

# ARTICLE IX TREE PRESERVATION

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## **ARTICLE IX TREE PRESERVATION**

### **SECTION 1 PURPOSE AND APPLICABILITY**

#### **1.1 Purpose**

The purpose of the tree preservation ordinance is the preservation of mature, healthy trees and natural areas and to consider protected trees during the design of streets, alleys, utilities, drainage and proposed structures that are part of any development and to require replacement of trees when removal is necessary. It is intended to protect trees during construction, development and redevelopment, and to control the removal of protected trees when necessary. It also establishes rules for replacement and replanting of trees that have been necessarily removed during construction. The ordinance shall protect any property from indiscriminate clearing and maintain and enhance a positive image as well as attract new business enterprises to the city.

The terms and provisions of this ordinance apply to all real property within the City's corporate limits as follows:

1. All new subdivisions of land at the time of preliminary and or final platting;
2. All replatting of undeveloped land;
3. All unplatted and undeveloped residential tracts of land greater than three (3) acres
4. All unplatted and undeveloped non-residential tracts of land greater than one acre;
5. All non-residential parcels of land at the time of site plan approval.

#### **1.2 Plan Required**

No person, directly or indirectly, shall cut down, destroy, remove or move or effectively destroy through damaging, any protected or feature tree situated on a property regulated by this ordinance without first submitting and receiving approval of a treescape plan unless otherwise specified in this ordinance.

#### **1.3 Builders/Contractors**

All builders/contractors should verify if there is a treescape plan approved on a parcel of land before work begins. All builders /contractors who have not submitted a request for a building permit as of the effective date of this ordinance are subject to the requirements herein.

## **SECTION 2      EXEMPTIONS**

Tree protection and replacement requirements shall **not** be required if the following conditions exist.

- A. **Agricultural.** Property zoned Agricultural (AG) and being actively used for agricultural purposes shall be exempt from the requirements specified herein. Clear-cutting of land, as defined herein, zoned Agricultural (AG) that is not being actively used for agricultural purposes is prohibited.
- B. **Damaged/Diseased Trees.** The tree is dead, diseased, damaged beyond the point of recovery, or in danger of falling.
- C. **Homeowners.** The owner of a residence shall be exempt from the tree protection and replacement requirements of this ordinance as it pertains to that property on which the home is located.
- D. **Public Safety.** The tree creates unsafe vision clearance or conflicts with other ordinances or regulations, or the tree is determined to be in a hazardous or dangerous condition so as to endanger the public health, safety or welfare.
- E. **Utility Service Interruption.** The tree has disrupted a public utility service due to tornado, flood or other act of God. Removal shall be limited to the part of the tree which is found necessary to be removed to reestablish and maintain the utility service.
- F. **Utility Companies, Utility Service and or Distribution/Transmission Lines.** Utility companies shall not be subject to the tree protection or replacement requirements in this ordinance when establishing distribution and transmission lines. When establishing new utility service, services should be routed between the service pole or transmission and distribution lines and the building being served in a manner that does not require the removal of protected trees. All rights of ways, easements or similar types of public property maintained by utility companies shall not be subject to the tree protection or replacement requirements in this ordinance.
- G. **Public Property.** All rights of ways, easements or similar types of public property maintained by the City shall not be subject to the tree protection or replacement requirements in this ordinance.

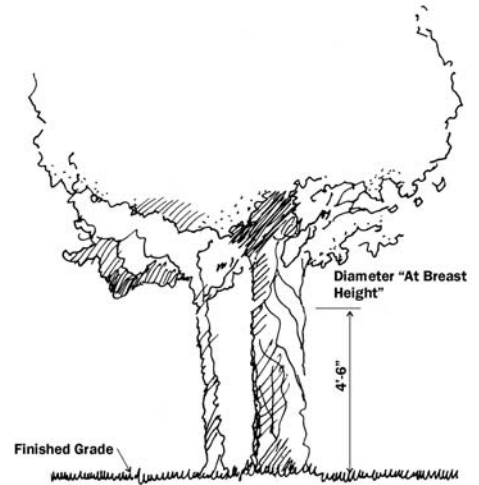
### SECTION 3     DEFINITIONS

**BUILDABLE 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, driveway, parking lot, pool and other construction as shown on a site plan.

