

ARTICLE 28.06 LANDSCAPING AND TREE PRESERVATION

DIVISION 1. GENERALLY -INDIVIDUAL RESIDENTIAL LOTS AND SMALL PROJECT LANDSCAPING AND TREE PRESERVATION

Sec. 28.06.001. Title.

This article shall be commonly cited as the residential and commercial landscape ordinance. Divisions 1 and 2 apply only to individual residential lots and smaller residential projects in city limits. Divisions 3, 4, and 5 apply only to commercial projects and larger residential subdivisions projects in the city limits and extraterritorial jurisdiction.

Sec. 28.06.002. Purpose – Residential Tree Preservation.

- (a) Generally. The purpose of this article is to provide protection for Heritage Trees in residential areas and for the preservation of native trees, in recognition that trees, landscaping, screening, and buffering protect the health and welfare of the community, while addressing the water conservation and drainage issues particular to the Hill Country region. The purpose of this article is also to enhance the community's ecological, environmental, and aesthetic qualities.
- (b) Health, welfare, and general well-being. Preserving and improving the natural environment, and maintaining a working ecological balance, are of increasing concern to the city. The fact that the proper use of landscape elements can contribute to the processes of air purification, oxygen regeneration, water absorption, water purification, and noise, glare, and heat abatement as well as the preservation of the community's aesthetic qualities indicates that the use of landscape elements is of benefit to the health, welfare, and general well-being of the community, and therefore it is proper that the appropriate use of such elements be required.
- (c) Water conservation and drainage. The city experiences frequent droughts, due in part to a landscape characterized by thin-soiled rock formations; therefore, it is the purpose of this article to encourage the use of drought-resistant vegetation and landscaping that minimizes runoff and erosion.

Sec. 28.06.003. Scope and Applicability.

Divisions 1 and 2 – Residential Tree Preservation apply to all residential property that has been issued a certificate of occupancy or which has or will be occupied by owner or lessee and any residential property project where subdivision results in fewer than five dwelling units within the incorporated municipal boundaries (i.e., city limits). Divisions 3, 4, and 5 apply to any residential construction of five or more dwelling units that is part of a project covered by those divisions prior to the issuance of the certificate of occupancy or when the residential construction is first occupied by an owner or lessee within the incorporated municipal boundaries (i.e., city limits) and extraterritorial jurisdiction. This article applies to actions taken after the date of enactment. Nothing in this article is intended to modify or excuse an individual's obligation to

comply with applicable federal, state, county or other laws, including laws imposing requirements stricter or more onerous than under this article.

In addition, this article applies to all development requiring site plan approval subject to zoning requirements, including:

- (a) All residentially-zoned property for which a subdivision is accepted by the City after the effective date of this ordinance generating fewer than five dwelling units;
- (b) All residentially-zoned properties with fewer than five dwelling units going through redevelopment through extension, reconstruction, resurfacing, or structural alteration must come into compliance. Site plan approval for such projects shall be conditioned on compliance with this article.
- (c) Any grading, filling or clearing of land related to a project as limited above; and
- (d) Trenching or excavating that may damage or destroy protected trees as defined related to a project as limited above.

Sec. 28.06.004. Definitions.

(a) Rules of interpretation. Words and phrases used in this article shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number shall include the singular number (and vice versa), and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

(b) Specific definitions.

ANSI: The American National Standards Institute (ANSI) is a private, non-profit organization that administers and coordinates the U.S. voluntary standards and conformity assessment system.

Boundary tree: A tree whose trunk is on two or more properties owned by separate individuals.

Caliper inch: A unit of measure for tree size taken six inches above the ground level for field grown stock, and six inches above the soil line for container grown stock, and six inches above the root flare for bare root plants, up to and including the four-inch caliper size. Certified arborist: A person with any one of the following certifications or credentials: ISA Certified Arborist or ISA Board Certified Master Arborist.

City administrator: The chief administrative officer of the city. The term shall also include the deputy city administrators.

City arborist: The employee or consultant designated by the city council as the city arborist.

City council: The governing body of the city.

City permit: A city license, certificate, approval, registration, consent, permit, or other form of authorization required by a city ordinance, regulation, or rule in order to develop, construct, and operate the improvements on the property.

Code: The Code of Ordinances enacted by the city, as may be amended from time to time.

Commercial land use: All activities and operations except for one- and two-family residences occupied by individual(s) claiming the dwelling as their homestead including commercial, industrial, multi-family, retail, GUI, and any other land use other than one- and two-family residences.

Critical root zone: The circular area surrounding a tree trunk, established as a distance equal to one foot of radial distance for every inch of caliper size or tree DBH, whichever is appropriate.

Development: The construction or placement of any buildings, utilities, access, roads or other structures, excavation, mining, dredging, grading, filling, clearing or removing vegetation, or the deposit of refuse, waste or fill.

Development Review Committee: A group consisting of the city administrator or designee, the city engineer, building official, and the city planner.

DBH (diameter at breast height): The unit of measure for tree size once over four inch (4") caliper. DBH is the tree trunk diameter of an existing tree measured in inches at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point beneath the split.

Escrow: A deposit of a cash bond with the city in accordance with this article.

Extreme drought classification: A mandatory drought response issued by the local water supply jurisdiction outlining conditions that include limits to water available for landscape irrigation making it impractical to establish new landscaping by irrigation.

