

## **DIVISION 9.207 TREE PRESERVATION**

### **Sec. 9.207.1. Purpose and intent.**

- A. The purpose of these regulations is to promote the preservation of mature trees and natural areas, tree stands, including, but not limited to, remnants of the Cross Timbers Forest and existing tree canopy, to protect trees during construction, to facilitate site design and construction that contribute to the long term viability of existing trees which improves environmental conditions, specifically to comply with air and water quality regulations, to increase property values and to develop a process to control the removal of trees. It is the further purpose of this division to achieve the following broader objectives:
1. Preserve the country atmosphere and natural environment that define the community character of the city and make it a unique and desirable community.
  2. Prevent untimely and indiscriminate removal or destruction of trees.
  3. Maintain and enhance a positive image of the city for the attraction of new residents and business enterprises to the city.
  4. Protect healthy protected/historic and protected/quality trees and promote the ecological, environmental and aesthetic values of the city.
  5. Preserve protected/historic trees.
  6. Provide for shade, windbreaks and the cooling of air; thereby, reducing the requirements for air conditioning and heating and the utilization of scarce energy resources.
  7. Promote site planning that is sensitive to the location of existing trees in an effort to save protected/historic and protected/quality trees.
  8. Provide for a permitting and enforcement procedure.
  9. Provide for open space and more efficient drainage of land; thereby, reducing the effects of soil erosion and the need for additional drainage facilities.
  10. Mitigate the ill effects of rapid and intense urbanization.
- B. The removal of any protected/historic or protected/quality trees as defined in this division requires a tree removal permit in accordance with the terms and provisions of this division. The terms and provisions of this division allow trees located within necessary public rights-of-way, easements and the build able area of a building lot or site where the lot or site is less than one acre in size to be removed without a

tree removal permit and prior to the issuance of a building permit. It is provided, however, that where a building lot or site is one acre in size or larger, then no protected/historic or protected/quality trees shall be removed from the build able area of the lot or site before the issuance of a building permit relating to the lot or site, unless otherwise permitted herein.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

### **Sec. 9.207.2. Definitions.**

For the purpose of this division, the following terms, phrases, words and their derivations shall have the meaning given herein:

*Agricultural use.* The use of land to produce plant or animal products, such as the growing of crops, raising and pasturing of livestock or farming. It does not include the processing of plant or animal products after harvesting or the production of timber or forest products. Agricultural use is not determined by the zoning classification of the land.

*Build able area.* That portion of a building site exclusive of the required yard areas on which a structure or building improvements may be erected and including the actual structure and driveway.

*Building pad.* The actual foundation area of a building area and the area within eight feet of the foundation that is used for construction and grade transition.

*Clear cutting.* The removal of all of the trees or a significant majority of the trees within an area.

*Clearing and grading, limits of.* The boundaries of that area of land identified in the clearing and grading plan, site plan or landscape plan subject to soil disturbance, clearing of trees, and other vegetation in conjunction with a proposed development or land use.

*Conservation easement.* A non-possessor interest held by a governmental body empowered to hold an interest in real property under the laws of the State of Texas or the United States; other qualified entity, pursuant to Section 170(h) of the Internal Revenue Code, as amended; or a charitable corporation, charitable association, or charitable trust in real property that imposes limitations or affirmative obligations designed to:

- A. Retain or protect natural, scenic, or open-space values of real property or assure its availability for agricultural, forest, recreational, or open-space use;
- B. Protect natural resources;

- C. Maintain or enhance air or water quality; or
- D. Preserve the protected/historical, architectural, archeological, or cultural aspects of real property.

*Critical root zone (CRZ).* The area of undisturbed natural soil around a tree defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the drip line (see section 9.207.32, Exhibit D).

*Cut/fill.* Areas where the natural ground level has been excavated (cut) or fill brought in.

*Development review committee.* As defined in section 9.201.3 of the Code of Ordinances, as may be amended from time to time.

*Diameter at breast height (dbh).* The tree trunk diameter measured in inches at a height of four and one-half feet above existing ground level.

For single-trunk trees, the width shall be measured at four and one-half feet above existing ground level.

For multi-trunk trees, combine the diameter of the largest stem or trunk with one-half of the diameter of each additional stem or trunk, all measured at four and one-half feet above ground level.

*Drip line.* A vertical line run through the outermost portion of the canopy of a tree and extended to the ground (see section 9.207.32, Exhibit D).

*Homestead property.* An individual residential property that has been declared as a homestead in accordance with Texas state law.

*Limits of construction.* Delineation on a graphic exhibit that shows the boundary of the area within which all construction activity will occur.

*Municipal/public domain property.* Property that is owned by the city or property in which the city has a legal or equitable ownership interest. Examples of this would include city hall, rights-of-way, easements, trails, public parks, county property, school district property, Corp. of Engineers property, State of Texas rights-of-way, library, fire stations, water tower sites, or similar properties.

*Pad site.* The location of the proposed or actual footprint of a primary building as shown on a grading plan, site plan or plot plan.

*Protective fencing.* Temporary chain link fence, wire fence, orange vinyl construction fence, snow fencing or other similar fencing with a minimum four-foot height.

*Selective thinning.* The removal of selected trees from within a densely forested area.

*Root pruning.* To cut away, remove, cut off or cut back all or parts of the root. All root pruning shall be in accordance with approved methods set forth in the National Arborist Association Standards.

*Tree.* Any self-supporting woody perennial plant that will attain a trunk diameter of two inches or more when measured at a point four and one-half feet above ground level and normally an overall height of at least 15 feet at maturity, usually with one main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of oaks.

