

(Draft copy updated and based on meeting held 7/7/09)Original Current Tree Preservation Ordinance with Changes to Tree Canopy Preservation Ordinance

Sec. 35-523. Tree Preservation

*Committee suggested the change of title to “Tree Canopy Ordinance”

STATEMENT OF PURPOSE

While allowing the reasonable improvement of land within the city and city's ETJ, it is stated public policy of the city to maintain, to the greatest extent possible, existing trees within the city and the ETJ, and to add to the tree population within the city and the ETJ. The planting of additional trees and preservation of existing trees in the city and the ETJ is intended to accomplish, where possible, the following objectives:

- To preserve trees as an important public resource enhancing the quality of life and the general welfare of the city and enhancing its unique character and physical, historical and aesthetic environment.*
- To encourage the preservation of trees for the enjoyment of future generations.*
- To encourage the preservation of trees to provide health benefits by the cleansing and cooling of the air and contributing to psychological wellness.*
- To encourage the preservation of trees to provide environmental elements by adding value to property, and reduction of energy costs through passive solar design utilizing trees.*
- To encourage the preservation of trees to provide environmental elements necessary to reduce the amount of pollutants entering streams and to provide elements crucial to establishment of the local ecosystem.*
- To provide tree preservation requirements and incentives to exceed those requirements that encourage the maximum preservation of trees.*
- To promote and protect the health, safety and welfare of the public by creating an urban environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life.*

This section implements the following provisions of the master plan:

Neighborhoods, Policy 3c: Continue to implement the tree preservation ordinance and strengthen as needed.

* Committee suggested to add “tree planting” in the list.

(a) Applicability.

(1) Generally.

- A. The regulations contained in this division shall apply to any private property located within the city limits and the ETJ of the city.
- B. The regulations contained in this division shall apply to all public property held by or for the benefit of the city or any agency, board or

commission thereof in accordance with the provisions of subsection (o) of this division.

* Comm. suggested the correction of the referenced subsection (o).

C. The regulations contained in this division shall regulate all activities that result or may result in the removal of ~~significant or heritage trees~~ tree canopy as defined herein. Said activities include any of the following:

* Comm. requested to define “all activities”.

1. Industrial, commercial, office, multi-family, residential and institutional development, including all new construction and any additions that increase the total floor area of a structure by more than two thousand five hundred (2,500) square feet.

*Comm. requested to clarify the imaginary line around building as currently established by City staff (limits of construction).

*Comm. requested to include proposed incentives for preserving trees. (Staff may also list the incentives already applied).

*Comm. requested for staff to bring samples.

2. Construction of a new parking lot larger than two thousand five hundred (2,500) square feet or expansion of an existing parking lot by more two thousand five hundred (2,500) square feet.

*Comm. requested for staff to bring samples.

3. Any grading, filling or clearing of land.

4. Any clear, selective or individual cutting or removal of any tree(s) or tree canopy as defined.

5. Chemical or biological treatment of tree(s) or tree canopy that may result in the death or destruction of any tree(s) or tree canopy as defined.

6. Trenching or excavation that may damage or destroy any tree(s) or tree canopy .

D. The regulations in this section shall apply to any projects receiving any federal, state, and/or local financial assistance.

*Comm. suggested for staff to state why the section was removed.

*This section has been moved to page 5.

*Comm. asked why this section was removed.

*Staff responded that it has never been used.

(23) Categories of Development Exempt. The provisions of this section shall not apply to any conservation subdivision.

(34) Trees Exempt. This division shall not apply to:

- A. Any tree(s) or tree canopy determined to be diseased, dying or dead, by the city arborist.
- B. Any tree(s) or tree canopy determined to be causing a danger or be in hazardous condition as a result of a natural event such as tornado, storm, flood or other act of God that endangers the public health, welfare or safety and requires immediate removal.
- C. Tree(s) or tree canopy located on property on which construction of single-family, two-family or three-family residential dwelling unit within a residential subdivision where there will be no further development..
*Comm. suggested this last underlined language be removed.
- D. Tree(s) or tree canopy located in the clear vision area, as defined in the street improvement standards.
- E. Tree(s) or tree canopy preventing the opening of reasonable and necessary vehicular traffic lanes in a street or alley.

The provisions contained in this section shall control in the event and to the extent they may conflict with other provisions contained in this chapter that do not relate to health and safety.

(b) Administration. The provisions of this section shall be implemented by a city arborist under the direction of the director of planning and development services. The city arborist shall oversee regulation of the maintenance and removal of tree(s) or tree canopy and shall enforce and administer the provisions of this section.

