

## ARTICLE 14.900 TREE PRESERVATION

### Sec. 14.901 General Provisions

(a) Purpose. The purpose of this ordinance is to promote site planning which furthers the preservation of trees and natural areas; to protect trees during construction; to facilitate site design and construction; contribute to the long-term viability of existing trees; and to prohibit clear cutting of trees. It is the further purpose of this ordinance to achieve the following broader objectives:

1. Prohibit the clearing of trees and natural areas.
2. Protect and increase the value of residential and commercial properties within the City as well as forest value.
3. Maintain and enhance a positive image, which will encourage further development in the City.
4. Protect healthy quality trees and promote, enhance the ecological, environmental and aesthetic qualities of the City in future development.
5. To encourage the increase of arboreal elements in design plans so as to improve both aesthetic and healthful conditions within the City.
6. To further the preservation of trees and natural areas by protecting them during the planning, site design, construction and maintenance phases of any residential or commercial development within the city of Lancaster, Texas, with specific exemptions as outlined in *Section 5*.
7. To retain the optimum number of trees on any development site.

(b) Tree Preservation Definitions. For the purpose of this ordinance, certain words or terms applicable hereto are defined in Article 13 Definitions of this Unified Development Code. For the purpose of this ordinance the Landscape Administrator shall have interpretive authority to use commonly accepted definitions and/or to utilize generally accepted professional standards when any such conflict cannot otherwise be resolved.

### Sec. 14.902 Definitions for Tree Preservation

For the purpose of this ordinance, certain words or terms applicable hereto are hereinafter defined. Words and terms used in this ordinance, but not defined in this Article shall have the meanings ascribed thereto in the Lancaster Development Code, or other ordinances of the City. Words and terms defined in two ordinances shall be read in harmony unless there exists an irreconcilable conflict in which case the definition contained in this ordinance shall control. For the purpose of this ordinance the Landscape Administrator shall have interpretive authority to use commonly accepted definitions and/or to utilize generally accepted professional standards when any such conflict cannot otherwise be resolved.

***Agricultural Use.*** The use of land to produce plant or animal products, such as the growing of crops, raising and pasturing of livestock, timber production, Christmas tree, or farming.

**Administrative Official.** Provisions of this Section shall be administered by the Landscape Administrator, who shall be appointed by the City Manager.

**ANSI.** American National Standards Institute; standards used by the horticulture and landscape professionals to measure and evaluate trees.

**Bark Protection.** Where a protected tree remains in the immediate area of intended construction, the tree shall be protected by enclosing the entire circumference of the tree with approved padding material and 2" x 4" lumber encircled with wire or any other method approved by the Landscape Administrator or designee. The intent is to protect the bark of the tree against incidental contact or damage by large construction equipment.

**Boring.** Boring of utilities shall be required in those circumstances where it is not possible to trench around the critical root zone of the protected tree. When required, the length of the bore shall be the width of the critical root zone at a minimum depth approved on site by Landscape Administrator or designee.

**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.

**Buffer Zone.** Buffer zone is a method of screening or separating adjacent land use areas, which are improved with predominate non-residential use and whose side or rear lines are adjacent to a residential district or use and not separated by a public street or roadway. These buffers, when required, should be densely maintained with trees and shrubs and be a minimum of twenty-five (25') feet in depth.

**Builder/Contractor (New Construction Only).** A builder or contractor who has purchased land or lots for construction with intent to sell is subject to all requirements specified herein.

**Building Envelope (BE).** Defined as that area surrounding and adjacent to the building pad that may be cleared to allow for all necessary construction equipment and construction. Residential BE shall not exceed ten (10') feet from the Building Pad. Commercial BE shall be determined by the Landscape administrator for the necessary tree protection. All existing natural vegetation beyond the building envelope shall be protected by protective fencing.

**Building Pad.** The actual foundation area of a building.

**Caliper.** The diameter of a tree measured is as follows: Height to measure depends on size: 0-4" (zero to four inches), measured at 6" (six inches) from natural ground level. Trees 4" (four inches) to transplantable size are measured at 12" (twelve inches) from natural ground level. All others at 4.5' from the ground level in Diameter at Breast Height (\*see ANSI standard).

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

**Conservation Design.** A development design or pattern intended or having the effect of creating, retaining or preserving environmentally sensitive areas, natural habitats, wooded areas or areas of natural beauty in greater amount than would be otherwise be provided using Conventional Design or Traditional Neighborhood Design. Techniques used to achieve this result principally include the grouping together and/or concentration of buildings into clusters, reduction in lot size, reduction in paved areas and/or streets, and the use of shared common areas.

**Conventional Design.** A development design or pattern characterized by homes and non-residential buildings located on large individual lots, physical separation of buildings, segregation of land uses, and a predominance of individual yards within privately owned lots rather than the use of commonly-owned open areas. This pattern frequently features long block lengths, wide streets, cul-de-sacs, alleys and an emphasis on transportation service via the privately owned automobile.

**Critically Alter, Critical Alteration.** Uprooting or severing the main trunk of a tree, or any act which causes or may reasonably be expected to cause a tree to die. This includes, but is not limited to: damage inflicted upon the root system of a tree; a change in the natural grade above the root system of a tree, storage of materials, or the compaction of soil above the root system of a tree; an application of herbicidal chemical or the misapplication of beneficial chemicals; excessive pruning; placement of non-permeable pavement over the root system or a tree; or trenching within the primary root zone. Additionally, a tree may be considered critically altered if more than 25% of the primary root zone is altered or disturbed at natural grade, or more than 25% of the canopy is removed.