*Tree board.* For all matters relating to this division, the planning and zoning commission shall perform as the tree board.

*Tree, healthy.* A tree that is vigorously growing and is free of structural problems such as hollows or voids, free of disease, or insect problems and has a root system that is large enough to support its above-ground mass.

*Tree, protected/historic.*

- A. A healthy tree or tree stand that stands at a place where an event of protected/historic significance occurred that had local, regional, or national importance; or at the home of a citizen who is famous on a local, regional, or national basis.
- B. A tree or tree stand that has taken on a legendary stature to the community; is mentioned in literature or documents of protected/historic value; or is considered unusual due to size, age or has landmark status.
- C. A tree or tree stand that has been designated by the city council, after due notice to the owner of the tree and public hearing, as a tree or tree stand of notable interest and value to the city because of its location or historical association with the community. A listing and map of all designated protected/historic trees shall be maintained and updated by the city manager or his/her designee and made available to the public upon request.
- D. A tree listed as a protected/historic tree on Exhibit A herein.

*Tree, marginal.* A tree that is not listed as a protected/quality tree within this division and is not required to be preserved in accordance with this division.

*Tree mitigation plan.* A plan that requires replacement or payment of funds into a tree mitigation fund for those areas/trees that is subject to tree protection.

*Tree, park.* Trees in public parks and all areas owned by the city to which the public has free access to as a park.

*Tree, protected/quality.* A tree that is listed within this division in section 9.207.32 and has a diameter of six inches or greater measured at four and one-half feet above ground; an under story tree that has a diameter of two inches or greater measured at 18 inches above ground. For a multi-trunk tree, the diameter shall be the total diameter of the largest trunk plus half the diameter of each additional trunk (see section 9.207.32, Exhibit E).

*Tree protection, permanent.* Structural measures, such as retaining walls/wells or aeration devices, that are designed to protect the tree and its root systems throughout its lifetime.

*Tree protection sign.* A sign furnished by the City of Oak Point upon approval of a tree survey or tree removal permit that describes prohibited conduct detrimental to trees.

*Tree protection, temporary.* Physical barriers installed prior to any clearing and grading activity and construction for the purpose of preventing damage to existing trees and under story vegetation and set outside of the root zone of such vegetation for the life of the development's construction.

*Tree removal.* An act or activity that causes or may be reasonably expected to cause a tree to be removed, damaged, cut, injured or destroyed including, but not limited to, uprooting, severing the main trunk, damaging the root system, and excessive pruning.

*Tree stand.* Contiguous trees whose canopies are generally clustered together.

*Tree, street.* Trees located adjacent to streets within the rights-of-way or within landscaping easements.

*Tree survey.* A survey of protected/quality trees indicating size, type and location of trees, done by a professional land surveyor, civil engineer, landscape architect or arborist.

*Tree topping.* The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown so as to remove the normal canopy and disfigure the tree.

*Tree, under story.* A tree that does not typically attain great size, and grows underneath the canopy of much larger trees. (see section 9.207.32, Exhibit A).

*Visibility triangle area.* A triangular area on a lot at the intersection of two streets, two sides of which are lot lines measured from the corner intersection of the lot lines for a distance specified in these regulations. The third side of the triangle is a line across the corner of the lot joining the ends of the other two sides. Where the lot lines or

intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**Sec. 9.207.3. Applicability.**

- A. Unless exempt under subsection C. below, this division shall apply to:
1. Undeveloped land.
  2. All property to be redeveloped including additions or alterations, but not including interior alterations or exterior alterations that do not change the footprint of the building and that do not require the removal of trees.
  3. Rights-of-way, streets, parks, and other public property under the jurisdiction of the City of Oak Point and other governmental entities.
- B. To the extent there is a conflict between this division and any other ordinance or regulation of the city, the more stringent requirement that preserves the largest quantity of trees shall apply.
- C. Exceptions. A tree removal permit shall not be issued and tree protection and replacement requirements shall not be required under any of the following conditions. The burden of proof as a qualified exception is upon the remover of a tree.
1. New developments that have an administratively complete application on file for a final or preliminary plat for a single-family residential development or a building permit, whichever is applicable, as of the effective date of this division.
  2. Any development for which construction has begun on infrastructure improvements pursuant to an approved development agreement, including roads, as of the effective date of this division. In the event that construction of all infrastructure improvements in such a development ceases for a continuous period of 180 days or longer, this exemption shall cease to apply on the 181st day after cessation of construction unless the city accepts the infrastructure improvements.
  3. Property on which a single-family or two-family residential dwelling unit(s) exists as of the effective date of this division.
  4. Trees located in the visibility triangle area.

5. Any tree that 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 re-establish and maintain reliable utility service.
6. Any tree that is diseased, damaged beyond the point of recovery, or in danger of falling as determined by the development review committee prior to the removal of the tree. The removal of a diseased tree by the city or an individual is required to reduce the chance of spreading the disease to adjacent healthy trees.
7. Any tree determined to be causing a danger or be in hazardous condition as a result of a natural event such as a tornado, storm, flood or other act of God or that endangers the public health, welfare or safety and requires immediate removal.
8. Clearing of under story trees necessary to perform soil borings, boundary surveying of real property or to conduct tree surveys or inventories as long as the clearing for surveying shall not exceed a width of two feet for general survey (i.e. of easement boundary, etc.) and eight feet for survey of property boundary lines and any tree having a ten-inch dbh or greater shall not be removed under this exemption during such boundary or general surveying.
9. Capital improvement projects awarded prior to the effective date of this division.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

Secs. 9.207.4--9.207.8. Reserved.

