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## **SUBCHAPTER 12. TREE PRESERVATION STANDARDS**

### **12.1 PURPOSE**

This Subchapter establishes requirements for tree preservation and replacement within the City and, to the extent authorized by state law relating to subdivision regulations, within the City's extra territorial jurisdiction (ETJ), as necessary to provide for orderly and healthful development of the community through the protection of specified trees, to promote the health, safety, welfare, and quality of life for the residents of the City and ETJ, to encourage the preservation of trees to provide environmental elements necessary to reduce the amount of pollutants entering streams and to provide elements crucial to establishment of the local ecosystem, to protect property values, and to avoid significant negative impacts on adjacent properties. The existing natural landscape provides superior ecological, environmental, and aesthetic qualities to the streetscape and parks and continues to help define the unique character of the City and ETJ. Therefore, the City requires the preservation of the existing natural landscape to the maximum extent feasible and declares the indiscriminate clearing of land and removal of protected trees a violation of this Chapter in accordance with the terms of this Subchapter.

### **12.2 APPLICABILITY/TREE TECHNICAL MANUAL ADOPTED**

#### **12.2.1 Applicability of Provisions**

Except as specifically exempted below, the provisions of this Subchapter shall apply to all property located within the City and ETJ.

A. The following properties are exempt from this Subchapter 12:

1. Developed single-family and two-family dwelling units with certificates of occupancies;
2. Properties designated for agricultural purposes and uses, being limited to those properties granted an agriculture tax exemption by the applicable county tax appraisal district and, in addition, being located in an Agriculture/Development Reserve (A) district as designated by the City, are exempt, except in relation to Section 12.4(l) of this Subchapter, which shall apply; and
3. Capital improvements projects by the City, State or Federal government, on property or rights-of-way for which the entity owns or controls.

B. This Subchapter is applicable to property located within the City's ETJ to the extent authorized by state law pursuant to Texas Local Government Code §§ 212.002 and 212.003. Accordingly, all provisions in this Subchapter that govern or are incidental to plats, subdivisions and the associated development of land shall apply in the ETJ as the same are applied within the City.

### 12.2.2 Applicability of Development Applications

The provisions of this Subchapter shall be reviewed with a preliminary plan, final plat, construction plan, site disturbance plan, site plan, and building permits, as applicable. No certificate of occupancy for in city development or acceptance of public infrastructure associated with a construction plan in the ETJ, as applicable, shall be issued until the provisions of this Subchapter 12 have been satisfied.

### 12.2.3 Tree Technical Manual Adopted

There is hereby adopted a Tree Technical Manual, which is incorporated herein for all purposes as Appendix A to this Subchapter, as if laid out here in full. The Tree Technical Manual shall provide the specifications, procedures and standards by which this Subchapter shall be interpreted, implemented and administered. In the event that any conflict exists between this Subchapter and the Tree Technical Manual, this Subchapter shall control. A true and correct copy of the Tree Technical Manual shall be maintained by the Planning Director and be available on the City's website.

### 12.3 TREE CLASSIFICATIONS

- A. Trees within the City and ETJ are grouped in five (5) tree classes as outlined below. Classes 2-5 are considered protected tree classes and are subject to mitigation in accordance with Section 12.8 and shall not be removed from the site without first obtaining necessary approval under a site disturbance permit, site plan permit, construction plan, or, if required, approval from City Council, each as applicable.
- B. A protected tree is any tree measuring eight (8") inches or greater in diameter at breast height (referred to herein as DBH, which is 4.5 feet above natural grade, as more specifically described in the City's adopted Tree Technical Manual) and any tree planted to satisfy the landscaping requirements of Subchapter 11 pursuant to an approved site plan, public infrastructure construction plan, or tree replacement plan. Protected trees include multi-trunk trees, which are measured by combining the diameter of the largest stem or trunk with one-half of the diameter of each additional stem or trunk, all measured at DBH.

