

ARTICLE X.

LANDSCAPE AND TREE PRESERVATION REGULATIONS.

Division 51A-10.100. In General.

SEC. 51A-10.101. DEFINITIONS.

In this article:

(1) **ARTIFICIAL LOT** means an area within the building site that is delineated by the building official or the director of park and recreation for the sole purpose of satisfying the requirements of this article (see Section 51A-10.122).

(2) **CALIPER** means the diameter of a tree trunk measured six inches above ground level up to and including four inch caliper size, and measured 12 inches above ground level if the measurement taken at six inches above ground level exceeds four inches. If a tree is of a multi-trunk variety, the caliper of the tree is the average caliper of all of its trunks.

(3) **CANOPY TREE** means a species of tree that normally bears crown foliage no lower than six feet above ground level upon maturity.

(4) **ENHANCED PAVEMENT** means any permeable or nonpermeable decorative pavement material intended for pedestrian or vehicular use. Examples of enhanced pavement include brick or stone pavers, grass paver, exposed aggregate concrete, and stamped and stained concrete.

(5) **EVERGREEN TREE OR SHRUB** means a tree or shrub of a species that normally retains its leaves throughout the year.

(6) **FLOOD PLAIN** means any land area susceptible to inundation by the hundred year frequency flood.

(7) **GROUND COVER** means natural mulch or plants of species that normally reach a height of less than three feet upon maturity, installed in such a manner so as to form a continuous cover over the ground.

(8) **HUNDRED YEAR FREQUENCY FLOOD** means the flood having a one percent chance of being equalled or exceeded in any given year. This flood is based upon the drainage area being fully developed to current zoning limitations.

(9) **LANDSCAPE ARCHITECT** means a person licensed to use the title of “landscape architect” in the State of Texas in accordance with state law.

(10) **LANDSCAPE AREA** means an area at least 80 percent of which is covered by natural grass, ground cover, or other natural plant materials (excluding screening).

(11) **LANDSCAPE BUFFER STRIP** means a landscape area that serves a buffer function.

(12) **LARGE SHRUB** means a shrub that normally reaches a height of six feet or more upon maturity.

(13) **LARGE TREE** means a tree of a species that normally reaches a height of 30 feet or more upon maturity.

(14) **LOT** means:

(A) a “lot” as defined in Section 51A-2.102; and

(B) an “artificial lot” as defined in this section.

(15) **LOT WITH RESIDENTIAL ADJACENCY** means any of the following:

(A) A building site containing a multifamily use that is adjacent to or directly across:

(i) a street 64 feet or less in width; or

(ii) an alley;

from private property in a single family, duplex, townhouse, or CH district.

(B) A building site containing a nonresidential use that is adjacent to or directly across:

- (i) a street 64 feet or less in width; or
- (ii) an alley;

from private property in an agricultural, single family, duplex, townhouse, CH, multifamily, or manufactured housing district.

(C) An artificial lot containing a multifamily use if the lot is less than 200 feet from private property in a single family, duplex, townhouse, or CH zoning district.

(D) An artificial lot containing a nonresidential use if the lot is less than 200 feet from private property in an agricultural, single family, duplex, townhouse, CH, multifamily, or manufactured housing zoning district.

(16) NONPERMEABLE COVERAGE means coverage with nonpermeable pavement. "Nonpermeable pavement" means any pavement that is not "permeable pavement" as defined in this section.

(17) PERMEABLE PAVEMENT means a paving material that permits water penetration to a soil depth of 18 inches or more. Permeable pavement may consist of nonporous surface materials poured or laid in sections not exceeding one square foot in area and collectively comprising less than two-thirds of the total surface area.

(18) PRIVATE PROPERTY means any property not dedicated to public use, except that "private property" does not include the following:

- (A) A private street or alley.
- (B) Property on which a utility and public service use listed in Section 51A-4.212 is being conducted as a main use.
- (C) A railroad right-of-way.
- (D) A cemetery or mausoleum.

(19) PROTECTED TREE means a tree having a caliper of eight inches or more that is not one of the following trees: *Acer saccharinum* (Silver Maple), *Ailanthus altissima* (Tree of Heaven), *Albizzia julibrissen* (Mimosa or Silk tree), *Celtis occidentalis/laevigata* (Hackberry or Sugarberry), *Fraxinus velutina* (Arizona Ash), *Maclura pomifera* [female only] (Bois d'Arc or Horseapple), *Melia azedarach* (Chinaberry), *Salix nigra* (Black Willow), *Sabium sebiferum* (Chinese Tallow), and *Ulmus pumila* (Siberian Elm).

