

CHAPTER XXXIV  
FORESTRY

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**34.01 INTENT AND PURPOSE**

It is hereby declared to be the policy of the City of Kenosha to regulate trees in the City in order to promote the public health, safety and welfare, enhance aesthetics and reduce the potential for trees becoming public nuisances.

Trees are a valuable resource which enhance the aesthetics of the property, prevent soil erosion, filter airborne pollutants, reduce atmospheric carbon dioxide, produce oxygen and ameliorate harsh climates, thereby reducing energy consumption. In addition, trees contribute significantly to property values and provide many other benefits from a local to a global aspect.

**34.02 DEFINITIONS**

Whenever the following words or terms are used in this Ordinance, they shall be construed to have the following meanings:

**A. "Person"** shall mean any person, firm, association or corporation.

**B. "City"** shall mean the City of Kenosha, Wisconsin.

**C. "Commission"** shall mean "The Board Of Park Commissioners" as constituted under the Code of General Ordinances of the City of Kenosha.

**D. "Public Right-of-Ways"** shall include that part of every street between the lot line and the curb, pavement or street line and shall include sidewalks and lawn parks.

**E. "Public Property"** shall include all public right-of-ways, City lawn parks, boulevards, parks and other lands owned, controlled or leased by the City.

**F. "Public Trees"** shall mean any trees located or to be planted in or upon any public property.

**G. "Private Property"** shall mean all lands not owned, controlled or leased by the City.

**H. "Private Trees"** shall mean any trees located or to be planted in or upon private premises.

**I. "Protected Trees"** shall mean a tree which has a diameter, measured at fifty-four (54") inches from grade, of three (3") inches or greater.

**J. "Public Nuisance"** shall mean any tree or part thereof which by reason of its condition interferes with the use of any public area; or which is infected with a plant disease; or which is infested with injurious insects or pests which threaten public or private property, or which endangers the public health, safety and welfare.

**K. "Forestry Program"** shall mean a comprehensive plan including maintenance, inventory and new planting with budget projections for annual and long range implementation.

**L. "Visual Clearance"** shall be defined as provided for in **§2.06** of the Zoning Ordinance of the City of Kenosha entitled "Visual Clearance".

**M. "Lawn Park"** shall have the meaning provided in **§5.051** of the Code of General Ordinances.

**N. "Tree"**, for purposes of controlling a public nuisance or regulating public property, shall include shrubs.

**O. "Replacement Tree"** shall mean a tree which replaces a tree in the location where a tree has been removed.

**34.03 CITY FORESTER**

The City may employ a City Forester, or designate a City employee to perform the duties thereof, who, under the supervision of the Director of Parks, and Commission, shall exercise designated powers and duties. City Forester shall include designees thereof.

**A. Powers And Duties.**

1. Exercise the powers conferred in §27.09, Wisconsin Statutes.

2. Administer and enforce this Ordinance.

3. Prepare an annual Forestry Program to be submitted to the Director of Parks and Commission, and implement such Program, as adopted and amended from time to time.

4. Supervise subordinates, oversee other employees and administer contracts related to the Forestry Program and this Ordinance.

5. Conduct or authorize inspections, tests, planting, replacements, pruning, removal, spraying, maintenance and issue permits as necessary to implement the Forestry Program and this Ordinance. Inspections of private property shall be at reasonable times with the consent of the owner or person in charge or by Special Inspection Warrant.

6. Prepare a Forestry Plan to be submitted to the Director of Parks and Commission and implement such Program, as adopted and amended from time to time.

7. Assist any person, having a permit to move a building, structure or oversized load upon a public right-of-way, in selecting a route which will cause minimal potential damage to trees.

8. Promulgate written guidelines for permitted work, to be filed in the Department of Parks.

**B. City Forestry Plan.** The City Forester, under the direction of the Director of Parks and Commission, shall prepare a Forestry Plan which shall include one or more of the following programs:

1. A City Lawn Park Beautification Program to provide for tree plantings and replacement in lawn parks. This Program is to be established on a quarter-section area basis or other acceptable, divisional plan covering a ten (10) year period. Said Program shall provide for the cost of tree planting to be borne jointly by the abutting property owner and the City, as determined by the Commission.