The city arborist shall work closely with all city departments and governmental entities and licensees, and franchisees thereof in order to promote and ensure the maximum protection of trees by the implementation and administration of this section. City departments with which the city arborist is authorized to interact pursuant to subsection (o) of this section. *Comm. requested validity and suggested to keep this section with the list of all departments below.
*Staff to correct the reference to subsection (o).

(c) Violation, Enforcement and Penalties. The provisions of this section shall be enforced as provided in article IV, section 35-493 of this chapter.

(d) Calculation of Tree Canopy Cover

Plans shall depict final tree canopy cover of preserved trees and newly planted trees.

*Comm. suggested to have this sentenced removed. Over all comm. agreed

The minimum canopy unit is the smallest tree canopy area in square feet that can be designated on the plan. The minimum canopy unit is 400 square feet.

*Comm. suggested the change to “minimum existing canopy”.

*Comm. requested explanation why use 400 feet.

The initial tree canopy is based on the gross area and there are no exclusion areas from the calculation of the canopy coverage. The Regulatory floodplain will be calculated separately based on 35-523(d)(5)..

*Comm. suggested the change of gross area to net area. There are concerns about trees located on the “low line areas”.

Tree cover credit shall only be given to trees with main trunk located on the site being developed. Trees with the main trunk on abutting properties will be provided a root protection zone as defined in §35-523(e) and any tree canopy that crosses into the site shall not be counted toward tree canopy cover.

**Comm. suggested samples.*

Canopy Cover may be determined by aerial, satellite, photographic, or digital imagery and stored and analyzed by computer generated software such as but not limited to ArcView or AutoCAD.

(1) Tree Canopy Cover requirements

A. Plans shall depict final canopy cover of preserved trees and newly planted trees. Minimum final canopy cover percentages shall be for the entire gross project area outside the Regulatory floodplain:

35% for high-density housing

45% for low-density housing

15% for residential in the Central Business District

25% for multi-family residential

25% for commercial including retail, industrial, institutional, schools and public capital improvement projects

A minimum of 10% of the tree canopy must be preserved and may not be mitigated

B. On sites of 0.5 acres or greater where the construction of a single family resident has been completed, the tree canopy preservation is 55%.

C. Any subsequent re-development must meet the requirements of this section.

(2) Tree Canopy credit for newly planted trees

A. Newly planted trees will receive 50% of the mature canopy area per species as listed in Appendix E. Each newly planted tree will require 162 square feet. Planting standards and soil specifications must adhere to those of the International Society of Arboriculture <http://www.isa-arbor.com/publications/cadDetails.aspx>. Additional canopy area may be claimed if Structural Soils or LID practices are used as provided in §35-523(h)(10).

B. Tree Credit Certificate 001 issued February 10, 2000 and Tree Credit Certificate 002 issued March 26, 2002 are acknowledged and the express language of those certificates apply whenever and wherever until fully redeemed with no limitations. The value of the Tree Credits are able to be used to meet new tree planting requirements and are based on the one foot tree canopy radius to one inch trunk diameter relationship; the canopy

value of 875 sq ft given for a live oak tree as in Appendix E has a radius of 16.7 feet and its estimated trunk diameter is 16.7 inches.

(3) Rights of Way and Public Property

Unless otherwise allowed by this division, tree canopy located within existing rights-of-way or easements may be damaged, destroyed, or removed only if prior approval is granted by the city arborist and if removal is requested the mitigation is based on 100% preservation.

(4) Historic Tree Canopy

In order to protect historic trees, as defined, the city arborist shall confer with the office of Historical Preservation who can request a review by the Historical Review and Design Committee

(5) Riparian Buffer Zone (Floodplain)

The canopy coverage within the Regulatory floodplain may not be used to meet preservation requirements set forth for the developable portion of the land. The canopy within the Regulatory floodplain is to be preserved at 90%.

Intermittent streams not covered by the Regulatory floodplain shall have a minimum 35-foot buffer zone of preserved trees or vegetation on either side.

(e) Root Protection Zone Standards

- (1) The root protection zone for commercial areas is a minimum of 50% of the tree canopy unit provided that no impermeable surface comes closer than a radius equal to 1.0 foot for 1-inch diameter (DBH) of the outer most tree(s).
- (2) The grade within the root protection zone of any tree to be preserved shall not be raised or lowered more than three (3) inches. Approved welling methods for tree preservation may be used within the root protection zone. Other welling and/or retaining methods may be used to protect and/or provide lateral support to the area outside the root protection zone. **Reference Alternative construction methods??**
- (3) Native understory vegetation within the root protection zone shall be preserved, however this requirement does not apply to those areas that have an approved landscape plan using plants from Appendix E.

