

ARTICLE 3.08 TREE PRESERVATION AND PROTECTION

Sec. 3.08.001 Scope and purpose

- (a) This article shall be effective within the geographical limits of the town, including any areas subsequently annexed by the town.
- (b) The purpose of this article is to encourage the preservation of trees that once removed can be replaced only after generations, to preserve protected trees during construction and to control the removal of protected trees when necessary. It is the intent of this article to achieve the following:
- (1) Prohibit the indiscriminate clearing of property.
 - (2) Protect and increase the value of residential and commercial properties within the town.
 - (3) Maintain and enhance a positive image for the attraction of new business enterprises to the town.
 - (4) Protect healthy quality trees and promote the natural ecological environmental and aesthetic qualities of the town.
 - (5) Help provide needed shaded areas in order to provide relief from the heat by reducing the ambient temperature.
 - (6) Help prevent erosion.

Sec. 3.08.002 Definitions

For the purpose of this article, the following words and phrases shall have the meanings ascribed to them:

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 and within fifteen (15) feet surrounding the structure and building improvements.

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

Critical root zone. The area of native soil around a **tree** defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the drip line. (Figure 2 on file in the office of the town secretary)

DBH or diameter at breast height. The diameter, in inches, of a **tree** as measured through the main trunk at a point four and one-half feet (4.5') above the natural grade. For a multi-trunk **tree**, the diameter shall be the total diameter of the largest trunk plus one-half (1/2) of the diameter of each additional trunk.

Drip line. The periphery of the area encompassing a **tree** determined by dropping imaginary vertical lines from the outermost portion of its canopy to the ground.

Grade change. Any changes in ground level or soil compaction within an area around or near the trunk of a **tree** that may adversely affect the health of the **tree**.

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

Mayor. The mayor of the town and/or his designee.

Person. Any person, corporation, partnership, firm, association or artificial entity, or any agent or employee of the foregoing.

Protective fencing. A barrier from entry, constructed from chain link, orange plastic, or other similar material at a minimum height of four feet (4') above ground level, restricting access to a **Tree** Protection Zone.

Tree. Any living, self-supporting, woody perennial plant which at maturity will attain a trunk diameter of two inches (2") or more when measured at DBH and which will typically attain at maturity a height of at least fifteen feet (15').

Tree, protected. Any **tree** having a DBH of six inches (6") or more, except mesquite, thorny honey locust, and willow trees.

Tree, replacement. A **tree** as listed in the approved **tree** replacement ([section 3.08.015](#)) that has a minimum caliper required by this article and a minimum height of seven feet (7'), measured at ground level (natural grade) at the time of planting.

Sec. 3.08.003 Applicability

The terms and provisions of this article apply to all property in the territorial limits of the town unless excepted herein. This article shall apply to all persons, including property owners, managers, trustees, and those persons who have control or responsibility over real property.

Sec. 3.08.004 Exceptions

(a) This article shall not apply to trees located in the yard area of developed residential property within an area of 3 acres surrounding the primary dwelling. However, in the event that a protected **tree** is cut, removed or damaged from property described in this

subsection and the property is transferred to or used for any purpose other than single-family residential within one (1) year following the cutting, removal or damaging of the protected **tree**, then the provisions of [section 3.08.011](#) of this article shall, immediately upon the cessation of use as single family residential property, apply to the protected trees cut removed or damaged in the prior one (1) year period.

(b) Nothing herein contained shall require any change in the plans, construction or designated use of any parcel of property for which a permit for construction has been issued, as of the effective date of this article.

(c) During the period of an emergency, such as a tornado, storm, flood or other natural disaster, the requirements of this article may be waived as deemed necessary by the mayor or his designee.

(1) In addition to rights granted by easement, utility service providers lawfully within the right-of-way may remove trees during the period of an emergency that are determined by the provider to be a danger to public safety and welfare by interfering with utility service.

(2) The town may clear streets and public rights-of-way of damaged or fallen trees, **tree** limbs, or other debris as needed as a result of a storm event.

(d) In the installation or maintenance of facilities, utility service providers, including the town, or their contractors, agents, successors and assigns shall have the right to trim or remove trees so as to prevent any part of such trees from becoming a danger to public health, safety and welfare by interfering with utility service. Trimming shall be done in a manner such that the aesthetics and health of the trees are not destroyed. Existing trees already growing into utility lines shall be trimmed as necessary. The town may require boring under trees within the critical root zone area instead of trenching.

