



STAFF REPORT

MEETING DATE: December 19, 2024

TITLE:

- 1) **1. Hold public hearing, consider, and act to amend section 6.3.004 PROTECTED & HERITAGE TREES to decrease the caliper per tree that will be protected from future development.**

This amendment seeks to increase protection of trees by reducing the caliper inch for when mitigation begins from 13 caliper inches.

- 2) **2. Hold public hearing, consider, and act to amend section 6.3.004 PROTECTED & HERITAGE TREES to add the requirement of a tree survey, add penalties, and further explanation of the requirements for tree protection.**

This amendment seeks to improve tree protections by adding requirements for a tree survey and also adding penalties when not followed.

- 3) **3. Hold public hearing, consider, and act to amend TABLE 2.1.003 PREFERRED PLANT LIST in the Technical Manual to add the Pecan Tree amongst others and remove some current trees.**

This amendment seeks to additional species to the existing plant list and remove some trees based on recommendations from the native plant society and independent arborists.

- 4) **4. Hold public hearing, consider, and act to amend Chapter 10, Definitions to include definitions of ISA-Certified Arborist, Native Plants and others.**

This amendment seeks to clarify definitions

- 5) **4. Hold public hearing, consider, and act to amend Appendix A, Fee Schedule for tree mitigation fees, and establish penalty for violation.**

This amendment seeks to clarify the cost of mitigation, and introduce a penalty for violation.

AGENDA ITEM SUBMITTED BY:

Submitted by: Kennedy Higgins, Senior Planner, Development Services Department

BACKGROUND/HISTORY:

The B3 code was adopted in November of 2019, and subsequently amended in April of 2022. From 2016 to 2023, Bastrop's population grew by approximately 34.3%. With the increased growth from Austin to the west, the availability of large land parcels, the availability of water, and abundant natural resources, the growth shows no signs of slowing.

“The intent of the Code is to establish the Standards that enable, encourage, and ensure the community achieves:

- ✓ ***Fiscal Sustainability***
- ✓ ***Geographically Sensitive Developments***
- ✓ ***Perpetuation of Authentic Bastrop” pg. 11 – B3 Code***

While the aspirational ideas envisioned in the preamble of the B3 code (as noted above) to provide for fiscal sustainability, geographically sensitive developments, and perpetuation of Authentic Bastrop, several segments of the code accomplished just the opposite.

The B3 code removed several key factors to preserving the natural environment .

“Retain its natural infrastructure and visual character derived from topography, woodlands, farmlands and waterways;.” Pg 12 -The B3 Code

While that may be a lofty aspirational goal, without increased protections for the natural environment, the minimal tree standards and penalties for removal of trees in the B3 creates a situation where it is easier to cut down trees, than it is to save them.

The proposed amendments for Sections 6.3.004 Protected & Heritage Trees, and Table 2.1.003 Preferred Plant List (B3 Technical Manual), are proposed to rectify the original intent of the B3 code which allows for any tree not on the preferred plant list to be taken down without penalty.

TABLE 2.1.003 PREFERRED PLANT LIST

Canopy		Accent	Grasses and Shrubs
American Elm	Texas Hickory	Crape Myrtle	Anthony Waterer Spirea
Austrian Pine	Texas Red Oak	Deciduous Magnolia	Apache Plume
Bald Cypress	Western Soapberry	Eastern Red Cedar	Autumn Sage
Black Jack Oak		Eve's Necklace	Dwarf Wax Myrtle
Bur Oak		Mexican Buckeye	Gray Santolina
Caddo Maple		Mexican Plum	Gulf Muhly
Cedar Elm		Red Bud	Indian Grass
Chinese Pistache		Smoke Tree	Inland Sea Oats
Chinquapin Oak		Vitex	Lindheimer Muhly
Lacebark Elm		Wichita Blue Juniper	Little Bluestem Grass
Live Oak			Little Bunny Fountain Grass
Loblolly Pine			Mexican Feather Grass
Magnolia			Rose Creek Abelia
Post Oak			Rosemary
Red Cedar			Seep Muhly
Shumard Red Oak			Texas Sage
Southern Magnolia			
Sweetgum			

Currently, mitigation for removal of a tree starts at 13 caliper inches, as long as the tree is on the preferred plant list. If it is not on the preferred plant list (see above), no mitigation is required. One important thing to note is that the Pecan tree (Texas state tree) is not on that list. State legislation allows Cities to begin mitigating at as low as 10 inches. This amendment to the B3 code will ensure that more trees will either be protected, or there will be a fee in lieu of in order to cover the cost of a replacement tree.

