

Tree Research Findings



TIRZ #3
November 27, 2018



Request

- August 28, 2018- Board Member Garza requested more information on a policy preventing the cutting down trees in the Downtown.



Texas Penal Code

- Sec. 28.01 (3) Texas Penal Code. Offenses Against Property. Arson, Criminal Mischief, and other property damage or destruction.



Uptown Vision



Leopard Street looking east towards Downtown with improved streetscape and infill development.



Narrowed Scope

- An Uptown property owner cut down about 15 trees in the public right of way on Leopard St. and Tancahua St. “because they were diseased.”





Unified Development Code

- Section 6.13.2 (Street Tree Planting Requirements):
 - Requires street trees in the uptown/downtown mixed use overlay if the sidewalk is **at least 10 feet in width**.
 - Requires planter boxes if the sidewalk is **less than 10 feet in width**.
 - Requires compliance with the Landscaping Ordinance.
 - Section 7.3.17 (Landscaping: Maintenance and Inspection):
 - Requires replacement of diseased, dead, or missing required trees
 - If building permit on existing or new property:
 - Grandfather Rule – property as it existed July 31, 2011
 - If non-conforming, not required to conform
 - If conforming, must continue to conform
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Relevant City Ordinances

- 53-265- Property owner duty to trim trees
- 53-264- Trees or shrubs as obstructions
- 53-195- Occupancy of ROW



53.265 Duty to Trim Trees

Sec. 53-265. - Property owner, etc., duty to **trim trees** or shrubs overhanging street or sidewalk; liability for breach of duty.

It shall be the primary duty of every occupant or owner of any premises in the city to keep all vegetation and other physical objects on such premises or **in the public right-of-way abutting such premises** trimmed or positioned so that such vegetation or objects do not visually obstruct the sidewalks or streets in a manner which is contrary to the provisions of this article, or in a manner which creates any obstruction which poses an unreasonable risk of personal injury or property damage to persons using such sidewalks or streets. This duty exists regardless of receipt of any notice under this article. An occupant or owner who violates said duty shall be primarily liable in damages for any loss or damage sustained by any person as a result of such vision or passage obstruction. The city shall not have any liability whatsoever by reason of inspection or reinspection or notice to abutting property owners or any other action pursuant to this or any other ordinance.

Ord. No. 23773, § 2, 9-21-1999; Ord. No. 026921, § 1, 8-22-2006)



53.264 Trees as Obstructions

Sec. 53-264. - **Trees** or shrubs **obstructing passage, vision, etc. on street or sidewalk prohibited.**

It shall be unlawful and constitute a nuisance for a person to place, maintain or cause or permit the placement or maintenance of any plant, tree or shrub within any part of a public right-of-way or within private property which is adjacent to the public right-of-way such that said tree or shrub, alone or in combination with any other tree, shrub, post or other thing:

- (a) interferes with the lighting of any public street or sidewalk as established by the City Traffic Engineering Department;
- (b) on any street, overhangs the sidewalk by a height of less than seven (7) feet (see Diagrams "A" and "B" below);
- (c) on a residential collector or local residential street, overhangs that area of the street bounded by the face of the curb and four and one-half (4.5) feet measured from the face of the curb by a height of less than seven (7) feet (see Diagram "A" below);
- (d) on a residential collector or local residential street, overhangs the area of the street measured between four and one-half (4.5) feet from each face of the street curblane by a height of less than thirteen (13) feet (see Diagram "A" below);
- (e) on a through street, overhangs the street by a height of less than thirteen (13) feet, between each face of the street curblane (See Diagram "B" below);