Class 1	Unprotected Trees - Trees with DBH < 8 inches (unless tree was planted to satisfy requirements of Subchapter 11)
Class 2	Protected Trees with DBH 8 - 17.99 inches and Trees planted to satisfy requirements of Subchapter 11
Class 3	Protected Trees with DBH 18 - 24.99 inches
Class 4	Protected Trees with DBH 25 inches or greater (Not a Heritage Tree species)

Class 5	“Heritage Tree” – Protected Trees with DBH 25 inches or greater
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- C. Trees within the Class 1 are not considered protected unless the tree was planted to satisfy requirements of Subchapter 11 of this Code. However, healthy trees of protected tree species with good branching structure, height, and spread similar to nursery grown trees with DBHs from 3-7.99 inches may be credited toward landscaping requirements described in Subchapter 11 of this Code and should be preserved where possible.
- D. A heritage tree is any protected tree measuring 25” in DBH or greater of the following tree species:
  - 1. American Elm
  - 2. Bald Cypress
  - 3. Bur Oak
  - 4. Cedar Elm
  - 5. Chinquapin Oak
  - 6. Live Oak
  - 7. Mexican White (Monterrey) Oak
  - 8. Pecan
  - 9. Shumard Red Oak
  - 10. Texas (Spanish) Red Oak
  - 11. Lacey Oak
  - 12. All other Oak trees not specified
  - 13. Texas Walnut
- E. A non-hazardous heritage tree shall not be removed unless specifically approved by City Council as provided in Section 12.7 of this Subchapter.

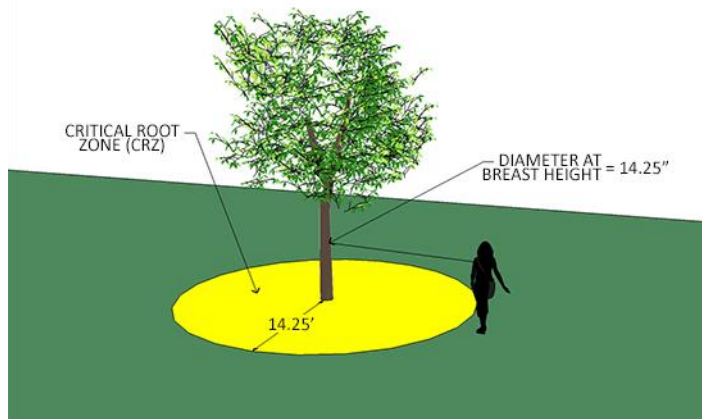
#### **12.4 GENERAL TREE PRESERVATION REQUIREMENTS**

- A. All trees are considered protected trees within classes 2-5 as described in Section 12.3 of this Subchapter with the following exceptions: Chinaberry, Hackberry, Ashe juniper (Cedar), Chinese Tallow, Willow, Ligustrum, Mimosa, Cottonwood, Huisache, and any other tree that is determined to be in a hazardous condition so as to endanger the public health, safety, or welfare. The Planning Director shall make the determination as to whether a tree is damaged, diseased, or dying due to natural or other causes.
- B. All existing non-hazardous trees, regardless of species, located within the required bufferyard per Subchapter 4 of this Code shall be considered protected.
- C. All proposed buildings and improvements shall be oriented in a manner that allows, to the greatest extent feasible, for the preservation of the protected trees.
- D. Tree preservation shall also be based on the hierarchy of trees indicated in Section 12.3 of this Subchapter, Tree Classifications with Class 5 heritage trees being at the top of the hierarchy for preservation purposes.
- E. Parking lots shall be designed to incorporate protected trees as focal points or practical means of segmenting parking lots through preservation of existing trees within landscape islands, peninsulas, and medians.