**Sec. 9.207.9. Permit required.**

- A. The clear-cutting of land as defined in this division is prohibited, and all permits for tree removal shall be subject to this division (see section 9.207.32, Exhibit B).
- B. A tree removal permit is required for all non-single family residential lots.
- C. No person, directly, or indirectly, shall cut down, destroy, remove or move, or intentionally destroy or damage any protected/quality tree without first obtaining a tree removal permit and complying with the requirements of this division.
- D. No grading or tree removal shall take place on any undeveloped property subject to this division without obtaining a tree removal permit.
- E. No heavy equipment shall be moved onto a site prior to all applicable permits being issued.

- F. All trees not listed as a protected/historic or protected/quality tree within this division may be removed with a permit.
- G. Selective thinning, when done in a professionally acceptable manner, shall be allowed as a single permit upon approval of the development review committee. Approval will only be granted when it is determined that the selective thinning is being done in a manner that would enhance the environment and likelihood of survival for the remaining trees.
- H. Where protected/quality tree removal is allowed through exemption or by a tree removal permit and the root system is intertwined with protected/quality trees that are intended to be saved, the tree shall be removed by flush cutting with the natural level of the surrounding ground. Where stump removal is also desired, stump grinding shall be allowed, or upon approval of the city, a trench may be cut between the two trees sufficient to cut the roots near the tree to be removed, thereby allowing removal of the remaining stump without destruction of the root system of the saved tree(s).

(Ord. No. 2005-08-06, § 2, 8-15-2005)

#### **Sec. 9.207.10. Preservation.**

The following shall apply unless an application for relief is filed and approved under section 9.207.18:

- A. Any tree or tree stand designated as a protected/historic tree shall be preserved.
- B. Any tree designated as a protected/quality tree shall be preserved unless mitigated under the requirements of section 9.207.20 below.
- C. A notation shall be placed on the site plan or final plat identifying each protected/quality tree and each protected/historic tree required to be preserved under this section. The notation shall limit any future unauthorized land disturbing activity or construction that would impact and/or damage the tree(s) to be preserved or protected.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

#### **Sec. 9.207.11. Requirements for new developments.**

All projects/developments that have not submitted final plat/construction plans, site plan or building permit, whichever is applicable, as of the effective date of this division shall be subject to the requirements for tree protection and replacement specified herein. Approval of development plans for compliance with this division may be by city council,

planning and zoning commission, development review committee, or city staff, whichever is applicable by city regulations.

A. Single-family residential subdivision developments.

1. A developer shall submit a tree survey showing all protected/historic and protected/quality trees as defined in this division and an aerial photo of the property showing tree coverage. An overlay of the proposed development showing all improvements including rights-of-way, easements, lot patterns, etc., shall be superimposed on the tree survey. This document shall be provided with the submittal of a concept plan for zoning, development plan, zoning exhibit, preliminary plat, or final plat, whichever occurs first. Any subsequent changes to the plans shall be accompanied by a revised tree survey showing the changes/revisions. The tree survey, aerial photo and plan overlay shall be to the scale of a minimum of one inch equals 100 feet (1"=100'). If the scale is impractical for the project, alternatives may be considered by the development review committee.
2. The requirement of a tree survey may be appealed to the tree board. If sufficient information is provided to review the various provisions of this division and the board determines that a tree survey is not necessary, this requirement may be waived by the board. The tree board shall make the final decision on whether a tree survey is necessary for a development.
3. The development review committee may recommend a revised lot layout following the review of the tree survey. All trees within street rights-of-way, utility or drainage easements as shown on an approved final plat/construction plans as approved by the city may be removed following the execution of a development agreement and approval of a tree protection plan by the city manager or his/her designee and shall be exempt from the tree protection and replacement requirements specified herein. All other tree removal activity shall be in conjunction with a building permit for individual lots and shall conform to the requirements of this division.
4. The developer may request from the development review committee to perform lot grading and pad site preparation following the clearing of rights-of-way and easements and prior to the issuance of building permit(s). In order for the development review committee to consider the request for pad site grading in advance of issuance of a building permit, a tree survey as defined in subsection (a), and a tree removal plan shall be submitted. The tree removal plan shall reflect the areas for proposed tree removal necessary to provide for a finished pad site and a minimum finished floor elevation of the slab. For purposes of initial tree removal, the maximum area of proposed pad site for residential lots as shown on a grading plan shall not exceed 150 percent of the minimum dwelling unit allowed in the zoning district. The development review committee may also grant permission for trees in other areas such as proposed ponds,

amenity center, etc., to be removed at the time of right-of-way clearing. The decision of the tree board on granting the request for advance lot grading shall be final.

B. Non-single-family residential development.

1. A tree survey showing all protected/historic and protected/quality trees as defined in this division, an aerial photo of the property showing tree coverage, and all proposed improvements shall be submitted with an application for zoning, platting, or site plan as appropriate.
2. A tree removal permit is required for all non-single-family residential developments and may be obtained in conjunction with a building permit or as a separate permit.
3. Street, alley and mews trees shall be counted towards tree replacement requirements hereunder.
4. All trees planted as trees capes or lawn ornamentation shall be credited 1:1 to the developer or builder as an offset for any additional trees allowed to be removed hereunder and that fall under this division.
5. Preserved tree stands of five acres or more shall be placed within a conservation easement. The conservation easement shall be located on the preliminary plat, final plat, site plan, and overlay district plan as may be required under the 720 Corridor overlay district regulations. The property located within the easement shall be maintained by a special district, if any, property owner or other body as approved by the city manager or his/her designee.

