

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Environmental Services

AGENDA DATE: December 1, 2015

CONTACT PERSON NAME AND PHONE NUMBER: Ellen A. Smyth, Director, (915) 212-6060

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 8: Nurture and Promote a Healthy, Sustainable Community

SUBJECT:

That the El Paso City Council approve an amendment to Chapter 9.11 (Tree Care) of the El Paso City Code to include dead trees within the definition of a nuisance tree.

BACKGROUND / DISCUSSION:

From time to time, the City receives complaints from residents about dead trees on a neighboring property that are believed to be at risk of falling and damaging structures on the complainant's property. Currently, the City's tree care ordinance defines nuisance trees as only those that are infected or infested. This amendment would add a dead tree to be included within the definition of a nuisance tree, thereby allowing the City to inspect and issue a notice for removal if the tree is determined to be a hazard.

PRIOR COUNCIL ACTION:

Chapter 9.11 was last amended by Ordinance No. 17804 on June 5, 2012.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Ellen A. Smyth, P.E.

November 13, 2015

Name

Signature

Date

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

**ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY),
CHAPTER 9.11 (TREE CARE), TO AMEND SECTION 9.11.010G
(GENERAL PROVISIONS) TO DECLARE DEAD TREES A NUISANCE;
CLARIFYING THE DELIVERY OF NOTICE OF THE CITY'S ORDER;
AND ADDING AN APPEAL TO CITY MANAGER; THE PENALTY AS
PROVIDED IN SECTION 9.11.010H OF THE CITY CODE**

WHEREAS, the City of El Paso has determined that dead trees constitute a nuisance, and a potential danger to the health, safety and property of neighboring property owners.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 9 (Health and Safety), Chapter 9.11 (Tree Care), Section 9.11.010G (General Provisions) be amended as follows:

G. Trees located on private property. Public nuisances on private property. It is unlawful for a property owner to cause, create, keep, or otherwise permit trees that are dead, or that have transmissible disease infections or insect infestations on private property. Trees that are dead trees or that have transmissible disease infections or insect infestations are declared a nuisance.

1. Authority of city. The city may order that the property owner or agent of the owner of any private property containing a tree(s) that is dead or infected by transmissible disease or infested with insects, remove in the case of a dead tree, or treat or allow the city to treat, the infected or infested tree(s) located on private property. Upon complaint or observation meriting further inspection, the city shall have the authority to enter upon private lands to make field inspections, including the removal of specimens for any laboratory analysis that may be necessary to determine the presence of a transmissible infection or infestation.

2. Issuance of order. When the city determines that a tree is dead or that the tree has an infectious disease or insect infestation, the city shall assess the need for immediate action to curb a hazardous condition in the case of a dead tree, or spread of the infection or infestation to other trees. If the dead tree is determined by the city to pose a hazardous condition, or if infection or infestation warrants immediate action to prevent spread to other trees, the city may order the property owner to immediately treat, remove or dispose of the dead or infected or infested trees, or allow the city to do so. If the dead tree or the infection or infestation does not warrant immediate action, the city may order that the property owner or agent of the owner treat, or remove and dispose of dead or infected or infested tree within a specified time, but not less than thirty days from the date of the order. The city's order shall be delivered by certified mail (return receipt requested) or by hand delivery to the property owner, or to any agency having the authority to lease, rent, sell, manage or take care of the property on which the tree at issue originates. If the city's order cannot be hand delivered, or the property owner's address cannot be

ascertained from the records recorded in the central appraisal district, the city's order may be provided by publication at least once in a newspaper of general circulation, by posting the order on or near the front door of the main building on the property where the tree at issue originates or by posting the order on a placard attached to a stake driven into the ground on the property where the tree at issue originates, if the property contains no buildings. In the sole discretion of the city, if the owner or agent of the owner does not satisfactorily complete the necessary work within the time allowed by the city's order, the city may enter upon the property to treat, to remove, or to destroy the dead or infected or infested tree(s) by approved practice.

3. Property owner appeal of order to appeal board. If the property owner wishes to appeal the city's order on the basis that the tree is not dead or infested or infected, such appeal must be received by the City Manager or designee within ten days of receipt of the city's order. The appeal must be in writing. Once the appeal is received by the City Manager or designee, the City Manager or designee shall notify the appeal board so that the board may schedule a date for the appeal to be heard within 30 days of the City Manager's receipt of said appeal. The appeal board shall consist of the City Arborist and two directors designated by the City Manager. An official from the Texas Forest Service may serve as an ex-officio member, without the right to vote, and he shall not be counted for purposes of establishing a quorum. The City Manager or designee will be responsible for notifying the property owner of the appeal date, providing all the necessary documents to the board, and conducting the appeal. The board shall render a decision based on all the evidence and documentation presented. The City Manager or designee shall notify the property owner of the board's decision in the form of a written report indicating the board's findings and the decision.

4. Further appeal to district court. The board's decision is final unless within twenty calendar days from the date of the board's decision, the property owner files an appeal in district court.

5. City abatement of infestation or infection or removal of a dead tree. If the property owner fails to complete any work required to be done by the city within the time specified, the city may cause the work to be done and the cost of the same shall be assessed against the property owner. Any notice given pursuant to this section shall state that if the work required is not done within the time specified, the city will cause the same to be done at the expense of the property owner. A statement of the costs incurred by the city shall be mailed to the property owner and such statement shall be paid within thirty days of the date of mailing thereof. If any property owner is unable to pay the cost of such work within thirty days, he may enter into an agreement for the payment of the same in monthly installments. If the property owner fails to pay the costs incurred by the city or fails to enter into an agreement for payment of the costs and pay such cost in accordance with the agreement, civil action by the city to recover the costs may be pursued and the city attorney is authorized, without further authorization from city council, to institute any civil suit necessary to recover the costs incurred by the city, to include costs associated with the civil suit.

Section 2. Except as herein enumerated, Title 9 (Health and Safety), Chapter 9.11 (Tree Care) of the City Code shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2015.

CITY OF EL PASO

Oscar Leeser
Mayor


ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Environmental Services Department



Chapter 9.11 (Tree Care) Ordinance Amendment **Environmental Services**

"Delivering Outstanding Services"



1. Strategic Goal No. 8

- Nurture and promote a healthy, sustainable community



2. Amendment

- Amend ordinance to include *dead trees* on private property within the definition of a public nuisance
- Currently, only trees with insect infestations or trees infected with transmissible diseases are regulated



3. Dead Trees

- May become structurally unsound with extensive decay, posing a risk of fall
- Tend to attract and harbor insects, which can then be spread to healthy trees
- Not specifically addressed as a fire hazard in the Fire Code



4. Enforcement

- City of El Paso has one arborist on staff (Capital Improvement)
- Arborist will train code compliance officers (Environmental Services) to determine if tree meets definition of *dead tree*
- Notice to comply would be issued to property owner by Code Compliance Division of ESD



5. Appeal

- Property owner in violation of ordinance may file a written appeal to City Manager (or designee)
- Appeal is reviewed by appeal board (composed of City Arborist and two designated department directors)
- Appeal board's ruling is final unless appealed to a district court within 20 days of board ruling



6. Abatement

- Conducted in accordance with Code Compliance notice of violation or as ordered by municipal judge
- Must be conducted by property owner, City has power to abate, but not proper equipment or trained personnel
- Ordinance will not require that property owner obtain a permit, use a tree removal service, or direct what is done with cut wood



Questions and Comments

"Delivering Outstanding Services"