- F. Trees preserved shall be integrated with the design of open spaces, screening, and landscape areas.
- G. Prior to the approval of the applicable Tree Protection, Removal or Replacement Plan where protected trees are proposed for tree removal with on-site mitigation, fiscal security is required in an amount equal to 100 percent of the mitigation value of the trees proposed for preservation per Section 12.8.2(B) of this Subchapter, Tree Classification-Fee by Diameter Inch Removed.
- H. All tree preservation and maintenance measures shall be in accordance with the City's adopted Tree Technical Manual.
- I. Any tree with a DBH of eight (8) inches or greater that is in a floodplain or floodway is considered protected, regardless of species, unless it is determined to be in a hazardous condition so as to endanger the public health, safety, or welfare or it affects hydraulics in the floodplain or floodway. The Planning Director shall make the determination as to whether a tree is damaged, diseased, or dying due to natural causes and is, therefore, in a hazardous condition. The Development Engineering Director shall make the determination as to whether a tree affects the hydraulics of the flood area.
- J. The mowing and clearing of brush located within or under the driplines of protected trees is allowed, provided a site disturbance permit is issued and such mowing or clearing is accomplished by hand or by mechanical mowers with turf tires. Mechanical mowers with tracks shall not be used within or under driplines of protected trees.
- K. The Planning Director shall require a signed letter from a landscape architect or a certified landscape professional that states the development complies with: (1) the tree preservation and tree removal mitigation requirements of this Subchapter prior to issuance of a certificate of occupancy in the City or acceptance of public infrastructure associated with a construction plan in the ETJ; and (2) if required, permanent irrigation system provisions are provided. The Planning Director has the right to inspect each site in conjunction with final inspection and at other times to ensure compliance with this Subchapter.

## **12.5 TREE PROTECTION**

- A. All trees identified for preservation on an approved Tree Protection Plan shall be flagged and encircled with protective chain-link fencing installed along the critical root zone (CRZ) or a dripline of the tree, whichever is greater, in accordance with the Tree Technical Manual. If there are physical constraints preventing the placement of the protective fencing at the CRZ or dripline of the tree, whichever is greater, the Planning Director may allow for the fencing to encroach into the CRZ by up to fifty percent (50%), but at no point may result in a fence closer than five (5) feet from the base of the tree. No construction, such as trenching or regrading, is to occur within an area that constitutes more than fifty percent (50%) of the CRZ for each tree being preserved. Tree protective fencing shall remain in place pursuant to the approved Tree Protection Plan throughout the construction process, and may not be removed until such time the Planning Director allows for the removal of such fencing.



- B. Grade changes shall not be permitted within the CRZ unless otherwise permitted by the Planning Director. If grading within the CRZ is approved, grading shall be done by hand or with small equipment to minimize root damage. Grade changes under specifically approved circumstances shall not allow more than six (6) inches of fill soil added or allow more than six (6) inches of existing soil to be removed from natural grade unless mitigated. Grade fills over six (6) inches or impervious overlay shall incorporate an approved permanent aeration system, permeable material, or other approved mitigation. Grade cuts exceeding six (6) inches shall incorporate retaining walls or an appropriate transition equivalent.
- C. No grading or tree removal shall occur on a lot until the Tree Protection Plan has been approved.
- D. Compliance with the criteria in this section shall be demonstrated in the field as well as on the applicable plan.
- E. Tree Protection Plan adjustments made during construction must be reviewed and approved by the Planning Director prior to implementing such adjustments. An applicant who removes protected trees in violation of this Subchapter shall be required to fully mitigate damages caused by the tree removal and is subject to penalties under Section 12.11 of this Subchapter.

## 12.6 TREE REMOVAL

### 12.6.1 Tree Removal in Conjunction with Development Applications

Any approved Tree Removal Plan associated with a development permit or construction plan approval shall remain in effect until the expiration of such development permit or construction plan, provided fiscal security is posted and maintained until the expiration of such development permit or construction plan approval, or the trees have been replaced pursuant to the approved Tree Replacement Plan, as applicable. Physical tree removal from the site may occur only after Tree Removal Plan approval. A non-hazardous heritage tree may be removed only if approved by City Council in accordance with Section 12.7 of this Subchapter.