C. Requirements for agricultural property. The owner of property being actively used for agricultural purposes shall be permitted to remove up to seven protected trees per calendar year with a permit. It is not the intent of this division to prohibit the clearing of land to be for a legitimate, agricultural use. The property owner shall request from the city manager to make an on-site inspection of the property to be cleared and provide the city with the purpose and reason for the clearing. If the city manager or his/her designee determines the clearing of land to be for a legitimate, agricultural reason, the city will issue a tree removal permit. The decision of the city manager may be appealed to the tree board.

D. Requirements for municipal/public domain property, rights-of-way and easements.

1. All construction and maintenance activities within municipal/public domain property, rights-of-way or easements by the city, county, school districts, state or other governmental entity, franchise utility companies, cable providers, telecommunication providers or other entities shall be subject to the requirements for tree protection and replacement specified herein.

2. A tree removal permit shall not be required and trees may be removed within the public right-of-way and utility easements by an appropriate representative of a party listed under subsection (e)(1). However, no construction or maintenance activity shall begin until construction plans showing protected trees to be removed and the limit of construction activity have been approved by the city manager or his/her designee.
3. The city shall administer a plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees in municipal/public domain property.
4. A list of trees acceptable for planting along streets, within parks or other public areas or for replacement and mitigation is contained in section 9.207.32, Exhibit I. Trees other than those listed as acceptable may be planted only upon approval of the development review committee.
5. The city shall have the right to plant, prune, and maintain street trees and park trees within the municipal/public domain property as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public properties. The city may remove or cause or order to be removed any tree or part thereof that is in an unsafe condition, or that by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or which is affected with any injurious fungus, insect or other pest.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**Sec. 9.207.12. Permit review and approval process.**

- A. Authority for review. An application for a tree removal permit shall be submitted to the building official for building permit purposes or city manager for infrastructure improvements, grading or drainage purposes, whichever is applicable during the construction process (see section 9.207.32, Exhibit B).
- B. The development review committee shall be responsible for the review and approval of all requests for tree removal permits submitted in accordance with the requirements specified herein.
- C. The development review committee may defer the approval of a tree removal permit to the tree board for any reason. The decision of the tree board shall be final.
- D. Any decision made by the development review committee may be appealed to the tree board. The decisions of the tree board shall be final.
- E. The city shall establish administrative procedures necessary to facilitate the implementation and enforcement of this division.

- F. A request for a tree removal permit must be submitted and approved prior to the removal of any protected tree in the city unless the tree is exempt under a provision of this division.
- G. All tree removal permits shall be accompanied by a payment made to the city in the amount specified in the city's fee schedule contained in this Code.
- H. An aerial photo of the property showing tree coverage and a tree survey of all protected/historic and protected/quality trees shall be submitted with any tree removal permit as determined by the development review committee and must include the items referenced in this division and its appendices.
- I. Permits for tree removal issued in connection with a building permit or site plan shall be valid for the period of that building permit's or site plan's validity. Permit(s) for tree removal not issued in connection with a building permit or a site plan shall become void 180 days after the issue date on the permit. Upon expiration, a new permit shall be required.
- J. The development review committee or the tree board shall grant a tree removal permit based on the following criteria:
  - 1. Whether or not a reasonable accommodation or alternative solution can be made to accomplish the desired activity without the removal of the tree;
  - 2. The cost of preserving the tree as a factor of the project's cost;
  - 3. Whether the tree is worthy of preservation;
  - 4. The effect of the removal on erosion, soil moisture, retention, flow of surface waters, and drainage systems;
  - 5. The need for buffering of residential areas from the noise, glare, and visual effects of non-residential uses;
  - 6. Whether the tree interferes with a utility service;
  - 7. Whether the proposed tree replacement pursuant to the tree replacement requirements hereof adequately mitigates the removal of the tree; and
  - 8. Any other factors deemed to be in the interest of preserving or protecting the health, safety and welfare of the City of Oak Point and its citizens.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

Secs. 9.207.13--9.207.17. Reserved.

**Sec. 9.207.18. Tree preservation relief provisions.**

- A. The purpose of this provision is to allow a determination of whether the application of the regulations of this division as applied to a tree removal permit application and related development applications would, if not modified or other relief granted, may unreasonably burden the development of the property.
- B. An applicant may request relief from all or a part of the requirements of this division if application of such requirements would, if not modified or other relief granted, unreasonably burden the development of the property. Such request must be made at the time that a tree removal permit would be requested hereunder.
- C. Criteria for approval. In deciding whether to grant relief to the applicant, the development review committee, planning and zoning commission and city council shall consider whether there is any evidence from which it can reasonably conclude that the application of all or a part of the provisions of this division may deprive the applicant of all economically viable use of the property, based on the following factors:
  - 1. Whether there is a unique physical circumstance on the property.
  - 2. Whether the proposed design has minimized the loss of trees to the extent possible.
  - 3. Whether preservation and/or mitigation unduly burdens the development of the property.
- D. The decision of the city council is a final determination.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**Sec. 9.207.19. Incentives for tree preservation.**

- A. *Parking spaces.* For every 12 dbh of protected/quality tree(s) that have been protected on site, beyond the minimum requirements, one parking space may be added to or subtracted from the required number of parking spaces up to a 15 percent increase or decrease. Upon the approval of the development review committee, a waiver of up to 30 percent may be granted.
- B. *Parking lot design.* The development review committee may allow parking lot design and parking lot landscaping requirements to vary from adopted standards to preserve existing trees.