53.264 Trees as Obstructions

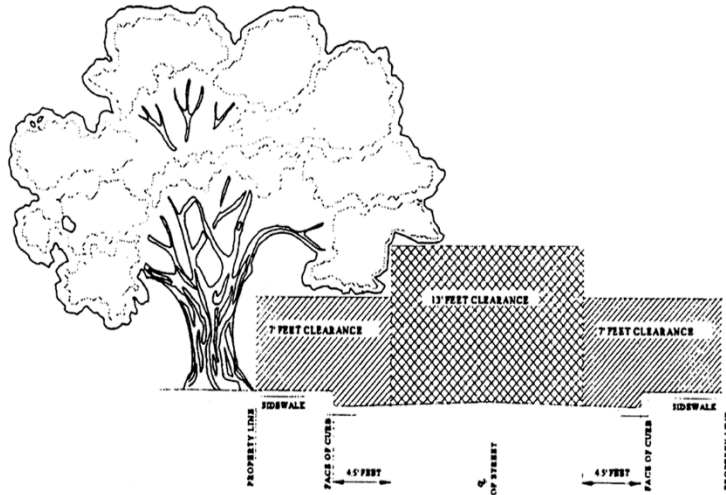


DIAGRAM "A" PASSAGE OBSTRUCTION CLEARANCE (Residential Collector and Local Residential Street)

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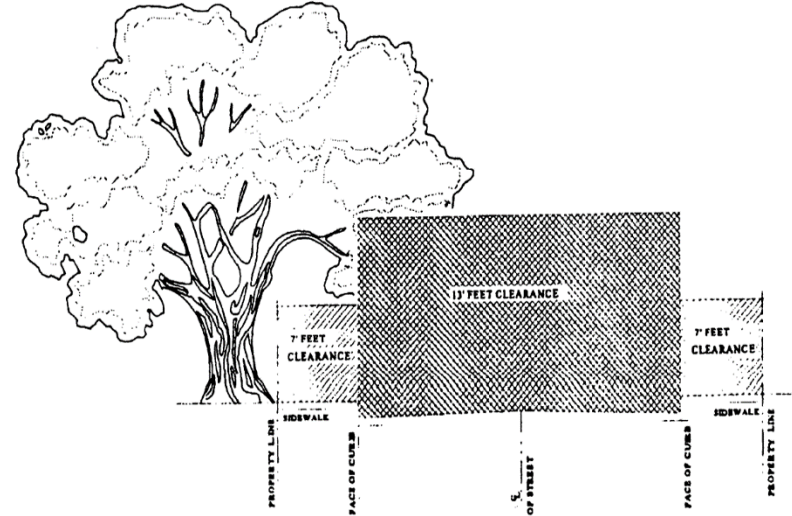


DIAGRAM "B" PASSAGE OBSTRUCTION CLEARANCE (Through Street)

DIAGRAM "B" PASSAGE OBSTRUCTION CLEARANCE (Through Street)



53.195 Occupancy of ROW

Sec. 53-195. - Procedures for **occupancy of public right-of-way** (covering of parking meters and rendering of curb space unusable) and **establishing charges** during construction or repair of buildings.



53.195 Occupancy of ROW

- Sec. 53-195 ...for the express use of contractors for the erection, construction, repair, or remodeling of buildings, or for the temporary placement of a dumpster on those arterial and collector through streets as defined in [section 53-251](#) of the City Code and upon all streets in the central business district, the following procedure and charges shall apply:

Permit	Flat Fee (\$)	Daily Fees
Parking Lanes	85	Min. \$2.25/day
Loading Zones	85	Min. \$2.25/day
Traffic lanes	95	Min. \$5.25/day
Sidewalks	95	Min. \$5.25/day
Alleys	95	Min. \$5.25/day
Metered Parking		Min. \$1/day (weekdays only)



Observations

- Ord. 53.195 does not list maintenance of trees or cutting down of trees as an action requiring a ROW permit.
 - Ord. 53.265 places responsibility to trim trees on property owner, but does not address cutting down a tree.
 - Other cities require approval from the City before allowing the cutting down of public trees.
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Observations

- 37 Texas cities have city-wide Public Tree Care Ordinances in place.
- 50 have Tree Preservation Ordinances (include mitigation plans)
- Most have Landscaping Ordinances



Options

- Leave As-is
- Motion of Direction