

ARTICLE VII. TREE PROTECTION AND PRESERVATION*

***Editor's note:** Section 16 of Ord. No. 98-30, adopted Nov. 17, 1998, repealed Ord. No. 98-07, adopted June 16, 1998; subsequently, §§ 30-211--30-218, which derived from said ordinance, were also repealed. Sections 1--12 and 14 of Ord. No. 98-30 did not specifically amend the Code but contained similar provisions to Ord. No. 98-07, and were thus codified herein as §§ 30-211--30-223.

Cross references: Buildings and building regulations, ch. 18; comprehensive zoning, pt. III.

Sec. 30-211. Purpose.

The objectives of this article are as follows:

- (1) To retain as many "significant" trees within the city as possible, without placing an undue burden on those persons who own properties already containing multiple trees;
- (2) That all undeveloped properties shall be required to meet minimum landscaping requirements at the time of occupancy, so that the burden of creating a beautiful, treed environment shall be shared by owners of naturally treed properties and naturally untreed properties alike;
- (3) That owners of undeveloped properties with existing "significant" trees shall be encouraged to save these trees by the award of monetary and no monetary credits.
- (4) That to create the greatest visual impact for the city, the preservation of existing trees and the planting of new trees shall be concentrated in those areas most visible to the public.

(Ord. No. 98-30, § 1, 11-17-98)

Sec. 30-212. Definitions.

Definitions contained in the comprehensive zoning ordinance shall also apply to this article. In addition, the following definitions shall apply to this article:

Caliper means the diameter of a tree at four feet of height above ground level. If a tree trunk separates or splits below four feet of height, measurement to determine diameter shall be taken immediately below the point where the trunk separates or splits.

Qualified tree list means a list of acceptable trees approved by the city as shown on Attachment A to Ordinance No. 98-30. This list may be amended from time to time and approved by city council without amendment to this article. The most current list shall be made available to the public at all times.

Qualifying trees means trees that may be used as a monetary or planting credit. A qualifying tree must be of a type listed on the qualified tree list of the city. A qualifying tree must also be preserved in a designated landscape reserve, in a designated common park or open space, in front of the minimum required front setback line or in front of the actual front line of a proposed primary building. Trees located in other areas shall not be considered qualifying and shall not incur either credits or debits. For landscaping credit, a tree must be greater than six inches in caliper. For monetary credit, a tree must have a caliper of 16 inches or greater. A qualifying tree may not be diseased, dying or dead.

Significant tree(s) means any tree or trees of a type listed on the qualified tree list of the city other than a palm tree, and having a caliper of 16 inches or greater and that is not diseased, dying or dead.

Working days means those days during which the city hall is open to the public.

(Ord. No. 98-30, § 2, 11-17-98; Ord. No. 99-30, § 1, 12-7-99; Ord. No. 2005-12, § 2, 5-3-05)

Sec. 30-213. Applicability; conformance.

- (a) This article shall apply to all unsubdivided property and to all unimproved, subdivided lots, tracts, green and/or open spaces or reserves within any and all zoning districts within the city.
- (b) This article shall not apply to any lot or tract of land that contains a primary structure that has been granted a certificate of occupancy by the city on or before November 17, 1998.
- (c) In the event an applicant has applied for or has obtained a valid building permit to construct a primary structure on or before November 17, 1998, the applicant may, at his/her option, choose to conform to these regulations or to the landscaping regulations contained in the comprehensive zoning ordinance. All building permit applications received after November 17, 1998, must conform to the requirements of this article. An applicant who allows his pre-existing permit to expire shall no longer have an option, but shall be required to adhere to the requirements of this article.

(Ord. No. 98-30, § 3, 11-17-98)

Sec. 30-214. Tree credits.

A property owner shall be given a credit for all qualifying trees of certain sizes that are located and preserved in any designated landscape reserve, designated common park or open space or in front of the minimum required front setback line or in front of the actual front line of a proposed primary building. In the case of subdivisions or other residential or commercial developments, the developer may apply for credits for trees located in any common area, landscape reserve, park, street right-of-way or other area to be used by the public at large. The developer may not apply for credits for trees located on individual lots to be sold. The individual property owner or builder may apply for credit for trees located on individual lots, but not for credit on commonly owned areas; provided, however, if the developer and the builder are one and the same person or entity, she or he may obtain credits for both commonly owned property and individual lots.

Each tree is eligible for a one-time credit only. The property owner may elect to take the credit in one of the following ways:

- (1) All qualifying trees over six inches in caliper shall count as a two-inch to one-inch credit to the landscaping requirement specified below. For example, an eight-inch caliper tree shall count as 16 inches of tree credit toward the total planting requirement in that specific zoning district.
- (2) All qualifying trees with a caliper of 16 inches or greater may be given a monetary credit of \$50.00 per each inch in caliper. For example, a 36-inch qualifying tree shall receive \$1,800.00 in monetary credit (36 inches x \$50.00). The credit shall have no cash value, but may be used to offset any penalty debits as explained in section 30-215 below. If the amount of credits exceeds the amount of debits, the excess credit amount may be converted back to inches and used as a landscaping credit.