**BUILDING PAD.** The actual foundation area of a building and a reasonable area around the foundation necessary for construction and grade transitions.

**CONSTRUCTION DRAWINGS.** Engineering or architectural drawings which have been prepared by an authorized individual and approved by the authorized authority, that describe in detail by measurements and specifications the method and manner in which a building, structure, utility, street or physical alteration to land or structure is to be accomplished.

**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 but not less than one foot radius for each one inch dbh.



**CLEAR-CUTTING** The removal of all trees or a significant majority of the trees within an area.

**DIAMETER AT BREAST HEIGHT (DBH).** The diameter in inches of a tree as measured through the main trunk at a point four and one-half feet (4.5') above the natural ground level.

**DRIP LINE.** A vertical line run through the outermost portion of the crown of a tree and extending down to the ground.

**FEATURE TREE.** Any Oak, Pecan or Elm that has a DBH of four (4) inches or greater or any tree that has a DBH of thirty (30) inches or greater. Feature trees may not be removed without approval of the Planning and Zoning Commission. Feature trees shall not include the following species: Bois d'Arc, Willow, Cottonwood, Locust and Chinaberry.

**LIMITS OF CONSTRUCTION.** A delineation on the treescape plan which shows the boundary of the area within which all construction activity will occur.

**PROTECTIVE/TEMPORARY FENCING.** Snow fencing, chain link fencing, orange vinyl construction fencing or similar fencing with a four (4') foot approximate height. The Director of Planning and Zoning, or his designee, shall determine the appropriate type of fencing for any particular property or portion thereof.

**REPLACEMENT TREE.** A tree from the replacement tree list with a minimum caliper size of three inches (3") and height of seven feet (7'). For the purpose of determining size, Replacement Trees should be measured at a point six (6") above the ground.

**TREE.** Any self-supporting woody perennial plant which will attain a trunk diameter of three inches (3") DBH and normally attains an overall height of at least fifteen (15)

## **Definitions**

### **Article IX. Tree Preservation**

feet at maturity, usually with one (1) main stem or trunk and many branches. It may appear to have stems or trunks as in several varieties of oaks.

**TREE, PROTECTED.** A tree which has a diameter of four inches (4") DBH or larger. The diameter of a multi-trunk tree shall be determined by adding the total diameter of the largest trunk at DBH to one-half the diameter of each additional trunk. Protected or feature trees shall not include the following species: Bois d'Arc, Willow, Cottonwood, Locust and Chinaberry. In addition, Hackberry and Cedar trees that are less than 11" DBH shall not be considered a protected tree.

**TREESCAPE PLAN.** A graphic representation drawn to the largest scale practical showing the exact location, size (trunk diameter and height) and common name of all protected and feature trees and indication of which trees are to be removed and or replaced. The treescape plan should include the following:

1. Location of all existing or proposed structures, or building pads as shown on the grading plan and all improvements properly dimensioned and referenced to property lines.
2. Setback and yard requirements.
3. Existing and proposed site elevations, grades, major contour and limits of construction.
4. Location of existing or proposed utilities and easements.
5. Location of all protected trees and trees to be removed from the site and the location of all replacement trees.
6. Columnar listing of all protected trees by species, location key shown on the plat, diameter breast height (DBH), physical condition of tree, and an indication of whether or not the applicant is proposing to remove that tree. Each column with numeric values shall be totaled.
7. Title block stating street address, lot and block, subdivision name, and date.
8. Name, address, and phone number of person preparing the plan.

## **SECTION 4 PLAN REVIEW AND APPROVAL**

### **4.1 Authority of Review and Approval**

The Director of Planning or his/her designee will review the treescape plan, report and make recommendations to the Planning and Zoning Commission. As part of the treescape plan review, the City has the right to request changes or adjustments in the layout and design of the development to save protected and feature trees. The Planning and Zoning Commission will review and approve or disapprove the treescape plan. The decision of the Planning and Zoning Commission may be appealed to the City Council.

