

**ARTICLE I. COMMERCIAL AND RESIDENTIAL SUBDIVISION
TREE PRESERVATION**

Sec. 94-1. Purpose.

- (a) This Article implements the following provisions of the Helotes Master Plan:
- (1) Preserves the neighborhood character of Helotes;
 - (2) Improves the quality of living for Helotes citizens;
 - (3) Preserves and enhances the rural atmosphere of Helotes;
 - (4) Responsibly protects the natural environmental resources of Helotes;
 - (5) Preserves the rugged beauty and natural environment that defines the Hill Country character of Helotes and makes it a unique and desirable community; and
 - (6) Prevents the clear-cutting of land.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-32. Definitions.

For the purposes of this Chapter, the following phrases, terms, words, and their derivation shall have the meanings given in this Section.

Caliper. The diameter of a tree four feet (4') above the natural grade, measured with a tree caliper instrument or a flexible tape. If a tape is used, the circumference of the tree should be measured and the result divided by 3.14 to determine the diameter.

Categories of Tree Preservation. The designations "Large Tree Species," "Small Tree Species," and "Heritage" are established for the purposes of applying the requirements of this Chapter. See Table 1.0 for tree preservation categories and preservation rates.

City Administrator. The person appointed by the City Council to administer City ordinances related to land development. The City Administrator is expected to consult with experts, as necessary, to carry out the provisions of this Chapter.

City Arborist. The person(s) appointed by the City Council to implement and enforce provisions of this Chapter as requested by the City Administrator. A professional arborist certified and/or degreed in Horticulture, Forestry or a closely related field with expertise in Forestry, Landscape Design, and Tree Preservation. Reviews, implements, and enforces this Chapter, landscaping requirements, tree surveys, landscaping plans, irrigation plans, and tree preservation plans. Inspects, on behalf of the City, parcels to determine compliance with City requirements.

Commercial Development. All commercial (industrial, office, multifamily, institutional, and retail) property to be developed or redeveloped, including additions and alterations to the structure or outdoor areas, such as parking lots or driveways.

Covered Species. Any existing living tree of any species or type, as defined in Table 1.0 "Protected Tree Preservation Categories and Preservation Rates."

Dripline. The area of ground surrounding the trunk of a tree considered essential to protecting the root structure of a tree. For the purposes of this Chapter, the dripline shall be calculated at one foot (1') for every one inch (1") of caliper width measured at four feet (4') above natural grade level. Construction may encroach into the dripline area of a tree, provided that alternative construction methods for protecting a tree are approved by the City Arborist.

Multi-Trunk Tree. A tree having two (2) or more trunks arising from the root collar or main trunk.

Preservation Rate. The amount of total inches or area—if using the tree stand delineation method—to be preserved onsite and shall be calculated for each category and not as a whole.

Example: Total protected “Large Tree Species” inches onsite = 10,000; Preservation rate = 40%; $10,000 \times 40\% = 4,000$ inches shall be preserved.

Example: Total protected “Small Tree Species” inches onsite = 1,000; Preservation rate = 40%; $1,000 \times 40\% = 400$ inches shall be preserved.

Example: Total “Heritage” inches onsite = 1,000; Preservation rate = 60%; $1,000 \times 60\% = 600$ inches shall be preserved.

Protected Tree. Trees that, by virtue of their size or species, are protected by this Chapter.

- (1) *Large Tree Species.* Trees of a covered species that are six-inch (6”) caliper or greater. See Table 1.0.
- (2) *Small Tree Species.* Trees of designated small tree species that are five- inch (5”) caliper or greater. See Table 1.0.
- (3) *Heritage Tree.* Any Protected Large Tree Species that is greater than a twenty-four-inch (24”) caliper trunk and any Protected Small Tree Species that is greater than a eight-inch (8”) caliper trunk. See Table 1.0.
- (4) *Non-Protected Tree.* Any living tree that the City Arborist certifies in writing is injured, dying, diseased, or infested with harmful insects; that is in danger of falling, interferes with utility service, or creates unsafe vision clearance; or, in any manner, creates a hazardous or dangerous condition so as to endanger the public health, welfare, or safety, is not a Protected Tree.