**Critical Root Zone (CRZ).** The area of undisturbed natural soil around a tree defined by a circle with a radius equal to the distance from the trunk to the outermost portion of the drip line. If CRZ is compromised by site conditions, such as but not limited to, roads, sidewalks, existing buildings, utility easements, etc., the CRZ will be determined by the Landscape Administrator or designee.

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

**Drip Line.** A circular line, which follows the outermost portion of the canopy of a tree and extending to the ground.

**Diameter at Breast Height (DBH).** The DBH is measured four and one-half (4.5') feet from natural ground level.

**FEMA 100-Year Flood Plain.** The area designated as being within the one hundred year flood plain on the Federal Emergency Management Agency Flood Insurance Rate Map (FIRM) as of the effective date of this Ordinance. The boundary may be verified and established through field surveys based on elevation. Any changes made by FEMA to the 100-year flood plain boundary after the effective date of this Ordinance due to filling of the flood plain, channelization, or other drainage improvements shall not reduce the area in which tree preservation, replacement or protection requirements apply.

**Grade Change.** Any changes in ground level or soil compaction within the area just beyond the spread of the branches will damage the roots.

**Ground Level Cuts.** Where protected tree removal is allowed through exemption or by tree removal permit, and the root system is intertwined with protected trees which are intended to be saved, the tree shall be removed by flush cutting with the natural level of the surrounding ground. If stump removal is desired stump grinding shall be allowed upon approval of the Landscape Administrator.

**Grubbing.** Excavating or removing a significant part of the root system.

**Tree Health.** The condition of the tree, including structural integrity, pest and/or pathogen related problems.

**Residential Homestead.** Owners of property zoned as residential, who reside at the property as their primary residence. This term does not include properties zoned “MF” Multi-Family Residential district.

**Limits of Construction.** Delineation on the site plan defining the areas within which all construction activity may occur.

**Municipal/Public Domain Property.** Property in which title is held in the name of a governmental entity. Proper examples of this would include City Hall, public parks, Corps of Engineers’ property, State of Texas R.O.W., library, fire stations, water tower sites, public schools or similar properties.

**Open Space.** Open Space means a public or semi- public space, including common areas or parks that:

- Is open and unobstructed from its lowest level to the sky. (Vegetation and complimentary amenity structures such as open pavilions shade structures, picnic tables, playground equipment, bicycle racks drinking fountains, trash receptacles, goal posts, lighting etc. shall not be considered obstructions.)
- Is accessible to, designed for, and intended for the common use or enjoyment of the general public or the residents/occupants of a building, neighborhood or subdivision.
- Is used for recreation, resource protection, amenity or buffer yard/greenbelt purposes.
- Is not an existing or future right-of-way (R.O.W.).
- Is not part of the roof of any building

**Tree, Preserved.** A protected tree shall be considered preserved only if a minimum of 75% of the critical root zone is maintained at undisturbed natural grade and not more than 25% of the canopy is removed due to building encroachment. The canopy shall retain its natural form and integrity.

**Protective Fencing.** Protective fencing shall be orange vinyl construction fencing or other material approved by Landscape Administrator or designee with a four-foot (4') approximate height adequately supported.

**Pruning, Allowed.** Approved pruning of protected tree(s) by Landscape Administrator in cases where tree(s) must be strategically pruned to allow construction or demolition of a structure. When allowed, all pruning shall be in accordance with approved arboricultural technique and/or guidelines established by the Landscape Administrator or designee.

**Pruning Permit.** Permit required for all utility, franchise and city projects. No fee is required.

**Thinning, Selective.** The removal of selected trees from within a forested area. The purpose of Selective Thinning is to improve the health and natural growth form of remaining trees or remove invasive and sometimes non-native species.

**Top Soil.** Top layer of soil native to the site.

**Traditional Neighborhood Design.** A development design or pattern that is characterized by a mixture of housing types and densities, a mixture of land uses including retail, office, and civic uses, reduced paving and street sizes, and that affords ease of pedestrian access. This design typically features a gridiron street pattern, short block lengths, narrow streets, reduced building

setbacks from the street and close proximity of residential and non-residential buildings and uses.

**Tree.** Any self-supporting woody perennial plant, which will attain a trunk diameter of two inches (2") or more when measured at a point four and one-half feet (4.5') above ground level and normally an overall height of at least fifteen feet (15') at maturity, singular or multi-trunk. The diameter of a multi-trunk tree shall be determined by adding the total diameter of ½ diameter of each additional trunk to the diameter of the largest trunk.

**Tree Board.** The Tree and Landscape Advisory Board members shall be appointed by the City Council. The Board will meet as needed, to review and monitor the Tree Protection and Landscape Ordinances, and to advise the Landscape Administrator, Park Board, City Council, Planning & Zoning Commission and citizens.

**Tree Diversity.** A condition wherein no single species of tree or plant material comprises more than 30% of the cumulative total of plantings on a site or of replacement trees required due to mitigation and remediation.

**Tree, Heritage.** Any tree planted and related to the heritage of the community, individual or homestead.

**Tree, Historic.** Any tree that has been identified as having historical value (species, history, uniqueness) by the Tree Advisory Board and/or Landscape Administrator. The nomination for certification shall have a public hearing and be forwarded to the Council for confirmation. A listing of all trees so designated shall be maintained and updated by the Landscape Administrator and made available upon request to the public. (Tree Champion List is listed with Texas Forestry Service.)

