

DRAFT TREE CODE AMENDMENTS

PART 1: NEW MMC SECTION 16.52.250

16.52.250. - Violations.

A. Application and Scope.

1. This section establishes fines, penalties, violation procedures and related information relative to trees and tree canopy that are removed or damaged in the City of Medina without prior or proper authorization from the City and/or without compliance with the regulations in MMC Chapter 16.52-Tree Management Code.

B. Definitions.

1. Private property or parcel means all land and property not included within the definitions stated in section B.2 below.

2. Right of way, ROW, and public property each mean and include any and all land and/or property rights held by the City of Medina and/or held by the City for the benefit of the City and/or the public.

3. Tree activity permit means a permit issued with conditions by the City of Medina for removal of a tree.

4. Tree damage means a tree found to have its health and/or viability substantially or permanently degraded due to improper implementation or failed maintenance of tree protection requirements, but does not exclude damage resulting from other unnatural causes.

5. Tree removal means the act of physically removing a tree by any means, or damaging a tree to a point it is no longer healthy or viable.

6. Viable means capable of surviving or living successfully.

7. Violator means the person, persons, and/or entity(s) determined by the Director to be responsible for or having committed any improper or unpermitted tree removal or tree damage.

C. Tree Removals Occurring on Private Property. Each tree removed from private property is subject to all of the following:

1. Fines. Fines shall be assessed for each tree removed as follows; each fine is cumulative:

a. \$1,000 per tree; and

- b. \$1,000 per inch DBH; and
- c. \$25,000 maximum per tree; and
- d. The fine for legacy or landmark tree removal shall be three times the maximum calculated fine per tree; and
- e. The fine for tree removal occurring within a critical area or a critical area buffer shall be three times the calculated fine per tree.
- f. The owner of a single-family parcel not under a pending or issued development permit may seek a one-time exemption from all or a portion of the foregoing fines for a maximum of one tree removal if the Director finds that all of the following apply:
 - i. The removed tree is not a legacy or landmark tree.
 - ii. The removed tree is not within a critical area or its buffer.
 - iii. No more than one tree is removed.
 - iv. There has been no prior exemption granted for a tree removal on the single-family property during the period of a continuous ownership.

2. Reimbursement and Recovery of City Costs. The following City costs and expenses incurred for or related to each tree removal shall be tabulated by the Director and periodic invoices therefore shall be presented to the violator, who shall reimburse the City in the full amount thereof within 30 days of presentation of such invoice.

- a. All costs and expenses of enforcement or remediation incurred by the City shall be recovered, including:
 - i. Professional consultant and contract costs, including without limitation arborists, technicians, City Hearing Examiner, City Attorney, and any other consultant or contractor performing work or activities related to the tree removal.
 - ii. Hourly City staff costs.

3. Tree Activity Permit Requirements.

- a. Permit fees for work performed without benefit of an issued tree activity permit shall be doubled.

4. Hardships. The owner of a private single-family residential property who is determined by the City to have committed an unpermitted tree removal on such property, and to whom the City has assessed fines for violations of this section, may petition the Hearing Examiner for a reduction of the City's assessed fines and penalties pursuant to this subsection C.4. The City's intent is to recognize individuals who are long-time residents of the City and who have limited financial assets, such that the assessed fines represent a significant and substantial financial burden on the owner.

- a. The owner of private single-family residential property who wishes to petition the Hearing Examiner due to financial hardship shall:

i. File a petition to the Hearing Examiner no later than the date of a required response to a City-issued Notice or other Order issued by the City regarding the unpermitted tree removal.

ii. The petition shall be delivered to the City of Medina Development Services Director via certified mail or by hand-delivery to City Staff at Medina City Hall "to the attention of the Development Services Director", and shall include full payment of the Hearing Examiner's fee as listed within the current Medina Fee Resolution.

iii. The City shall provide the petitioner with a notice of receipt via regular mail.

iv. The petitioner shall provide substantial credible evidence of monetary burden and personal impact and hardship due to the City's assessed fines.

v. The Hearing Examiner shall have discretion over the petition and may grant a hearing on the petition or may deny the petition for lack of substance. The Hearing Examiner shall issue a Notice of Decision to the petitioner and the Director within 30 days of receiving the petition, which Notice shall briefly explain the Examiner's decision and either deny the petition or grant a hearing on the petition.

vi. If a hearing is to be held, the Hearing Examiner shall consult with the parties and set the date thereof no later than 90-days following issuance of the Notice, and shall set dates for the submission of an answer by the City to the petition and a response thereto by the petitioner. The hearing shall be conducted in accordance with the Hearing Examiner's Rules of Procedure. If the Hearing Examiner decides to grant the petition in whole or in part, the Hearing Examiner may not reduce the City's assessed fines to less than 25 percent of the City's total assessment.

