

Sec. 106-106. Tree Preservation.

- (a) The purpose of this section is to encourage the preservation of mature trees which once removed cannot be replaced by equivalent trees, to preserve protected trees during construction, and to control the removal of protected trees when necessary. It is the intent of this section to achieve the following:
- (1) Prohibit the indiscriminate clearing of property.
 - (2) Protect and increase the value of residential and commercial properties within the Town.
 - (3) Maintain and enhance a positive image for the attraction of new business enterprises to the Town.
 - (4) Protect healthy quality trees and promote the natural ecological environmental and aesthetic qualities of the Town.
 - (5) Help provide needed shaded areas in order to provide relief from the heat by reducing the ambient temperature.

(Ord. No. 986, § 2, 10-20-2009)

Sec. 106-107. Administration.

- (a) *Definitions.* Applicable definitions are located in the Landscaping Regulations of the Little Elm Code of Ordinances.
- (b) *Prohibition.* Prior to the removal or the critical alteration of any protected tree in the Town, an application for tree removal permit must be submitted and approved, unless otherwise exempt under a provision of the ordinance from which this division derives.
- (c) *Tree survey required.* All grading permits, building permits, tree removal permits, and any other development and construction permits shall contain a tree survey of the subject property, or a note on the landscape plan stating that no protected trees are located on-site.
- (d) *Tree removal permit.* Any tree survey proposing the removal of protected trees shall be accompanied by a tree removal application. The burden shall be upon the applicant to show the necessity for any and all trees being removed.
- (e) *Fees.* All tree removal applications shall be accompanied by a check made payable to the Town of Little Elm in the amount specified by Town Council.
- (f) *Authority for review.* The Director shall be responsible for the review and approval of all requests for tree removal permits submitted in accordance with the requirements specified herein.

(g) *Appeals.* Any decision made may be appealed to the Planning and Zoning Commission. All decisions made by the Commission shall be final and binding.

(h) *Permit expiration.* Permits for tree removal issued in connection with a building permit shall be valid for the period of that building permit's life. Permit(s) for tree removal not issued in connection with a building permit shall become void 180 days after the issue date on the permit.

(i) *Inventory requirements.* Tree surveys shall:

- (1) Include all individual trees which have a DBH of six inches or greater or which are otherwise noteworthy because of species, age, size or rarity.
- (2) Contain a tree location map identifying each tree by its caliper size (DBH), common name, scientific species information, whether the tree is located in a floodplain or not, and whether the tree is proposed to be removed, transplanted/relocated, or preserved.
- (3) Illustrate the location of all buildings, structures, floodplains, pools, and other existing or proposed improvements for the site, including the limits of construction line, if applicable.
- (4) The name and phone number of arborist, licensed surveyor, or landscape architect that prepared the survey.
- (5) These requirements may be modified by the Director as needed to administer the ordinance from which this division derives. Upon prior approval by the Director, the map exhibit may be limited only to the applicable portion of the site. An aerial photograph may be allowed if it clearly meets these requirements.

(j) *Denial.* The Director shall deny a tree removal application if it is determined that:

- (1) Removal of the tree is not reasonably required in order to conduct anticipated activities;
or
- (2) A reasonable accommodation can be made to preserve the tree; or
- (3) The purpose and intent of this ordinance is not being met by the applicant.

(Ord. No. 986, § 2, 10-20-2009)

Sec. 106-108. Exceptions.

(a) No person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging or other means, any protected tree situated on property regulated by this division without first obtaining a tree removal permit unless otherwise specified in this division.

(b) A tree removal permit and tree mitigation requirements shall not be required under any of the following circumstances:

- (1) *Private property.* An individually platted parcel zoned for residential uses and used as a homestead shall be exempt from the tree protection and replacement requirements of this division as it pertains to that residential property, until such time as the property is no longer used as a single-family residence.
- (2) *Damaged/diseased trees.* The tree is dead, diseased, damaged beyond the point of recovery, in danger of falling, or endangers the public health, welfare or safety as determined by the Director. This would include removal of a diseased tree by the Town to reduce the chance of spreading the disease to adjacent healthy trees. This exception does not apply to newly planted trees that have died that are part of landscape plan, nor native trees that have short shelf lives.
- (3) *Public infrastructure.* Rights-of-way, capital improvement projects, bridges, and other activity conducted by a municipal entity, whether leased or owned, excluding property used for administration offices or functions.
- (4) *Utility service interruption.* The tree has disrupted a public utility service due to a tornado, storm, flood, or other act of God. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.
- (5) *Business interests.* The following business ventures shall be exempt from the requirements specified herein as follows:
 - a. *Landscape nursery:* All licensed plant or tree nurseries shall be exempt from the tree protection and replacement requirements and from the tree removal permit requirements only in relation to those trees planted and growing on the premises which are so planted and growing for the sale to the general public.
 - b. *Golf course:* Golf courses shall be exempt from the tree protection and replacement requirements and from the tree removal permit requirements for removal of protected trees within areas designated as tee boxes, fairways or greens. All other areas shall be subject to these requirements.