Residential Subdivision Development Project. Any and all real property meeting the definition of Subdivision as set forth in Code Sec. 78-34 which has been platted for single-family home construction.

Root Protection Zone (RPZ). The area around the base of a tree in which limited construction may take place.

Tree Stand Delineation. An alternative to the standards tree survey methodology. This option can be used in lieu of an “on-the-ground” tree survey required for the Tree Preservation and Removal Permit. This methodology uses a current aerial photograph and overlays the proposed development onto a photograph to determine the tree preservation rate, as described in Table 1.0. Heritage trees shall be shown on the plan only if they fall within the proposed development.

TABLE 1.0			
PROTECTED TREE PRESERVATION CATEGORIES AND PRESERVATION RATES			
Covered Species	Large Tree Species” are any existing living tree of any species or type, <i>excluding</i> the following:	“Small Tree Species” are as follows:	Preservation Requirement
	Ashe Juniper (Cedar) Athel Tamarisk Brazilian Peppertree Chinaberry Chinese Elm Chinese Tallow Cottonwood Desert Willows Five Stamen Tamarisk French Tamarisk Hackberry Japanese Ligustrum Salt Cedar Tamarisk Siberian Elm Tallowtree Tree of Heaven Willow Species other than Desert Willows	Condalia Mexican Redbud Mountain Laurel Possomhaw Texas Crab Apple/ Downy Hawthorn Texas Persimmon Texas Redbud	N/A
Protected Category	Large Tree Species that are: 6” to 24” caliper	Small Tree Species that are: 5” to 8” caliper	40% of the total protected inches or area, if alternative tree stand option used
Heritage Category	Large Tree Species that are: Greater than 24” caliper	Any Small Tree Species that are: Greater than 8” caliper	60% of the total protected inches or area, if alternative tree stand option used
100 Year Floodplain Category	All Protected and Heritage Category Trees	All Protected and Heritage Category Trees	80% of the total protected inches or area, if alternative tree delineation stand option used

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-3. Applicability.

- (a) Commercial and residential subdivision developments within the City's corporate limits and its Extraterritorial Jurisdiction are subject to the tree removal, preservation, and / or pruning restrictions and permitting requirements established within this ordinance.
- (b) Oak Wilt restrictions and permit requirements contained within Sec. 94-6. *Tree Pruning Restrictions* shall apply to all real property within the City's corporate limits and its Extraterritorial Jurisdiction.
- (c) All professional tree care or landscaping companies shall obtain a permit from the City prior to any tree trimming, de-mossing, or tree removal within the City's corporate limits and its Extraterritorial Jurisdiction.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-4. Exceptions.

The following authorized exceptions from the terms and provisions of this Article shall apply:

- (1) In the event that any Protected or Heritage Tree is determined by the City Arborist to be in a hazardous or dangerous condition so as to endanger the public health, welfare, or safety, written authorization for removal may be given by the City Arborist and such Protected or Heritage Tree may then be removed.
- (2) During the period of an emergency, such as a tornado, storm, flood, or other act of God, the requirements of this Article may be waived by the City Council for the affected area or areas.
- (3) All licensed plant or tree nurseries shall be exempt from the terms and provisions of this Article only in relation to those trees planted and growing on the premises of said licensee, that are so planted and growing for the sale or intended sale to the general public in the ordinary course of said licensed business.
- (4) Utility companies franchised or otherwise authorized to provide utility service may prune or remove Protected or Heritage Trees that endanger public health, safety, and welfare by interfering with utility service, provided that the removal is the minimum necessary for the utilities to function properly and no other alternative is available.
- (5) The mowing, clearing, and grubbing of brush located within or under the drip lines of Protected or Heritage trees shall be allowed, provided such mowing, clearing, or grubbing is not implemented by use the of bulldozers, loaders, or other construction or earth moving equipment.
- (6) Areas contained within public and private rights-of-way or utility or drainage easements, provided that the applicant demonstrates that the removal is necessary for the rights-of-way and easements to function properly.
- (7) All municipal functions and activities of the City of Helotes are exempt from the application, terms, and provisions of this Chapter.
- (8) Exempt from such restrictions and permit requirements are:
 - a. non-contiguous established single-family, owner- or lessee-occupied housing, 3 acres or less, platted or unplatted, located within a district zoned residential;
 - b. non-contiguous vacant single-family residential lots, 3 acres or less, platted or unplatted, located within a district zoned residential;

- c. items 94-4 (8)(a) or (b) greater than 3 acres, platted or unplatted, within a subdivision regulated by deed restrictions prohibiting subdivision of real property.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-5. Permit for tree preservation and removal.

