupant or person in control of the premises is necessary for entry. If such entry is refused and the city has probable cause to believe that there exists on the premises a public nuisance as defined herein, the city shall go before the Municipal Court Judge and seek to obtain a search warrant. The purpose of the warrant is to determine the presence of a public nuisance and to obtain such specimens of trees as are required for the purposes of analysis to determine whether the same are infected.

§ 91.07 NOTICE TO OWNER.

(A) If, on laboratory analysis of specimens removed from any red oak tree, it is determined that such tree is a public nuisance, as provided in this chapter, or if it is determined that any dead or substantially dead tree, is a public nuisance, as provided herein, and if it is determined that any such tree should be removed, the city may serve or cause to be served a written notice upon the owner of record and upon all lienholders of the lot or parcel of land on which the tree or dead oak wood is located, requiring such owner to comply with the provisions of this chapter. Diagnosis may be obtained via laboratory verification by the Texas A&M Forest Service or through a field survey by trained personnel.

(B) Service of notice provided for in this chapter shall be by certified mail to the owner's address as listed on the Hays County Appraisal District's tax roll. Notice to a lienholder or its agent may be made by personal service or by certified mail. Certified mail returned as "unclaimed" or "refused" shall be deemed delivered.

§ 91.08 ABATEMENT REQUIRED; PREVENTIVE MEASURES; CITY MAY ABATE.

(A) Upon receipt of written notice by the city as described in § 91.07 it shall be unlawful for any owner of any lot or parcel of land within the city to permit or maintain on any such lot or parcel any dead oak wood or oak tree which is a public nuisance as defined in this chapter, and it shall be the duty of the owner of such to promptly remove and destroy such oak tree by cutting the tree off at ground level and removing all dead oak wood and woody debris as directed by the city.

(B) Should the property owner fail to abate the public nuisance within 60 days following the receipt of notification, the city shall have the right to cause the removal and destruction of the diseased trees. The full cost of such removal and destruction shall be assessed to the property owner. Should the property owner fail to pay the city within 30 days from the date of invoicing the city may, at its discretion, file a lien against the property in the amount of all costs incurred by the city, plus interest. The assessment of expenses and lien shall follow the procedures established in Tex. Health and Safety Code Ch. 342.

(C) Oaks known or suspected to have died of oak wilt may not be retained for firewood under any circumstances due to the high risk of fungal mat formation and insect transmission.

(D) Oaks that are dead or dying of oak wilt as determined by the city staff or the Texas A&M Forest Service shall be cut at ground level, with all firewood and woody debris covered and hauled away or disposed of by burying, burning or chipping within three working days.

(E) It shall be unlawful to stack firewood taken from live oaks known to be infected or suspected of being infected by the oak wilt fungus.

(F) It shall be unlawful for any person to transport or sell firewood within the city that was taken from oak trees known or suspected to be infected by the oak wilt fungus.

(G) Pruning or cutting of oak trees shall be prohibited in the spring months of February through June when fungal spore formation and beetle activity are highest unless such activities are completely unavoidable in order to protect the safety of people and property or the health of the tree. A permit from City Hall must be secured prior to pruning or cutting in this situation.

(H) Pruning or cutting of oaks is permitted from July through January. Pruning apparatus must be disinfected between trees.

(I) Regardless of the time of year that the wound occurs, black tree wound dressing must be applied immediately to all wounds of any size on susceptible oaks, including the cut surface of healthy oak stumps, pruning cuts, construction damage, or any spot where the bark has been removed to expose the wood beneath, in order to discourage potential insect/disease contamination. Failure to seal any wound immediately upon creation of the wound is an unlawful violation of this chapter.

§ 91.09 ENFORCEMENT.

The City Manager or designee is charged with the enforcement of the provisions of this chapter.

§ 91.10 COSTS OF PREVENTIVE MEASURES, TREATMENT OR REMOVAL AND REPLACEMENT.

(A) The city shall appropriate funds as deemed appropriate by the City Council for oak wilt suppression.

(B) The city has no obligation to pay for preventive measures on any private property.

(C) Fungicide treatment for non-symptomatic or slightly symptomatic trees or removal of infected or dead trees shall be the responsibility of the landowner.

§ 91.99 PENALTY.

It shall be unlawful for any person, firm or corporation to violate the provisions of this chapter. Any person violating any provision hereof shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every such violation and for each and every day or portion thereof during which any such violation continues or occurs. Upon the conviction of such violation, such offense shall be punishable by fine which shall not exceed \$500 for each separate offense.

(A) **Compliance.** Violators of this article will be required to come into compliance within sixty (60) days, unless a variance has been approved by the city. Compliance with this article may be grounds for withholding of other related pending permits for the project by the city.

(B) **Enforcement.** The city shall have the power to administer and enforce the provisions of this article as may be required by governing law. Any person violating any provision of this article is subject to a stop work order, suit for injunctive relief, and/or prosecution for criminal violations. Any violation of this article is hereby declared to be a nuisance. Any violation of this

article may serve as grounds to withhold or delay issuance of other permits and revocation of a certificate of occupancy.

(C) Civil remedies. Nothing in this article shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this article and to seek remedies as allowed by law, including but not limited to the following:

(1) Injunctive relief. Injunctive relief to prevent specific conduct that violates this article or to require specific conduct that is necessary for compliance with this article;

(2) Civil penalty. A civil penalty up to five hundred dollars (\$500.00) a day to be deposited in the landscaping fund, when it is shown that the defendant was actually notified of the provisions of this article and after receiving notice committed acts in violation of this article or failed to take action necessary for compliance with this article, and other available relief; and

(3) Stop work order. In the event work is not being performed in accordance with this article, the city shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.