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

**Tree, Protected.** A tree listed on the recommended tree list (Appendix A), which has a caliper of six (6") inches or greater measured in accordance with standards established by this ordinance. The caliper of a multi-trunk tree shall be determined by adding the total diameter of the largest trunk to one-half (1/2) diameter of each additional trunk (refer to ANSI).

**Tree, Specimen.** Any tree, including under story trees, of a species not listed or not on the recommended tree list, but which the City determines significant positive characteristics, such as size, age and/or historical importance, and is worthy of preserving.

**Tree, Street.** Trees, shrubs, and all other woody vegetation on land lying between property lines planted at recommended intervals with consideration of visibility triangle on either side of all streets, avenues, right-of-ways or entrances to the City. Tree species and planting techniques shall be selected to create a unified image for the street, provide an effective canopy, avoid sidewalk damage and minimize water consumption.

**Tree, Understory.** A tree which the City has determined has significant positive characteristics worthy of preservation and that does not typically attain height greater than thirty (30') feet.

**Tree Survey.** The Tree Survey is the heart of the Tree Preservation Ordinance. Its purpose is not to penalize, but to aid in protecting our valuable natural resources during development and construction. The Tree Survey will also help determine the quantity of trees, if any, that may be

removed or cannot be safely and adequately protected during the street utility, engineering/drainage, and construction phases of development.

***Tree Topping.*** The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. 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 ordinance at the determination of the Landscape Administrator or designee.

***Tree, Canopy or Shade.*** Canopy or Shade Tree means a species of tree which normally bears crown foliage no lower than six feet above ground level upon maturity.

### **Sec. 14.903 Permit Required**

A tree removal permit shall be obtained from the Landscape Administrator or designee before any person, directly or indirectly, shall clear cut/remove, destroy or do selective thinning on any protected tree(s) situated on property regulated by this ordinance, except as specified herein (definitions of clear cutting, selective thinning, and ground level cuts).

(a) New Development/Construction. In the event it becomes necessary to remove a tree for development or construction, a Tree Removal Permit shall be required. New construction shall include Residential, Non Residential, Special Developments, Planned Developments and individual contractor builders shall be required to meet the criteria herein specified and shall require a Tree Removal Permit for the removal of any Protected Tree. During platting, a permit shall be issued after preliminary plat approval by Planning and Zoning Commission.

- (1) Submission of a Tree Removal Permit Application to the City shall authorize the Landscape Administrator or designee to conduct field inspections of the site as necessary to meet the provisions of this Article and any published Guidelines. After thorough review of the Tree Removal Permit Application and accompanying documents, the Landscape Administrator or designee will approve as submitted, approve with conditions, or disapprove the applications.
- (2) All developers and/or builders, which have not submitted preliminary plats as of the effective date of this ordinance shall be subject to the requirements for tree protection and replacement specified in this ordinance.
- (3) All areas within public R.O.W., utility easements or drainage easements, as shown on an approved Preliminary Plat and areas designated as cut/fill on the master drainage construction plan approved by the Landscape Administrator, shall be subject to the tree protection requirements specified herein except as provided for in *Sub-section 5.8 Street Trees and Open Space*.

(b) Municipal/Public Domain Property. All municipal or public domain property shall be subject to this Article regarding protection and replacement specified. A Tree Removal Permit shall be required with fee exemption for the removal of a Protected Tree. Any Protected Tree to be removed must be shown on construction plans approved by the Landscape Administrator or designee.

(c) City/Franchise for Existing R.O.W. and Public Easements. All construction and maintenance activity within public R.O.W. or easements shall be subject to the requirements for tree protection and replacement specified in this ordinance.

- (1) **City Projects.** The City shall be subject to the requirements for tree protection and replacement on all projects. A Tree Removal Permit shall be required with fee exemption for the removal of a Protected Tree.
  - (2) **Pruning.** The owners of all trees adjacent to public R.O.W. shall be required to maintain a minimum clearance of fourteen feet (14') 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, which shall constitute a menace to public safety. (The City shall also have right to prune trees overhanging within the Public R.O.W. which interfere with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign or a s necessary to preserve the public safety.)
  - (3) **Stump Removals.** All stumps of street and park tree shall be removed below the surface of the ground so the top of the stump shall not project above the surface of the ground.
  - (4) **Franchise and Other Utility Companies.** All utility company projects shall be subject to the requirements for tree protection and replacement specified in this Ordinance. Companies shall meet before hand on site with Landscape Administrator or designee, and obtain pruning permit before work is begun. Pruning activities by a utility company must comply with Definitions on Pruning, allowed, Pruning required, and Tree Topping. Prior to beginning any pruning not requested by the owner of the tree; the contractor shall submit a Tree Pruning Request for approval (see definitions). A Tree Removal Permit must be obtained prior to the removal of a protected tree. This permit must be accompanied by current pictures, site plan or construction plan meeting the site plan requirements specified in this Ordinance.
    - A. Utility companies may prune trees as necessary to re-establish disrupted electric service without obtaining a permit.
    - B. Compliance with this ordinance shall be amended to and included with all future revision of all franchise agreements.
    - C. All trenching shall be designed to avoid trenching across the critical root zone of any protected tree. Although this is not intended to prohibit the placement of underground service such as electric, phone, gas, etc., the placement of these utilities is encouraged to be located outside of the critical root zone of protected tree(s).
    - D. Pictures of work site shall be submitted with all permit applications and is a requirement for procurement prior to work beginning.
- (c) Agricultural Owners. Agricultural owners shall be permitted to remove seven (7) protected trees per calendar year without the requirement to mitigate or replace said trees providing they meet provisions as stated in *Sub-section 5.4 Agriculture*. Protected trees removed in excess of seven will require mitigation and the approval of a permit.
- (d) Builders/Contractors (New Construction Only). A builder or contractor who purchased land or lots for residential construction and sale is subject to all requirements specified herein. All builders who have not submitted a request for a building permit as of the effective date of this ordinance are subject to the requirement herein this ordinance and shall be required to obtain a tree removal permit for removal of Protected Tree(s). No building permit shall be issued unless the applicant signs a permit request which states that all construction activities shall meet the requirements of the tree preservation ordinance.