- A. Tree Protection Plan Required

A Tree Protection Plan shall be submitted before or with the site plan or associated development application submittal and prior to the removal of any trees. The Tree Protection Plan shall: (1) include a tree survey in accordance with the Tree Technical Manual graphically identifying protected trees on the site; (2) provide for tree protective measures; and (3) identify the trees proposed for preservation and removal. All trees shall be identified by species, diameter, condition, and mitigation ratio and value.

**B. Tree Replacement Plan**

If development under a proposed site plan will remove a tree with a DBH of 8" or greater, the City shall require tree mitigation in accordance with Section 12.8, Mitigation for Tree Removal, of this Subchapter, including the planting of replacement trees or the payment of an applicable fee in-lieu, as a condition of site plan or other development application approval. The Planning Director or Development Engineering Director, as applicable, shall not release the construction plan, site disturbance plan, or site plan until the applicant satisfies the condition(s) of approval or posts fiscal security to ensure the condition(s) of the tree replacement will be satisfied.

**C. Plan Requirements**

A tree survey, Tree Replacement Plan, Tree Removal Plan and Tree Protection Plan shall be provided in accordance with the applicable survey and plan requirements specified in the Tree Technical Manual and the respective development application. These elements shall be incorporated into the overall sheet set for preliminary plans, construction plans, site plans, or site disturbance plans. The irrigation plan shall be in accordance with Subchapter 11 of this Code, Chapter 113 of the Code of Ordinances (Irrigators), and the Tree Technical Manual.

**12.6.2 Tree Removal Not in Conjunction with a Development Application**

- A. The proposed removal of any tree not associated with a development application or plan shall require a site disturbance permit with the exception of single-family and two-family lots or units. The clearing of brush and trees less than eight (8") inches shall require a site disturbance permit.
- B. The site disturbance permit application shall be made by the owner of the property on which the tree(s) is located or by the owner(s)'s authorized representative. A tree survey in accordance with the Tree Technical Manual survey requirements, and a Tree Replacement Plan and Tree Protection Plan, as applicable, shall be provided with the site disturbance permit application.
- C. Upon receipt of a complete application, the Planning Director shall inspect the subject tree and approve or deny the application in accordance with the provisions of this section.
- D. A site disturbance permit shall not be approved or released until a Tree Replacement Plan has been approved and fiscal security has been posted, or payment of fee in-lieu has been provided in accordance with Section 12.8 Mitigation of this Subchapter for Tree Removal.
- E. A non-hazardous heritage tree may be removed only if approved by City Council and tree replacement or payment for fee in-lieu of replanting is provided per Tables 12.8.1 and

12.8.2(B) of this Subchapter. The applicable Tree Replacement Plan shall reflect the heritage tree(s) requested to be removed, which shall be processed in accordance with Section 12.10 of this Subchapter.

- F. If no construction activity has occurred on the property within 60 days of site disturbance permit approval, the application shall expire.

**12.7 PROTECTED TREE REMOVAL EXCEPTIONS**

- A. A protected tree may be removed without tree replacement or mitigation if the tree is identified for removal in a capital improvement project which has been approved by City Council or governing jurisdiction (e.g., Travis County).
- B. Existing single-family and two-family or duplex lots or units with a valid certificate of occupancy are exempt.
- C. A protected tree, including a heritage tree, may be removed if the Planning Director determines that the tree is in a hazardous condition so as to endanger the public health, safety or welfare, or the tree is found to be dead or dying by the Planning Director (referred to herein as a hazardous tree).
- D. A property owner may request authorization from City Council to remove a heritage tree in accordance with Section 12.10 of this Subchapter.

**12.8 MITIGATION FOR TREE REMOVAL**

**12.8.1 On-Site Mitigation**

- A. Any protected tree removed, damaged, or killed as a result of development or improper maintenance, such as excessive pruning, shall be replaced by a tree or trees of the same species or comparable alternative equal to the total number of diameter inches removed, as measured at breast height (DBH). Tree replacement on site shall be in accordance with Table 12.8.1, Tree Classification - Mitigation Ratio. Replacement trees shall meet the planting criteria in Subchapter 11 of this Code and in the Tree Technical Manual. The Planning Director shall determine the cause of damage or death for a protected tree.