### **4.2 Treescape Plan Application Required/Application Process**

Consideration of a treescape plan shall be obtained by making application to the Director of Community Development or his/her designee. The application and treescape plan shall be accompanied by a written document indicating the reasons for removal of any protected trees. The required treescape plan will accompany all preliminary plats, final plats, site plans and landscape plans. In those instances where very few protected trees exists on a property, the treescape plan can be incorporated and shown on the preliminary plat, site plan or landscape plan and the fee can be waived at the discretion of the staff.

### **4.3 No Protected Trees**

For property being platted or site planned, the property owner may submit a letter certifying that there are no protected trees on the property. This letter will be submitted with the understanding that if it is determined that there are protected trees on the property, the violation provisions and fines adopted as part of this ordinance will be in full force and effect.

### **4.4 Appeals**

Decisions of the Planning and Zoning Commission may be appealed to the City Council.

### **4.5 Treescape Plan Expiration**

Plans shall be valid for two (2) years after the approval date. Treescape plans which are approved in conjunction with preliminary plats, final plats, site plans, or building permits shall be valid for the same amount of time as those corresponding plans and permits.

### **4.6 Building Permit**

All builders/contractors should determine if there is an approved treescape plan before work begins on a parcel. The City will verify this statement. No building permit shall be issued unless the applicant signs an application for permit request which states that all construction activities shall meet the requirements of the tree preservation ordinance. Before issuing the building permit, the City shall obtain a signature from applicant acknowledging receipt of the Tree Preservation Ordinance.

## **SECTION 5 TREE REMOVAL PERMIT**

### **5.1 Tree Removal Permit**

Once a treescape plan is approved, a tree removal permit will be required under the following conditions:

- A. If it is determined by the property owner that a protected tree needs to be removed; except as covered in Section 2.C Exemptions.
- B. An addition to an existing non-residential structure requires that a protected tree be removed.

Tree removal permits will be approved administratively by the Director of Planning and Zoning or his/her designee. Feature trees may not be removed without approval of the Planning and Zoning Commission. All trees removed through this process will require replacement as described in Section 6 below.

## **SECTION 6 TREE REPLACEMENT & PLANTING REQUIREMENTS**

If it is necessary to remove protected or feature tree(s), the applicant as condition of approval will be required to replace the tree(s) being removed with trees selected from the list of approved trees on the replacement tree list. Replacement trees must be a minimum of 3 caliper inches measured 6" above the root ball when planted. The following replacement rules apply:

- A. Protected tree(s) measuring 4" through 29" DBH shall be replaced with caliper inches equal to the total diameters of the tree(s) removed, except as shown in item F below.
- B. Protected feature tree(s) (30" DBH and larger) if approved for removal will be replaced with twice the number of inches as the tree(s) removed.
- C. The replacement tree must be maintained in a healthy growing condition for a minimum of 2 years after planting.
- D. A replacement tree shall not be planted within an area such that the mature root zone will interfere with underground public utility lines, and/or where the mature canopy of the tree will interfere with overhead utility lines.
- E. No tree shall be planted within 5' of a fire hydrant, water or sewer line.
- F. Hackberry and Cedar trees that are 11" DBH or larger, shall be replaced at 50% of the total caliper inches being removed. Protected or feature trees shall not include the following species: Bois d'Arc, Willow, Cottonwood, Locust and Chinaberry. In addition, Hackberry and Cedar trees that are less than 11" DBH shall not be considered a protected tree.



## **SECTION 7      TREE REPLACEMENT CREDITS**

Tree replacement credits may be granted to reduce the number of replacement inches required. The following guidelines apply.

- A. **Preservation Credits.** Each saved oak (any type), pecan or elm tree(s) 24" DBH or greater will earn a credit. The maximum credit under this provision is 20% of the total replacement inches in the development.
- B. **Locations for Planting Replacement Trees.** The preferred location for the planting of replacement trees is the development from which trees were removed. However, if the site is too small to accommodate the number of replacement trees required, credits can be earned for trees planted elsewhere within the corporate City limits. Credit on an inch-per-inch basis will be granted for trees planted in parks, medians, street rights-of-way, or other areas determined by the Parks and Recreation Department. The location shall be within one mile of the area where the trees are being removed.
- C. **Purchase of Credits.** Tree replacement credits not exceeding 20% of the total replacement inches can also be purchased. Payments of \$125 per caliper inch may be paid to the City of Rockwall Tree Fund. Funds will be used for planting of trees, but not limited to City parks, medians, and along street rights-of-way more than one mile from the area where the trees are being removed. Replacement credits purchased in a private community development with no public streets or parks can be used for the planting of trees elsewhere in that development.
- D. **Types of Trees.** Replacement trees shall be selected from the following list and shall be a minimum of 3 caliper inches as measured 6" above the root ball.

