



# STAFF REPORT

**MEETING DATE:** February 17, 2024

**TITLE:**

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

**AGENDA ITEM SUBMITTED BY:**

Submitted by: James Cowey, Director of Development Services

**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%. Due to 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 protection 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.

This amendment, introduced at January 2025 Parks board, supports stiff penalties for unauthorized removal of trees, as shown in the attached, with the following changes: *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 notice of the citation,*

*finest will be assessed at a rate of \$2000 **per day** until paid. In addition, the Certificate of Occupancy shall not be issued until the fees/penalties are paid in full.*

January 30, 2025, Planning and Zoning Commission heard the proposed amendment with the requests by the Parks Board. The Commission sought clarity on civil versus criminal penalties and how this section of the code would be enforced. This section is a civil penalty.

Discussion with the City Attorney is that to enforce the civil penalty, the City would have to file suit in District Court. That is codified in Sec. 54.017. Further, the maximum penalty is \$1,000 per day unless related to discharge of pollutants.

*Sec. 54.017. CIVIL PENALTY. (a) **In a suit** against the owner or the owner's representative with control over the premises, the municipality may recover a civil penalty if it proves that:*

*(1) the defendant was actually notified of the provisions of the ordinance; and*

*(2) after the defendant received notice of the ordinance provisions, the defendant committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.*

*(b) A civil penalty under this section may not exceed \$1,000 a day for a violation of an ordinance, except that a civil penalty under this section may not exceed \$5,000 a day for a violation of an ordinance relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality.*

**FISCAL IMPACT:**

None

**RECOMMENDATION:**

Approved the modifications as written by clarifying this is a civil penalty with a maximum amount of \$1,000 per day.

**ATTACHMENTS:**

1. B3 Code Proposed Amendment in redline