C. *Subdivision design.* The following incentives may be approved by the development review committee and tree board and must be commensurate with the quality and character of the trees to be preserved:

1. Block length may be increased up to 25 percent.
2. Cul-de-sac length may be increased up to 25 percent.
3. Alternative sidewalk locations.
4. Offset street location within a right-of-way.

D. *Other incentives.* The employment of the following incentives must be approved by city council and must be commensurate with the quality and character of the trees to be placed within a conservation easement or otherwise conserved and the extent to which the preserved land contributes to the preservation of the remnants of the Cross Timbers Forest. Incentives may include, but are not limited to:

1. Fee waivers or credits;
2. Reduced park land dedication requirements;
3. Tax abatements;
4. Tax increment financing;
5. Chapter 380 grant of money;
6. Transfer of development rights; and/or
7. Purchase of development rights--purchase by government or trust.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**Sec. 9.207.20. Tree replacement requirements.**

A. In the event that it is necessary to remove a protected tree as specified in this division, the party removing the tree shall be required to submit a mitigation plan to replace the protected trees being removed with replacement trees as authorized in section 9.207.32, Exhibit I. The mitigation plan shall provide for a 1:1 caliper inch ratio of protected/quality trees removed on a property. Tree replacement may take place on the same lot that tree removal took place or within the development that tree removal took place. A deposit of a minimum of \$100.00 per caliper inch shall be made into a tree mitigation fund if the above options are not feasible, and money in lieu of planting is approved by the tree board. A sufficient number of trees shall

be planted to equal or exceed the diameter (measured at 4.5 feet) above ground level of each tree removed. This mitigative measure is not meant to supplant good site planning. Tree replacement will be considered only after all design alternatives, which could save more existing trees, have been evaluated and reasonably rejected. Said replacement trees shall be a minimum of three-inch diameter (measured at one foot above ground) and seven feet in height when planted.

- B. At the time of review, the agent responsible for placement, the time of replacement and the location of the new trees will be determined by the development review committee. The replacement trees shall be located on the same property that trees were removed. If the tree board approves the planting of replacement trees more than 30 days after the removal of protected trees, the applicant shall provide the city manager with an affidavit that all replacement trees will be planted within six months. A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree in compliance with this division.
- C. Tree mitigation fund. The applicant may make a payment into the tree mitigation fund to be administered by the city in lieu of planting the replacement tree on the subject site if approved by the tree board. The funds shall be used only for purchasing, planting and maintaining trees on public property, acquiring wooded property that shall remain in a naturalistic state in perpetuity, or to educate citizens and developers on the benefits and value of trees.
  - 1. The amount of the payment required for each replacement tree shall be calculated based on a schedule, which sets forth the average cost of a quality tree added to the average cost of planting a tree based on the schedule published by the International Society of Arboriculture but not less than \$250.00 per caliper inch. The schedule may be periodically updated by the city without changing this division.
  - 2. Fees contributed to the tree mitigation fund shall be paid prior to the issuance of a tree removal permit, building permit, approval of site plan, or approval of final plat, whichever applies.
  - 3. Voluntary contributions for tree preservation shall be placed in the tree mitigation fund.
- D. Tree trusts.
  - 1. Areas of a minimum of one acre that have the characteristics of Cross Timber Forests are eligible to be classified as a tree trust.
  - 2. Designation of a tree trust and use of such tree trust to satisfy the tree replacement requirements of this section shall be approved by the development review committee.

3. Tree trusts shall be preserved with a permanent easement that shall limit any future land disturbing activity or construction that would impact and/or damage the tree(s) and shall run with the land and be binding upon all successors and assigns of the current owner. Methods for the long-term conservation of said trees may include permanent conservation easements, restrictive covenants, or other such legal mechanisms.
4. Trees that are required to be preserved in compliance with other development regulations shall not be credited towards the tree trust.
5. Areas that are undevelopable, including, but not limited to, undeveloped floodplain, wetlands and riparian areas, shall not be designated as tree trusts.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**Sec. 9.207.21. Tree transplantation.**

The city may request to enter a property following the approval of a tree removal permit or development plans for a property to inspect the site for any trees marked for removal that may be transplanted. The city will pay all costs associated with the removal and transplantation of designated trees to public parks, public facilities or public rights-of-way.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**Sec. 9.207.22. Tree protection.**

A major purpose of this division is to protect all protected/quality trees, which are not required to be removed, to allow approved construction to occur. The following procedures are required:

- A. All construction plans shall include the necessary documents as requested by the development review committee to review the tree preservation plan.
- B. 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:
  1. *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. However, this restriction shall not apply to material storage in areas exempt from the tree protection and replacement requirements (e.g., building pad, driveway, patios, parking lot, etc.)