Additionally, a tree survey is required for any tree on a property that is over 6 inches. There are not currently regulations around the tree survey. These amendments will add an expiration date to the tree survey, to ensure that an accurate and recent survey of the trees on site is provided. It will also add further requirements to ensure adequate protections. *From the last meeting White Mulberry has been removed as it is invasive per the native plant society.

One recommendation from independent arborists is to use the Arbor Day Foundation Tree list. This list has many trees, but does also include some invasive species and trees that might not thrive here since it is not a Texas specific list.

The proposed amendment to the tree protections allows residents and visitors enjoy the natural environment and the trees that are so vital to the community.

FISCAL IMPACT:

None

RECOMMENDATION:

Recommend the amendments as proposed by staff.

ATTACHMENTS:

1. B3 Code Proposed Amendment in redline

B3 Code changes

SEC. 6.3.004 PROTECTED & HERITAGE TREES

- (a) Tree Determinations: Protected or heritage tree designations are determined by measuring at the height of the tree at 4.5 feet above the ground or Diameter at Breast Height (DBH), for various tree species for purposes of applying the Standards of this section. Multi-trunk trees are to be measured with the largest trunk counting for full DBH inches plus 50 percent of the DBH sum of the additional trunks, if the tree is classified as protected or heritage.

When the trunk branches or splits less than 4.5 feet from the ground, measure the smallest circumference below the lowest branch. See Figure 6.3B. If the tree has a branch or a bump at 4.5 feet, it is better to measure the diameter slightly below or above the branch/bump.

- (b) No grading or tree removal shall take place on any undeveloped property without obtaining a permit unless exempted from this code
- (c) Tree Survey
- (1) A tree survey and preservation plan for all areas of soil disturbance and construction activity including all work within rights-of-way and easements shall be submitted within a zoning concept scheme application. If rezoning is not applicable for a property, then this document shall be submitted at the time of public improvement plans or site development plans, whichever is first.
 - (2) The tree survey and preservation plan shall be approved and signed by an ISA-certified Arborist and licensed surveyor and the information submitted shall not be older than two years.
 - (3) The tree survey and preservation plan must be reviewed
 - (4) The requirement of a tree survey and preservation plan may be appealed to the Planning and Zoning Commission. If sufficient information is provided to review the various provisions of this Code and the Commission determines that a tree survey and preservation plan is not necessary, the Commission may recommend that this requirement may be waived by the City Council the City Council shall make the final decision on whether a tree survey and preservation plan is necessary for development.

- (d) Protected Trees:

- (1) Tree species listed in the Preferred Plant List in the B3 Technical Manual with a ~~43 caliper inch~~ 10-inch caliper diameter or greater measured at the DBH.
- (2) Protected trees must be preserved, protected, and integrated in the Development of the property.
- (3) Proposed Removal of healthy protected trees must be submitted for approval to the DRC.

(4) Granted Removal of protected trees shall be replaced by planting trees from the Preferred Plant List in the B3 Technical Manual, on the property equal to the total caliper inches of the trees removed, measured at 12 inches in height from the ground.

Strict

i. Said replacement trees shall be a minimum of four-inch (4") diameter (measured at twelve [12"] above ground) and seven (7') in height when planted.

i. A sufficient number of trees shall be planted to equal, in caliper, the caliper of the tree removed. Said replacement trees shall be a minimum of three (3) inches caliper when planted.

ii. A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree in compliance with this Code.

(5) Alternative compliance may be submitted to the DRC for approval or a fee in lieu shall be paid if the Site can not meet the Standards of this section. See the City Fee Schedule for tree replacement cost.

(6) This mitigative measure is not meant to supplant good site planning. Tree replacement will be considered only after all design alternatives, which could save more existing trees, have been evaluated and reasonably rejected.