(e) Permit Expiration. Permits for tree removal shall become void one hundred eighty (180) days after the issue date on the permit.

#### **Sec. 14.904 Submittal Requirements**

Prior to removing a protected tree(s) and receiving a tree removal permit, the applicant shall submit a Tree Removal Permit Application and pay the application fee to the City. The applicant shall also submit a written reason for the request to remove the Protected Tree(s), as well as the following information as applicable:

(a) Tree Survey

(1) **Purpose.** The Tree Survey is vital to the Tree Preservation Ordinance. Its purpose is to aid in protecting the City's valuable natural resources during all phases of development and construction. Additionally, the Tree Survey will help identify Protected and/or historic trees; identify the trees to be mitigated on the site that may be damaged in the construction zone; determine the trees that must be accommodated in the development of essential streets, utilities and building construction, and in the adjustment of these streets, utilities and building envelopes, to protect as much of the native vegetation as possible.

(2) **Scope.** A Tree Survey shall be conducted on all residential and non-residential tracts and be current to within the twenty-four (24) months immediately prior to submission of and included with the following:

- A. Preliminary Plat
- B. Re-plat
- C. Final Plat/Approval
- D. Site Plan Review
- E. Application for Building Permit
- F. Street, Utility, and drainage plans
- G. Concept Plan for a Planned Development

(3) **Detail**

- A. The Tree Survey shall be performed by a degreed urban forester, certified arborist, or qualified personnel as approved by the Landscape Administrator or designee.
- B. The Tree Survey shall be accurate and include: Location, size (DBH or Caliper), species, and trees with health problems (structural integrity, pest and/or pathogens) with a six-inch (6") or greater caliper (see definition). The Tree Survey information shall be compiled in a tabular format with each Tree identified by a number corresponding to a numbered tree on the site Plan.
- C. The entire parcel being proposed for development should be included in the Tree Survey.
- D. Once the Tree Survey has been accomplished and submitted to the City, all Trees on the Tree Survey shall be classified as Protected Trees, with the exception of those classified as Unprotected Tree species under this Ordinance.

(b) Commercial Development. Additional requirements for the tree survey on commercial tracts of land shall require a complete tree survey, which shall include the following:

- (1) All areas within public R.O.W.,
- (2) Public utility or drainage easements shown on an approved Final Plat, and
- (3) Fire lanes, parking and drive areas, exclusive of the building pad, shall be subject to the tree protection and replacement requirements specified herein.

(c) Aerial Photos and Sampling. With the submittal of a concept plan or preliminary plat, which ever occurs first for property containing large, heavily wooded areas, the Landscape Administrator or designee may, in lieu of a tree survey, authorize the submittal of an aerial photograph accompanied by a transparent plan of the development at the same scale as the photograph, showing all non-disturbance areas and proposed exemption areas where no trees will be critically altered.

For heavily wooded areas where development activity and disturbance is intended or likely, the Landscape Administrator or designee is authorized, but not required, to accept sampling of the property in lieu of a tree survey for all or any part of a property, provided that a tree survey of all other areas is submitted to the Landscape Administrator prior to any grading or construction. Said Sample or sampling techniques should be representational of the site or wooded area and should comprise at least 5% of the total site or wooded area.

The Landscape Administrator or designee may approve the submission of photographs or samples in phases for a multiphase project.

(d) Affidavit of No Protected Trees. If a property contains no Protected Tree species, or if construction, grading, trenching or related activities are not to be performed in an area containing protected trees, the applicant may submit an Affidavit of No Protected Trees in lieu of a tree survey. This affidavit shall act in lieu of a tree survey upon a determination by the Landscape Administrator that no protected trees exist on the site. The Landscape Administrator shall review the Affidavit. The Affidavit shall be denied or approved when determined if the property contains protected tree(s) or non-protected tree(s) by the Landscape Administrator.

(e) A Tree Preservation Plan. A tree preservation plan shall be submitted showing major site construction features, existing trees to remain, existing trees that may be removed, and replacement trees showing species, location, number and size. The Tree Preservation Plan information may be included on the tree survey if all information can be clearly delineated.

## **Sec. 14.905 Exemptions**

Any exemption shall be approved by the Landscape Administrator or designee prior to removal of any tree(s). A Tree Removal Permit and tree protection and replacement requirements shall not be required under any of the following circumstances.

(a) Public Safety. The tree endangers the public health, welfare of safety and immediate removal is required due to structural integrity concerns.

(b) Utility Service Interruption. The tree has disrupted a public utility service due to a tornado, storm, flood or other act of nature. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.