2. *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 includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.
  3. *Tree attachments.* No signs, wires or other attachments, other than those of a protective nature, shall be attached to any protected tree. Fencing attached to a tree via "U" nails or bent nails when only at points of tangency with the trees are allowed.
  4. *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 the critical root zone for purposes of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance or emergency restoration of utility service or routine mowing operations.
  5. *Grade changes.* No grade changes shall be allowed within the limits of the critical root zone of any protected tree unless adequate construction methods are approved by the development review committee or if grading is as directed by the city's engineer.
  6. *Impervious paving.* No paving with asphalt, concrete or other impervious materials in a manner that may reasonably be expected to kill a tree shall be placed within the limits of the critical root zone of a protected tree. If a protected tree dies within five years of issuance of a certificate of occupancy for non-residential construction or final building inspection for residential construction, due to construction activity or impervious paving around the critical root zone of the tree, the property owner shall submit a mitigation plan and tree replacement in accordance with this division shall be required.
- C. A protected tree shall be considered to be preserved only if a minimum of 75 percent of the critical root zone is maintained at undisturbed natural grade and no more than 25 percent of the canopy is removed due to building encroachment.
- D. The following procedures shall be followed on all types on construction projects (i.e. residential subdivisions, commercial, multi-family, residential builders and municipal/public).
1. *Tree flagging or marking.* Trees that are shown on an approved plan by the city for preservation/protection shall be flagged with bright fluorescent orange vinyl tape or ribbon wrapped around the main trunk at a height of four and one-half feet or more such that it is very visible to workers operating construction equipment. Trees that are marked for preservation/protection shall have protective fencing in accordance with the requirements of this division.

2. Protective fencing. In those situations where a protected tree is so close to the construction area that construction equipment might infringe on the root system or is within 20 feet of the construction area, a protective fencing shall be required between the outer limits of the critical root zone of the tree and the construction activity area. Four feet high protective fencing shall be supported at a maximum of ten feet intervals by approved methods. All protective fencing shall be in place prior to commencement of any major site work involving heavy equipment for construction of utilities and roadways and shall remain in place until all site work has been completed. This provision does not apply to clearing the right-of-way for the purpose of access to the site for site preparation.
3. Protective fencing shall not be required for clearing the rights-of-way for the purpose of access to the site. Once the site is accessible by heavy equipment, protective fencing shall be placed in accordance with this division.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

### **Sec. 9.207.23. Tree pruning restrictions.**

No protected tree shall be pruned in a manner that significantly disfigures the tree or in a manner that would reasonably lead to the death of the tree.

- A. *Allowed pruning.* Protected trees may be strategically pruned to allow construction or demolition of a structure. All pruning shall take place in accordance with approved arboricultural techniques and the recommendations of section 9.207.32, Exhibit G. Reasonable pruning of trees also may be performed or contracted to be performed by the owner of the tree when unrelated to construction activity.
- B. *Required pruning.* The owners of all trees adjacent to public right-a-way shall be required to maintain a minimum clearance of 13.5 feet above the traveled pavement or curb of a public street. Said owners shall also remove all dead, diseased or dangerous trees, or broken or decayed limbs that constitute a menace to the safety of the public. The city shall also have the right to prune trees overhanging within public right-of-way that interfere with the proper spread of light along the street from a street light or interfere with visibility of any traffic control device or sign or as necessary to preserve the public safety.
- C. *Tree topping.* It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this division at the determination of the city.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**Sec. 9.207.24. Tree planting restrictions.**

- A. *Overhead lines.* Any required replacement trees shall not be planted within an area such that the mature canopy of the tree will be within ten feet of overhead utility lines.
- B. *Underground utilities.* Any required replacement trees or street trees shall not be planted within five feet of underground public utility lines, including water lines, sewer lines, transmission lines or other utilities. No trees may be planted within five feet of a fire hydrant.
- C. *Street corners.* No street tree shall be planted closer than 25 feet of any street corner, measured from the point of nearest intersecting curbs or curb lines.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

Secs. 9.207.25--9.207.29. Reserved.

**Sec. 9.207.30. Enforcement.**

- A. *Permit required.* No development or grading activity shall commence until all applicable requirements of this division are met and a notice to proceed or a tree removal permit has been issued for the site. The building official or other authorized representative of the city shall have the authority to place a stop work order on any activity involving the removal of protected/quality trees, protected/historic trees, or that may otherwise endanger trees contrary to the provisions of this division.
- B. *Acceptance of improvements.* No acceptance of public improvements shall be authorized until it is determined that all requirements of this division are met and all fines for violations of this division have been paid to the city or otherwise disposed of through the municipal court. No acceptance of public improvements shall be authorized until all replacement trees have been planted or appropriate payments have been made to the tree mitigation fund.
- C. *Certificate of occupancy.* No certificate of occupancy for non-residential construction or final building inspection for residential construction shall be issued until it is determined that all requirements of this division are met and all fines for violations of this division have been paid to the city or otherwise disposed of through the municipal court. No certificate of occupancy shall be issued until all replacement trees have been planted or appropriate payments have been made to the tree mitigation fund.
- D. Notwithstanding the above provisions, public improvements may be accepted and certificate of occupancy may be issued before all trees have been replaced if an

escrow account is established by the city in the amount equal to the prevailing rate for installed trees with a two-year guarantee, plus 15 percent to cover administrative costs.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**Sec. 9.207.31. Penalty.**

- A. *Penalty for unauthorized removal of protected/quality trees.* Any person, firm, corporation, agent, or employee thereof who violates the provisions of this division by removing a protected/quality tree without a permit shall be guilty of a misdemeanor and, upon conviction hereof, shall be fined in an amount not to exceed \$250.00 per diameter inch of the tree(s) removed or damaged. Funds paid to the city as tree removal penalties shall be deposited in the tree mitigation fund and used by the city to provide and/or support supplemental landscape plantings in public areas of the city.
- B. *Penalty for unauthorized removal of protected/historic trees.* Any person, firm, corporation, agent, or employee thereof who violates the provisions of this division by removing a protected/historic tree without a permit shall be guilty of a misdemeanor and, upon conviction hereof, shall be fined in an amount not to exceed \$750.00 per diameter inch of the tree(s) removed or damaged. Funds paid to the city as tree removal penalties shall be deposited in the tree mitigation fund and used by the city to provide and/or support supplemental landscape plantings in public areas of the city.
- C. A person firm, corporation, agent, or employee thereof [who] violates any other provisions of this division shall be guilty of a misdemeanor and upon conviction hereof shall be fined in an amount not to exceed \$500.00 for each incident. The unlawful injury, destruction or removal of each protected tree shall be considered a separate incident and each incident subjects the violator to the maximum penalty set forth herein per tree.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**Sec. 9.207.32. Tree preservation exhibits.**

It is anticipated that the following exhibits will be changed periodically by the development review committee in response to changes in the administration of this division.