(20) REMOVE means an act that causes a tree to decline and die within three years of the act. It includes, but is not limited to: the cutting down of a tree; a compaction of soil above the root system of a tree; a change of the natural grade above the root system of a tree; an injury to a tree from fire or other causes which results in or permits infections or pest infestations; an application of herbicidal or other lethal chemicals; and placement of nonpermeable pavement over the root system of a tree.

(21) REPLACEMENT TREE means a tree that is planted in accordance with Section 51A-10.134.

(22) SCREENING means screening that complies with the construction and maintenance regulations in Section 51A-4.602, except as those regulations may be expressly modified in this article.

(23) SMALL TREE means a tree of a species that normally reaches a height of less than 30 feet upon maturity.

(24) SOIL means a medium that plants will grow in.

(25) UNDERSTORY means a grouping of natural low-level woody, herbaceous, or ground cover species.

(26) VISIBILITY TRIANGLE means the term "visibility triangle" as defined in Section 51A-4.602.

(27) WATER COURSE means a natural or constructed channel for the flow of water. (Ord. Nos. 19455; 20496; 22053)

SEC. 51A-10.102. PURPOSE.

The process of development with its alteration of the natural topography, vegetation, and creation of impervious cover can have a negative effect on the ecological balance of an area by causing increases in air temperatures and accelerating the processes of runoff, erosion, and sedimentation. The economic base of the city can and should be protected through the preservation and enhancement of the unique natural beauty, environment, and vegetative space in this area. Recognizing that the general objectives of this article are to promote and protect the health, safety, and welfare of the public, the city council further declares that this article is adopted for the following specific purposes:

- (1) To aid in stabilizing the environment's ecological balance by contributing to the processes of air purification, oxygen regeneration, ground-water recharge, and storm water runoff retardation, while at the same time aiding in noise, glare, wind, and heat abatement.
- (2) To provide visual buffering between land uses of differing character to alleviate the harshness of urban life.
- (3) To enhance the beautification of the city.
- (4) To safeguard and enhance property values and to protect public and private investment.
- (5) To conserve energy.
- (6) To provide habitat for wildlife.
- (7) To encourage the preservation of large trees which, once removed, can be replaced only after generations. (Ord. Nos. 19455; 22053)

SEC. 51A-10.103. ACCEPTABLE LANDSCAPE MATERIALS.

- (a) No artificial plant materials may be used to satisfy the requirements of this article.
- (b) In satisfying the requirements of this

article, the use of high-quality, hardy, and drought-tolerant plant materials is recommended and encouraged. (Ord. 22053)

SEC. 51A-10.104. SOIL REQUIREMENTS.

(a) Planting areas in general must have the following soil depths and dimensions:

- (1) For each large shrub or small tree installation, a minimum of 24 inches of soil depth and 16 square feet of surface area (total of 32 cubic feet).
- (2) For each large tree installation, a minimum of 36 inches of soil depth and 25 square feet of surface area (total of 75 cubic feet).

(b) Planting areas located above underground buildings or structures must have the following soil depths and dimensions:

- (1) For each large shrub or small tree installation, a minimum of 30 inches of soil depth and 25 square feet of surface area (total of 62.5 cubic feet).
- (2) For each large tree installation, a minimum of 40 inches of soil depth and 36 square feet of surface area (total of 120 cubic feet).

(c) The building official may waive the minimum soil requirements if a landscape architect certifies that the proposed alternative soil depths and dimensions are sufficient to support the healthy and vigorous growth of the plant materials affected. (Ord. 22053)

SEC. 51A-10.105. PROTECTION OF LANDSCAPE AREAS.

Required areas for plant materials must be protected from vehicular traffic through the use of concrete curbs, wheel stops, or other permanent barriers. (Ord. 22053)

SEC. 51A-10.106. IRRIGATION REQUIREMENTS.

All plant materials used as required screening

must be irrigated by an automatic irrigation system installed to comply with industry standards. Other plant materials used to comply with this article must be located within 100 feet of a verifiable water supply. Proposed watering methods (irrigation or otherwise) must be:

(a) indicated on the landscape plan, if any; and

(b) adequate to maintain the plant materials in a healthy, growing condition at all times. (Ord. 22053)

SEC. 51A-10.107. PLANTERS ALLOWED.

Planters may be used to satisfy the requirements of this article provided that the soil requirements in Section 51A-10.104 are met. (Ord. 22053)

SEC. 51A-10.108. GENERAL MAINTENANCE.