(e) In the installation or maintenance of drainage facilities, creek channel lining, or erosion control measures, the town, or its contractors, agents, successors and assigns shall have the right to trim or remove trees so as to prevent any part of such trees from becoming a danger to public health, safety and welfare by interfering with said drainage improvements. The town may require boring under trees within the critical root zone area instead of trenching.

(f) Diseased or damaged protected trees which are beyond the point of recovery or in danger of falling shall be exempt from the **tree** replacement and preservation plan requirements of this article. A **tree** removal permit shall be required but no permit fee shall be assessed or charged. In the case of code enforcement action, the notice of violation and description of the action to be taken shall serve as the permit to commence work. The removal of a diseased **tree** may be required to reduce the chance of spreading the disease to adjacent, healthy trees.

(g) Plant nurseries shall be exempt from the provisions of this article only in relation to those trees planted and growing on the premises for sale, either retail or wholesale.

(h) Any paved surface within the critical root zone of a protected **tree** that is in existence on or before the effective date of this article may be replaced or maintained.

(i) Seven percent (7%) of the total caliper inches of all protected trees situated on property used for residential or agricultural purposes, but not in the commercial designated corridors, may be removed per year. The maximum in any consecutive five-year period shall be twenty-one (21%) of the total caliper inches of all protected trees. Trees situated on the exempted three-acre area surrounding the primary dwelling under [section 3.08.004\(a\)](#) of this article shall not be used in or subject to this calculation. A **tree** removal permit shall be submitted and approved before any such removal is begun. No fee will be assessed or charged for the permit. Notwithstanding the foregoing, no person shall remove a protected **tree** with a DBH of 18 inches or more without approval of the town council.

Sec. 3.08.005 Tree preservation and protection

(a) No person shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected **tree**, directly or indirectly, regardless of whether the protected **tree** is on private property or the abutting public right-of-way, unless exempt or excepted under the provisions of this article.

(b) The town may issue a stop-work order for any development or construction project or activity at any time if the requirements of this article are not being met. Efforts will be made to allow a developer or builder to comply before the project is shut down.

(c) No clear-cutting of land is allowed. Prior to the removal of any protected **tree**, regardless of construction or development schedule, a **tree** preservation plan must be submitted to and approved by the town.

(d) Prior to construction or development of a commercial or residential subdivision project on a site that contains one (1) or more trees, a **tree** preservation plan must be submitted to and approved by the town. If the site does not contain any protected trees, a letter, prepared by a registered surveyor, engineer, architect or landscape architect, shall be submitted to the town which verifies that protected trees are not on the subject site.

(e) The **tree** preservation plan submittal shall be accompanied by a site plan that includes but is not limited to the following:

(1) Delineation of site boundaries.

(2) Location of all existing or proposed structures and of all improvements such as streets, drives, alleys, septic systems, and easements.

(3) Tree location map. All requests for **tree** removal permits must be accompanied by a map showing at a minimum the requirements as listed below.

(4) Map requirements. Maps shall show: the location of all buildings, structures, pools, utilities, other improvements intended on the lot and limits of construction line shown if applicable; the location of all protected trees; the location of **tree(s)** to be removed and replacement trees with dimensions from two nearest property lines; the caliper and common name of trees to be removed and any required replacement trees shown with caliper size and the common name of **tree**.

(5) The reason for the proposed **tree** removal shall be summarized on legend form on the plan. The same summary shall also be submitted on a legible 8.5" x 11" document.

Sec. 3.08.006 Protection of trees

Protected trees that are not to be removed or have been identified on the **tree** preservation plan to be preserved must be protected under the following conditions:

(1) No materials intended for use in construction or waste materials accumulated due to excavation or demolition shall be placed within the limits of the critical root zone.

(2) No equipment shall be cleaned or other foreign materials deposited or allowed to flow overland within the critical root zone of a protected **tree**. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.

(3) No signs, wires or other objects, other than those of a protective nature, shall be attached to any protected **tree**. However, lighting of a decorative nature may be attached to a protected **tree** so long as the lighting is attached in a manner so as not to damage the protected **tree**.

(4) Construction traffic or parking shall be limited so as to avoid taking place within the limits of the critical root zone of any protected **tree** other than on an existing paved surface. This restriction does not apply to access within the critical root zone for purposes of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance or emergency restoration of utility service, or routine mowing operations, however, these activities should be conducted in such a manner as to minimize the impact on the protected **tree**.