(e) Heritage Trees:

(1) Tree species listed in Preferred Plant List in the B3 Technical Manual with a 24 caliper inch circumference or greater measured DBH.

(2) Heritage trees must be preserved, protected, and integrated in the Development of the property.

(3) Proposed Removal of healthy heritage trees must be submitted for approval to the DRC.

(4) Granted Removal of heritage trees shall be replaced by planting trees from the Preferred Plant List in the B3 Technical Manual, on the property equal to the total caliper inches removed, measured at 12 inches in height from the ground.

Option 1 Strict

i. Said replacement trees shall be a minimum of four-inch (4") diameter (measured at twelve [12"] above ground) and seven (7') in height when planted.

Option 2 Moderate

i. A sufficient number of trees shall be planted to equal, in caliper, the caliper of the tree removed. Said replacement trees shall be a minimum of three (3) inches caliper when planted.

ii. A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree in compliance with this Code.

(5) Alternative compliance may be submitted to the DRC for approval or a fee in lieu shall be paid if the Site can not meet the Standards of this section. See the City Fee Schedule for tree replacement cost.

(6) This mitigative measure is not meant to supplant good site planning. Tree replacement will be considered only after all design alternatives, which could save more existing trees, have been evaluated and reasonably rejected.

(g) Tree Preservation Credits.

(1) For every healthy protected tree ten (10) inches caliper or larger) located outside of the flood plain that is preserved, the developer shall be given credit, according to the following chart. When interior parking lot landscaping is also required, only those trees preserved in the parking area shall be considered for credit for the parking area, according to the following:

i. Trees ten (10) inches to twenty-four (24) inches caliper: one and one-half (1½) inches credit for each one (1) inch preserved.

ii. Trees over twenty-four (24) inches caliper: Two (2) inches credit for each one (1) inch preserved.

iii. Healthy unprotected trees, over twelve (12) inches in size, located outside the flood plain, may be considered for tree credits only when individually field inspected and approved by a designated representative of the City of Bastrop.

(h) Replacement of Trees.

- (1) In the event it is necessary to remove a tree six (6) inches caliper or larger, the developer, builder or property owner shall be required to replace the tree to be removed with comparable or better spacious trees somewhere within the planned development or subdivision. The City Council may allow such trees to be located to other areas in the City if it is deemed necessary by City staff, and space is available. Otherwise, the developer, builder or property owner shall, at the City's option, escrow funds sufficient to meet the requirements of this Ordinance
- (2) Trees planted to satisfy landscape requirements that are indicated herein, and successfully transplanted trees, shall count toward the tree replacement requirements, inch for inch. Transplanted trees must successfully survive one (1) full year after planting to count as a preserved tree.

(f) Exempt Trees:

- (1) Any protected or heritage trees determined to be diseased, overly-mature, dying or dead, by an ISA certified arborist are exempted from the Standards of this Code.
- (2) All invasive species identified by an ISA-certified arborist will receive invasive species credits.

Definitions to be added to Chapter 10:

ISA-Certified Arborist = International Society of Arboriculture tested and certified to have a professional level of knowledge and skill in the field of arboriculture.

Native Plants = are plants that have been growing in a particular habitat and region, typically for thousands of years or much longer. Also called indigenous, they are well adapted to the climate, light, and soil conditions that characterize their ecosystem. Within this system, they have evolved tremendously important co-evolutionary relationships with the other plants, animals, fungi, and bacteria present, and these very complex relationships keep that particular ecosystem stable.

Invasive Plants = plants that are not native to a particular habitat, and once introduced, they move aggressively into a habitat and monopolize resources such as light, nutrients, water, and space to the detriment of other species.