2. A City Tree Planting Program to provide that whenever a bond issue is passed for the purpose of replacing and/or widening any City street, that there be included within such bond issue sufficient funds to carry out a tree planting program to replace any trees destroyed or damaged in the course of making the improvement.

#### 34.04 FORESTRY PERMIT

**A. Permit Requirement And Cost.** No person shall plant, replace, prune, alter, do surgery on a tree, on any limbs greater than one and one-half (1-1/2")

inches in diameter, or disturb the land within the dripline of any tree on lawn parks and public right-of-ways, or cause such work to be done by others, without first obtaining a written permit for such work from the City Forester, as herein provided. The permit holder shall be responsible for paying for the cost of all work performed, unless acting under contract with the City or its subunits.

**B. Permit Exemptions.** No person shall be required to obtain a Permit to fertilize or water trees in a lawn park abutting their property. No person shall be required to obtain a permit to prune limbs of one and one-half (1-1/2") inches or less in diameter on trees in a lawn park or public right-of-way abutting their property.

**C. Permit Application.** Any person who applies for a Permit shall make said application in writing, on City forms.

**D. Permit Issuance, Fee And Term.** When the City Forester determines that any proposed work described in an application for a Permit is in accordance with the provisions of this Ordinance, taking into account the public health, safety and welfare, the location of utilities above and below ground, public sidewalks, driveways, street lights and signs, the general character of the area in which the tree is located or proposed to be located, the type of soil, the characteristics and physiological need of the genus, species and variety of the tree, then a Permit may be issued or denied as appropriate under the circumstances, with conditions or limitations, without a fee therefore.

**E. Permit And Duration.** Every Permit issued by the City Forester shall include a description of the work to be done and shall specify, in the case of plantings, the genus, species and variety, size, nursery grade and location of trees to be planted. Any work done under such Permit issued under this Section shall expire nine (9) months after the date of issuance.

**F. Permit Violation.** It shall be a violation of this Ordinance for any person to perform work under a Permit contrary to the Permit terms and provisions of this Ordinance.

A Permit violator shall be responsible for the repair and replacement of any tree damaged or destroyed due to defective work or noncompliance with this Ordinance for two (2) full growing seasons following performance of work.

**G. Annual Public Utility And Contractor Permits.** Public utilities and contractors may apply for and obtain, in accordance with this Ordinance, an

Annual Forestry Permit subject to the following additional conditions, unless waived for just cause by the City Forester:

1. Provide City Forester with fifteen (15) days advance, written notice of work to be performed.
2. Perform work in conformance with this Ordinance and written guidelines and directives of the City Forester.

#### **34.05 REGULATIONS RESPECTING TREES IN LAWN PARKS AND PUBLIC RIGHT-OF-WAYS**

The following regulations respecting trees in lawn parks and public right-of-ways shall apply, unless a variance is granted for just cause by the City Forester:

**A. Genus, Species, Variety, Size And Manner Of Planting.** The City Forester shall approve the genus, species, variety, size and manner of planting of trees planted in any lawn park or public right-of-way.

**B. Minimum Size.** The minimum size of any tree planted in a lawn park or public right-of-way shall be one and one-half (1-1/2") inches in diameter measured at six (6") inches above the ground.

**C. Distance Limitations.** No tree shall be planted in a lawn park or public right-of-way within thirty (30') feet of a street corner, street light, traffic sign, traffic signal, or within forty (40') feet of another tree located in the lawn park or public right-of-way. Trees may be authorized to be planted in a lawn park or public right-of-way which is less than four (4') feet in width, measured from the sidewalk to the back of the curb. The species and site location will be determined by the City Forester or his/her designee prior to planting a tree. No more than one (1) tree shall be planted in a lawn park or public right-of-way abutting a lot having a frontage at the street of less than one hundred twenty (120') feet.

**D. Required Pruning.** Trees planted within any lawn park or public right-of-way shall be trimmed so that any branches or foliage projecting over any public right-of-way which is the subject of vehicular traffic provide a clearance of not less than thirteen and one-half (13-1/2') feet from the pavement and any branches or foliage projecting over any public right-of-way which is the subject of pedestrian traffic provide a clearance of not less than eight and one-half (8-1/2') feet from the pavement or ground. Trees shall be pruned in such a manner as to preserve their health and maintain a natural shape.

**E. Visual Clearance.** Visual clearance shall be maintained.

**F. Tree Removal.** Trees which are cut down shall be removed with the root stump grubbed or ground out to a depth at least nine (9") inches below grade. Surface roots beyond the main stump are to be removed to a depth at least five (5") inches below grade. All wood and debris shall be removed from the site and no wood or debris shall be permitted to remain on the street or sidewalk when work on any day is concluded. Holes must be safeguarded by a barricade if not immediately filled. The abutting property owner shall fill holes as soon as practicable, which shall be topped with a minimum of two (2") inches of top soil and seeded. The site shall be barricaded to protect the public at any time work is in progress. A permit to an abutting property owner to remove a lawn park tree, having a diameter in excess of six (6") inches measured fifty-four (54") inches from grade, shall be conditioned upon proof of liability insurance covering death and personal injury and property loss or damage in the amount of Two Hundred Fifty Thousand (\$250,000) Dollars.

**G. Tree Replacement.** Irrespective of the foregoing distance limitations, a replacement tree may be planted in any lawn park or public right-of-way subject to the permitting requirements of Section 34.04.

**H. Sidewalks.** Sidewalks, paving and other surfaces impervious to water shall not be constructed within two (2') feet of the base of any tree.

**I. Roots.** Roots greater than two (2") inches in diameter shall not be severed without the permission of the City Forester.

**J. Boring.** Boring shall be done under a tree only when necessary, and at a minimum depth of thirty (30") inches below grade to avoid the roots of trees.

**K. Sidewalk Excavation.** Sidewalk excavation shall be allowed to a maximum depth of six (6") inches.

**L. Curb Excavation.** Curb excavation shall be allowed to a maximum depth of eighteen (18") inches.

**M. Notice Of Planting And Removal.** Whenever the City Forester proposes the planting or removal of any tree, he/she shall give two (2) weeks advance written notice to the owner of record or person in charge of the lot or parcel of land adjacent to the land on which such tree stands or will stand. Said written notice shall advise that written, detailed objections may be sent or served upon the City Forester within said two (2) week period. Said notice shall specify in detail the street, avenue or boulevard from which trees are proposed to be planted or

removed and the general nature and character of the changes and improvement contemplated. After reviewing any written objections which may be submitted, the City Forester will advise the owner of record or person in charge of the lot or parcel of land adjacent to the land on which the tree stands or will stand, in writing, of his/her final decision regarding the tree. The City Forester shall abandon or modify said proposed work or proceed with it as he/she believes the best interest of the public requires. No prior notices by the City Forester are required for the trimming of living trees or for the removal of dead or dangerous trees. The absence of a timely notice shall not render any work performed invalid.

**N. Appeal.** The final written order of the City Forester may be appealed to the Commission upon written notice of appeal to the City Forester, served or postmarked within ten (10) days of said written order. Where possible, said appeal will be heard at the next scheduled meeting of the Commission, provided that the notice of appeal is received by the City Forester at least seven (7) days prior to the next scheduled meeting of the Commission.

**O. Sanitary Sewers Clogged With Tree Roots.** Abutting property owners shall be responsible for cleaning and repairing sanitary sewer laterals which are clogged with the roots from lawn park trees. The abutting property owner, when performing any work within the dripline of a healthy tree, shall take such measures as directed by the City Forester to protect trees from injury and damage, up to and including tunneling.

#### **34.06 PUBLIC NUISANCE-PRIVATE PREMISES**

**A. Notice to Abate Public Nuisance.** Whenever the City Forester shall find that any tree or part thereof growing or located upon private property is a public nuisance, he/she shall notify the owner thereof, in writing, that the nuisance must be abated as directed in the notice within the time specified, which time shall not be less than thirty (30) days, unless the City Forester shall determine that immediate action is necessary to preserve the public health, safety and welfare, in which event a lesser period of time for abatement shall be provided.

Notice shall be served on the owner of record of said lot identifying those conditions which constitute a public nuisance and demanding abatement by a time certain in the manner and to the extent prescribed by said notice. Service shall be in the manner provided for service of a Summons in the Circuit Court or by Certified Mail-Return Receipt. If the owner cannot be served or if there is no Certified Mail-Return Receipt, the order may be served by posting it on the main entrance of the building or

structure, if any, or where no building or structure is present, by posting a sign on each side of said lot, and by publishing as a Class One (1) Notice, under Chapter 985, Wisconsin Statutes.

**B. Failure To Abate.** If said owner fails to remedy or improve the condition complained of in accordance with the written notice furnished by the City Forester, then said City Forester shall, after the expiration of the period specified in the written notice, cause said nuisance to be abated.

**C. Abatement By City.** The abatement may be by City personnel or by a contractual agreement with others entered into by the City.

**D. Hearing.** The owner, upon written request to the City Forester, served and postmarked during the notice period, shall be granted a hearing before the City Forester. Where possible, said hearing should be within ten (10) days following the request therefor. Said hearing shall give the owner the opportunity to contest the existence of facts sufficient to form the basis for the finding of a public nuisance as herein described. Following the hearing, a written statement of the findings of the City Forester shall be sent by regular mail to the owner at the address given by the owner at said hearing. The City Forester may, for good cause, extend the period of time for abatement of the nuisance.

**E. Appeal.** The written order of the City Forester, where a hearing has been held, may be appealed to the Commission upon written request to the City Forester, served or postmarked within ten (10) days of the date of said written order. Where possible, said appeal should be heard at the next scheduled meeting of said Commission, provided that the request for review is received by the City Forester at least seven (7) days prior to the next scheduled meeting of the Commission.

**F. Special Assessment.** Following abatement of said public nuisance, the City Forester shall bill the owner for the cost of abatement. If such bill is not paid within thirty (30) days, said bill shall be processed as a special assessment against said property.

**G. Emergency Procedure.** The above specified notice procedure does not apply when circumstances arise which require immediate action to protect the public from imminent harms, such as sickness, disease or personal injury. In determining imminent harm, there must be a balancing of the rights of the landowner to notice and appeal procedures with the right of the public to be protected from a risk of harm which could be avoided by prompt action. However, where possible, the landowner should be given a

minimum of twenty-four (24) hours written or oral notice prior to City abatement action. The above Ordinance shall otherwise apply, except for the notice and appeal procedures, which shall be as herein stated.

**34.07 PERMIT REVOCATION**

Any Permit granted under authority of this Ordinance may be revoked by the City Forester for cause upon ten (10) days advance, written notice and an opportunity to be heard. The revocation of any Permit may be appealed to the Commission within ten (10) days of receipt of written notice of revocation.

**34.08 NO GUARANTEE, WARRANTY OR CAUSES OF ACTION CREATED**

This Ordinance is not intended to guarantee or to expressly or impliedly warrant to any person that this Ordinance will accomplish its intended purpose, especially in regard to private trees, and no causes of action are intended to be created or vested in any person either against the City or against any other party.

**34.09 INJURY TO TREES PROHIBITED**

**A.** No person, upon public property, shall:

1. Injure, destroy, damage, mutilate, deface or commit any act which will prevent the growth or cause the death of any tree.
2. Secure, attach, fasten, nail or run through any rope, cable, wire, sign or fixture to, around or through any tree.
3. Deposit, place or permit the deposit of any toxic or hazardous substance on or about any tree.
4. Excavate or disturb the ground within the dripline of any tree without a permit.
5. Perform any work within the dripline of any tree without taking measures as directed by the City Forester to protect the tree from injury and damage, up to and including tunneling.
6. Remove any guard, stake or other protective device or close or obstruct any open space about the base of a tree designed to permit access of air, water or fertilizer.
7. Perform any other act contrary to this Ordinance.

**34.10 TREE PROTECTION**

**A. Application.** This Ordinance, except as otherwise provided, shall be applicable to lots and parcels of land which are:

1. Twenty thousand (20,000) square feet or greater; or,
2. Subject to a Conditional Use Permit; or,
3. Subject to a Subdivider's Agreement; or,
4. Zoned B-2 or IP;

and which contain a protected tree.

This Ordinance shall not apply to the construction of garages and additions to dwellings located on residential lots improved with a dwelling.

**B. Prohibition.** No person shall perform any act requiring a Permit in this Ordinance without first obtaining a Permit or perform any action pursuant to a Permit contrary to the terms, conditions and limitations of such permit or otherwise violate any provision of this Ordinance.

**1. Permit Required.** Any person, party, firm or corporation to whom this Ordinance applies, except as herein provided, shall not remove a protected tree, build or construct any building or structure upon a lot or parcel containing a protected tree, or otherwise disturb the land upon a lot or parcel containing a protected tree without first obtaining a permit hereunder. A permit is not required where a development is regulated by a Subdivider's Agreement or Conditional Use Permit, where the Tree Protection provisions of this Ordinance are incorporated therein.

A permit shall not be required by government personnel or agencies who remove a tree in the performance of their official duties during an emergency declared by the Mayor or Common Council.

The owner of any regulated lot or parcel of land who claims an exemption from this permitting requirement for reason of there being no protected tree on said lot or parcel shall, as a condition of exemption, file an executed statement to this effect with the permitting authority.

**2. Application Form And Filing.** Permit application shall be made to the City Forester in the Department of Parks upon City forms. Where an application is made for a Building Permit, the Tree Protection Permit application may be combined with the Building Permit application, and filed with the Department of Neighborhood Services and Inspections for forwarding to the City Forester. Where the lot or parcel of land contains a tree which has a diameter measured at fifty-four (54") inches from

grade of three (3") inches or greater, the application shall include a tree location survey to include the following on a scale of 50:1 or larger:

**a.** Location, shape and dimensions of the lot or parcel, existing and proposed locations of buildings, utilities and other improvements, if any.

**b.** Location of all existing trees, which are subject to this Ordinance, identifying the tree diameter measured at fifty-four (54") inches from grade. Trees proposed to remain, to be transplanted, or to be removed, shall be identified as such. Groups of trees which are fifteen (15') feet or more in distance from any land disturbing activity may be designated as a "clump" of trees, with the estimated number and average size listed. All trees shall be numbered on the plan.

**c.** Where existing trees are to be transplanted, the proposed relocation for such trees, together with a statement as to how such trees are to be transplanted, protected during land clearing and building construction and maintained after construction, is required.

**d.** A statement indicating how trees not proposed for removal or relocation are to be protected during land clearing and building construction.

**e.** Locations and dimensions of all setbacks and easements required by the City of Kenosha Zoning Ordinance or Subdivider's Agreement.

**f.** Grade changes proposed for each lot or parcel of land and a statement showing how such changes will affect trees protected by this Ordinance.

**g.** Location of trees to be planted.

**h.** Approved landscape plan, if any is required by another Ordinance, to be attached.

The above data may be combined, as practical, into as many documents as will fulfill the requirement.

Where no protected tree is located upon the lot or parcel of land, a request for a "No Tree Verification" shall be submitted in lieu of a tree location survey.

**3. Time Of Permit Issuance.** Permit issuance shall be governed by the following time frames:

**a.** Where a construction activity requires a City approved landscape plan, following landscape plan approval.

**b.** Where a construction or land disturbing activity requires an Erosion Control Permit, following the issuance of the Permit.

**c.** Where a construction activity requires a Building Permit, prior to the issuance of the Permit.

**4. Permit Fee.** The Permit fee shall be as determined by the Commission from time to time and maintained by the Department of Parks in its schedule of fees and charges. The fee shall increase five hundred (500%) percent in the event any work requiring a Permit is commenced prior to obtaining a Permit, without effect on penalties arising out of a prosecution for a violation of this Ordinance.

**5. Permit Review, Inspection and Issuance.** The Permit application shall be reviewed by the City Forester and based thereon, and following site inspection, the City Forester may reject the application for insufficient data, or as being untimely, grant or deny the Permit, or grant the Permit with conditions and/or limitations.

The Permit may authorize the removal of protected trees where the landscape plan provides for tree removal, replacement and additional tree planting with the result that there will be an overall improvement in the environmental condition and aesthetic character of the site, or where the tree(s):

**a.** Pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility services;

**b.** Pose a safety hazard to buildings or structures;

**c.** Prevent access to a lot or parcel of land;

**d.** Unreasonably prevents development of a lot or parcel of land or the physical use thereof, provided the applicant has not failed to design and locate the proposed improvements to minimize the removal of trees;

**e.** If diseased or weakened by age, storm, fire or other cause, so as to pose a danger to persons, property, improvements or other trees;

**6. Permit Conditions.** Any Permit issued for a site containing a protected tree shall include the following conditions:

**a.** Prior to and during the construction or land disturbance, the owner, developer or agent thereof shall clearly mark (with red flagging) all trees proposed to be removed and shall erect barricades around all trees to be protected. The barricades shall

remain in place and in good condition throughout the construction and land disturbance activity. Removal of other vegetation within any tree protection zone identified on the Permit, shall be accomplished by mowing or hand clearing only. If improvements are to be located within the tree protection zone, clearing by machinery will be allowed, but only in the area and to the extent necessary to install the improvements.

**b.** Unless otherwise approved by the City Forester, required tree protective barricades shall be installed no closer than ten (10') feet from the trunk or at the outer edge of the dripline, whichever is greater, to shield all trees or groups of trees to be protected. The barricades shall be constructed in a post and rail configuration. The upright posts shall be a minimum of a two (2") inch by two (2") inch wooden stake, six (6') feet in length. Connecting the upright posts shall be a minimum of a single one (1") inch by four (4") inch rail. The maximum distance allowed between upright posts is eight (8') feet. "Do Not Enter" signs shall be posted on all barricades.

**c.** Large property areas containing protected trees and separated from construction or land clearing areas, road rights-of-ways, lakes and utility easements may be barricaded off, in lieu of erecting barriers, as required by §§a. and b., by placing stakes a maximum of twenty-five (25') feet apart and connecting the stakes with two (2) lines of red colored ribbon from stake to stake and posting "Do Not Enter" signs along the outside perimeters of such areas at regular intervals.

**d.** Silt barriers, hay bales or similarly effective erosion control barriers shall be required in any area where erosion or siltation may cause damage to protected trees.

**e.** There shall be no movement, cleaning or storage of equipment within a designated tree protection zone. The owner, developer or agent shall not permit the placement of construction material, debris, or fill; nor cause or permit disposal of waste materials such as paints, oils, solvents, asphalt, concrete, mortar or any other harmful material within the dripline of any protected tree.

**f.** Where elevation changes are proposed within a designated tree protection zone, the applicant shall be required to design and submit drawings of appropriate root protection devices; i.e., drain tiles, retaining walls, etc., for approval. These root protection devices shall be in place prior to the deposit of fill, or excavation of soil from the protected zone.

**g.** No damaging attachment, wires, signs or permits may be fastened to any tree protected by this

Ordinance.

**h.** Pruning trees for construction clearance shall be minimal to provide for passage of equipment and personnel, as well as to accommodate buildings and structures. Oaks and elms shall not be pruned from May through the end of August during the Permit term.

**i.** Trenching is prohibited for any reason, including utility installation within the dripline of protected trees during construction or thereafter. Tunnelling to a minimum depth of thirty (30") inches below existing tree grade within the dripline is permitted.

**7. Tree Replacement And Planting Standards.** As a condition of the granting of permission to remove a tree, the applicant shall be required to relocate the tree(s) being removed or replace the tree(s). The replacement(s) shall have at least equal shade potential and other approved characteristics comparable to those of the tree removed. Replacement shall be diameter inch for diameter inch removed, i.e., eighteen (18") inch diameter = six (6) trees @ three (3") inches diameter. Alternatives, with respect to size, number and species may be considered but must have written approval of the City Forester before implementation.

A minimum of one (1) replacement tree shall be required for each two thousand (2,000) square feet of lot or parcel of land not improved by a building or structure for which a Tree Permit has been issued. Any tree(s) left in good growing condition on the site shall be counted toward the minimum requirement. Replacement trees shall have a single stem, with a single terminal leader, specimen grade and conform to the American Standard for Nursery Stock Standards, published by the American Association of Nurserymen, Inc.. All replacement trees shall be a minimum of eight (8') feet in height, when planted, and have a diameter of at least two (2") inches, measured six (6") inches above grade. Trees shall be planted in accordance with the most recent Edition of the International Society of Arboriculture Standards.

Where a tree(s) is(are) to be removed under the provision of this Ordinance, the City Forester shall have the option, with owner's permission, to relocate the tree(s) not being relocated within property to another property, at the City's expense. The relocation shall be accomplished within fifteen (15) working days of the issuance of a Permit or other suitable schedule as agreed to by the City Forester and applicant.

Trees planted in compliance with an approved landscape plan required under another Ordinance

may be used to help satisfy the requirements of this Section. However, there may be different requirements in regard to species, sizes, and locations. It is the applicants responsibility to consult with the City Forester to resolve any potential conflicts, prior to the installation of replacement trees.

Trees required to be planted in accordance with this Section shall be in place and established prior to the issuance of a Certificate of Occupancy. No tree shall be located closer than five (5') feet to any property line or underground utility line. Replacement trees shall not be planted underneath or near overhead utility lines, unless they are a species which will attain a height that would not interfere with such lines. The planting site must have sufficient root zone and canopy space to reasonably allow the tree(s) to grow to a mature size.

Replacement tree(s) shall be planted either bareroot or balled and burlapped. A minimum of one (1) stake, set below the bottom of the planting pit, shall be used for bareroot trees. Only a webbing material with a width greater than one (1") inch may be used to hold the tree(s) attached to the stake by itself or with wire. Planting pits shall be as deep or slightly less than the depth of the root ball, so that the root collar remains at grade or slightly higher. Planting pits may be as wide as possible within the upper eighteen (18") inches of the surface. All trees shall receive mulch, composed of approved materials, at a minimum depth of three (3") inches and a minimum width of three (3') feet from the stem for trees two (2") in diameter, six (6") inches above grade, and one (1') foot wider for each additional tree-inch diameter increase, i.e., three (3") tree = mulch four (4') feet wide from the stem, or as approved by the City Forester.

**8. Periodic Inspections.** The City Forester shall conduct periodic inspections of the site during land disturbance and construction, in order to ensure compliance with this Ordinance.

**9. Tree Survival.** The property owner shall be responsible for the maintenance and survival of trees protected on site and planted pursuant to this Ordinance. All trees relocated or replaced in accordance with the terms of this Ordinance shall be replaced should the trees expire anytime within two (2) years after City approval of site planting.

**34.11 ENFORCEMENT**

This Chapter shall be enforced by the City Forester and designees thereof.

Any City Department which observes a violation of this Chapter shall bring said violations to the

attention of the City Forester.

**34.12 ADMINISTRATIVE REMEDIES**

Until the provisions of this Chapter, including the conditions on any Permits issued thereunder, have been fully met, the City shall withhold issuance of any Land Use Permit, Building Permit, Certificate of Occupancy or inspection required under the current City Building Code or issue stop orders for any land development involving tree removal.

**34.13 APPEALS**

Any person aggrieved by the administration or interpretation of any of the terms or provisions of this Chapter, who is not in violation of this Ordinance, may appeal to the Commission within fifteen (15) days of receiving notice of such administration or interpretation, which, after a hearing, with notice to the appellant, may reverse, affirm or modify, in whole or in part, the order, requirement, decision or determination of the City Forester, and to that end shall have all the powers of the City Forester. The notice of appeal shall be filed with the Department of Parks.

**34.135 SPECIAL ASSESSMENTS**

The City may specially assess any property for work performed by or at the direction of the City, where any work is done on such property or in the lawn park area abutting such property to secure compliance with this Ordinance, under circumstances where the property owner has been notified of the work to be performed and has failed to timely perform the work. The special assessment shall include a Seventy-five (\$75.00) Dollar administrative fee.

**34.14 PENALTY**

Any person who by himself/herself or by his/her agent or employee, shall violate any of the provisions of this Chapter, shall, upon conviction, pay a forfeiture of not less than Twenty-five (\$25.00) Dollars and not more than One Thousand (\$1,000.00) Dollars, and in default of payment thereof, be imprisoned in the County Jail for a period not to exceed ninety (90) days. A separate offense shall be deemed to have been committed on every day on which a violation occurs or continues.