(5) No grading or grade changes shall be conducted or allowed within the limits of the critical root zone of any protected **tree** unless required for structural integrity of buildings or improvements on approved building sites.

(6) No paving with asphalt, concrete or other impervious materials shall be placed within the critical root zone of a protected **tree**. However, paving may encroach within the critical root zone of a **tree** upon approval by the town.

(7) No person, directly or indirectly, shall prune, cut down, destroy, remove or move, or effectively destroy through damaging, any protected **tree** on town-owned property unless otherwise permitted by this article.

Sec. 3.08.007 Tree removal permit

(a) An application for **tree** removal permit must be submitted to and approved by the town prior to the removal of any protected **tree** unless exempt or excepted under this article. The fee for a **tree** removal permit shall be established by the town council.

(b) Permits for **tree** removal issued in connection with a building permit or site plan shall be valid for the period commensurate with the building permit or site plan. Permit(s) for **tree** removal not issued in connection with a building permit or a site plan shall become void one hundred eighty (180) days after the issue date on the permit. Notwithstanding, a permit may be revoked by the mayor or his designee if the holder of the permit violates any provisions of the permit or this article.

Sec. 3.08.008 Action on permit application

(a) Upon receipt of a sufficient application for a **tree** removal permit, the mayor or his designee shall review and approve or deny all requests submitted in accordance with the requirements specified herein.

(b) Any denial of a permit by the mayor or his designee may be appealed to the town council. Action by the town council shall be final.

(c) Consideration for the approval of a **tree** removal permit shall be based upon the following guidelines:

(1) Whether the removal of the protected **tree** is permitted by this article and the exceptions enumerated herein;

(2) Whether or not a reasonable accommodation or alternative solution can be made to accomplish the desired activity without the removal of the protected **tree**;

(3) The effect of the removal of the protected **tree** on erosion, soil moisture, retention, flow of surface waters, and drainage systems;

- (4) The need for buffering of residential areas from the noise, glare, and the visual effects of streets, highways and nonresidential uses;
- (5) Whether the removal of the protected **tree** affects the public health, safety or welfare of the residents of the town; and
- (6) Whether the application demonstrates the attempt to preserve existing trees on the site.

(d) No certificate of occupancy shall be issued until all fines and administrative and civil penalties for violations of this article have been paid to the town.

Sec. 3.08.009 Prior to construction

The following procedures shall be followed on all construction projects including but not limited to residential subdivisions, commercial, multi-family, manufacturing developments, residential builders and municipal/public, utility easement, right-of-way, manufactured housing development, road construction, and sidewalk construction:

- (1) Tree flagging. All protected trees on the subject property within forty (40) feet of a construction area or surface improvements such as driveways, alleys or walks, shall be flagged with bright fluorescent orange vinyl tape of at least 2-inch width wrapped around the main trunk at a height of four (4) feet or more such that the tape is visible to workers operating construction equipment. This shall include the flagging of all protected trees adjacent to rights-of-way within approved residential subdivisions during the construction of roadways. All flagging shall remain in place during the entire phase of construction at all times.
- (2) Open space flagging. All trees or groups of trees within areas intended to be preserved as open space shall be enclosed with bright fluorescent orange vinyl tape of at least 2-inch width along all areas of possible access or intrusion by construction equipment. Tape shall be supported at a maximum of twenty-five (25) foot intervals by wrapping trees or other approved methods. Single incident access for the purposes of clearing underbrush is allowed. All flagging shall remain in place during the entire phase of construction at all times.
- (3) Protective fencing. Protective fencing will be located at the drip lines of all protected trees that border the limits of construction, and only where construction activity occurs, as designated by the mayor or his designee.
- (4) Bark protection. In situations 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 2-inch by 4-inch lumber encircled with wire or other means that do not damage the **tree**. The purpose

is to protect the bark of the **tree** against incidental contact by large construction equipment.

Sec. 3.08.010 Permanent construction methods

(a) Boring. Boring of utilities under protected trees may be required in certain circumstances. When required, the length of the bore shall be the width of the critical root zone at a minimum and shall be a minimum depth of forty-eight (48) inches.