(Ord. No. 98-30, § 4, 11-17-98; Ord. No. 99-30, § 1, 12-7-99)

Sec. 30-215. Tree debits.

A property owner shall be debited for each qualifying tree with a caliper of 16 inches or greater that she or he removes, destroys, causes to remove or causes to destroy, provided that the removal or destruction of the tree is not caused by the addition of fill [and/or] used to achieve minimum elevation requirements and has been authorized by a valid city fill permit. A property owner shall be penalized if she or he causes the removal or destruction of significant trees due to addition of fill for which a city fill permit has not been issued, or by the addition of fill that is not necessary to achieve minimum elevation

requirements. The amount of debit shall be \$100.00 per inch. For example, the removal of a tree of 40 caliper inches shall result in a debit of \$4,000.00. The total debit amount may be offset by any monetary credits. All remaining debit amounts shall be paid by the property owner at the time the tree removal permit or certificate of no permit necessary is secured or at the time of final platting, whichever occurs later. Unpaid debits shall be transferred with ownership of the land. Any uncollected debit fees shall be paid before a certificate of occupancy shall be granted.

(Ord. No. 98-30, § 5, 11-17-98; Ord. No. 99-30, § 1, 12-7-99)

Sec. 30-216. Permit--Required.

No person, firm or corporation shall commence construction or development site preparation of or for any portion of any property described above without first obtaining a tree removal permit or a certificate of no permit necessary from the building official.

(Ord. No. 98-30, § 6, 11-17-98)

Sec. 30-217. Same--Information and procedures.

A tree removal permit or a certificate of no permit necessary shall be reviewed within seven working days after receipt. Provided the application contains complete information and is in accordance with this article, it shall be issued within that time period at no charge. If the permit application is incomplete or incorrect, the building official shall deny the permit within seven working days after receipt. If the building official fails to either approve or deny the permit within the time period allowed, the permit shall be considered approved.

The permit shall be on a form promulgated by the building official, shall be signed and attested, and shall contain at least the following minimum information:

- (1) A preliminary plat drawing, plot plan or survey, drawn to scale, showing:
 - a. The location of all significant trees, except significant trees in areas where fill is to be added in accordance with a valid fill permit to meet minimum elevation requirements, and a designation of which significant trees are to be saved on the property and which significant trees are to be removed. In addition, these trees shall be flagged on the actual property in an acceptable manner to enable city staff to identify such trees when visiting the site.
 - b. The location of all qualifying trees on the property, if the owner intends to apply for monetary or landscaping credit for these trees. In addition, these

trees shall be flagged on the actual property in an acceptable manner to enable city staff to identify such trees when visiting the site.

- c. The location of all existing and proposed roads, utility easements, and waterways, including canals, on the property.
 - d. The location of the minimum front setback line as required by the city's comprehensive zoning ordinance.
 - e. If known, the proposed location of all primary and secondary structures to be built on the property.
 - f. The location and depth of any fill to be placed on the property.
 - g. The signature, printed name, title, full address and phone number of the person completing the above information.
 - h. The flood zone in which the property is located. If the property is located in more than one flood zone, then the flood zone line(s) shall be marked.
- (2) The applicant shall indicate the number of qualifying trees she or he intends to save on the property and how she or he wants the credit for these trees applied.
- (3) The applicant shall indicate the number of significant trees located on the property which are to be removed because they are located in the path of existing or proposed utility easements, roads or waterways.
- (4) The applicant shall indicate the number of significant trees located on the property which are to be removed or that may be damaged due to the addition of fill used to meet minimum elevation requirements.
- (5) The applicant shall indicate the number of significant trees located on the property which are to be removed or that may be damaged that do not meet the requirements of subsection (3) or (4) above.

(Ord. No. 98-30, § 7, 11-17-98)

Sec. 30-218. Commencement of site preparation; inspection.

After issuance of the permit and payment of any debits, if due, the applicant may commence site preparation in accordance with the permit. The applicant shall notify the building official upon completion of site preparation so that an inspection can be performed. After inspection, the building official shall make a final calculation of any

debits and credits. No additional permits shall be issued for the property until the final site development inspection has been approved by the building official.

(Ord. No. 98-30, § 8, 11-17-98)

Sec. 30-219. Landscaping requirements.