Technical Manual Changes

Canopy <u>Shade</u> <u>Trees</u>		Accent <u>Small</u> <u>Medium Native and</u> <u>Ornamental Trees</u>		Grasses and Shrubs <u>Native</u> <u>Grasses</u>	
American Elm	Lacebark Elm	Crepe Myrtle	Wichita Blue Juniper	Anthony Waterer Spirae	Indian Grass
Austrian Pine	Chinquapin Oak	Deciduous Magnolia	Red Bud	Little Bluestem Grass	Lindheimer Muhly
Bald Cypress	Post Oak	Eastern Red Cedar <u>(ST)</u>	Vitex	Apache Plume	Little Bunny Fountain Grass
Black Jack Oak	Texas Hickory	Eve's Necklace	Mexican Plum	Autumn Sage	Mexican Feather Grass
Bur Oak	Loblolly Pine	Mexican Buckeye	<u>Red Buckeye</u>	Dwarf Wax Myrtle	Rose Creek Abelia
Caddo Maple	Texas Red Oak	Smoke Tree	<u>Mexican Buckeye</u>	Gray Santolina	Rosemary
Cedar Elm	Western Soapberry	<u>Arroyo Sweet Wood</u>	<u>Kidney Wood</u>	Inland Sea Oats	Seep Muhly
Chinese Pistache		<u>Rough Leaf Dogwood</u>	<u>Persimmon</u>	Gulf Muhly	Texas Sage
Magnolia	Southern Magnolia	<u>Red Mulberry</u>	<u>Possumhaw</u>	<u>Side Oats Gramma</u>	<u>Weeping Muhly</u>
Live Oak		<u>Flame Leaf Sumac</u>	<u>Yaupon</u>	<u>Big Blue Stem</u>	<u>Black Stockings Napier Grass</u>
Sweetgum	<u>Hackberry</u>	<u>Evergreen Sumac</u>	<u>Mexican Olive</u>	<u>Blue Gramma</u>	<u>Princess Caroline Napier Grass</u>
<u>Texas Ash</u>	<u>Pin Oak</u>	<u>Mountain Laurel</u>	<u>Desert Willow</u>	<u>Gulf Coast Muhly</u>	
<u>Wafer Ash</u>	<u>Monterrey Oak</u>	<u>Goldenball Lead Tree</u>	<u>Soap Berry</u>		
<u>Box Elder</u>	<u>Montezuma Cypress</u>	<u>Ratama or Palo Verde</u>	<u>Fragrant Sumac</u>		
<u>Bodark</u>	<u>Mexican Sycamore</u>	<u>Southern Wax Myrtle</u>	<u>Huisache</u>		
<u>Catalpa</u>	<u>Lacey Oak</u>		<u>Barbados Cherry</u>		
<u>Shumard Red Oak</u>	<u>Pecan Tree</u>				
<u>Green Ash</u>	<u>Farkleberry</u>				

Appendix A-

Tree Mitigation Fee- \$600 per 4 caliper inch Tree \$150 per 1 caliper inch.

Penalty.Option 1 -Strict

Penalties for Unauthorized Removal of Trees. If any tree is removed from any real property, including injury to a tree resulting from the owner's failure to follow required tree protection guidelines, that results in or may reasonably be expected to result in the death of the subject tree(s), the property owner shall be determined to be in violation of this Ordinance.

Any person or corporation violating any of the provisions of this ordinance shall upon conviction be fined the sum of two thousand dollars (\$2,000.00) per day; and each and every day that the provisions of this ordinance are violated shall constitute a separate and distinct offense. In addition to the said penalty provided for, the right is hereby conferred and extended upon any property owner owning property in any district where such property owner may be affected or invaded by a violation of the terms of the ordinance to bring suit in such court or courts having jurisdiction thereof and obtain such remedies as may be available at law and equity in the protection of the rights of such property owners.

Option 2-Moderate

1. Any person, firm, corporation, agent, or employee thereof who violates the provisions of this Code by removing trees without a permit shall be guilty of a misdemeanor and upon conviction hereof shall be fined in an amount not to exceed two hundred and fifty dollars (\$250.00) per caliper inch of the tree(s) removed not to exceed two thousand dollars (\$2,000) per incident.

2. A person firm, corporation, agent, or employee thereof violates any other provisions of this Code shall be guilty of a misdemeanor and upon conviction hereof shall be fined a minimum of five hundred dollars (\$500.00) but not to exceed two thousand dollars (\$2,000) per incident. The unlawful injury, destruction or removal of each protected tree shall be considered a separate incident and each incident subjects the violator to the maximum penalty set forth herein per tree.