(b) Trenching. Where possible, all trenching shall be designed to avoid trenching across the critical root zone of any protected **tree**. This shall not inhibit the placement of necessary underground utility services such as electric, telephone, gas, etc. No trenches in the critical root zone of a protected **tree** may be left open for more than 24 hours.

(c) Root pruning. It is required that all roots two (2) inches or larger in diameter which are exposed as a result of trenching or other excavation be cut off square with a sharp medium tooth saw and covered with pruning compound within two hours of initial exposure.

(d) Rehabilitation. All post boring and trenching in the critical root zone and root pruning shall require rehabilitation treatments of watering and fertilizing with root stimulator as recommended by an arborist certified by the International Society of Arborists.

Sec. 3.08.011 Tree replacement requirements

(a) Replacement trees shall be required under the following conditions:

(1) To replace a protected **tree** that is removed as specified in this article, unless excepted by [section 3.08.004](#) of this article; or

(2) To replace a **tree** that was identified on a **tree** preservation plan but dies within two (2) years of the date it was planted;

Replacement trees shall not be required for protected trees that are removed because the protected trees are situated within the buildable area of residential properties.

(b) Replacement trees shall be planted in accordance with the provisions of this article per the following rates:

| For each Protected Tree to be Removed (" Caliper) | Required Size and Number of New Replacement Trees |
|--|--|
| 6" to 12" caliper | Minimum 3" caliper, equivalent to 150% of |

| | |
|---------------------------------|--|
| | caliper inches removed |
| Greater than 12" to 30" caliper | Minimum 4" caliper, equivalent to 150% of caliper inches removed |
| Greater than 30" caliper | Minimum 6" caliper, equivalent to 150% of caliper inches removed |

(c) No more than 34% of the number of replacement trees shall be of the same species when twelve (12) or more replacement trees are required. All replacement trees must be of a species designated in the approved **tree** replacement list ([section 3.08.015](#)).

(d) The replacement trees shall be located on the subject site. However, if there is not a suitable location for the replacement trees on the subject site, the town council may approve either of the following or a combination of the following:

- (1) The planting of the replacement trees within a public right-of-way, public park land or any other municipally-owned property;
- (2) The planting of the replacement trees within private open space (common ground areas); and
- (3) The payment of a fee into the **tree** restoration fund in the amount in accordance with a fee schedule provided by the town. The fee schedule shall be based on the current Texas A & M Extension Service Fact Sheet for Evaluation of Texas Shade Trees. The funds shall be used for the purposes of purchasing, installing and maintaining trees on public rights-of-way, public parkland or any other municipally-owned property, or any other purpose as determined by the town council.

Sec. 3.08.012 Miscellaneous provisions

(a) Trees required to be planted by this article shall be planted in such a manner as not to constitute, at the time of planting and at the point of full maturity, any interference with the visibility triangles at intersections nor to interfere with the view of motor vehicles.

(b) If any **tree** required to be retained or planted as required by this article should die within a period of two (2) years after completion of the activities associated with construction or development, the property owner or person required to plant the replacement **tree(s)** shall replace the trees within six months at a ratio of one-to-one with an approved identical size **tree** from the approved replacement **tree** list. ([section 3.08.015](#)).

(c) The filling and reclamation of property and mitigation as delineated on a Section 404 Permit, issued by the U.S. Army Corps of Engineers, shall be permitted in lieu of the requirements of this article. The removal of any protected **tree** on the subject property

shall be in accordance with a filling, reclamation, and mitigation plan approved and/or ordered by the Corps of Engineers incident to the filling and reclamation of wetlands and flood lands on such property. As soon as the reclamation and mitigation prescribed by the Corps of Engineers has been completed, and the property is no longer under the supervision and authority of the Corps of Engineers, this article shall immediately apply to such property thereafter.

Sec. 3.08.013 Appeals, variances

(a) The town council shall hear appeals from decisions of the mayor or his designee and may approve a **tree** removal permit and approve an exception to all or a portion of the requirements of this article to provide for replacement trees for the following:

- (1) A public or recreational use or structure but not including rights-of-way or easements.
- (2) A private use that usually requires large areas of open space or impervious surface.
- (3) Development of heavily forested sites where strict compliance with the requirements of this article will unreasonably burden the use of the property.