D. Tree Removals Occurring on Public Property or City ROW. Each tree removed from City or public property or ROW is subject to all of the following:

1. Fines. Fines shall be assessed for each tree removed as follows; each fine is cumulative.

a. There is no minimum diameter of tree limitation.

b. \$1,000 per tree; and

c. \$1,000 per inch DBH; and

d. The fine for each tree removed shall be three times that calculated per subsections D.1.a, .b and .c.

2. Reimbursement of City Costs. The following City costs and expenses incurred for or related to each tree removal shall be tabulated by the Director and periodic invoices therefore shall be presented to the violator, who shall reimburse the City in the full amount thereof within 30 days of presentation of such invoice.

a. All costs and expenses of enforcement and remediation incurred by the City shall be recovered, including:

i. Professional consultant and contract costs, including without limitation arborists, technicians, City Hearing Examiner, City Attorney, and any other consultant or contractor performing work or activities related to the tree removal.

ii. Hourly City staff costs.

iii. All site restoration activities, including debris, tree material and stump removal; grading; clean-up; infrastructure repair and replacement; site and public protective actions.

iv. All subsequent remedial and implementation activities, including estimated or anticipated costs to assure health, viability and protection of each remediation tree, including advance deposits therefor as periodically determined by the Director. Such amounts shall minimally include the estimated costs for three years of watering and other maintenance by City staff, and for five consecutive years to cover health and viability observation and/or response by the City Arborist.

3. Remediation of Tree Removal and Denigration of Tree Canopy. Immediate steps to replace and restore the total area of removed tree canopy are required, including the following:

a. The area of canopy remediation shall be based upon the City Arborists estimation of canopy area lost.

b. Utilize tree species listed within the Medina Lists of Suitable Trees.

c. Tree sizes as necessary to reduce the quantity of replacement trees.

d. Replant within the immediate area of the tree and canopy removal.

e. Utilize additional replanting in locations determined appropriate by the City Arborist.

f. Recovery of the City's expenses of remediation, including replacement trees, professional planting, delivery, and sales tax, and ongoing maintenance thereof, as set forth in Section C.2 above.

g. Contribution(s) to the Medina Tree Fund shall comply with Section 16.52.200.E.3.

h. At its discretion the City may perform the remediation work required or the City may use preferred consultants of its choice.

i. Modifications may be applied to remediation requirements as determined appropriate by the Director.

4. Tree Activity and Right of Way Use Permit Requirements.

a. Fees for work performed without benefit of an issued tree activity and right of way use permit shall be doubled.

E. Tree Protection Requirements and Standards During Development.

1. Failure to Implement or Maintain Tree Protection. Failure to implement or maintain tree protection as required during development projects shall result in a minimum fine of \$1,000 per tree.

2. Damaged Trees. Trees found to have their health and/or viability substantially or permanently damaged due to improper or failed implementation or maintenance of tree protection requirements shall be subject to fines, fees, cost reimbursement, and remediation as though the tree had been removed without benefit of permit.

F. Financial Guarantees and Supplemental Provisions. The following provisions apply to all actions occurring under this Section:

1. A financial guarantee acceptable to the City, including a bond, cash, or bank cash set-aside account (collectively Guarantee) is required for all time deposits under this Section.

2. A minimum Guarantee in the amount of \$4,000 is required per remediation tree. Said Guarantee shall be held for 5-years beginning with the date of replanting.

3. Guarantees shall be replenished within 60 days of written notice from the City that the current deposit amount is at 25% or less of the original deposit.

4. All or portions of a Guarantee may be used by the City to cover total cost to replant if needed.

5. A portion of a Guarantee may be used for assuring a new 3-year watering and maintenance program, and concurrent 5-year period of City arborist observations.

PART 2: CONFORMING EDITS TO MMC CHAPTER 1.15

MMC Section 1.15.030 is amended to read as follows:

1.15.030. - Applicability.

This chapter applies to any violations of:

- A. MMC Title 16, Unified Development Code;
- B. Chapter 8.04 MMC, Nuisances;
- C. Chapter 8.06 MMC, Noise;

- D. Chapter 12.08 MMC, Construction in Streets;
- E. Chapter 12.32 MMC, Structures in Unimproved Portions of Public Rights-of-Way;
- F. Chapter 13.06 MMC, Stormwater;
- G. Chapter 16.75 MMC, Construction Activity Permit;
- H. Chapter 16.50 MMC, Critical Areas;
- I. Chapter 16.52 MMC, Tree Management Code; and
- J. Other Medina Municipal Code sections that make reference to this chapter.

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