(a) Required plant materials must be maintained in a healthy, growing condition at all times. The property owner is responsible for regular weeding, mowing of grass, irrigating, fertilizing, pruning, and other maintenance of all plantings as needed. Any plant that dies must be replaced with another living plant that complies with this article and the approved landscape plan, if any, within 90 days after notification by the city.

(b) Any damage to utility lines resulting from the negligence of the property owner or his agents or employees in the installation and maintenance of required plant materials in a utility easement is the responsibility of the property owner. If a public utility disturbs a landscaped area in a utility easement, it shall make every reasonable effort to preserve the plant materials and return them to their prior locations after the utility work. If, nonetheless, some plant materials die, it is the obligation of the property owner to replace the plant materials. (Ord. 22053)

SEC. 51A-10.109. ALTERNATIVE METHODS OF COMPLIANCE.

(a) If a property owner cannot plant in compliance with this article a replacement tree on the lot from which the protected tree was removed, he shall comply with one of the three following requirements:

(1) Donate the tree to the city's park and recreation department.

(2) Plant the tree on other property in the city within one mile of his lot as long as he obtains the written permission of the property owner of the lot where the tree is to be located and the building official.

(3) Make a payment into a special city account, to be known as the Reforestation Fund, in accordance with Subsection (c).

~~(b) Other property.~~ If a property owner obtains permission to plant the replacement tree on other property in the city, that owner shall ensure that the planting and maintenance of the tree on the other property complies with the requirements of this article that would otherwise pertain to the planting and maintenance of the tree on his property.

(c) Reforestation.

(1) The economic development department shall administer the reforestation fund. The funds must be used only for purchasing trees to plant on public property or acquiring wooded property.

(2) The amount of the payment required is calculated by using the formula for appraising the value of a tree, as derived from the most recent edition of the Guide for Establishing *Values of Trees and Other Plants* published by the Council of Tree & Landscape Appraisers, unless another publication is designated by the building official. If more than one tree is being removed or not planted, the values of the trees are added when calculating the payment required. (Ord. Nos. 22053; 22581)

SEC. 51A-10.110. SPECIAL EXCEPTION.

(a) The board may grant a special exception to the requirements of this article upon making a special finding from the evidence presented that:

(1) strict compliance with the requirements of this article will unreasonably burden the use of the property; and

(2) the special exception will not adversely affect neighboring property.

(b) In determining whether to grant a special exception under Subsection (a), the board shall consider the following factors:

(1) The extent to which there is residential adjacency.

(2) The topography of the site.

(3) The extent to which landscaping exists for which no credit is given under this article.

(4) The extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

(c) The board may waive the filing fee for a special exception under Subsection (a) when the board finds that payment of the fee would result in financial hardship to the applicant. The applicant may either pay the fee and request reimbursement as part of his appeal or request that the matter be placed on the board's miscellaneous docket for predetermination. If the matter is placed on the miscellaneous docket, the applicant may not file his appeal until the merits of the request for waiver have been determined by the board. (Ord. 22053)

Division 51A-10.120. Landscaping.

SEC. 51A-10.121. APPLICATION OF DIVISION.

(a) This division does not apply to the following:

(1) Property governed by a landscape plan approved by the city council or the city plan commission.

(2) Lots in the following districts:

(A) The Dallas Arts District (Planned Development District Nos. 145 and 145-H/18).

(B) The Deep Ellum/Near East Side District (Planned Development District No. 269).

(C) The Oak Lawn Special Purpose District (Planned Development District No. 193).

(D) Central area districts.

(3) Restoration of a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind. For purposes of this paragraph, "restoration" means the act of putting back into a former or original state.

(b) Only Section 51A-10.125(a) of this division applies to lots containing single family or duplex uses.

(c) This division only becomes applicable to a lot when an application is made for a building permit for construction work that within a 24month period:

(1) increases the number of stories in a building on the lot;

(2) increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot; or

(3) increases the nonpermeable coverage on the lot by more than 2,000 square feet.

(d) When this division becomes applicable to a lot, its requirements are binding on all current and subsequent owners of the lot.

(e) The city council shall, as a minimum, impose landscaping requirements that are reasonably consistent with the standards and purposes of this division as a part of any ordinance establishing or amending a planned development district, or granting or amending a specific use permit. (Note: This subsection does not apply to ordinances that merely renew a specific use permit when no substantive changes are made other than to extend the time limit of the permit.) All landscaping requirements imposed by the city council must be reflected in a landscape plan that complies in form and content with the requirements of Section 51A-10.123. (Ord. Nos. 19455; 19786; 204%; 22053)

SEC. 51A-10.122. ARTIFICIAL LOT DELINEATION.