Sec. 3.08.014 Penalties

(a) Any person who cuts, removes or destroys a protected **tree** in violation of this article may be subject to a civil penalty imposed by the mayor or his designee of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each caliper inch of protected **tree** cut, removed or destroyed. Upon a finding that a person has violated this article, the mayor or his designee shall determine an appropriate administrative penalty, after due consideration of the danger of repetition, the severity of the offense, and all relevant circumstances. The mayor or his designee shall transmit notice of the violation and of the assessment of administrative penalties to the offending person who may, within twenty (20) days after receipt of notice, request an appeal of the mayor's assessment to the town council. Said notice of appeal must be timely and shall state the basis of the appeal in plain and intelligible language. The town council shall, upon receipt of a notice of appeal, promptly schedule the matter for hearing and upon hearing, shall sustain, reverse or modify the determination and assessment of the mayor his designee, as the town council deems appropriate and in the ends of justice. The town council's determination shall be final.

(b) Any person violating any term or provision of this article shall be deemed guilty of a misdemeanor and subject to a penalty as provided for in this article, and upon conviction shall be punished by fine in accordance with the general penalty provision found in [section 1.01.009](#) of this code for each offense, and each and every day such violation shall continue shall constitute a separate offense.

(c) Any person who violates any of the provisions of this article, or who fails to comply therewith or with any of the requirements hereof, or who commences construction or development of any real property in violation of any plan submitted or approved under this article, or who fails to obtain a permit where required herein, or who erects, occupies or alters any structure or building, or commences to erect, occupy, or alter any structure or building in violation of any plan submitted or approved under this article, shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined accordance with the general penalty provision found in [section 1.01.009](#) of this code. Each and every day such violation exists or is continued to exist shall constitute a separate offense. The owner of the building, structure, property or premises, or part thereof, where such violation exists, and any architect, builder, contractor or agent employed in connection therewith who may have assisted in the commission of any such violation shall each be deemed guilty of a separate offense and, upon conviction, shall be subject to the penalties herein provided. Upon conviction, the judge may order the defendant to replace the **tree** or trees with other trees equal to or greater in height, diameter and type of that which was unlawfully removed.

(d) In addition to the penalties hereinabove provided, the town may, at its option, pursue compliance with the terms and provisions of this article by injunctive relief in the appropriate courts of Denton County, Texas.

(e) The remedies provided in this article shall be cumulative and the town's pursuit of any one remedy shall not be construed as an election; the town may pursue any and all remedies allowed by state law or the ordinances of the town.

Sec. 3.08.015 Approved replacement **tree list**

| Large Trees | Small/Ornamental Trees |
|-----------------|------------------------|
| | |
| Afgan Pine * | American Holly |
| American Elm | Aristocrat Pear |
| Bald Cypress | Ashe Juniper * |
| Big Tooth Maple | Bradford Pear |
| Black Hickory * | Carolina Buckthorn |
| Black Walnut | Chinese Pistachio |
| Blackjack Oak | Desert Willow * |
| Buckeye * | Dogwood Crepe Myrtle |
| Bur Oak * | Eastern Redbud * |
| Caddo Maple | Escarpment Live Oak |

| | |
|---------------------|-------------------------|
| Catalpa * | Eve's Necklace |
| Cedar Elm * | Flowering Crabapple |
| Chinese Pistachio * | Forest Pansy Redbud * |
| Chinquapin Oak * | Foster Holly |
| Durand Oak | Golden Raintree |
| Eastern Red Cedar | Japanese Black Pine |
| Ginko | Japanese Maple |
| Lacebark Elm * | Little Gem Magnolia |
| Lacey Oak | Mexican Plum * |
| Live Oak | Mexican Redbud |
| Mountain Cedar | Mountain Laurel * |
| Pecan | Nellie R. Stevens |
| Plateau Live Oak * | Oklahoma Redbud * |
| Post Oak | Possumhaw * |
| Red Maple | Prairie Flameleaf Sumac |
| Shumard Red Oak * | Purple Plum |
| Southern Live Oak * | Rusty Blackhaw |
| Southern Magnolia | Saucer Magnolia |
| Sugarberry * | Savannah Holly |
| Sweetgum | Smoke Tree * |
| Sycamore | Texas Persimmon * |
| Texas Ash * | Texas Redbud |
| Texas Red Oak * | Washington Hawthorne |
| Trident Maple | Yaupon Holly * |
| Western Soapberry * | Vitex * |
| White Ash | Wax Myrtle |
| Texas Red Oak * | |
| Western Soapberry * | |
| White Ash | |

* Plants preferred due to lower water demand and high pest resistance.

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