Table 12.8.1: Tree Classification - Mitigation Ratio lists the protected tree classifications based on size or designation with the applicable tree mitigation ratio for replacement caliper inches.

<b>Table 12.8.1: Tree Classification</b>		<b>Mitigation Ratio</b>
Class 1	Unprotected Trees - Trees with DBH < 8 inches (unless tree was planted to satisfy requirements of Subchapter 11)	N/A
Class 2	Trees with DBH 8 - 17.99 inches	1:1



	and Trees planted to satisfy requirements of Subchapter 11 with DBH less than 8 inches	
Class 3	Trees with DBH 18 - 24.99 inches	2:1
Class 4	Protected Trees with DBH 25 inches or greater (Not a Heritage Tree species)	2.5:1
Class 5	“Heritage Tree” - Trees with DBH 25 inches or more	3:1

- B. No protected tree shall be removed, and no replacement tree shall be planted, until the Planning Director has reviewed and approved the Tree Replacement Plan and fiscal security equivalent to the replacement value, as represented in Table 12.8.2(B), has been posted. Fiscal security will be returned once all replacement trees have been successfully planted and inspected.
- C. Protected trees may be transplanted to a suitable location on the same property or off-site within the City or its ETJ. If off-site, no replacement on site shall be required. The developer shall comply with the generally accepted transplanting methods of the American National Standards Institute (ANSI A300 Standards), and the trees are required to survive for a period of at least one (1) year without showing any signs of decline. Posting fiscal security equivalent to the replacement value of the transplanted tree is required. Fiscal security will be returned once the one (1) year, outlined previously, has been successfully completed.
- D. Irrigation shall be provided for replacement trees in accordance with Subchapter 11 of this Code, Chapter 113 of the Code of Ordinances (Irrigators), and the Tree Technical Manual.

**12.8.2 Alternative Mitigation**

When the Planning Director determines that mitigation for protected tree removal by replanting trees on site is not feasible (e.g., planting capacity has been reached on site), an applicant may choose one of the following alternatives in lieu of replanting on site:

- A. Plant the replacement trees with the applicable mitigation ratio identified in Table 12.8.1 in a City park or other City-owned property as would otherwise be required on site in locations approved by the Planning Director and Parks and Recreation Director; or
- B. Make a payment into the Tree Fund, or account for use by the City, for the planting, pruning, irrigation, and other activities associated with trees in City parks or on other City-owned property. The payment shall be based on the DBH of the protected trees removed. This payment is non-refundable.

Table 12.8.2(B) Tree Classification Removal Fees lists the tree classifications with their applicable fees per diameter inch removed, as measured at breast height (DBH).

<b>Table 12.8.2(B) Tree Classification Removal Fees</b>		
<b>Tree Classification</b>		<b>Fee per Diameter Inch Removed</b>
Class 1	Unprotected Trees - Trees with DBH < 8 inches (unless tree was planted to satisfy requirements of Subchapter 11)	N/A
Class 2	Trees with DBH 8 - 17.99 inches and Trees planted to satisfy requirements of Subchapter 11 with DBH less than 8 inches	\$150
Class 3	Trees with DBH 18 - 24.99 inches	\$300
Class 4	Protected Trees with DBH 25 inches or greater (Not a Heritage Tree species)	\$375
Class 5	"Heritage Tree" - Trees with DBH 25 inches or more	\$450

C. Mitigation Fee Credits. In accordance with Section 212.905 of the Texas Local Government Code, which is adopted and incorporated herein for all purposes, and notwithstanding anything in this Subchapter to the contrary, tree planting credits offsetting Tree Classification Removal Fees identified in Table 12.8.2(B) of this Subchapter are hereby established as required by state law. The Planning Director shall develop processes and procedures necessary for the implementation of these requirements.

### **12.8.3 Mitigation Exceptions**

A. Natural Disasters and other Emergencies

If a protected tree is causing a danger or is in a hazardous condition due to a natural disaster, such as a tornado, fire, storm, flood, or other act of God that endangers public health, welfare, or safety, the requirement of this Subchapter may be waived by the Planning Director.