(Ord. No. 2005-08-06, § 2, 8-15-2005)

**EXHIBIT A**

## PROTECTED/HISTORIC TREES AND PROTECTED/QUALITY TREES

### Protected/Historic Trees--6" Caliper and Greater

TABLE INSET:

Common Names	Botanical Names
Blackjack Oak	Quercus marilandica
Post Oak	Quercus stellata

### Protected/Quality Trees--6" Caliper and Greater

TABLE INSET:

Common Names	Botanical Names
Oak (All species)	Quercus spp.
Pecan	Carya Illineonsis
Cedar Elm	Ulmus crassifolia
American Elm	Ulmus Americana
Lacebark Elm	Ulmus parvifolia
Winged Elm	Ulmus alata
Bitter-nut Hickory	Carya cordiformis
Black Hickory	Carya texana
Red Hickory	Carya ovalis
Texas Hickory	Carya texana
Red Cedar	Juniperus virginiana
Texas Ash	Fraxinus texensis
Green Ash	Fraxinus pennstlvanica
Black Walnut	Juglans nigra
Sycamore	Platanus occidentalis
Sweet Gum	Liquidambar styraciflua
Honey Mesquite	Prosopis glandulosa
Sugar-Berry	Celtis laevigata

### Protected/Quality Trees--Under Story Trees

TABLE INSET:

Common Names	Botanical Names
--------------	-----------------

Redbud	Cercis Canadensis
Mexican Plum	Prunus mexicana
Deciduous Holly	Ilex decidua
Yaupon Holly	Ilex vomitoria
Possumhaw Holly	Ilex decider
Eves Necklace	Sophora affinis
Texas Persimmon	Diospyros texana
Rough-leaf Dogwood	Cornus drummondii
Chicksaw Plum	Prunus augustifolia
Little False Bluestem	Schizachyrium scoparium

**GRAPHIC LINK:**Figure 1. Exhibit B

## EXHIBIT C

### CONSTRUCTION PLAN REQUIREMENTS

The following shall be required as a part of all construction plans submitted to the city when tree removal or tree protection is required during any phase of site work or construction:

1. A Tree Preservation Detail Sheet shall include the following at a minimum:
  - a. The requirements of section 9.207.23 (Tree Pruning Restrictions) shall be noted.
  - b. A graphics legend to be used throughout the plans for the purposes of showing the following: Trees to be flagged, protective fencing, trees requiring bark protection, boring, areas of cut and fill impacting protected/quality trees.
  - c. Graphic tree exhibit showing the features of a tree to include the critical root zone, trunk, canopy, drip line, and method of caliper measurement (See Exhibits D & E).
  - d. Graphic exhibits showing methods of protection to include snow fences, boarded skirts, etc.
  - e. Graphic exhibits showing construction methods to include grade changes, boring, trenching, etc.
  - f. Graphic exhibits showing appropriate pruning practices (See Exhibit G).

2. All requirements of the Tree Preservation section within this Division shall be shown graphically as needed on the construction plans.

**GRAPHIC LINK:Figure 2. Exhibit D**

**GRAPHIC LINK:Figure 3. Exhibit E**

**GRAPHIC LINK:Figure 4. Exhibit F**

**GRAPHIC LINK:Figure 5. Exhibit G**

**GRAPHIC LINK:Figure 6. Exhibit H**

## EXHIBIT I

### REPLACEMENT TREE LIST

TABLE INSET:

<b>Ornamental Trees (10 to 25 feet)</b>	
American Holly*	Ilex opaca
Arborvitae	Thuja orientalis
Arizona Cypress	Cupressus arizonica
Cherry Laurel	Prunus caroliniana
Chinese Photinia	Photinia serrulata
Crepe Myrtle	Lagerstroemia indica
Oleander	Nerium oleander
Possumhaw*	Ilex deciduas
Russian Olive*	Eleagnus angustifolia
Texas Persimmon	Diospyros texana
Vitex*	Vitex agnus-castus
Wax Myrtle*	Myrica cerifa
Yaupon Holly*	Ilex vomitoria
<b>Small Trees (20 to 35 feet)</b>	
Afghan Pine	Pinus eldarica
Chinese Pistache	Pistacia chinensis
Desert Willow*	Chilopsis linearis
Eve's Necklace	Sophora affinis
Japanese Black Pine	Pinus thunbergi
Mexican Plum*	Prunus mexicana

Redbud*	Cercis sp.
Texas Pistache	Pistacia texana
Soapberry*	Sapindus drummondii
<b>Large Trees (above 35 feet)</b>	
Bur Oak*	Quercus macrocarpa
Cedar Elm*	Ulmus crassifolia
Chinquapin Oak	Quercus muhlenbergii
Texas Ash*	Fraxinus texensis
Green Ash*	Fraxinus pennsylvanica
Lace Bark Elm	Ulmus parvifolia
Live Oak	Quercus virginiana
Pecan	Carya illinoensis
Schumard Red Oak*	Quercus schumardii
Texas Red Oak*	Quercus texana

\* Low Water Use

## ARTICLE 3.1200. TREE PRESERVATION

### Sec. 3.1201. Application to building and construction activity.

Any and all building and construction activity within the City of Oak Point shall comply with the tree preservation regulations contained in Division 9.207 of Chapter 9, Subdivisions, of this Code.