(d) Landscape Nursery. All licensed plant or tree nurseries shall be exempt from the tree protection and replacement requirements and from the tree-removal permit requirements only in relation to those trees planted and growing on the premises of said licensee, which are so planted and growing for the sale or intended sale to the general public in the ordinary course of said licensee's business.

(e) Agricultural. The owner of property zoned 'AO' agricultural and being actively used for agricultural purposes or being used for an individual residence or homestead shall be permitted to remove seven (7) Protected Trees per calendar year without obtaining a permit. Removal of protected trees in excess of seven will require permits. It is not the intent of this Ordinance to prohibit the clearing of land for legitimate agricultural use. An agriculturally zoned property owner shall request the Landscape Administrator to make an on-site inspection of the property to be cleared and provide to the Landscape Administrator the reason for the clearing said property. A fee shall be paid to the city for this inspection. If the Landscape Administrator determines the clearing of land to be for a legitimate, agricultural reason, he/she shall issue a tree removal permit and specify the designated area or property. Should the cleared land be developed within five (5) years of clearing date, the developer shall be required to mitigate trees removed as referenced in the Permit. To give the owner of agricultural property the same rights as the residentially zoned property owner, he/she can be exempt from this ordinance for a total of two (2) acres surrounding and adjacent to his/her existing homestead.

(f) Diseased Trees. Tree removal is permissible when a tree is infected with transmittable pathogens, damaged beyond the point of recovery, or in danger of falling as determined by the Landscape Administrator or designee prior to the removal of the tree.

(g) Residential Property. Owners of property zoned as residential, who reside at the property and use the residence as their primary residence. Citizens of Lancaster who have a homestead within the City of Lancaster and own residential rental properties shall have an exemption on a maximum of two (2) properties for removal of Protected Trees.

(h) Affidavit of No Protected Trees. See *Section 14.904(d)*.

(i) Street Trees & Open Space. New developments incorporating Traditional Neighborhood Design with a minimum of 15% open space, Conventional Design with a minimum of 20% open space, or Conservation Design with a minimum of 25% open space and the provision of street trees shall be exempt from the mitigation applicable for protected tree loss within rights-of-way (ROW) areas. For purposes of this section the following apply:

- (1) Street trees shall be planted an average of thirty (30') feet on center, in minimum five-foot (5') wide planter strips located between the curb and minimum five-foot (5') wide sidewalk. In secondary areas without planter strips, trees shall be kept as close to the sidewalk to

provide shade canopy, be aligned to visually frame the street, avoid sidewalk damage, and minimize water consumption. Street trees shall be of a limited selection of tree species, as listed in the City's Approved Plant List, to give them a unified and distinct image.

- (2) Tree species and placement shall be designed to avoid the use of a single species, to visually frame streets and to create an identifiable and distinct image.
- (3) Adequate sight distances must be maintained, in order to ensure safety.
- (4) Infrastructure shall be engineered and constructed to assure placement of street trees will not be injurious to utilities, vision clearance, or other public improvements.
- (5) Maintenance of "street trees" including adequate irrigation shall be provided by homeowners individually or shall be incorporated into the homeowner association (H.O.A.) and business development agreements.

(j) **Building Pad.** The building foundation and an area extending ten (10') feet from the building foundation as shown on an approved Site Plan shall be exempt from tree replacement and mitigation.

#### **Sec. 14.905 Review and Approval Process**

(a) **Authority for Review.** The Landscape Administrator or designee shall evaluate any plans required by this ordinance for determination that the applicant has made a good faith effort in saving as many protected trees as possible. An analysis prepared by the Landscape Administrator or designee shall be forwarded to the Planning and Zoning Commission and the City Council for their consideration regarding denial or approval of the development. The Landscape Administrator or designee shall be responsible for the review and approval of all requests for tree removal permits submitted in accordance with the requirements specified herein.

- (1) **Deferrals.** The Landscape Administrator may defer the approval of a tree removal permit to the Planning and Zoning Commission for any reason. All decisions made by the Commission shall be final.
- (2) **Appeals.** Decisions made by the Landscape Administrator may be appealed to the Planning and Zoning Commission. Any such appeal shall first be considered by the Tree Advisory Board. The Tree Advisory Board shall be authorized, but not required, to forward a non-binding recommendation to the Planning and Zoning Commission. All decisions made by the Planning and Zoning Commission shall be final.

(b) **Fee Schedules.** The Landscape Administrator shall establish administrative procedures necessary to facilitate the implementation and enforcement of this ordinance.

- (1) **Fees.** All tree removal permits shall be accompanied by a payment made to the City of Lancaster in the amount established by resolution of the City Council to cover the cost of review and passed by Resolution.
- (2) **Alternative Fee Schedule.** Until such time as a Landscape Administrator is hired, the Tree Preservation Ordinance requirements for new construction review shall be fulfilled by approved City Tree Consultants and applicable consultant fees shall be charged to the applicant in lieu of city fee schedule by resolution. There shall be an administrative fee of \$25.00 paid additionally to the City.