No certificate of occupancy shall be issued for any lot or tract of land until and unless the following minimum landscaping requirements have been met:

(1) *Requirements per zoning district.*

R-LD and R-1 zoning district: One five-inch tree plus one four-inch tree plus two three-inch trees per lot. The five-inch tree and one other required tree shall be placed in front of the front line of the primary building. The remaining number of required trees may be placed in the side or rear yard.

R-2 zoning district: One five-inch tree plus two three-inch trees per lot. The five-inch tree shall be placed in front of the front line of the primary building. Either or both of the three-inch trees may be placed in the side or rear yard.

R-3 zoning district:

Townhouses and duplexes: One four-inch tree per living unit in the front yard plus one two-inch tree per living unit to be located in the common area.

Apartments: One four-inch tree per each three living units or fraction thereof. Trees are to be located on all street frontages and spaced at a distance no greater than one tree every 40 linear feet along the frontage, excluding driveways. Any additional trees needed to meet the requirement may be placed throughout the complex.

OS zoning district:

Residential: One four-inch tree per lot to be located in the front yard.

Commercial: One four-inch tree per lot to be located in the front yard plus one three-inch tree per each ten parking spaces or fraction thereof.

C-1, C-2, C-3, WAD, MMU and LI zoning districts: One four-inch tree per each 20 parking spaces or fraction thereof plus additional four-inch trees are to be located on all street frontages and spaced at a distance no greater than one tree every 40 linear feet along the frontage, excluding driveways.

(2) *Requirements for all zoning districts.*

- a. Tree measurement is by caliper.
- b. Landscaping required by parking must be generally distributed among the parking area.
- c. Amounts of landscaping materials must be calculated only by the actual number of parking spaces provided.
- d. Landscaping must be in place prior to the issuance of a certificate of occupancy.
- e. Trees planted for credit under the terms of this article shall be a minimum of six feet in height when measured immediately after planting.
- f. All required trees shall be selected from the qualified tree list of the city.
- g. All landscaping required by this section shall be restricted to the principal lot or property for which it is being installed. No landscaping, except that planned, designed or permitted by the city council shall be placed within any roadway right-of-way.

(Ord. No. 98-30, § 9, 11-17-98; Ord. No. 2000-22, § 1, 11-21-00; Ord. No. 2001-03, § 1, 3-6-01; Ord. No. 2005-12, § 2, 5-3-05)

Sec. 30-220. Interpretation and administration of article.

The building official shall interpret and administer this article. Should the opinion of the applicant vary from the opinion of the building official, the applicant may produce written documentation signed by a certified forester, arborist or recognized tree expert, in support of the applicant's opinion. The building official shall consider all such written documentation when making his/her final decision.

(Ord. No. 98-30, § 10, 11-17-98)

Sec. 30-221. Board of adjustment appeal.

Any property owner who disagrees with the final decision of the building official regarding this article, or who wishes a variance or exception to this article, shall apply to the board of adjustment in accordance with its procedures. The applicant may produce written or oral testimony from a certified forester, arborist or other recognized tree expert in his/her defense. The board shall consider all such testimony when making its decision. Decisions by the board of adjustment may be appealed only to district court in accordance with state law.

(Ord. No. 98-30, § 11, 11-17-98)

Sec. 30-222. Possible conflict with zoning ordinance.

It is the intention of the city to integrate this article with the city's existing requirements listed in the comprehensive zoning ordinance; however, until such time, should this article conflict with the zoning ordinance, this article shall prevail. Where this article is silent, the other ordinances of the city, including the comprehensive zoning ordinance shall prevail.

(Ord. No. 98-30, § 12, 11-17-98)

Sec. 30-223. Violation; penalty.

A person commits an offense if she or he violates any provision of this article. Each violation and each day such violation continues shall be considered as separate offenses. Any defense under this section is a misdemeanor punishable by a fine not to exceed the maximum amount permitted by law, per offense.

(Ord. No. 98-30, § 14, 11-17-98)

Sec. 30-224. Qualified tree list.

TABLE INSET:

Common Name	Botanical Name
American Elm	Ulmus americana
American Holly	Ilex opaca
American Hornbeam	Carpinus Carolinian
American Sycamore	Platanus occidentalis
Anacua/Sandpaper Tree	Ehretia anacua
Arrow-wood Viburnum	Viburnum dentatum
Bald Cypress	Taxodium distichum
Black Hickory	Carya texana
Black Walnut	Juglans nigara
Bur Oak	Quercus macrocarpa
Callery Pear/Bradford	Pyrus calleryana
Canary Island Date Palm 1 (palm tree)	Phoenix canariensis
Carolina Buckthorn	Rhamnus caroliniana