- (a) *Purpose.* The purpose of this Article is to provide a review process to preserve the existing natural environment, whenever possible, and to encourage the preservation of trees throughout construction and / or development. Commercial and residential subdivision developments within the City's corporate limits and its Extraterritorial Jurisdiction are subject to the tree removal, preservation, and / or pruning restrictions and permit requirements established within this Article.
- (b) *Permit Information.* The information required for a Tree Preservation and Removal Permit is located on the Tree Preservation and Removal Permit application.
- (c) *Original Tree Survey.* The Tree Survey submitted with the original application for a Tree Preservation and Removal Permit shall be the reference by which all subsequent tree removal permits for the tract(s) or portions of the tract(s) are reviewed. An applicant shall not circumvent the minimum preservation requirements set forth in this Article through the filing of multiple tree removal applications.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-6. Tree pruning restrictions.

- (a) *Applicability.* Tree pruning restrictions shall apply to all real property within the City's corporate limits and it's Extraterritorial Jurisdiction.
- (b) *Required Pruning.* The City shall have the right to prune overhanging trees which interfere with the visibility of any traffic control device, sign, or roadway, as necessary, to preserve the public safety.
- (c) *Tree Topping.* It shall be unlawful for any commercial or residential subdivision development or utility company to severely cut back limbs to stubs larger than three-inches (3") in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree without the City Arborist's approval.
- (d) *Branch / Root Pruning and Wounded Trees.* All broken branches and exposed roots one half inch (1/2") in diameter or greater of any Protected, Heritage, or Replacement tree shall be cut cleanly. In the case of oak species susceptible to Oak Wilt, wounds must be painted with an acceptable wound dressing within thirty (30) minutes from the time of cutting.
- (e) *Oak Wilt.* Trimming or cutting of any oak tree susceptible to Oak Wilt is prohibited within the corporate limits and Extraterritorial Jurisdiction of the City of Helotes from the first day of February to the last day of May. Permission, however, may be granted to any entity wishing to trim or cut an oak tree susceptible to Oak Wilt during the prohibited months, provided that the entity contracts with a licensed professional tree care or landscaping company. The professional tree care or landscaping company shall obtain a permit from the City prior to any tree trimming, de-mossing, or removal in the City. In the case of oak species susceptible to Oak Wilt, wounds must be painted with an acceptable wound dressing within thirty (30) minutes from the time of cutting. All trimming tools shall be cleaned with a disinfectant after each use to prevent spreading of the disease.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-7. Protected and heritage trees: removal, replacement, relocation, and penalties.