(c) **Permit Application Action.** The Landscape Administrator or Planning and Zoning Commission shall grant a tree removal permit based on the following considerations:

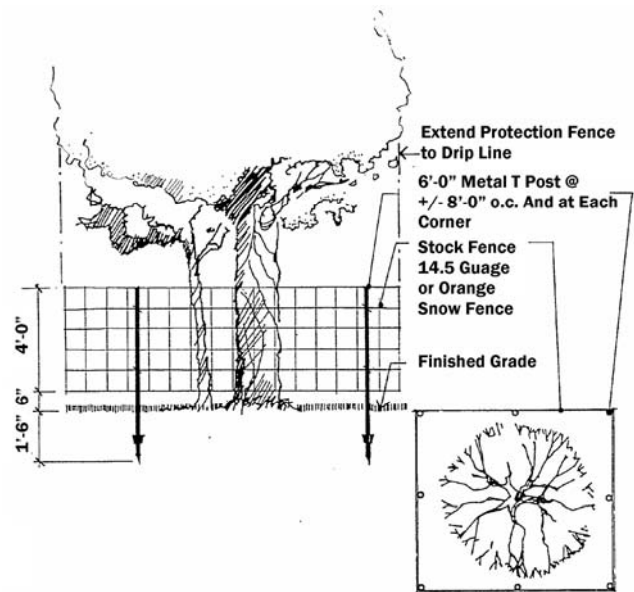
- (1) Whether or not an alternative solution can be made to accomplish the desired activity without tree removal;
- (2) The cost of preserving the tree;
- (3) Whether the tree is worthy of preservation;
- (4) The effect of the removal on erosion, soil moisture, retention, flow of surface waters, and drainage systems;
- (5) The need for buffering of residential areas from the noise, glare, and visual effects of nonresidential uses;
- (6) Whether the proposed tree replacement pursuant to *Section 7 Tree Replacement* adequately mitigates the removal of the tree;
- (7) Whether the removal affects the public health, safety or welfare.

**Sec. 14.906 Guidelines for Tree Protection**

A major purpose of this Section is to protect all the Protected Trees retained on the site for approved development and construction to occur.

(a) During Construction. Minimum requirements for the protection of all Protected Trees on the development and construction site related, but not limited to, streets, parking lots, building sites, driveways and sidewalks shall be strictly adhered to. This shall include:

- (1) Establishing a Building Envelope enclosed with approved fencing; establishing designated areas for parking all vehicles, trailers, construction equipment, related items as well as storage of all supplies and materials;
- (2) Clearly identifying designated restricted areas on construction and site plans and the project location;
- (3) Proper protection of Drip line of a Protected Tree with appropriate fencing;
- (4) Approved bilingual (English and Spanish) signage visibly located at site;
- (5) Retention and protection of Under Story Vegetation and leaf litter during all phases of development;
- (6) Boring of any underground utilities, which passes within a Protected Tree or Critical Root Zone;
- (7) Enactment of preventive measures to prevent grade changes of one-half inch (1/2") or more, or fill, within a Tree Protection or Critical Root Zone.



Additional protective measures may be required by the Landscape Administrator or designee as a condition of permit approval. Such conditions may be established by the publication of Tree Preservation Guidelines and/or by attaching conditions of permit approval.

(b) Trenching. All trenching shall be designed to avoid trenching across the critical root zone of any protected tree. Although this is not intended to prohibit the placement of underground service such as electric, phone, gas, etc., the placement of these utilities is encouraged to be located outside of the critical root zone of protected tree(s). Irrigation system trenching shall be placed outside the critical root zone with only the minimum required single head supply allowed within that area placed radially to the tree trunk and shall be hand trenched with roots cleanly cut or use of air spade to reduce damage.

(c) Prohibited Activities. Prior to and during development and construction, the following activities shall be prohibited. The Landscape Administrator shall be authorized to provide more detailed explanations by publication of Tree Preservation Guidelines or by attachment of conditions to any permit issued pursuant to this ordinance. All such directions shall be strictly adhered to.

- (1) Clear cutting of trees on a property for any purpose at any time except for the exceptions provided for in *Section 5 Exemptions*.
- (2) Construction vehicles and equipment parking and storage around Protected Trees.
- (3) Storage, placing or disposing of construction and waste materials around Protected Trees.
- (4) Restrictions and prohibitions on unapproved grade changes that may damage or destroy Protected Trees.
- (5) Water accumulations due to construction-related activities.
- (6) Unapproved attachments to Protected Trees.
- (7) Removal of more than 25% of a Protected Tree's foliage in a given year. No pruning or topping may significantly disfigure the tree, or be done in a manner, which would reasonably lead to the death of the tree.
- (8) Any person acting to circumvent the purpose of this ordinance.
- (9) Impervious materials used in or near Protected Trees.
- (10) Unapproved fencing and bark protection methods on any construction sites in and near the Protected Tree areas.
- (11) Construction methods such as boring, grade change, trenching, and root pruning that damage or destroy Protected Trees.
- (12) Placement of fill within the drip line of any protected tree on any undeveloped property.

## **Sec. 14.907 Tree Replacement**

In the event that it is necessary to remove a Protected Tree(s) as allowed in *Section 3* above, the applicant shall be required to replace the Protected Tree(s) being removed with quality trees from the Approved Plant List. A sufficient number of trees shall be planted to equal or exceed, in caliper, the diameter (at 4.5' above ground level) of each tree removed. This mitigation measure is not meant to supplant good site planning. Tree replacement will be reconsidered 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 two (2") inches caliper (at 1' above ground) and seven feet (7') in height when planted. All replacement trees shall be from the Approved Tree List or an approved street tree when replacing street trees. Tree diversity will be encouraged. The Landscape Administrator or designee has the authority to reject any tree(s) replacement plan not meeting the standards in this Article and in Article VIII Landscape Standards.

(a) Responsibility and Site Requirements. The Landscape Administrator or designee shall determine the agent responsible for replacement, the time frame for replacement and the location of the new trees. The replacement trees shall be located on the subject site whenever possible. However if this is not feasible, the Landscape Administrator or designee has the authority to allow the planting to take place on another property, including public property. If the Landscape Administrator approves the planting of replacement trees more than 30 days after the removal of protected trees, the applicant shall provide the Landscape Administrator with an affidavit that all replacement trees will be planted within six (6) months and maintained by the applicant for a minimum of two (2) years in good condition. Developers shall plant all the replacement trees identified on the Mitigation Plan. The Landscape Administrator or designee shall document the date of replacement trees on the reforestation plan and record for review of the 2-year commitment.

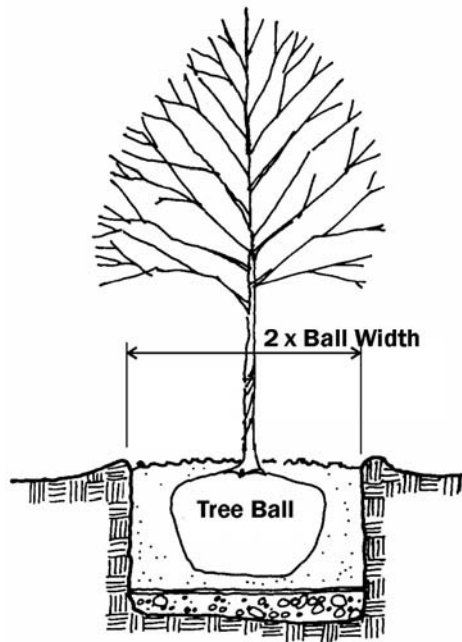
In as much as it is reasonable and feasible, replanting on the development or construction site will be encouraged in order to restore the original natural landscape character of the site.

- (1) Protected Trees will be replanted at a replacement ration of one-inch (1") caliper of replacement tree for each one (1") inch Diameter Breast Height (DBH) of removed tree.
  - (2) \*Specimen and Historic, Champion, and Heritage Trees shall be replanted at a replacement ratio of ten (10") inches caliper Replacement Tree for each one-inch (1") DBH of removed tree. \*(American National Standards Institute)
  - (3) The Landscape Administrator has the authority to reject any trees not meeting these standards.
  - (4) One (1) 6-month extension may be approved by the Landscape Administrator due only to seasonal limitations that would make planting of trees impractical, and shall require an escrow deposit in an amount equal to 110% of the mitigated value.
  - (5) The applicant shall be required to maintain the replacement trees in good condition for a minimum of two years. If a replacement tree dies or is damaged within the initial two-year period, the applicant shall replace it with a tree approved by the Landscape Administrator or designee.
- (b) Payment in Lieu of Replacement.
- (1) To the extent that tree replacement is not feasible, the Landscape Administrator or designee shall determine in accordance with the provisions provided herein, the amount of indemnification to be paid by the developer or other responsible party. Upon

determination of indemnification, said payment shall be made to the City of Lancaster Reforestation and Natural Area Fund based on the following guidelines:

- A. For Protected Trees, reparations will be made in the amount of one hundred twenty-five dollars (\$125.00) per one (1") inch DBH. The Landscape Administrator shall be authorized to reduce this amount in accordance with the following:
  1. In cases when at least 25% of the required mitigation is provided by on-site or off-site tree planting, a reduction to not less than one hundred dollars (\$100) per one (1") inch DBH may be allowed.
  2. A two (2") inch credit against mitigation and/or reparations may be authorized for each inch of large tree that is preserved and designated as Specimen, Historic, Champion, or Heritage tree. Designation of Specimen, Historic, Champion, or Heritage trees not located on the same property may also be used for this credit upon review and approval of same. The property owner or responsible party for said tree designated as a Specimen, Historic, Champion, or Heritage tree shall be responsible for the care and maintenance of said tree.
  3. A one (1") inch for one (1") inch credit against mitigation and/or reparations shall be authorized for the preservation of any tree provided that:
    - i. Said tree to be preserved is a minimum of six (6") caliper inches and is listed as a protected species in Appendix A of this ordinance.
    - ii. Said tree to be preserved is located in an exempted area or is otherwise free from mitigation and/or reparations requirements.
    - iii. Said tree is protected from future removal, destruction or critical alteration by:
      - The establishment of protective covenants, easements, or agreements, or
      - Said tree is transplanted to or designated within a common area, public park or open space.
  4. Subsequent removal damage, or critical alteration of any tree used for credit as identified in *Sub-sections a, b or c* above shall require mitigation replacement and/or reparations in accordance with this ordinance.
- B. For Specimen and Historic, Champion, and Heritage Trees, reparations will be made for the Appraised Value of the removed tree as determined by CLTA (Council of Landscape Tree Appraisers) Guidelines. In lieu of total cash reparation, developers shall have the option of paying 75% of mitigated value to the City of Lancaster Reforestation and Natural Areas Fund (LRNA Fund) and 25% of the mitigated value shall be expended to plant approved trees at sites designated by the Landscape Administrator. Developers shall purchase, plant, and maintain for a period of two (2) years approved trees at designated sites. Verification of mitigation expenses shall be approved by Landscape Administrator or designee.
- C. If any Protected and/or Replacement Tree(s) dies within two (2) years of initial planting or issuance of Certificate of Occupancy and is brought to the attention of the Landscape Administrator or designee, the original permit applicant shall be subject to the same replacement fee as for a Protected Tree.

- D. Money paid in lieu of tree replacement made in compliance with this section shall be considered contributions to the LRNA Fund.
- E. The LRNA Fund shall be used for purchasing and planting trees on public property, acquiring property that shall remain in a naturalistic state in perpetuity through outright purchase or Development Rights, and assisting in the cost of administering this ordinance.
- F. The Landscape Administrator shall be authorized to temporarily defer the payment of any mitigation or reparation fees when such action is deemed to be warranted due to unique circumstances, such as when the amount of mitigation is subject to change, when a development agreement is pending, or other similar transitory circumstances. Any such deferred fee shall be rectified and paid in full prior to the filing of a plat in the County records.



**Sec. 14.908 Tree Planting Restrictions**

- (a) Overhead Lines. Any required replacement trees shall not be planted within an area such that the mature canopy of the selected tree will interfere with overhead utility lines.
- (b) Underground Utilities. Any required replacement trees or street trees shall not be planted within an area such that the mature root zone of the tree will interfere with underground public utility lines (including water lines, sewer lines, transmission lines or other utilities). Selection of tree species whose root systems are the least invasive to utilities may be considered.
- (c) Fire Hydrants. No trees shall be planted within ten (10') feet of a fire hydrant.
- (d) Street Corners. No street trees shall be planted closer than thirty-five feet (35') of any street corner, measured from the point of nearest intersecting curbs or curb-lines.

**Sec. 14.909 Street Trees**

- (a) Acceptable Trees. The Landscape Administrator shall maintain a list of acceptable trees for planting along streets, buffer yards, medians, within parks, or within other public areas. Trees other than those listed as acceptable may only be planted within said public areas upon approval of the Landscape Administrator.
- (b) Street Tree Spacing. The spacing of street trees will be in accordance with recommendations of the Landscape Administrator. Closer spacing or group plantings may be approved by the Landscape Administrator in unique situations.
- (c) Homeowner Associations (HOAs) or Property Owners. HOAs or property owners shall maintain a clearance above the street level of fourteen (14') feet, seven to eight feet (7' to 8') above sidewalks, and branching of trees out of the Visibility Triangle. Landscape maintenance of street trees to accommodate buses and service vehicles shall be incorporated into homeowner association and business agreements. HOAs will be responsible for replacement of trees along public rights-of-way within their neighborhood.
- (d) Public Tree Care. The City shall have the right to prune and maintain street trees, and park trees within the lines of all streets, alleys, avenues, lanes, squares, and public grounds, as may be necessary to insure public health, safety and welfare. The City may, by determination of the Landscape Administrator, remove, cause or order to be removed, any tree or part thereof which is in an unsafe condition; or which by reason of its nature maybe injurious to sewers, electric power lines, gas lines, water lines, vision clearance or other public improvements.

**Sec. 14.910 Ordinance Enforcement**

- (a) Developers Agreement. No developer's agreement shall be approved which does not state that all construction activities shall meet the requirements of the tree preservation ordinance.
- (b) Building Permit. No building permit shall be issued unless the applicant signs an application or permit request which states that all construction activities shall meet the requirements of the tree preservation ordinance and guidelines.
- (c) Acceptance of Improvements. No acceptance of public improvements shall be authorized until all fines for violation of this ordinance have been paid to the City or other wise 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 Reforestation

Fund; however, the acceptance of public improvements may be authorized before all trees have been replaced provided a fiscal security deposit is posted in the amount equal to one and one-half times (1½ X) the prevailing rate for installed trees with a two (2) year guarantee, plus fifteen percent (15%) to cover administrative costs. Said deposit shall be forfeited if subject trees are not planted within 30 days of notification by the Landscape Administrator.

(d) Certificate of Occupancy. No Certificate of Occupancy shall be issued until all fines for violations of this ordinance 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 Reforestation Fund; however, that a Certificate of Occupancy may be granted before all trees have been replaced provided a fiscal security deposited is posted in the amount equal to one and one half times (1½) the prevailing rate for installed trees with a two (2) year guarantee, plus fifteen percent (15%) to cover administrative costs. Said deposit shall be forfeited if subject tree(s) are not planted within 30 days of notification by the Landscape Administrator.

#### **Sec. 14.911      Violations**

In addition to any criminal penalty for violation of this Code, any person, firm, corporation, agent, city, state, or federal organization or employee thereof who violates the provisions of this ordinance where such violation results in the removal or damage to applicable trees shall be guilty of a misdemeanor and upon conviction shall be assessed a civil penalty of one hundred twenty-five dollars (\$125.00) per diameter inch of the tree(s) removed or damaged.

The unlawful injury, destruction or removal of each protected tree shall be considered a separate incident, and each incident subjects the violator to the penalty set forth herein per tree.

- (a) **Removal of Public Trees.** It shall be deemed a violation of this ordinance for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees within the City without first adhering to the requirements of this ordinance and procuring approval from the Landscape Administrator.
- (b) **Violations and Assessments.** Violations of this ordinance and non-payment of fines levied will be attached to property involved through standard legal methods.

Any person, firm, corporation, agent, city, state, or federal organization or employee thereof who violates a procedural requirement or who fails to comply with conditions established with a permit issued by the Landscape Administrator or his or her designee pursuant to this ordinance shall be guilty of a misdemeanor and upon conviction shall be fined five hundred dollars (\$500.00) per violation. Each procedural violation or failure to comply each day shall be considered a separate incident, and each incident subjects the violator to the penalty set forth herein.