

City of Bellaire

ORDINANCE NO. 21-011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS, AMENDING CHAPTER 9, BUILDINGS, ARTICLE XI, TREES, SECTION 9-350, DEFINITIONS; SECTION 9-352, NEW CONSTRUCTION, REMODELING, DEMOLITION AND LOT CLEARING; AND SECTION 9-354, REPLACEMENT MEASURES, OF THE CODE OF ORDINANCES OF THE CITY OF BELLAIRE, TEXAS, FOR THE PURPOSE OF REVISING THE DEFINITION OF UNDESIRABLE TREES, REQUIRING UNDESIRABLE TREES TO BE REMOVED DURING LOT CLEARING OR NEW CONSTRUCTION, AND UPDATING THE TYPE OF MATERIAL ALLOWED FOR TREE PROTECTION

WHEREAS, the Building and Standards Commission of the City of Bellaire, Texas has discussed and proposed revisions to Chapter 9, Buildings, of the Code of Ordinance of the City of Bellaire, Texas; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLAIRE, TEXAS THAT:

Section 1. *Chapter 9, Buildings, Article XI, Trees, Section 9-350, Definitions; Section 9-352, New construction, remodeling, demolition and lot clearing; and Section 9-354, Replacement measures, of the Code of Ordinances of the City of Bellaire, Texas ("City's Code"), is hereby amended for the purpose of revising the definition of undesirable trees, requiring undesirable trees to be removed during lot clearing or new construction, and updating the type of material allowed for tree protection. The amended Article XI, Trees, Section 9-350, Definitions; Section 9-352, New construction, remodeling, demolition and lot clearing; and Section 9-354, Replacement measures, shall read as set out in Appendix A, attached hereto. All other portions of Chapter 9, Buildings, Article XI, Trees, of the City's Code not specifically amended hereby shall remain in full force and effect.*

Section 2. If any word, phrase, clause, sentence, paragraph, section or other part of this Ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid

or unconstitutional by any court of competent jurisdiction, neither the remainder of this Ordinance, nor the application of such word, phrase, clause, sentence, paragraph, section or other part of this Ordinance to any other persons or circumstances, shall be affected thereby.

Section 3. The City Council officially finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this Ordinance was discussed, considered or acted upon was given in the manner required by the Texas Open Meetings Act, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof.

Section 4. This Ordinance shall be effective immediately upon its passage and adoption.

PASSED, APPROVED and ADOPTED this, the 25th day of January 2021.

SIGNED:

Andrew S. Friedberg
Mayor

ATTEST:

Tracy Dutton, TRMC
City Clerk

APPROVED AS TO FORM:

Alan P. Petrov, City Attorney
City of Bellaire, Texas

Appendix A

(Language to be added shown by underline, language to be deleted shown by strike-out)

Chapter 9 - BUILDINGS

ARTICLE XI. - TREES

Sec. 9-350. - Definitions.

- A. *Caliper*. The measurement or diameter across the center of a tree. For purposes of this article, the caliper is measured at 12 inches above ground level.
- B. *City*. The City of Bellaire, Texas, a home rule municipal corporation.
- C. *Commercial property*. Property on which is located any for-profit business.
- D. *Drip line*. The area of unpaved ground under the branches of a tree.
- E. *Demolition permit*. A permit required by the city to remove structures from either residential, institutional, or commercial property.
- F. *Institutional property*. Property on which is located any school, church, or other public service nonprofit institution.
- G. *Public right-of-way*. The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property within the city.
- H. *Remodeling*. Modifications made to an existing structure which would require a building permit.
- I. *Shared tree*. A tree the body of the trunk of which grows on the property line of different property owners.
- J. *Tree*. Any self-supporting woody plant together with its root system, growing upon the earth usually with one trunk, or a multi-stemmed trunk system, supporting a definitely formed crown.
- K. *Tree disposition plan*. A survey of existing trees on a piece of property containing the following information: (i) the approximate location of the trees, (ii) the caliper or diameter of each tree, (iii) the species of each tree, and (iv) the proposed removal and replacement of any trees.
- L. *Tree removal permit*. A permit which allows the property owner, commercial entity, or institutional entity to remove trees in designated areas, and which has been approved in advance by the Bellaire Community Development Department.
- M. *Undesirable trees*. ~~Chinese Tallow (*Sapium sebiferum*), Arizona Ash (*Fraxinus volutina*), Hackberry (*Celtis laevigata* or *Celtis occidentalis*), Silver Maple (*Acer saccharinum*), and Cottonwood (*Populus spp.*) variety trees.~~ All trees listed on the current Texas A&M Forest Service's Forest Health: Common Invasive Plants in East Texas, as the same may be amended from time to time.

Sec. 9-352. - New construction, remodeling, demolition and lot clearing.

Trees on residential or institutional property, which is undergoing new construction, remodeling, demolition or lot clearing, shall only be removed after obtaining a tree removal permit in accordance with the requirements of this section.

A. *Tree removal permit is required for:*

1. The removal of a tree on residential, commercial, or institutional property with a caliper greater than or equal to four inches, and;
2. The removal of a tree of a variety other than a designated "undesirable tree".

B. *Tree removal permit is not required for the following conditions:*

1. The removal of a tree on residential, commercial, or institutional property with a caliper less than four inches; or,
2. The removal of a designated Undesirable tree of any size; or
3. The property owner provides documentation from a landscape architect, landscape designer, horticulturist, or other person or firm approved by the building official of the City of Bellaire, Texas, that the tree is diseased, dying, or is endangering persons or property.

C. *Public right-of-way:*

1. A tree which is located in a public right-of-way and has a caliper of greater than four inches may not be removed, except under the following circumstances:
 - a. The tree is a designated undesirable tree;
 - b. The tree is in the path of utility installation, driveways, sidewalks or streets and no other reasonable accommodations can be made; or,
 - c. The property owner provides documentation from a landscape architect, landscape designer, horticulturist, or other person or firm approved by the building official of the City of Bellaire, Texas, that the tree is diseased, dying, or is endangering persons or property.
2. The removal of any tree with a caliper of greater than four inches which does not meet the exceptions set forth in section 9.352(C)(1) above requires a tree removal permit.

D. *Tree disposition plan.*

The property owner or the building contractor shall be responsible for developing a tree disposition plan for the preservation and replacement of trees on the property. A sample tree disposition plan will be available from the Bellaire Community Development Department. The code enforcement officer will verify the tree disposition plan.

1. *Tree disposition plan and tree removal requirements:*

	Tree Disposition Plan	Time	Tree Removal Permit	<u>Removal of Undesirable Trees</u>	Replacement
Lot clearing	✓	Prior to clearing	✓	✓	Prior to final inspection and certificate of occupancy
Demolition	✓	At time of demolition permit	✓		Prior to final inspection and certificate of

					occupancy
New Construction	✓	At time of the building permit	✓	✓	Prior to final inspection and certificate of occupancy
Remodeling	✓	At the time of the building permit	✓		Prior to final inspection and certificate of occupancy

E. *Protection of trees during any construction.*

The property owner or building contractor shall provide the following protection for all remaining trees:

1. A chain link or wood fence, or other material approved by the building official, not less than four feet high at the drip line of the tree.
2. A six inch layer of mulch covering exposed roots within walk areas not covered by tree fencing.
3. Construction materials or chemicals may not be stored within the drip line of the tree.
4. Except as set out in subsection E.6 of this section, vehicles or construction equipment may not be driven or parked across the drip line of the tree.
5. A clearly visible, weatherproof sign facing the street shall be placed on the construction fence. This sign shall be provided by the city to the property owner or builder. The cost of the sign shall be covered by the fee for the tree disposition plan and shall contain the following wording in both English and Spanish in a form as attached hereto and marked "Exhibit A".
6. Builders shall be entitled to a total of 20 feet of access to the construction site. Such access may or may not be continuous and every effort will be made to design access so that it does not compromise the construction protection for existing trees.

F. *Removal of undesirable trees during lot clearing or new construction.*

All undesirable trees must be identified on the tree disposition plan and removed during lot clearing or new construction prior to obtaining a certificate of occupancy.

FG. *City inspections:*

1. Inspections will be concurrent with regular construction inspections and at other times as necessary.
2. The building inspector shall be responsible for overseeing compliance with the tree disposition plan and that the construction protection for remaining trees is as required per this article.

Sec. 9-354. - Replacement measures.

- A. For new construction, the table below shows the minimum quantity of trees required. The replacement tree may not be an undesirable tree, but may include species which at maturity are smaller than the tree being replaced. Replacement will not be necessary if the number of remaining trees meets the minimum requirement:

	Front Yard	Back Yard
Lots greater than or equal to 80 feet in width	Minimum of 3 trees	Minimum of 2 trees
Lots greater than or equal to 60 feet but less than 80 feet in width	Minimum of 2 trees	Minimum of 1 tree
Lots less than 59 feet in width	Minimum of 1 tree	Minimum of 1 tree

- BC.** *Replacement size:* The property owner or building contractor shall provide replacement trees which meet the following size requirements:

1. A 30-gallon minimum size for any tree removed with a diameter of less than 15 inches measured 4.5 feet above the ground.
2. A 45-gallon minimum size is required for any tree removed which equals 15 inches in diameter or greater measured 4.5 feet above the ground.
3. Any species of trees is acceptable except the undesirable trees.

- C.** *Maintenance of Replacement Trees. Any replacement tree that dies within the first two (2) years of its planting would itself need to be replaced in accordance with the requirements of this Section.*