(f) Tree Protection and Maintenance Standards

(1) Pre-construction site requirements:

- A. Pruning will follow the ANSI A300 standards.
- B. During construction activity on the site, at least 3-inch layer of coarse mulch shall be placed and maintained over the root protection zone unless the native understory is remaining.
- C. The 4-foot high fencing material or additional protection devices shall be installed and inspected before site work is initiated.

(2) Construction requirements:

- A. The tree protection is to be maintained until construction activity is completed.
- B. Heavy equipment, vehicular traffic, stockpiling of materials or toxic materials, or deposition of sediment shall not be permitted within preserved tree canopy units.
- C. No protective devices, signs, utility boxes or other objects shall be nailed or affixed to preserved trees.
- D. No excavating, trenching, or tunneling shall occur within the root protection zone including that for lighting, irrigation or utilities; and outside this area, all tree roots greater than 2 inches in diameter that are exposed or damaged shall be pruned cleanly, and covered temporarily with moist peat moss, burlap, or other suitable material to prevent the exposed root(s) from drying out until the final soil grade is restored.
- E. Any damaged inflicted the above or belowground portions of the trees shown to be preserved shall be repaired immediately. All damaged branches in the canopy shall be pruned in accordance with ANSI A300 standards. All wounds to oak trees shall be painted within 30 minutes.
- F. Tree canopy cover lost due to the removal of trees dead or dying due to construction shall be replaced by the planting of mitigation trees. Mitigation trees shall be planted in the vicinity of the dead or dying tree(s) which was (were) removed unless other arrangement are agreed to by the owner and the permittee and approved by the Director.

(3) General Maintenance:

Tree(s) and tree canopy must be maintained in a healthy condition at all times. The property owner is responsible for irrigating, fertilizing, pruning and other maintenance of all trees as needed.

(g) Planting and Transplanting Standards

- (1) No more than 25% of trees to be planted shall be of one species and trees selected shall be from Appendix E.
- (2) All tree sizes shall meet the standards specified in the American Association Nurserymen's American Standard for Nursery Stock (ANSI Z60.1).
- (3) Species are to be from Appendix E and shall be a minimum caliper of 1.5 inches.
- (4) All trees shall be planted in accordance with the latest edition of the International Society of Arboriculture "Tree and Shrub Transplanting Manual".
- (5) Newly planted trees shall be in good condition; free of disease, insects, parasitic plants, major defects, codominant trunks and shall have their trunks protected from sun scald. If staking is used, then the above ISA standards are to be used and the staking is to be removed within 1 year.
- (6) Transplanting existing trees shall be considered an acceptable method for preserving a tree if:
 - A. The tree is a long-lived tree from Appendix E; and
 - B. The tree is transplanted within the property of the permit, ; and
 - C. The applicant provides a feasibility report prepared by a certified arborist or landscape architect which describes the following:
 1. Digging method;
 2. Relocation sites;
 3. Method of transport;
 4. Time of year transplanting will take place;
 5. Storage methods (if any); and,
 6. Maintenance programs before, during, and after transplanting.
 - D. The applicant shall comply with the requirements of the feasibility report, which shall be considered a condition of the tree permit.

(h) Tree preservation incentives

An individual may apply for, and subject to verification, shall receive incentives for tree canopy preservation as follows:

(1) Parking space reduction

Upon application and verification by the city arborist, an individual shall be entitled to a reduction in the minimum parking requirements of §35-526 of this Code to help meet the minimum tree canopy up to fifty (50) percent of the minimum parking spaces required by Table 526-3 may be granted. If used, the incentive provided by this subsection shall control over any other conflicting provision of this Code.

(2) Sidewalks

Where the director of development services determines that preservation of tree(s) or tree canopy warrants the elimination, reduction in width, or modification to the sidewalk and curb requirements in accordance with the Tree Preservation and Canopy Standards, a waiver may be granted.

(4) Landscape credits

Landscape credits may be awarded as provided in §35-511, above. Trees installed to meet the requirements of the Landscape Buffer §35-510 and or Landscape ordinance §35-511 may be used to meet the requirements of the Tree Canopy Preservation §35-523.

(5) Understory

The city arborist, may determine that the preservation of native understory plants together with trees grouped in significant stands or native “natural” areas may result in a reduction of new plantings needed to meet the requirements of Tree Canopy Preservation §35-523. Such areas may receive up to 1.5 tree canopy credit. In addition, such areas can be used to meet the landscape requirements and/or an increase of credit given for elective points and/or the elimination of an irrigation system requirement of §35-511.

(6) Minimum Lot Size and Setbacks

The Board of Adjustment may waive the minimum lot size and setback requirements of the applicable zoning district for an individual lot or lots where the Applicant demonstrates the following:

- A. Compliance with the minimum lot size or setback requirement is needed to preserve tree canopy; and

B. If the Tree Permit application is pursuant to a proposed subdivision plat, the average lot size of the proposed subdivision will equal or exceed that of the applicable zoning district; and

C. The public purpose involved in protecting the tree exceeds the public purpose of complying with minimum lot size or setback requirements; and

D. The resulting lot sizes or setbacks do not violate the Master Plan or the applicable Neighborhood Plan.

(7) Energy conservation credit

A. Planted or preserved large canopy shade trees (medium to large in Appendix E) trees located on the western or southern aspects of a building may receive additional tree canopy credit. The trees must be located a minimum of 10 feet but a maximum of 30 feet from the building.

B. A canopy cover credit of 1.5 times the existing canopy cover of trees meeting the aforementioned specifications or the planted tree canopy cover which has been requested and approved and meeting the aforementioned specifications may be counted toward meeting the required canopy coverage.

(8) Large contiguous canopy cover credit

A. Existing contiguous tree canopy of 20,000 square feet or more, with no dimension less than 35 ft, excluding Regulatory floodplains, that are preserved with the existing native understory according to §35-523(e)(f) shall receive a tree canopy cover credit of 1.5 times the area and 2 times if the area joins with an abutting contiguous tree canopy area on the adjacent property.

B. To receive credit, the area must be protected in perpetuity by such instruments as platting or conservation easement.

(9) Heritage Tree canopy credit

A canopy cover credit of 2.0 times the tree canopy area of a long-lived heritage tree may be counted toward meeting the required canopy coverage.

(10) Use of landscaped Low Impact Development (LID) practices

A. Areas where LID practices are used in conjunction with tree canopy preservation and or those areas where a landscaped LID is installed with

B. To receive 1.5 times credit, the landscaped LID must be approved by application of §35-504 standards_____

(i) Variance Procedure.

(1) Variances. Variances to the terms and requirements of this division may be granted by the city arborist where a literal enforcement of the provisions of this division will result in an unnecessary hardship. No variance may be granted unless:

A. Such variance will not be contrary to public interest;

B. Such variance will be in harmony with the spirit and purpose of this division;

C. The variance will not substantially weaken the general purposes of this division or the regulations herein established for the protection of trees; and

D. The variance granted is limited in scope of relief to only that which is necessary to relieve the hardship condition.

(2) Request for Variance. A person who feels they qualify for a variance, under the conditions outlined in subsection (a) above, from the literal application of this division to their property may request a variance from such application of one (1) or more of the provisions of this division. All requests for variances shall be made in writing to the city arborist, and shall include:

A. The subject of the requested variance; and

B. The justification for granting a variance.

(3) Burden.

A. The party requesting a variance has the burden of demonstrating that sufficient evidence exists for the granting of a variance to application of this division. The city arborist shall consider and provide a written response to all such requests for variances as quickly as possible but not more than thirty (30) days from the date a valid request for variance is received. The response shall be served by certified mail, return receipt requested, or by hand delivery.

B. If granted. If a variance is granted as requested, or with modification, the recipient of the variance may develop their property according to all

applicable provisions of this division, to the extent such provisions have not been waived or modified by the variance.

(4) Appeal. Any person who properly requests a variance pursuant to this section and objects to the decision of the city arborist which denies all or part of the relief requested may appeal such denial to the director of development services or his designee by filing a request for appeal within ten (10) working days from the date notice of denial is received by the requesting party. All such appeals shall be made in writing to the office of the director of planning and development services and shall include all pertinent information which the person requesting the appeal wishes to be considered. The director of planning and development services may require additional information from or request a meeting with the person making the appeal. The written decision of the director of planning and development services, or authorized designee, on the appeal shall be rendered within fifteen (15) working days and shall be delivered to the appealing party by certified mail, return requested, or by hand delivery. If the director of planning and development services or authorized designee fails to render an opinion on the appeal within the fifteen-day period, the relief requested in the appeal shall be granted.