(Ord. No. 986, § 2, 10-20-2009)

Sec. 106-109. Construction Regulations.

(a) *General.*

- (1) *Tree pruning restrictions.* No protected tree shall be pruned in such a manner which significantly disfigures the tree or in a manner which would reasonably lead to the death of a tree, except where such pruning is necessary for the safety of the public and

to maintain utility service. Utility companies may prune trees as necessary to re-establish disrupted utility service. The practice of "topping" trees, either ornamental or canopy, is absolutely prohibited except when necessary for utility provision, public safety or some other official nuisance.

- (2) *Fill and grading.* The area within the drip line of a protected tree shall not be filled or graded.
- (3) *Maintenance after development.* If any of the trees required to be retained or trees planted as a part of this division should die within a period of one year after completion of the activities associated with construction, the owner of the property shall replace the trees within six months at a ratio of three-to-one with an approved large canopy tree from the recommended plant materials chart, which is the same size as the tree removed.

(b) *Prior to construction.*

- (1) *Tree flagging.* All protected trees on the subject property within 40 feet of a construction area or surface improvements such as driveway, walks, etc., shall be flagged with bright fluorescent orange vinyl tape wrapped around the main trunk at a height of four feet or more such that the tape is highly visible to workers operating construction equipment. This shall not include the flagging of protected trees adjacent to ROW within approved residential subdivisions during the construction of the roadway.
- (2) *Protective fencing.* Protective fencing will be located at the drip lines of all protected trees that border the limits of construction. In situations where a protected tree is located within the immediate area of intended construction, protective fencing will be located at the drip line.

(c) *During construction.*

- (1) *Prohibited activities.* The following activities shall be prohibited within the limits of the critical root zone of any protected tree, subject to the requirements of this division:
 - a. *Material storage:* No materials intended for use in construction or waste materials accumulated due to excavation or demolition shall be placed within the limits of the critical root zone of any protected tree.
 - b. *Equipment cleaning/liquid disposal:* No equipment shall be cleaned or other liquids deposited or allowed to flow overland within the limits of the critical root zone of a protected tree. This would include paint, oil, solvents, asphalt, concrete, mortar or similar materials.
 - c. *Tree attachments:* No signs, wires or other attachments, other than those of a protective nature shall be attached to any protected tree.

- d. *Vehicular traffic*: No vehicular and/or construction equipment traffic or parking shall take place within the limits of the critical root zone of any protected tree other than on an existing street pavement. This restriction does not apply to single incident access within a critical root zone for purposes of clearing underbrush, emergency restoration of utility service, or routine mowing operations.
- e. *Grade changes*: No grade changes (cut or fill) shall be allowed within the limits of the critical root zone of any protected tree unless adequate construction methods are approved by the Director.
- f. *Impervious paving*: No paving with asphalt, concrete or other impervious materials in a manner which may reasonably be expected to kill a tree shall be placed within the limits of the critical root zone of a protected tree.

(d) *Permanent construction methods.*

- (1) *Boring*. Boring of utilities under protected trees may be required in certain circumstances. When required, the length of the bore shall be the width of the critical root zone at a minimum and shall be a minimum depth of 48 inches.
- (2) *Trenching*. All trenching where possible shall be designed to avoid trenching across the critical root zone of any protected tree. This shall not inhibit the placement of necessary underground services such as electric, telephone, gas, etc.
- (3) *Root pruning*. It is recommended that all roots two inches or larger in diameter which are exposed as a result of benching or other excavation be cut off square with a sharp medium tooth saw and covered with pruning compound within two hours of initial exposure.

(Ord. No. 986, § 2, 10-20-2009)

Sec. 106-110. Tree Mitigation.

- (a) *General rule*. In the event that it is necessary to remove a protected tree, the applicant shall be required to replace the protected tree being removed with a large canopy tree from the recommended plant materials chart, or pay into the Town's tree fund.
- (b) *Replacement trees*. Trees shall be replaced at a ratio determined by the tree valuation schedule (for every one inch removed, "X" inches must be replaced). If any replacement tree cannot be properly located on the subject property, the applicant may plant the replacement tree(s) on property owned by the Town and/or common area open space, subject to review and approval by the Director.
- (c) *Mitigation*. If the tree(s) is not replaced on-site, or other Town-approved location, fees must

be paid to the Town based on the tree valuation schedule and the tree valuation formula of this division. This fee shall be paid in addition to any tree removal permit fee and shall be held in a separate account (tree fund) to be used exclusively for future installation of trees within public lands owned by the Town.