- (a) *Removal of Protected and Heritage Trees.* No commercial or residential subdivision development, directly or indirectly, shall cut down, destroy, remove, or effectively destroy through damaging, any Protected or Heritage tree within the City of Helotes or Extraterritorial Jurisdiction without first obtaining a Tree Preservation and Removal Permit.
- (b) *Replacement Trees.* Should the required tree preservation percentage fall below the required percentage threshold, it shall be the responsibility of any person obtaining a Tree Preservation and Removal Permit for a Protected Tree to provide replacement tree(s) having a total caliper width equal to that of the trees to be removed. Further, it shall be the responsibility of any person obtaining a Tree Preservation and Removal Permit for a Heritage Tree to provide replacement tree(s) having a total caliper width equal to three (3) times that of the trees to be removed. In considering a mitigation method, the City Arborist shall weigh the value of established smaller trees, clumps of trees, and natural vegetation that could be retained to meet the requirements of this Article and landscape regulations so that the addition of replacement trees may not be required.
 - (1) Such replacement trees shall:
 - a. have a minimum caliper width of two (2) inches; and
 - b. have a minimum height of at least eight feet (8') when planted.
 - (2) No more than thirty-five (35) percent of replacement trees may be of the same species.
 - (3) A replacement tree that dies within one (1) year of the date it was planted must be replaced by another tree, and a new one (1) year warranty period shall start for that tree.
- (c) *Mitigation in Lieu of Replacement.* Mitigation may be paid to the City of Helotes instead of providing replacement trees required by this Article.
 - (1) This provision is limited to fifty percent (50%) of the required Protected and Heritage Tree replacement.
 - (2) Any such payments shall be deposited to the Tree Mitigation and Replacement Fund.
 - (3) The per-caliper-inch cash value for replacement trees and planting is \$150 per caliper inch.
- (d) *Penalties for unauthorized removal of Protected and Heritage Trees.* If any Protected or Heritage Trees are removed or injured by a commercial or residential subdivision development and such removal or injury constitutes a violation of this Article, the City shall have the authority to enact the following administrative and civil penalties on the property owner:
 - (1) A monetary penalty of five hundred dollars (\$500.00) per caliper inch of each Protected or Heritage Tree removed or injured. Fines paid to the City of Helotes as penalties shall be deposited into the Tree Mitigation and Replacement Fund.
 - (2) Replacement with tree(s) having a total tree caliper equal to five (5) times that of the illegally removed or injured tree(s). Such replacement trees shall each have a minimum caliper width of four inches (4") and a minimum height of at least nine feet (9').
- (e) *Replanting of Protected and Heritage Trees.* No commercial or residential subdivision development, directly or indirectly, shall move any Protected or Heritage Tree on or from any real property within the City of Helotes without first obtaining a Tree Preservation and Removal Permit.

- (f) *Replanting standards.* Only those trees meeting the applicable Texas Association of Nurserymen Grades and Standards, as reviewed and approved by the City Arborist, shall satisfy the tree replanting requirements contained herein.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-8. Tree protection measures.

The following tree protection measures shall be required:

- (a) Prior to commercial or residential subdivision development, property owners shall establish and maintain a root protection zone and install four-foot high (4') plastic (or equivalent) safety fencing outside the drip line of Protected and Heritage trees for the duration of construction and development. Trees shall not be pruned to reduce the root protection zone.
- (b) During construction or development of commercial or residential subdivision developments, the property owner shall prohibit the cleaning of equipment or materials and/or the disposal of any waste material, including, but not limited to, paint, oil, solvents, asphalt, concrete, mortar, etc. under the canopy or within the drip line of any Protected or Heritage tree.
- (c) No attachments or wires of any kind, other than those of a protective nature, shall be attached to any tree during construction or development of commercial or residential subdivision developments.
- (d) With major grade changes of six inches (6") or greater resulting from placement of fill material, a retaining wall or tree well of rock, brick, landscape timbers, or other approved materials shall be constructed around the tree no closer than six (6) feet from the trunk of Protected or Heritage trees during construction or development of commercial or residential subdivision developments. The top of the retaining wall or tree well shall be at the new finished grade.
- (e) Unless otherwise approved by the City Arborist, no commercial or residential subdivision development construction or construction-related activity shall occur within the drip line of any Protected or Heritage Tree.
- (f) Any trees removed during commercial or residential subdivision development shall be chipped or hauled off-site within thirty (30) days of the time the trees were removed.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-9. Penalty upon failure to comply.

- (a) In addition to any penalties specified elsewhere in this Article, any person violating or failing to comply with any provision or requirement of this Article shall be fined a minimum of \$250 and a maximum of the replacement cost of the tree, as determined by the Municipal Court. Each tree illegally removed or damaged shall constitute a separate offense. If the precise caliper of a tree cannot be determined, the cost of replacement shall be established by the City Arborist based upon his or her estimate of the total caliper inches of the removed or damaged tree(s).
- (b) Failure of any party to follow the procedures of this Article shall constitute grounds for withholding or revoking site plan approval, building permits, occupancy permits, or any other appropriate approvals necessary to continue development. Such sanctions, however, may be instituted immediately at the direction of the City Administrator after consultation with the City Attorney. The City Administrator shall inform the Mayor of all actions taken pursuant to this subsection and present the matter to the City Council without delay. In the case of emergency

to prevent the unauthorized removal of trees, the Mayor may direct the City Attorney to petition a court of competent jurisdiction for injunctive relief directing compliance with this subsection.