(5) Planning Commission.

A. If the director of planning and development services denies all or part of the relief requested in an appeal, the aggrieved party may appeal to planning commission by filing a notice of appeal with the office of the city clerk no later than the tenth working day following the party's receipt of the written decision of the director of development services. A true and correct copy of the notice of final appeal must also be filed with the office of the director of planning and development services who, upon receipt of such notice, shall immediately transfer copies of all documents and information relevant to the appeal to the executive secretary to the planning commission. The executive secretary of the planning commission shall schedule the hearing of the appeal at the earliest available regularly scheduled meeting of the planning commission which will allow compliance with the requirements of the Texas Open Meetings Act.

B. A decision of the planning commission that is adverse to the applicant shall be appealable by the applicant to the city council for final action by filing a notice of final appeal with the office of the city clerk no later than the tenth working day following the party's receipt of the written decision of the planning commission. The city clerk shall schedule the hearing of final appeal at the next available regularly scheduled meeting of the city council which will allow compliance with the requirements of the Texas Open Meetings Act.

C. Where this division requires either the city or applicant to respond, or take other action, within a specific number of days, such calculation shall begin on the first working day after the date of receipt of the information that necessitated response or action.

(j) Tree Mitigation Fund.

(1) Fund Established. The director of finance is hereby directed to establish a dedicated account to be entitled tree mitigation fund (hereinafter the "fund").

(2) Penalties. Section 35-493 of this chapter provides for sections imposing civil penalties in addition to criminal penalties. Civil penalties collected pursuant to such section shall be recorded in the fund created pursuant to this section, unless expressly prohibited by law. Likewise, all funds received from the payment of mitigation fees pursuant to subsection (f) shall be recorded in the fund.

(3) Use of Funds. The funds collected from civil penalties and mitigation fees in the fund shall be utilized to pay for the planting and maintenance of trees, the funding of tree preservation and planting programs to be administered by the designated department. The director of the designated department shall seek the advice of the open space committee in regard to the selection of projects to be funded. A portion of the fund may be used, on an annual basis, to fund activities directed towards educating the public on the importance of trees in the environment, ecological issues and pollution prevention.

(4) Funds to be Kept Separate. The balance within the fund shall be recorded and accounted for in a manner that distinguishes them from other general funds of the city and shall be disbursed in a manner consistent with the purposes for which this fund has been established. The balance of this fund shall not be transferred to the general fund at the end of each budget year, but rather, the balance remaining in the fund at the close of the city's fiscal year shall roll over and become the beginning balance for the next fiscal year.

(k) Tree Canopy Investment Fund.

(1) Fund Established. The director of finance is hereby directed to establish a dedicated account to be entitled Tree Canopy Investment Fund.

(2) Tree Canopy Investment Fund Fees.

(i) A fee of fifteen dollars (\$15.00) per lot shall be assessed for each residentially platted lot or for each residential building permit issued.

(ii) A fee of twenty-five dollars (\$25.00) per acre or portion thereof shall be assessed for each commercially platted lot or a fee of twenty-five dollars (\$25.00) per acre for each lot for which a commercial building permit is issued by the development services department.

(iii) Fees collected pursuant to the Tree Canopy Investment Fund shall be assessed at the time a tree permit is issued and recorded in the fund created pursuant to this section, unless expressly prohibited by law.

(3) Use of Funds. The funds collected shall be utilized to pay for the planting and maintenance of trees to proactively enhance the city's tree canopy area. In addition, 10 % of the funds collected will be kept in a separate budget line to be used for any

litigation necessary in the pursuant of implementation of this section. The program is to be administered by the designated department. The director of the designated department and the city forester shall advise on the selection of projects to be funded.

(4) Funds to Be Kept Separate. The balance within the fund shall be recorded and accounted for in a manner that distinguishes them from other general funds of the city and shall be disbursed in a manner consistent with the purposes for which this fund has been established. The balance of this fund shall not be transferred to the general fund at the end of each budget year, but rather, the balance remaining in the fund at the close of the city's fiscal year shall roll over into the balance for the next fiscal year.

(Ord. No. 97332 § 2) (Ord. No. 97602 § 2) (Ord. No. 98697 § 1, 4, and 6) (Ord. No. 100126 § 4) (Ord. No. 101816, § 2, 12-15-05) (Ord. No. 2006-11-02-1258, § 2, 11-2-06) (Ord. No. 2009-01-15-0001, § 2, 1-15-09)