Cedar Elm	<i>Ulmus crassifolia</i>
Chalk Maple	<i>Acer Leucoderne</i>
Cherry Laurel	<i>Prunus caroliniana</i>
Chinese Elm	<i>Ulmus parvifolia</i>
Chinese Pistache	<i>Pistacia chinensis</i>
Chinquapin Oak	<i>Quercus muhlenbergii</i>
Common Crapemyrtle	<i>Lagerstroemia indica</i>
Common Fig	<i>Ficus carica</i>
Common Persimmon	<i>Diospyros virginiana</i>
Drummond Red Maple	<i>Ace rubrum var, drummondii</i>
Eastern Red Cedar	<i>Juniperus virginiana</i>
Eastern Redbud	<i>Circus canadensis</i>
Edible Date Palm 1 (palm tree)	<i>Phoenix dactylifera</i>
Eve's Necklace	<i>Sophora affinnis</i>
Green Ash	<i>Fraxinus pennsylvanica</i>
Honey-Locust	<i>Gleditsia triacanthos</i>
Huisache	<i>Acacia farnesiana</i>
Live Oak	<i>Quercus virginiana</i>
Loquat	<i>Erioboytrya japonica</i>
Mascarene Island Palm 1 (palm tree)	<i>Hyophorbe Verschaffelti</i>
Mexican Buckeye	<i>Ungnadia speciosa</i>
Mexican Fan Palm 1 (palm tree)	<i>Washingtonia robusta</i>
Mexican plum	<i>Prunus mexicana</i>
Nuttail Oak	<i>Quercus nuttallii</i>
Ornamental Holly	<i>Ilex spp.</i>
Overcup Oak	<i>Quercus lyrata</i>
Paloverde	<i>Parkinsonnia aculeata</i>
Parsley Hawthorn	<i>Crataegus marshallii</i>
Pecan	<i>Carya illinoenis</i>
Possumhaw Holly	<i>Ilex decidua</i>
Post Oak	<i>Quarks stellata</i>
Red Bay	<i>Persea barbonia</i>
River Birch	<i>Betula nigra</i>
Rough-leaf Dogwood	<i>Cornus drummondii</i>
Rusty Blackshaw Viburnum	<i>Viburnum rufidulum</i>
Sassafras	<i>Sassafras albidum</i>
Scarlet (red) Buckeye	<i>Aesculus pavia</i>

Shagbark Hickory	<i>Carya ovata</i>
Shumard Red Oak	<i>Quercus shumardii</i>
Snowbell	<i>Styrax americana</i>
Southern Magnolia	<i>Magnolia grandiflora</i>
Swamp Chestnut Oak	<i>Quercus michauxii</i>
Sweet-Bay Magnolia	<i>Magnolia virginiana</i>
Sweetgum	<i>Liquidambar styraciflua</i>
Texas Mountain-Laurel	<i>Sophora secundiflora</i>
Texas Persimmon	<i>Diospyros virginiana</i> (male)
Texas Pistache	<i>Pistacia texana</i>
Texas Redbud	<i>Cercis canadensis texensis</i>
Texas Sabal Palm 1 (palm tree)	<i>Texana sabal</i>
Tulip-Tree	<i>Liriodendron tulipifera</i>
Washington Robust Palm 1 (palm tree)	<i>Washingtonia robusta</i>
Water Hickory	<i>Carya aquatica</i>
Water Oak	<i>Quercus nigra</i>
Water Tupelo	<i>Nyssa aquatica</i>
Wax Myrtle	<i>Myrica cerifera</i>
Western Soapberry	<i>Sapindus drummondii</i>
White Ash	<i>Fraxinus americana</i>
White Oak	<i>Quercus alba</i>
Willow Oak	<i>Quercus phellos</i>
Winged Elm	<i>Ulmus alata</i>
Woollybucket Bumelia	<i>Bumelia lanuginosa</i>
Wright Acacia	<i>Acacia wrightii</i>
Yaupon Holly	<i>Ilex vomitoria</i>

1. The use of palm trees is restricted as shown in section 30-225 below.

(Ord. No. 98-30, att. A, 11-17-98; Ord. No. 2001-15, § 1, 5-15-01; Ord. No. 2005-12, § 2, 5-3-05)

Sec. 30-225. Limitations on the use and credits/penalties applicable to palm trees.

(a) Palm trees shall be considered as significant for the purpose of meeting landscaping requirements. Although palm trees may be used to meet the landscaping requirements of section 30-219, a palm tree shall not be considered as

a significant tree and a palm tree shall not be considered for purposes of tree credits (section 30-214) or tree debits (section 30-215).

- (b) In any district where palm trees are proposed to be planted to meet the requirements, the minimum size tree shall be ten caliper inches and 15 feet in height when such trees are to substitute for the other trees stated in this chapter. Where palm trees are proposed as additional trees, beyond the minimum requirement, the property owner may use any size without restriction. For purposes of section 30-219, a palm tree caliper shall be reduced to 1/3 the tree's actual measurement.

(Ord. No. 2005-12, § 2, 5-3-05)