B. Dead or Diseased Trees

If the Planning Director, with assistance from an ISA Certified Arborist engaged by the property owner, determines that based on an on-site inspection and a report from the ISA Certified Arborist a protected tree is already dead, dying, or fatally diseased, the provisions of the mitigation requirements do not apply.

### **12.9 PROHIBITED ACTIVITIES**

A. It is unlawful for any person to remove any tree without first securing the required approvals as specified in this Subchapter.

B. All development subject to this Subchapter, including grading, trenching, and tree removal on all sites, is prohibited prior to the approval of a Tree Protection, Replacement and/or Removal Plan, as applicable.

- C. It is unlawful for any person to damage a protected tree in any way, such as through tree topping or pollarding, excessive pruning or chemical poisoning. All tree maintenance and pruning shall be conducted pursuant to the requirements of the Tree Technical Manual.
- D. Indiscriminate clearing or stripping of the natural vegetation on any lot is prohibited and is considered a violation of this Subchapter.
- E. It is unlawful for a person to continue work on a site or lot or remove trees after a stop work order has been issued.

## **12.10 APPEALS**

- A. An applicant may appeal the decision of the Planning Director to deny a heritage tree removal application to City Council where the Planning Director determined the tree to be non-hazardous. Such appeal must be made in writing and received by the Planning Director within thirty (30) days from the date of the decision on the tree removal application or official correspondence referencing the denial of the proposed heritage tree removal application. The request for appeal must set forth the specific reasons for the appeal and state the specific reasons for disagreement with the decision of the Planning Director, including the basis for the applicant's position that the application should have been granted. In addition, a request to remove a non-hazardous heritage tree as reflected in the applicable Tree Replacement Plan, shall be forwarded to City Council for consideration.
- B. In each such case, the Planning Director shall set the matter for public hearing before City Council at the earliest possible regularly scheduled meeting of City Council.
- C. City Council shall review the request and render a decision either affirming, affirming in part, conditionally affirming, or reversing the determination of the Planning Director, or approving a non-hazardous heritage tree removal request only after determining that the heritage tree:
  - 1. Prevents substantial economically viable use of the property;
  - 2. Prevents reasonable use of or access to the property;
  - 3. Is dying or dead;
  - 4. Is diseased and restoration is not practicable or the disease may be transmitted to other trees;
  - 5. Poses a high risk of property damage or personal injury that cannot reasonably be mitigated without removing the tree (Reasonable mitigation may include lightning protection measures.);
  - 6. Is located on public property, street or easement;
  - 7. Prevents the opening of necessary vehicular traffic lanes in a street or alley; or
  - 8. Prevents the construction of utility or drainage facilities that may not feasibly be rerouted due to physical constraints.
- D. If heritage tree removal is permitted after an appeal pursuant to the provisions of this section, the applicant shall comply with all applicable provisions of this Subchapter, including tree mitigation, unless the appeal determines the heritage tree is hazardous.

### **12.11 PENALTY**

Violations of this Subchapter 12 that occur within the City are punishable in accordance with Subchapter 1 of this Chapter 157, but shall be punishable by a fine of not less than \$300 nor more than \$500 per violation. An offense under this Subchapter is hereby declared to be a strict liability offense and the culpable mental state required by Chapter 6.02 of the Texas Penal Code is hereby specifically negated. Each violation of this Subchapter, including without limitation, each protected tree that is unlawfully removed or damaged shall constitute a separate and distinct offense. Criminal prosecution shall not preclude civil action available at law by the City to recover for the damage or loss of the tree as determined by industry-accepted appraisal valuations. The criminal penalty established herein shall not apply to violations of this Subchapter that occur in the City's extraterritorial jurisdiction. However, the City is entitled to appropriate injunctive relief, such other rights to relief as provided in Texas Local Government Code §§ 212.003 and 212.018, and other remedies established at law to redress such violations.