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<b>Evergreen:</b>	Afghan Pine Eastern Red Cedar Japanese Black Pine Live Oak Magnolia
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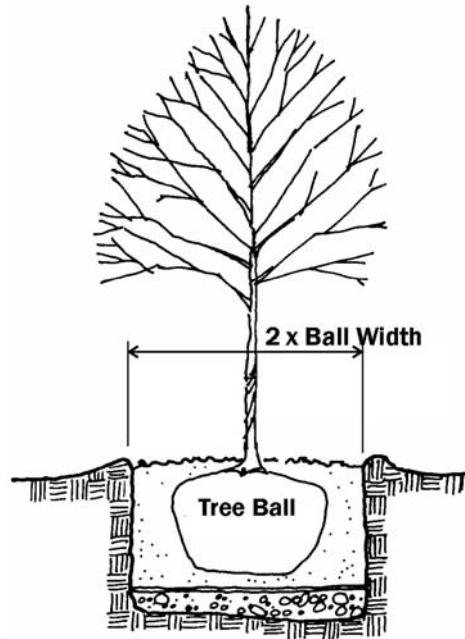
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<b>Deciduous:</b>	Bald Cypress Burr Oak Cedar Elm Chinese Pistachio Chinquapin Oak Eve's Necklace Lace Bark Elm Aristocrat Pear Pecan Sweet Gum Sycamore Texas Ash Texas Red Oak Possumhaw Holly
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**SECTION 8 TREE TRANSPLANTING**

Existing trees of the variety listed in Section 7.D above can be transplanted to meet the replacement requirements under the following conditions.

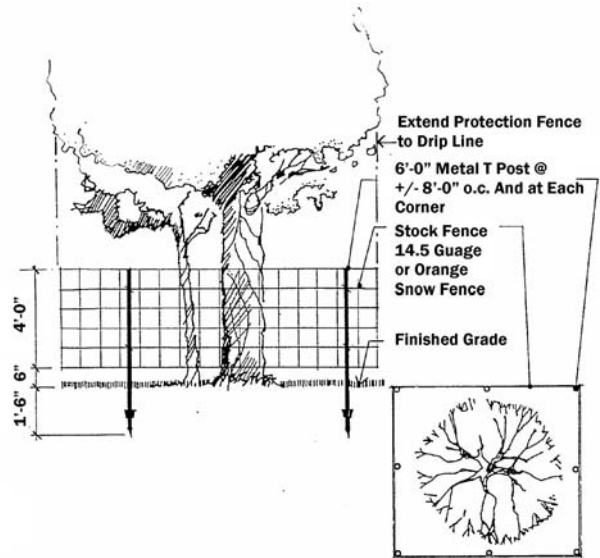
1. Trees of at least three caliper inches (3") but not exceeding six inches (6") DBH are eligible for transplanting.
2. Transplanted trees must survive and be in a healthy condition for a period of two years. The developer who received the transplanting credit must replace trees that do not meet these criteria.
3. Transplanted protected trees will be listed in the tree survey with the notation that they are being transplanted.



## SECTION 9 TREE PROTECTION PRIOR TO AND DURING CONSTRUCTION

### 9.1 Tree Protection

- A. Prior to any construction or land development, the developer shall mark with an aluminum tag which indicates its relationship to the Treescape Plan and clearly flag with bright fluorescent red vinyl tape all protected trees. The red tape should be wrapped around the main trunk of the protected tree at a height of approximately 5 feet so that the tape is clearly visible during construction. In those instances where a protected tree is so close to the construction area that construction equipment could possibly damage the tree, a protective fence shall be required. The protective fence must be maintained during all construction phases until project is finished.