(a) In general. If the building site is over two acres in size, the applicant may request that the building official create an artificial lot to satisfy the requirements of this division. The building official shall not create an artificial lot which would, in his or her opinion, violate the spirit of the landscape regulations. Any artificial lot created by the building official must:

- (1) wholly include the area on which the construction work is to be done; and
- (2) have an area that does not exceed 50 percent of the area of the building site.

(b) In city parks over five acre. In city parks over five acres in size, the director of park and recreation may create an artificial lot to satisfy the requirements of this division. Any artificial lot created by the director of park and recreation must wholly include the area on which the construction work is to be done.

(c) Platting not required. An artificial lot need not be platted; however, it must be delineated on plans approved by the building official prior to the issuance of a building permit. (Ord. Nos. 19455; 20496; 22053)

SEC. 51A-10.123. LANDSCAPE PLAN SUBMISSION.

(a) If this division applies to a lot pursuant to Section 51A-10.121, a landscape plan must be submitted to the building official with the application for a building permit for work on the lot. A landscape plan submission must consist of two **blue**line or blackline prints. The plan must have a scale of one inch equals 50 feet or larger (e.g. one inch equals 40 feet, one inch equals 30 feet, etc.) and be on a standard drawing sheet of a size not to exceed 36 inches by 48 inches. A plan which cannot be drawn in its entirety on a 36 inch by 48 inch sheet must be drawn with appropriate match lines on two or more sheets.

(b) Any person may prepare the landscape plan required under this division. There is no requirement that the plan be prepared by a landscape architect or by a person engaged-in the landscape business.

(c) A landscape plan required under this division must contain the following information:

- (1) Date, scale, north point, and the names, addresses, and telephone numbers of each property owner and the person preparing the plan.
- (2) Location of existing boundary lines and dimensions of the lot, the zoning classification of the lot, and the zoning classification of adjacent properties. A vicinity map should also be attached to or made a part of the plan.
- (3) Approximate centerlines of existing water courses and the location of the flood plain, the escarpment zone, and geologically similar areas, as those terms are defined in Article V, if applicable; the approximate location of significant drainage features; and the location and size of existing and proposed streets and alleys, utility easements, driveways, and sidewalks on or adjacent to the lot.
- (4) Project name, street address, and lot and block description.
- (5) Location, height, and material of proposed screening and fencing (with berms to be delineated by one-foot contours).

(6) Locations and **dimensions** of proposed landscape buffer strips.

(7) Complete description of plant materials shown on the plan, including names (common and scientific name), locations, quantities, container or caliper sizes at installation, heights, spread, and spacing. The location and type of all existing trees on the lot over six **inches** in caliper must be specifically indicated.

(8) Complete description of landscaping and screening to be provided in or near off-street parking and loading areas, including information as to the amount (in square feet) of landscape area to be provided internal to parking areas and the number and location of required off-street parking and loading spaces.

(9) An indication of which protected trees will be removed during construction and how existing healthy trees proposed to be retained will be protected from damage during construction.

(10) Size, height, location, and **material** of proposed seating, lighting, planters, sculptures, and water features.

(11) A description of proposed watering methods.

(12) Location of visibility triangles on the lot (if applicable). (Ord. Nos. 19455; 10496; 22053)

SEC. 51A-10.124. LANDSCAPE PLAN REVIEW.

The building official shall review each landscape plan submitted to determine whether it complies with the requirements of this division. **All** landscape plans must comply with the mandatory provisions in Section **51A-10.125**. In addition, all landscape plans must comply with at least two “design standards” as described in Section **51A-10.126**. The same landscape features and elements may be strategically placed so as to comply with more than one provision. (For example, the same large trees might be located so as to be classified as “street trees” and “parking lot trees.”) (Ord. Nos. 19455; 20496; 22053)

SEC. 51A-10.125. MANDATORY PROVISIONS.

(a) Single family and duplex uses. **Except as provided in** Section **51A-10.127**, a lot containing a single family or duplex use established after May 29, 1994, must comply with this subsection before the final inspection of any building on the lot. The lot must have at least three trees with a caliper equal to or exceeding two inches. At least two of these trees must be located in the front yard. The trees must be species listed in Section **51A-10.134(b)**. The trees may be located in the public right-of-way provided that all private licensing requirements of the city code and charter are met.

(b) Other uses. **Lots** containing a use other than single family or duplex must comply with the following requirements:

(1) Perimeter landscape buffer. **A** landscape buffer strip must be provided along the entire length of the portion of the perimeter of the lot where a residential adjacency exists, exclusive of driveways and accessways at points of ingress and egress to and from the lot. The buffer strip must be at least 10 feet wide, except that:

(A) any portion of the buffer strip adjacent to public street frontage need not exceed 10 percent of the lot depth; and

(B) any portion of the buffer strip in the front yard and adjacent to the side lot line need not exceed 10 percent of the lot width.

(2) Screening of off-street loading spaces.

(A) All off-street loading spaces on a lot with residential adjacency must be screened from that residential adjacency.

(B) In all districts except CS and industrial districts, all off-street loading spaces on a lot must be screened from all public streets adjacent to that lot.

(C) The screening required under Subparagraphs (A) and (B) must be at least six feet in height measured from the horizontal plane passing through the nearest point of the off-street loading

space and may be provided by using any of the methods for providing screening described in Section 51A-4.602(b)(3).

(3) **Site trees.** One tree having a caliper of at least two inches must be provided for each 4,000 square feet of lot area, or fraction thereof, with a minimum of four trees being provided.

(4) **Street trees.** A large tree must be provided for each 50 feet of frontage, with a minimum of two trees being provided. These trees must be located within 30 feet of the projected street curb. The trees may be located in the public right-of-way provided that all private licensing requirements of the city code and charter are met. For purposes of this paragraph, “projected street curb” means the future location of the street curb consistent with the city thoroughfare plan as determined by the director of public works and transportation.

(5) **Parking lot trees.** No required parking space may be located more than 120 feet from the trunk of a large canopy tree. Each tree must have a caliper of at least two inches and may not be planted closer than two and one-half feet to the paved portion of the parking lot.

(6) **Minimum sizes.** Except as provided in Subsections (a), (b)(3), and (b)(5) of this section, plant materials used to satisfy the requirements of this division must comply with the following minimum size requirements at the time of installation:

(A) Large trees must have a minimum caliper of three inches, or a minimum height of six feet, depending on the standard measuring technique for the species.

(B) Small trees must have a minimum height of six feet.

(C) Large evergreen shrubs must have a minimum height of three feet.

For purposes of this paragraph, “height” is measured from the top of the root ball or, if the plant is in a container, from the soil level in the container.

(7) **Buffer.** A landscape buffer strip provided to comply with this section or

Section 51A-10.126 must contain one of the following groups of plant materials at a minimum average density of one group for each 50 linear feet of the buffer strip:

(A) One large canopy tree and one large non-canopy tree.

(B) One large canopy tree and three small trees.

(C) One large canopy tree and three large evergreen shrubs.

(D) One large canopy tree, two small trees, and one large evergreen shrub.

(E) One large canopy tree, one small tree, and two large evergreen shrubs.

(F) Two large non-canopy trees. (Ord. Nos. 19455; 19786; 204%; 22053)

SEC. 51A-10.126. DESIGN STANDARDS.

An applicant shall comply with at least two of the following design standards:

(a) **Enhanced perimeter buffers.** An applicant may enhance the perimeter landscape buffer strip to a minimum average width equal to or greater than 15 feet.

(b) **Street buffers.** An applicant may provide a landscape buffer strip along public street frontage. The landscape buffer strip must:

(1) be provided along the entire adjacent public street frontage, exclusive of driveways and accessways at points of ingress and egress to the lot; and

(2) have a minimum width of 10 feet or 10 percent of the lot depth, whichever is less.

(c) **Screening of off-street parking.** An applicant may provide screening for all parking lots on the building site or artificial lot, whichever is applicable, from all adjacent public streets in accordance with the following paragraphs.

(1) The screening must be voluntary (not required by ordinance).

(2) The screening must extend along the entire street frontage of the parking lot, exclusive of:

(A) driveways and accessways at points of ingress and egress to and from the lot; and

(B) visibility triangles.

(3) The screening must be at least three feet in height.

(4) Underground parking is considered to be screened for purposes of this subsection.

(d) ~~Enhanced vehicular pavement.~~ An applicant may provide enhanced pavement. This pavement must be at least 25 percent of all outdoor vehicular pavement area on the lot. The same pavement cannot satisfy both Subsections (d) and (e). (Note: All vehicular pavement must comply with the construction and maintenance provisions for off-street parking in this chapter.)

(e) ~~Permeable vehicular pavement.~~ An applicant may provide permeable enhanced pavement. This pavement must be at least 25 percent of all outdoor vehicular pavement on the lot. The same pavement cannot satisfy both Subsections (d) and (e). (Note: All vehicular pavement must comply with the construction and maintenance provisions for off-street parking in this chapter.)

(f) Pedestrian facilities. An applicant may provide publicly accessible special pedestrian facilities and features such as plazas, covered walkways, fountains, lakes and ponds, seating areas, and outdoor recreation facilities. These facilities and features must occupy at least five percent of the lot area.

(g) Foundation planting strip. An applicant may plant large shrubs along the foundation of the main building. The planting area for the shrubs must be a minimum of three feet in width and extend along at least 50 percent of the portion of the foundation that faces a street. The shrubs must be spaced no more than six feet apart measured from trunk to trunk.

(h) Understory preservation. The applicant may preserve existing healthy understory. The preserved understory must occupy at least five percent of the lot area.

(i) Enhanced pedestrian walkways. The applicant may provide enhanced pedestrian walkways. These walkways must consist of enhanced pavement intended for pedestrian use and occupy at least five percent of the lot. (Ord. Nos. 19455; 20496; 22053)

SEC. 51A-10.127. WHEN LANDSCAPING MUST BE COMPLETED.

(a) Except as otherwise provided in Subsection (b), all landscaping must be completed before the final inspection of any building on the lot. If there is an approved landscape plan for the lot, the landscaping must comply with that plan before the final inspection.

(b) If the property owner provides the building official with documented assurance that the landscaping will be completed within six months, the building official may permit the property owner to complete his landscaping during the six-month period. For purposes of this subsection, "documented assurance" means:

(1) a copy of a valid contract to install the landscaping in accordance with the landscape plan within the six-month period; or

(2) a set of deed restrictions **containing** a covenant to install the landscaping in accordance with the landscape plan within the six-month period. The deed restrictions must:

(A) expressly provide that they may be enforced by the city of Dallas;

(B) be approved as to form by the city attorney; and

(C) be filed in the deed records of the county in which the land is located.

(c) If, at the end of the six-month period, the

landscaping has not been installed in accordance with the landscape plan, the owner of the property is liable to the city for a civil penalty in the amount of \$200 a day for each calendar day thereafter until the landscaping is properly installed. The building official shall give written notice to the property owner of the amount owed to the city in civil penalties, and shall notify the city attorney of any unpaid civil penalty. The city attorney shall collect unpaid civil penalties in a suit on the city's behalf.

(d) The civil penalty provided for in Subsection (c) is in addition to any other enforcement remedies the city may have under city ordinances and state law. (Ord. Nos. 19455; 20496; 22053)

Division **51A-10.130. Tree Preservation**

SEC. 51A-10.131. APPLICATION OF DIVISION.

This division applies to all property in the city except for:

(a) lots smaller than two acres in size that contain single family or duplex uses; and

(b) lots in a planned development district with landscaping and tree preservation regulations that vary appreciably from Article X, as determined by the building official. (Ord. 22053)

SEC. 51A-10.132. TREE REMOVAL REVIEW.

(a) When a tree removal application is required. A tree removal application must be approved in accordance with this section before a person may remove a protected tree from a lot.

(b) Application for review. An application required under this section must be filed with the building official on a form furnished by the city for that purpose. The application must include the following:

(1) The name, address, telephone number, and signature of the applicant. If the applicant is not the owner of the lot, he shall submit a letter from the owner authorizing him to act on the owner's behalf.

(2) The name, address, and telephone number of each owner of the lot.

(3) The street address of the lot.

(4) A tree survey that shows the location, caliper, and name (both common and scientific) of all trees on the lot (trees in close proximity that all have a caliper of less than eight inches may be designated as a "group of trees" with only the number noted). The survey does not have to be prepared by a registered surveyor, architect, or landscape architect. Trees not proposed for removal or located within 50 feet of proposed construction activity need not be shown on the survey unless the building official

determines it would help evaluation of the application.

(5) Any other reasonable and pertinent information that the building official determines to be necessary for review. (Ord. 22053)

SEC. 51A-10.133. DECISION OF THE BUILDING OFFICIAL.

(a) Form of decision. Upon the filing of a complete tree removal application, the building official shall make a decision regarding the application within 30 calendar days of the filing date. That decision must take one of three forms:

- (1) Approval, no conditions.
- (2) Approval, subject to conditions noted.
- (3) Denial.