- (d) *Landscape plan.* All replacement trees shall be shown with their caliper size and common name on an approved landscape plan.
- (e) *Replacement restriction.* Any required replacement tree shall not be planted within an area such that the mature canopy of the tree will interfere with overhead utility lines, or that the mature root zone of the tree interferes with underground public utility lines.
- (f) *Landscaping limitation.* Trees required to be added to the development per the landscaping requirements in the zoning ordinance or by virtue of deed restrictions shall not be considered or credited as replacement trees.

(Ord. No. 986, § 2, 10-20-2009)

Sec. 106-111. Enforcement.

- (a) Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction hereof shall be fined a penalty of a sum not to exceed \$500.00 for each offense and a separate offense shall be deemed committed on each day during or on which a violation occurs. The unlawful destruction or removal of each protected tree shall be considered a separate offense and each offense subjects the violator to the maximum penalty of \$500.00 per tree for each day that the tree is not replaced. Unless otherwise specifically set forth herein, or in state law as adopted, allegation and evidence of culpable mental state are not required for the proof of an offense defined by this article.
- (b) No acceptance of public improvements shall be authorized until all fines for violations of this ordinance have been paid to the Town.
- (c) No certificate of occupancy shall be issued until all fines for violations of the ordinance from which this article derives have been paid to the Town.
- (d) No building permit shall be issued unless the applicant signs an application or permit request which states that all construction activities shall meet the requirements of the tree preservation ordinance. The building official shall make available to the applicant a copy of the tree preservation ordinance.

(Ord. No. 986, § 2, 10-20-2009)

Sec. 106-112. Tree Valuation Schedule.

- (a) The following charts shall be used in interpreting the provisions of this article:

TREE VALUATION SCHEDULE

CLASS NO. 1 100% Value 5:1 Ratio	CLASS NO. 2 80% Value 4:1 Ratio	CLASS NO. 3 60% Value 3:1 Ratio	CLASS NO. 4 40% Value 2:1 Ratio	CLASS NO. 5 20% Value 1:1 Ratio
Floodplain Trees * ALL Oaks Pecan American Beech American Holly Yaupon Holly Sweet Gum Magnolia Ginkgo Chinese Pistachio Bald Cypress (* All trees in the floodplain, regardless of species)	ALL Ashes ALL Elms ALL Maples Hickories Black Walnut Persimmon Chittamwood Golden Raintree	ALL Pines Blue Spruce Junipers, Cedar Honey Locust Honey Mesquite Western Soapberry River Birch Redbud Eve's Necklace	Crepe Myrtle Dogwood Plums / Pears Common Hackberry Sugarberry Bois D'Arc Cottonwoods Poplars Loquat Siberian Elm Silver Maple	Other Fruit Trees Other Ornamentals Boxelder Tree of Heaven Mulberry Trees Chinaberry Catalpa Jujube Tallows Willows

Sec. 106-113. Tree Valuation Formula.

TREE VALUATION FORMULA

TREE VALUATION FORMULA

DIAMETERS $0.7854 \times D = \text{CROSS SECTION} \times \text{VALUE/SQ.IN} = \text{TREE VALUE}$

6"	$0.7854 \times 36 =$	28.3	$\times 22.00$	=	\$622.60
7"	$0.7854 \times 49 =$	38.5	$\times 22.00$	=	\$847.00
8"	$0.7854 \times 64 =$	50.3	$\times 22.00$	=	\$1,106.60
9"	$0.7854 \times 81 =$	63.6	$\times 22.00$	=	\$1,399.20
10"	$0.7854 \times 100 =$	78.54	$\times 22.00$	=	\$1,727.88
11"	$0.7854 \times 121 =$	95.0	$\times 22.00$	=	\$2,090.00