- B. Property owner shall be responsible for protecting feature trees including the use of an arborist, as necessary.

### 9.2 Material and Equipment Storage

The developer or contractor shall not store any material or equipment under the canopy of any protected tree. During the construction stage of the development no cleaning or storage of equipment or material shall be allowed within the drip line of a protected tree. Those materials include but are not limited to oils, solvents, mortar, asphalt and concrete.

### 9.3 Signs

No signs, wire or other attachments shall be attached to the protected trees.

### 9.4 Traffic

No vehicular traffic, construction equipment traffic or parking shall take place within the drip line of a protected tree other than on an existing street pavement. This restriction does not apply to single incident access 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.

### 9.5 Grade

No grade change in excess of two inches (2") shall be allowed within the drip line of any protected tree unless adequate construction methods are approved beforehand. If approved, major grade changes (i.e. two inches (2") or greater) within the critical root zone of a protected tree will require additional measures to maintain proper oxygen and water exchange with the roots. Root pruning will be required when disturbance will result in root exposure.

**9.6 Tree Flagging**

At the time of submittal of the treescape plan all protected trees should be marked with an aluminum tag which indicates its relationship to the Treescape Plan and clearly flagged with bright fluorescent red vinyl tape. The red tape should be wrapped around the main trunk of the protected tree at a height of approximately 4 feet so that the tape is clearly visible.

**9.7 Boring**

Boring of utilities under protected trees shall be required in those circumstances where it is not possible to trench around the critical root zone of a protected tree. When required, the length of the bore shall be the width of the critical root zone plus two feet (2') on either side of the critical root zone and shall be at a minimum depth of 48 inches.

**9.8 Damage**

Any physical damage to a tree preserved for credit that is considered to place the survival of the tree in doubt shall be eliminated as a credited tree and will require additional trees to be planted in its place at the required ratio. A certified arborist shall be consulted to determine whether physical damage to a tree places the survival of the tree in doubt.

## **SECTION 10 TREE PRUNING**

### **10.1 General**

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

### **10.2 Permit Requirement**

Utility companies may prune trees as necessary to reestablish disrupted service or maintain existing service without obtaining a permit. Utility companies shall inform the City of their routine pruning schedules and are encouraged to prune trees in accordance with the National Arborist Association standards for pruning shade trees.

### **10.3 Allowed Pruning**

A protected tree may be pruned in cases where it is necessary to remove branches broken during the course of construction, or where protected trees must be pruned to allow construction of a structure. Pruning should be done in manner that does not significantly disfigure the tree.

### **10.4 Required Pruning**

The owner of all trees adjacent to public R.O.W. shall be required to maintain a minimum clearance of twelve feet (12') above traveled pavement or curb of a public street. The City shall also have the right to prune trees overhanging the public R.O.W. as necessary to preserve public safety. Trees shall be pruned to allow signs to be seen.

## **SECTION 11 TREE FUND**

### **11.1. Tree Fund Administration**

The City shall administer the tree fund. The funds shall be used to purchase, plant and maintain trees on public property utilizing either city staff or contract labor, to acquire wooded property that remains in a naturalistic state in perpetuity, to perform and maintain a City wide tree inventory and to educate citizens and developers on the benefits and value of trees. The City Council shall have the ability to adopt alternative methods of creating tree credits and methods of distribution of trees and/ or funds for purchasing trees. (*Ord. No. 09-23, 06-15-09*)

### **11.2 Collection of Money**

Money contributed to the Tree Fund shall be paid prior to the issuance of any construction or building permit and prior to filing of a Final Plat.

## **SECTION 12 VIOLATIONS**

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction hereof shall be fined \$500.00 for each offense. A separate offense shall be deemed committed on each day during which a violation occurs. The unlawful damage, destruction or removal of each protected tree shall be considered a separate incident and each incident subjects the violator to the maximum penalty of \$500 for the first tree with each subsequent tree increasing by \$500 increments.

No acceptance of public improvements shall be authorized and no Certificates of Occupancy (CO) shall be issued until all fines for violations of this ordinance have been paid to the City.