(Ord. No. 2005-08-06, § 4, 8-15-2005)

#### App. A. Zoning Map.

**GRAPHIC LINK:** [Oak Point Zoning Map](#)

#### App. B. Table of Permitted Uses

Table 1

Key: • = Allowed use S = allowed use by Specific Use Permit • = not allowed

TABLE INSET:

Residential Uses	RE-5	RE-3	R1	R2	R3X	R4X	MHR	NC
------------------	------	------	----	----	-----	-----	-----	----



Beer & Wine (Off-Premises Consumption Only)								S
Cemetery	S	S	S	S	S	S	S	S
Community/Outreach Center	S	S	S	S	S	S	S	S
Consumer Goods Repair								S
Convenience Store (w/gas pumps)								S
Convenience Store (w/out gas pumps)								•
Daycare/Preschool	S	S	S	S	S	S	S	•
Dry Cleaning Shop								•
Funeral Home/Mortuary								
Government Centers/Services/Offices	S	S	S	S	S	S	S	S
Grocery Store/Food Market								S
Hospital--General Medical	S	S	S	S	S	S	S	S
Medical Emergency Clinic (minor)								•
Medical/Dental/Optical Office								•
Medical Laboratory								
Nursery/Flower Shop								S
Organizational Clubhouses/Lodges	S	S	S	S	S	S	S	S
Park	S	S	S	S	S	S	S	S
Printers/Copying								•
Professional/Non-Inventory Sales/Services								•
Religious or Philanthropic Organizations	S	S	S	S	S	S	S	S
Restaurant								•
Restaurant, with Drive-Through/Drive-In								S
Retail Sales/Services								•
Resale or Secondhand Sales								S
Sale of Mixed Beverages in Restaurants by Food and Beverage Certificate Holders Only								S
School (Private/Parochial)	S	S	S	S	S	S	S	S
School (Public)	S	S	S	S	S	S	S	S
Studio, Instructional/Artistic								•
Veterinary Services (no outside pens)								•
Other Unspecified Uses	S	S	S	S	S	S	S	S
Other Unspecified Commercial Uses								S

(Ord. No. 2005-04-1, § 2, 4-18-2005; Ord. No. 2005-04-7, § 3, 4-18-2005)

## App. C. Approved Landscape Materials

TABLE INSET:

<b>Large/Shade Trees</b>	
Common Name	Botanical Name
Bald Cypress	Taxodium distichum
Bur Oak	Quercus macrocarpa
Cedar Elm	Ulmus crassifolia
Chinese Pistache	Pistachia chinensis
Cinquapin Oak	Quercus muehlenbergii
Common Persimmon	Diospyros virginiana
Escarpment Live Oak	Quercus fusiformis
Lacebark Elm	Ulmus parvifolia
Osage Orange	Maclura pmifera
Pecan	Carya illinoensis
Shumard Oak	Quercus shumardii
Southern Live Oak	Quercus virginiana
Southern Magnolia	Magnolia grandiflora
Sweet Gum	Liquidambar styraciflua
Texas Ash	Fraxinus texensis
Texas Red Oak	Quercus texana

TABLE INSET:

<b>Living Screen</b>	
Common Name	Botanical Name
Burford Holly	Ilex cornuta 'Burfordi'
Cherry Laurel	Prunus caroliniana
Cryptomeria	Cryptomeria japonica
Junipers	Juniperus sp.
NRS Holly	Ilex aquifolium 'Nellie R. Stevens'
Tree Form Holly	Ilex opaca AIT or Ilex perny
Vitex	Vitex agnus-castus
Wax Myrtle	Myrica cerifera
Yaupon Holly	Ilex vomitoria

TABLE INSET:

<b>Ornamental Trees</b>	
Common Name	Botanical Name
Cherry Laurel	<i>Prunus caroliniana</i>
Crape Myrtle	<i>Lagerstroemia indica</i>
Eve's necklace	<i>Sophora affinis</i>
Flame-leaf Sumac	<i>Rhus lanceolata</i>
Flowering crabapple	<i>Malus hybrida</i>
Common Name	Botanical Name
Japanese Black Pine	<i>Pinus thunbergiana</i>
Japanese Maple	<i>Acer Palmatum</i>
Mexican buckeye	<i>Ungnadia speciosa</i>
Oklahoma redbud	<i>Cercis canadensis</i>
Red Buckeye	<i>Aesculus Pavia</i>
Wax Myrtle	<i>Myrica cerifera</i>
Yaupon Holly	<i>Ilex vomitoria</i>

TABLE INSET:

<b>Shrubs</b>	
Common Name	Botanical Name
Abelia	<i>Abelia sp.</i>
Barberry	<i>Berberis sp.</i>
Chinese Photinia	<i>Photinia serrulata</i>
Dwarf Burford Holly	<i>Ilex cornuta</i>
Ebbings Silverberry	<i>Eleagnus x ebbengei</i>
Junipers	<i>Juniperus sp.</i>
Nandina	<i>Nandina domestica</i>
Red-tip Photinia	<i>Photinia x fraseri</i>
Texas Sage	<i>Leucophyllum frutescens</i>
Variegated Chinese Privet	<i>Ligustrum sinense</i>