12"	0.7854 × 144 = 113.1 × 22.00	=	\$2,488.20
13"	0.7854 × 169 = 133.0 × 22.00	=	\$2,928.00
14"	0.7854 × 196 = 154.0 × 22.00	=	\$3,388.00
15"	0.7854 × 225 = 177.0 × 22.00	=	\$3,894.00
16"	0.7854 × 256 = 201.1 × 22.00	=	\$4,424.20
17"	0.7854 × 289 = 227.0 × 22.00	=	\$4,994.00
18"	0.7854 × 324 = 254.5 × 22.00	=	\$5,599.00
19"	0.7854 × 361 = 284.0 × 22.00	=	\$6,248.00
20"	0.7854 × 400 = 314.2 × 22.00	=	\$6,912.40
21"	0.7854 × 441 = 346.4 × 22.00	=	\$7,620.80
22"	0.7854 × 484 = 380.0 × 22.00	=	\$8,360.00
23"	0.7854 × 529 = 415.5 × 22.00	=	\$9,141.00
24"	0.7854 × 576 = 452.4 × 22.00	=	\$9,952.80
25"	0.7854 × 625 = 491.0 × 22.00	=	\$10,802.00
26"	0.7854 × 676 = 531.0 × 22.00	=	\$11,682.00
27"	0.7854 × 729 = 573.0 × 22.00	=	\$12,606.00
28"	0.7854 × 784 = 616.0 × 22.00	=	\$13,552.00
29"	0.7854 × 841 = 661.0 × 22.00	=	\$14,542.00
30"	0.7854 × 900 = 707.0 × 22.00	=	\$16,554.00

NOTE: Values of trees greater than 30 feet will be determined by a tree expert retained by the contractor and approved by the owner and architect.

NOTE: Diameter measured four and one-half feet above the ground.

(Reference: National Arborist Association)

Sec. 106-114. Plant List.

Recommended Plant Materials List

- I. Plant material: All required plant material, including required residential trees, shall be from the following list unless alternate plant materials are approved through the landscape plan:

Large Canopy Trees

Bald Cypress	Bigtooth Maple	Burr Oak
Caddo Maple	Cedar Elm	Chinquapin Oak
Chinese Pistache	Dawn Redwood	Ginkgo
Homestead Elm	Italian Stone Pine	Lacebark Elm
Live Oak	Montezuma Cypress	Pecan
Pond Cypress	Red Oak	Shantung Maple
Southern Magnolia	Texas Ash	Trident Red Maple
Urbanite Ash		

Small Ornamental Trees

American Smoketree	Carolina Buckthorn	Crepe Myrtle (tree form)
Desert Willow	Dogwood	Eve's Necklace
Flameleaf Sumac	Golden Raintree	Italian Cypress
Japanese Maple	Lacey Oak	Mexican Buckeye
Possumhaw Holly	Redbud	Savannah Holly
Teddy Bear Magnolia	Viburnum	Vitex
Wax Myrtle	Yaupon Holly	

Urban Trees

Allee (Lacebark) Elm	Chinese Pistache	Ginkgo
Homestead Elm	Lacey Oak	Pond Cypress
Shantung Maple	Teddy Bear Magnolia	Urbanite Ash

Evergreen Screening Shrubs (low < 5')

Agarito	Boxwood	Dwarf Abelia
Dwarf Burford Holly	Elaeagnus (Silverberry)	Euonymus
Grayleaf Cotoneaster	Indian Hawthorn	Juniper (several varieties)
Nandina	Texas Sage	

Evergreen Screening Plants (high > 5')

Austrian Black Pine	Cleyera	Eastern Red Cedar
Foster Holly	Leyland Cypress	Little Gem Magnolia
Nelly R. Steven's Holly	Sweet Viburnum	Waxleaf Ligustrum

Other Shrubs

American Beautyberry	Apache Plume	Aralia
Aucuba	Autumn Sage	Azalea
Barberry	Black Dalea	Burning Bush
Chinese Fringe Flower	Desert Spoon	Dwarf Crepe Myrtle
Flowering Quince	Holly (multiple varieties)	Horizontal Cotoneaster
Leatherleaf Mahonia	Pampas Grass	Red Yucca

Rose (shrub form)	Spirea	Turk's Cap
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Vines:

Boston Ivy	Carolina Jasmine	Confederate Star Jasmine
Coral Honeysuckle	Crossvine	English Ivy
Japanese Honeysuckle	Rose (climbing variety)	Trumpet Vine
Virginia Creeper		

Groundcover

Ajuga	Asian Jasmine	Bermuda Grass
Buffalo Grass	Creeping Juniper	Fountain Grass
Liriope (Monkey Grass)	Mondo Grass	Purple Wintercreeper
St. Augustine	Tall Fescue	Zoysia

Prohibited Plant Material

Bois D' Arc	Bradford Pear	Catalpa
Cottonwood	Hackberry	Lombardy Poplar
Mesquite	Mimosa	Mulberry
Red Tip Photinia	Siberian Elm	Silver Maple

(Ord. No. 986, § 2, 10-20-2009)

Secs. 106-115--106-116. Reserved.

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