(b) Failure to decide. If the building official fails to make a decision regarding the application within 30 calendar days of the filing date, the application is considered to be approved subject to compliance with all applicable city codes, ordinances, rules, and regulations.

(c) Incomplete applications. The time periods in this section do not begin to run until the applicant provides all of the information required in Section 51A-10.132(b). In cases where the building official requests additional information within 10 calendar days of the filing date, the time periods in this section do not begin to run until the applicant provides the additional information.

(d) Tree removal standards. Building official shall deny a tree removal application if the removal is not in the public interest. This decision must be based on the following factors:

- (1) The feasibility of relocating a proposed improvement that would require the removal.
- (2) The cost of preserving the tree.
- (3) Whether the lot would comply with this article after the removal.

(4) Whether the removal is contrary to the public health, safety, or welfare.

(5) The impact of the removal on the urban and natural environment.

(6) Whether an economically viable use of the property will exist if the application is denied.

(7) Whether the tree is worthy of preservation.

(8) Whether the tree is diseased.

(9) The effect of the removal on erosion, soil moisture retention, flow of surface waters, and drainage systems.

(10) The need for buffering of residential areas from the noise, glare, and visual effects of nonresidential uses.

(11) Whether a landscape plan has been approved by the board of adjustment, city plan commission, or city council.

(12) Whether the tree interferes with a utility service.

(13) Whether the tree is near existing or proposed structures.

(14) Whether the proposed mitigation for tree removal is sufficient.

Notwithstanding the above, the building official shall grant a tree removal application when the proposed removal is necessary to allow the construction of improvements in accordance with a building permit.

(e) Written denial. If the building official denies a tree removal application under this section, he shall state in writing the specific reasons for denial.

(f) Approval subject to conditions noted. As an alternative to denial of a tree removal application under Subsection (d), the building official may approve the application subject to conditions noted if compliance with all conditions will eliminate what would otherwise constitute grounds for denial. If the

building official approves the application subject to conditions noted, he shall state in writing the specific requirements to be met before approval of the application. An application approved subject to conditions noted shall not be considered as finally approved. Until all conditions are met and the building official approves the application with no conditions, the application approved subject to conditions shall be deemed denied. (Ord. 22053)

SEC. 51A-10.134. MITIGATION OF TREE REMOVAL

If the tree removal application is approved, one or more replacement trees must be planted in accordance with the following requirements:

(a) **Quantity.** The replacement tree(s) must equal, in caliper, the caliper of the protected tree(s) removed.

(b) **Species.** A replacement tree must be one of the following trees:

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<i>Acer barbatum</i> var. "Caddo"	Caddo Maple
<i>Acer grandidentatum</i>	Bigtooth Maple
<i>Acer buergerianum</i>	Trident Maple
<i>Bumelia lanuginosa</i>	Chittamwood or Gum Bumelia
<i>Carya illinoensis</i>	Pecan
<i>Cercis canadensis</i>	Redbud
<i>Chilopsis linearis</i>	Desert Willow
<i>Diospyros texana</i>	Texas Persimmon
<i>Diospyros virginiana</i> [male only]	Common or American Persimmon
<i>Fraxinus americana</i>	White Ash
<i>Fraxinus texensis</i>	Texas Ash
<i>Gymnodadus dioicus</i>	Kentucky Coffeetree
<i>Ilex decidua</i>	Possumhaw or Deciduous Holly
<i>Ilex vomitoria</i>	Yaupon Holly
<i>Juglans microcarpa</i>	Texas Black Walnut
<i>Juniperus ashei</i>	Ash Juniper
<i>Juniperus virginiana</i>	Eastern Red Cedar
<i>Liquidambar styraciflua</i>	Sweetgum
<i>Magnolia grandiflora</i>	Southern Magnolia
<i>Pinus eldarica</i>	Eldarica, Mondell, or Afghan Pine
<i>Pinus nigra</i>	Austrian or Black Pine
<i>Pinus thunbergii</i>	Japanese Black Pine
<i>Pistacia chinensis</i>	Chinese Pistachio
<i>Prosopis glandulosa</i>	Mesquite
<i>Prunus mexicana</i>	Mexican Plum
<i>Quercus durandii</i>	Durrand Oak
<i>Quercus fusiformis</i>	Escarpment Oak
<i>Quercus macrocarpa</i>	Bur Oak Live
<i>Quercus muhlenbergii</i>	Chinkapin o*
<i>Quercus shumardii</i>	Shumard Oak
<i>Quercus virginiana</i>	Live Oak

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
<i>Sapindus drummondii</i>	Western Soapberry
<i>Sophora affinis</i>	Eve's Necklace
<i>Taxodium ascendens</i>	Pond Cypress
<i>Taxodium distichum</i>	Bald Cypress
<i>Ulmus crassifolia</i>	Cedar Elm
<i>Ulmus parvifolia</i>	Lacebark Elm
<i>Viburnum rufidulum</i>	Rusty Blackhaw

(c) **Location.** The replacement tree(s) must be planted on the lot from which the protected tree was removed. No replacement tree may be planted within a visibility triangle, a water course, or an existing or proposed street or alley.

(d) **Minimum size.** A replacement tree must have a caliper of at least two inches.

(e) **Timing.**

(1) Except as otherwise provided in Paragraph (2), all replacement trees must be planted within 30 days after the removal of the protected tree(s).

(2) If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official may permit the property owner to plant the replacement trees during the six-month period.

(3) A replacement tree that dies within two years of the date it was planted must be replaced **by** another replacement tree that complies with this subsection. (Ord. 22053)

SEC. 51A-10.135. RETENTION OF PROTECTED TREES.

Where an applicant plans to retain protected trees on a site to be developed, the following requirements must be met:

(a) **Tree flagging.** All protected trees must be flagged with colored vinyl tape wrapped around the main trunk at a height of at least four feet so as to be visible to workers on foot or driving equipment.

(b) **Protective fencing.** A protected tree that is within 50 feet of construction or construction access must have protective fencing. This fencing must completely enclose the drip line of the tree until

construction is completed. During construction, no excess soil, additional fill, equipment, liquids, or construction debris may be placed inside the protective barrier, nor may any soil be removed from within the barrier. For purposes of this subsection, “drip line” means a vertical line that runs from the outermost portion of the crown of a tree to the ground. (Ord. 22053)

SEC. 51A-10.136. CRIMINAL RESPONSIBILITY.

A person is criminally responsible for a violation of this division if the person:

(a) removes, or assists in the removal of, a protected tree without complying with the requirements of this division; or

(b) owns part or all of the land where the violation occurs. (Ord. 22053)

SEC. 51A-10.137. NOTICE OF VIOLATION.

Before issuing a citation for a violation of this division, the building official shall give a written notice to the person(s) criminally responsible. The notice must specify the location of the offense and the corrective measures required, as well as require compliance within 30 days after service of the notice. The notice must be served either personally or by certified mail. The building official may not issue the citation within the **30-day** period or after the 30-day period if the violation was corrected within the 30-day period. (Ord. 22053)

SEC. 51A-10.138. APPEALS.

In considering an appeal from a decision of the building official made in the enforcement of this division, the sole issue before the board of adjustment shall be whether or not the building official erred in his or her decision. The board shall consider the same standards that the building official was required to consider in making the decision. (Ord. 22053)

SEC 51A-10.139. FINES.

A person convicted of violating this division shall be subject to a fine of not less than \$400.00. (Ord. 22053)

SEC. 51A-10.140. DEFENSES TO PROSECUTION.

It is a defense to prosecution under Section **51A-10.136** of this division that the act is included in one of the enumerated categories listed in this section. No approval of a tree removal application is required if the tree:

(a) was dead and the death was not caused by an intentional or negligent act of the owner or an agent of the owner;

(b) had a disease or injury that threatened the life of the tree and was not caused by an intentional act of the owner or an agent of the owner;

(c) was in danger of falling or had partially fallen and the danger or the fall was not due to an intentional act of the owner or an agent of the owner;

(d) was in a visibility triangle (unless the owner was legally required to maintain the tree there) or obstructed a traffic sign;

(e) interfered with service provided by a public utility within a public right-of-way;

(f) threatened public health or safety, as determined by one of the following city officials:

(1) the chief of the police department;

(2) the chief of the fire department;

(3) the director of public works and transportation;

(4) the director of streets, sanitation, and code enforcement services; or

(5) the director of park and recreation;

(g) **was** designated for removal in a landscape plan approved by the city council, city plan commission, or board of adjustment;

(h) interfered with construction or maintenance of a public utility;

(i) -was removed to allow construction, including the operation of construction equipment in a normal manner, in accordance with infrastructure engineering plans approved ~~under~~ Article V of Chapter 49 or Section ~~51A-8.404~~; or

(j) was removed to allow construction of improvements in accordance with a building permit. (Ord. 22053)