- (c) In addition to any other remedies or penalties contained herein, the City may enforce the provisions of this Article pursuant to the applicable provisions of Chapter 54 of the Texas Local Government Code, which Chapter provides for the enforcement of municipal ordinances.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-10. Jurisdiction.

- (a) To ensure compatibility with the Master Plan and this Article, the City Arborist shall have the authority to review and act on all Tree Preservation and Removal Permits for commercial and residential subdivision developments within the City and its Extraterritorial Jurisdiction (ETJ). Plans shall be approved, approved with conditions, or denied. The City Arborist shall provide comments to the property owner or designated representative as to the disposition of each Tree Preservation and Removal Permit application.
- (b) *Appeal to City Council.* Any applicant or party aggrieved by a decision of the City Arborist, City Administrator, or municipal employee may appeal such decision to the City Council. Such notice of appeal must be filed with the City Administrator within ten (10) working days of the decision in question. Such appeal shall stay the issuance of a building permit and shall be placed on the agenda for the next regular or special City Council meeting. The Board of Adjustment shall be without jurisdiction to hear or decide any appeal authorized by this subsection.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-11. Enforcement.

The City Arborist, City Administrator, and Code Compliance Officer are hereby charged with the responsibility for the enforcement of this Article and may serve notice to any person in violation thereof or institute legal proceedings, as may be required. The City Attorney is hereby authorized to institute appropriate proceedings to that end. (Ord. No. 376, §1, 10-9-2008)

Sec. 94-12. Variances.

- (a) Variances to any decision of the City Arborist, City Administrator, Code Compliance Officer, municipal employee, or to the terms of this Article may be granted by the City Council where a literal enforcement of the provisions of this Article will result in unnecessary hardship. A variance request must be submitted to the City Administrator in writing setting out the basis for the request. No variance shall be granted unless:
 - (1) such variance will not be contrary to public interest;
 - (2) such variance will be in harmony with the spirit and purposes of this Article;
 - (3) the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial; and
 - (4) the variance will not substantially weaken the general purposes of this Article.
- (b) After review of the variance request, the City Council may:
 - (1) Approve the variance; or

- (2) Deny the variance; or
- (3) Grant the variance with such conditions as may be necessary for the furtherance of the purposes of municipal tree preservation in keeping with the spirit and intent of the ordinance.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-13. Liability.

Nothing in this Chapter shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of public property or the owner of any private property shall have a duty to keep the trees and landscaping upon the property and under their control in a safe, healthy condition. Any person who feels a tree located on property possessed, owned, or controlled by them is a danger to the safety of themselves, others, or structural improvements on-site or off-site shall have an obligation to secure the area around the tree or support the tree, as appropriate to safeguard both persons and improvements from harm. (Ord. No. 376, §1, 10-9-2008)

Secs. 94-14 – 94-20. Reserved.

**ARTICLE II. COMMERCIAL AND RESIDENTIAL SUBDIVISION
LANDSCAPE REQUIREMENTS**

Sec. 94-21. Purpose.

The purpose of this Article is to provide requirements and standards for the installation and maintenance of landscaping elements and site improvements; to provide visual buffering and enhance the beautification of the City of Helotes; to safeguard and enhance property values and to protect public and private investment; to preserve and protect the unique identity and environment of the City of Helotes and preserve the economic base attracted to the City of Helotes by such factors; and to protect the public health, safety, and general welfare. (Ord. No. 376, §1, 10-9-2008)

Sec. 94-22. Applicability.

- (a) Commercial and residential subdivision developments within the City’s corporate limits and its Extraterritorial Jurisdiction are subject to the landscaping and irrigation requirements established within this Article.
- (b) A common commercial or residential subdivision development that includes more than one lot shall be treated as one lot for the purposes of satisfying the landscaping requirements of this Article. Split ownership, planning in phases, construction in stages, and/or multiple building permits for a project (i.e. apartments) shall not prevent it from being a common development, as referred to above. Each phase of a project shall comply with the requirements of this Article.

(Ord. No. 376, §1, 10-9-2008)

Sec. 94-23. Definitions.

For the purposes of this Chapter, the following phrases, terms, words, and their derivation shall have the meanings given in this section: