

SUBCHAPTER 12. TREE PRESERVATION STANDARDS.

A. PURPOSE.

This Section establishes requirements for tree preservation in order to provide for orderly protection of specified trees, to promote the health, safety, welfare, and quality of life for the residents of the City, to protect property values, and to avoid significant negative impacts on the adjacent properties. The existing natural landscape provides superior ecological, environmental, and aesthetic qualities to the streetscape and parks, and continue to help define the unique character of Pflugerville. Therefore, the City requires the preservation of the existing natural landscape including Protected Trees and Significant Stands of Trees to the maximum extent feasible and where necessary, protected from setbacks from development. Indiscriminate clearing of land and removal of Protected Trees is hereby declared a public nuisance.

B. APPLICABILITY.

The provisions of this Section shall apply to property located within the corporate limits of the City of Pflugerville and that portion of the extra-territorial jurisdiction (ETJ) within 5,000 feet from the city limit boundary in one or more of the following conditions:

- (1) All existing and new development with commercial, industrial and multi-family zoning and/ or land use;
- (2) All new construction of single-family development without a Certificate of Occupancy;
- (3) All property with agriculture zoning and not utilized for agricultural purposes; and
- (4) All property associated with a Conceptual, Preliminary Plan, Construction Plan and/ or Site Plan.

C. PROTECTED TREES.

- (1) A Protected Tree or a Significant Stand of Trees shall not be removed from site without first securing a Tree Removal Permit, Site Plan Permit or Construction Plan Permit. A Heritage Tree shall not be removed unless specifically approved by City Council.
- (2) Protected Tree Size. A Protected Tree is any Tree (including Significant Stands of Trees) measuring eight diameter inches (8") or larger at DBH. The following species are excluded from Protected status with certain exceptions: Chinaberry, Hackberry, Ashe juniper (Cedar), Chinese tallow, Willow, Ligustrum, Mimosa, Cottonwood or any other tree that is determined by the Administrator to be diseased or dying due to natural causes. Treelines, regardless of tree species, that serve as a visual buffer between existing single-family and a more intense use shall be considered Protected.
- (3) A Significant Stand of Trees has a DBH sum of at least 20 inches (minimum DBH of 20" tree) within an area at least 100 square feet, where the center of each tree is no more than

10 feet from another tree. Chinaberry, Hackberry, Ashe juniper (Cedar), Chinese tallow, Willow, Ligustrum, Mimosa, Cottonwood or any other tree that is determined by the Administrator to be diseased or dying due to natural causes are excluded.

- (4) A Heritage tree is any tree measuring twenty-five diameter inches (25") or larger at DBH. The following species are excluded from the Heritage tree classification: Chinaberry, Hackberry, Ashe juniper (Cedar), Chinese tallow, Willow, Ligustrum, Mimosa, Cottonwood or any other tree that is determined by the Administrator to be diseased or dying due to natural causes.

D. PROTECTED TREE REMOVAL EXCEPTIONS.

- (1) A Protected Tree may be removed if the tree is identified for removal in a capital improvement project which has been approved by City Council.
- (2) A Protected Tree or Significant Stand of Trees may be removed if the tree is identified for removal on an approved Site Plan, Tree Removal Permit or Construction Plan consistent with the approved Preliminary Plan.
- (3) A Protected Tree (Heritage) may be removed if approved by City Council.
- (4) A Protected Tree may be removed if determined by the City Forester or Administrator determines that the tree is diseased, dead, or dying due to natural causes.

E. GENERAL TREE PRESERVATION REQUIREMENTS.

- (1) The location of all proposed buildings and improvements shall be oriented in a manner which allows for the greatest extent of preservation of the Protected Trees or Significant Stand of Trees.
- (2) Tree preservation shall also be based on the hierarchy of Trees indicated in Section (H), Tree Classifications while tree classifications 4, 5 and 6 shall be preserved to the greatest extent.
- (3) Parking lots shall be designed to incorporate Protected Trees as focal points or practical means of segmenting parking lots within landscape Islands, Peninsulas, and Medians.
- (4) Trees preserved shall be integrated with the design of open spaces, screening and landscape areas.
- (5) Fiscal security is required in an amount equal to 100 percent of the mitigation value of the trees proposed for preservation per Table 12, Tree Classification-Fee by Diameter Inch Removed.
- (6) All tree preservation measures shall be in accordance with the Tree Technical Manual.

F. TREE CLASSIFICATIONS.

- (1) The first tree classification (Not Protected) may include trees with diameters up to 7.99 inches; trees less than eight (8) inches in diameter are not protected trees. However, healthy trees (good branching structure, height and spread similar to nursery grown trees) with diameters from 3-7.99 inches may be credited toward landscaping requirements described in [Subchapter 11](#) of the Zoning Ordinance.
- (2) The second tree classification (Protected) includes trees with diameters of 8-17.99 inches. Trees of all species that are at least eight (8) inches in diameter are protected except for Chinaberry, Hackberry, Ashe Juniper, Chinese Tallow, Willow, Mimosa, Cottonwood and Ligustrum.
- (3) The third tree classification (Protected) includes Significant Stands of Trees that equal 20 - 39.99 inches.
- (4) The fourth tree classification (Protected) includes Significant Stands of Trees that equal 40 + inches.
- (5) The fifth tree classification (Protected) includes trees with diameters of 18-24.99 inches and above.
- (6) The sixth tree classification (Protected) includes Heritage Trees with diameters of 25 inches and above.

G. ON SITE MITIGATION.

- (1) Any Protected Tree or Significant Stand of Trees removed, damaged or killed as a result of Development shall be replaced by a Tree or Trees of the same species or comparable alternative equal to the total number of diameter inches removed. Tree replacement on site shall be in accordance with Table 11, Tree Classification - Mitigation Ratio. Replacement trees shall meet the planting criteria in [Subchapter 12](#) and in accordance with the Tree Technical Manual.
- (2) Table 11, Tree Classification - Mitigation Ratio lists the Protected Tree classifications based on size or designation with the applicable tree mitigation ratio for replacement caliper inches.

Table 11, Tree Classification		Mitigation Ratio
Class 1	Unprotected Trees - Trees with DBH < 8 inches	N/A
Class 2	Trees with DBH 8 - 17.99 inches	1:1
Class 3	Significant Stand of Trees - DBH 20 - 39.99	1:1

Class 4	Significant Stand of Trees - DBH 40 +	2:1
Class 5	Trees with DBH 18 - 24.99 inches	3:1
Class 6	“Heritage Tree” - Trees with DBH 25 inches or more	3:1

- (3) No replacement trees shall be planted until the City Forester and/ or Administrator has reviewed and approved the Tree Replacement Plan.
- (4) Transplanting of Protected Trees. Protected Trees can be transplanted to a suitable location on the same property or off-site, and no replacement on site shall be required, if the application complies with the generally accepted transplanting methods of the American National Standards Institute (ANSI A300 Standards) and the tree survives for a period of at least five (5) years and shows no signs of decline. Posting fiscal for the replacement value of the tree is required.
- (5) Irrigation shall be provided for the replacement of Protected Trees in accordance with [Subchapter 11](#) and [Chapter 113](#), Irrigators.

H. OTHER MITIGATION.

- (1) When it is determined by the City Forester or Administrator that mitigation for Protected Tree removal by replanting trees on site is not feasible, e.g., planting capacity has been reached on site, an applicant may choose one of the following alternatives in lieu of replanting on site:
 - (a) Planting the replacement trees with the applicable mitigation ratio identified in Table 11 in a City Park or other publicly owned property as would otherwise be required on site in the locations approved by the City Forester; or
 - (b) Payment per diameter inch of Protected Trees removed shall be paid into the Tree Fund or account for use by the City for the planting, pruning, irrigation and other activities associated with trees in a City Park or on other City-owned property. The payment into the Tree Fund is non-refundable. Table 12, Tree Classification- Fee by Diameter Inch Removed lists the tree classifications with their applicable fees per diameter inch removed.

Table 12, Tree Classification		Fee per Diameter Inch Removed
Class 1	Unprotected Trees - Trees with DBH < 8 inches	N/A
Class 2	Trees with DBH 8 - 17.99 inches	\$150
Class 3	Significant Stand of Trees - DBH 20 - 39.99	\$150
Class 4	Significant Stand of Trees - DBH 40 +	\$300

Class 5	Trees with DBH 18 - 24.99 inches	\$450
Class 6	“Heritage Tree” - Trees with DBH 25 inches or more	\$450

I. MITIGATION EXCEPTIONS.

- (1) Natural Disasters and other Emergencies. If a Protected Tree is determined to be causing a danger or to be in a hazardous condition due to a natural disaster such as a tornado, fire, storm, flood or other act of God that endangers public health, welfare or safety, the requirement of this Section may be waived as deemed necessary by the City Forester and/or Administrator.
- (2) Dead or Diseased Trees. If the City Forester or an ISA Certified Arborist determines, based on an on-site inspection and in writing, that a Protected Tree is already dead, dying or fatally diseased, the provisions of the mitigation requirements will not apply.

J. PROHIBITED ACTIVITIES.

- (1) It is unlawful for any person to remove any Protected Tree without first securing approved Construction or Site Plans or tree removal permit as specified in this section.
- (2) All development subject to this Section, including grading, trenching, or tree removal on all sites, is prohibited prior to the approval of a Tree Protection Plan.
- (3) It is unlawful for any person to damage a Protected Tree, such as through tree topping, over-pruning or chemical poisoning.
- (4) Indiscriminate clearing or stripping of the natural vegetation on a Lot is prohibited.
- (5) It is unlawful for a person to continue work or removal of trees after a stop work order has been issued.

K. ENFORCEMENT.

- (1) All trees identified on an approved Site Plan or Tree Protection Plan to be preserved shall be flagged and encircled with protective chain-link fencing that extends to the drip line. No construction is to occur within an area that constitutes more than 50% of the critical root zone (as measured from the edge of the drip line to the trunk of the tree) for each tree being preserved. No grading or tree removal shall occur on a lot until the Tree Protection Plan and/or Tree Removal Permit has been approved.
- (2) Enforcement of these criteria shall be demonstrated in the field as well as on the plan.
- (3) Plan adjustments made during construction must be reviewed by the Administrator. Removal of Protected Trees in violation of this Section, in addition to other remedies

permitted by the Code of Ordinances, shall require the applicant to fully mitigate damages caused by the tree removal.

- (4) The provisions of this Section shall be implemented by the Administrator and/or City Forester.

L. TREE REMOVAL IN CONJUNCTION WITH DEVELOPMENT APPLICATIONS.

- (1) Tree Protection Plan required. At or before the Site Plan submittal and prior to the removal of any trees, the applicant shall submit a Tree Protection Plan, which shall graphically identify Protected Trees and Significant Stand of Trees and identify those proposed for preservation and removal.
- (2) Tree Replacement Plan. If development under a proposed site plan will remove a tree eight inches in diameter or a Significant Stand of Trees, the City shall require tree mitigation, including the planting of replacement trees or fee in-lieu, as a condition of site plan approval. The Administrator shall not release the site plan until the applicant satisfies the condition of approval or posts fiscal security to ensure performance of the condition.
- (3) Plan Requirements. A Tree Survey, Tree Replacement Plan and Tree Protection Plan shall be provided in accordance with the plan requirements specified in the Tree Technical Manual. The irrigation plan shall be in accordance with [Subchapter 11, Chapter 113](#) (Irrigators) and the Tree Technical Manual.
- (4) Any approved tree removal in conjunction with a development application shall remain in effect until the expiration of such development application or construction plan. Physical tree removal from the site may occur only after a Construction Plan and/ or Site Plan approval.

M. TREE REMOVAL APPLICATION REQUIREMENTS (NOT IN CONJUNCTION WITH A DEVELOPMENT APPLICATION).

- (1) The application shall be made by the owner of the property or the owner(s)'s authorized representative on which the Protected Tree(s) are located.
- (2) Upon receipt of the application, the Administrator or City Forester shall inspect the subject tree and approve or deny the application in accordance with the provisions of the Section within fifteen (15) days of the date of the application. If a decision by the City Forester would delay construction already properly commenced and in progress, the City Forester shall approve or deny the application within three (3) business days.
- (3) A Tree Removal Permit shall not be approved or released until a Tree Replacement Plan has been approved or payment of fee in-lieu has been provided.
- (4) Tree Removal Permits shall remain valid for a period of 60 days.

N. APPEALS.

- (1) An applicant may appeal the decision of the City Forester and/ or Administrator to deny a Heritage Tree Removal to the City Council. Such appeal must be made in writing and received by the Administrator within thirty (30) days from the date of the decision on the tree removal application or official correspondence referencing the denial of the proposed Heritage tree removal. The request for appeal must set forth the specific reasons for the appeal and state the specific reasons for disagreement with the decision of the City Forester, including the basis for the applicant's position that the application should have been granted.
- (2) The Administrator shall set the matter for public hearing before the City Council at the earliest possible regularly scheduled meeting of the City Council.
- (3) The City Council shall review the request and render a decision either affirming, affirming in part, conditionally affirming, or reversing the determination of the City Forester or Administrator only after determining that the Heritage Tree creates one of the following conditions:
 - a. Prevents all economically viable use of the property
 - b. Prevents reasonable use of or access to the property
 - c. Is dying or dead;
 - d. Is diseased and:
 - (i) Restoration is not practicable; or
 - (ii) The disease may be transmitted to other trees;
 - e. Poses a high risk of property damage or personal injury that cannot reasonably be mitigated without removing the tree; (Reasonable mitigation may include lightening protection measures.)
 - f. If located on public property, street or easement:
 - (i) Prevents the opening of necessary vehicular traffic lanes in a street or alley; or
 - (ii) Prevents the construction of utility or drainage facilities that may not feasibly be rerouted.
 - g. If a Heritage Tree Removal Permit is issued after an appeal (or after the expiration of the appeal period) pursuant to the provisions of this subsection, the applicant shall comply with all applicable provisions of this Section, including tree mitigation.

O. PENALTY.

Violations of this [Subchapter 12](#) shall be punishable by a fine of not less than \$300 or more than \$2,000 per violation. This offense is hereby declared to be a public nuisance a strict liability offense and the culpable mental state required by Chapter 6.02 of the Texas Penal Code is hereby specifically negated and clearly dispensed with. Each Protected Tree that is unlawfully removed or damaged shall constitute a separate and distinct offense. Criminal prosecution shall not preclude civil action by the City to recover for the damage or loss of the tree, and the City Attorney is hereby authorized, without further authorization from the City Council, to institute and prosecute a lawsuit against any person who unlawfully removes or damages a Protected Tree to recover the reasonable value of the tree based on the latest edition of the Guide for Plant Appraisal by the Council of Tree and Landscape Appraisers.