Hardwood: Texas Ash, Bald Cypress, American Elm, Cedar Elm, Texas Madrone, Bigtooth Maple, All Oaks, Pecan, Arizona Walnut, Eastern Black Walnut, American Sycamore, Eastern Cottonwood, Red Mulberry, and Osage Orange.

Healthy tree. Any tree that has not been determined to be considered dead, diseased, or posing an imminent threat or hazard to people or property by a Certified Arborist or by the City Arborist.

Impervious cover: Buildings, parking areas, roads, and other impermeable man-made improvements covering the natural land surface that prevent infiltration. For further clarification on what is considered impervious cover, refer to the city's water quality protection ordinance (article 10.03).

Landscape architect: A person licensed to use the title of "landscape architect" in the State of Texas in accordance with state law. Landscaping: Consists of introduced vegetation, as well as related improvements to a lot, including, but not limited to, forming and berming, irrigation systems, landscape subsurface drainage systems, site furnishings, and nonstructural retaining walls.

Natural area: An area where the naturally grown landscaping is left primarily undisturbed, except for the removal of poison ivy, greenbrier, and similar vegetation, oak wilt removal and/or prevention measures, and allowing for maintenance of the trees to maintain vigorous growth.

Owner: A person or persons with legal control over property in question. Owner includes all owners as it relates to boundary trees as defined herein.

Person. A human individual, corporation, agency, unincorporated association, partnership, or sole proprietorship, or other legal entity.

Protected tree. Any of the following:

- (1) Heritage tree. A protected tree generally having a trunk of 18.0” or greater caliper in inches measured at DBH or as further defined in Sec. 28.06.079.
- (2) Standard tree. A protected tree having a trunk of 8.0” -17.9” caliper in inches measured at DBH or as further defined in Sec. 28.06.079.

Residential Use: One- and two-family structures, occupied by individuals as their primary residence.

Responsible party: The owner/operator of the business located on the property on which the site development permit is being sought or where the protected tree or landscaping is required; the owner of the property upon which the tree is located or landscaping is required; the person who performs construction or landscaping on a lot, contracts with or directs a person to accomplish the construction.

TCEQ: The state commission on environmental quality, or its successor agency.

Tree caliper: Caliper is the diameter of the trunk, measured at 6 inches above the soil line on the uphill side, and used for trees that measure 4” caliper or smaller. Over 4” caliper, trees are measured in DBH.

Sec. 28.06.005. Landscaping fund.

A fund is hereby created in which any cash-in-lieu paid to the city pursuant to the mandates of this article shall be deposited. The fund may be drawn upon by the city to implement landscaping improvements on city land and city controlled rights-of-way or to fund landscape project grants that serve a public city purpose.

Sec. 28.06.006. Damaging or removing trees.

No person shall damage or remove trees in violation of this article. “Damage” in this case includes, but is not limited to, altering or maintaining trees in a manner inconsistent with the standards published in American National Standards Institute (ANSI) A-300 “Standards for Tree Care Operations” for trees protected by this ordinance. A violation of this section is an offense under section 28.06.008.

Sec. 28.06.007. Violation

It shall be unlawful for any person to violate this article.

Sec. 28.06.008. Offense

- (a) A person who intentionally, knowingly, recklessly, or with criminal negligence violates, causes, allows or permits a violation of a section of this article designated as an offense commits a misdemeanor punishable by a fine not exceeding \$2000.00. A person who otherwise violates a section of this article designated as an offense commits an offense punishable by a fine not to exceed \$500.
- (b) Each violation of this article designated as an offense constitutes a separate offense. Each tree removed or seriously damaged in violation of this ordinance is a separate offense.
- (c) No culpable mental state is required to prove an offense under this article if the offense involves:
 - (1) removal or damage to trees in violation of this article including clearing, grubbing, or construction through the use of heavy load vehicles as defined in Chapter 30 of the code over the critical root zone of a protected tree; or
 - (2) death of a protected tree outside of-but adjacent to-areas of disturbance by construction.
- (d) Violations:
 - (1) Section 28.06.006. Damaging or Removing Trees.
 - (2) Section 28.06.051. Maintenance Requirements.
 - (3) Section 28.06.052. Tree Preservation.
 - (4) Section 28.06.056. Irrigation Requirements

Sec. 28.06.009. - Liability.

The provisions of this article shall not be construed as relieving or limiting in any way the responsibility or liability of any person that damages or removes any tree, from personal injury or property damage resulting from the damage or removal of the tree, or resulting from the negligence or willful acts of such person in the construction or maintenance of any property resulting in the damage or removal of a tree or the damage or removal of any tree, or from the damage caused by the failure to remediate oak wilt or planting of a prohibited tree. Nor shall it be construed as imposing upon the city or its officers, employees or agents any responsibility or liability by reason of the approval of any site development permit, subdivision, or construction under these provisions.

Sec. 28.06.010. - Civil remedies.

Nothing in this article shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this article and to seek remedies as allowed by law, including, but not limited to the following:

- (1) Injunctive relief to prevent specific conduct that violates the article or to require specific conduct that is necessary for compliance with the article, including

remediation of oak wilt or protection of trees where such remediation or protection is required by this article at the expense of the responsible party;

- (2) A civil penalty up to \$1,000.00 a day when it is shown that the defendant was notified of the provisions of the article and after receiving notice committed acts in violation of the article or failed to take action necessary for compliance with the article; and other available relief.
- (3) Any person violating any provision of this article is subject to a stop work order. Any violation of this article is hereby declared to be a nuisance. Any violation of this article may serve as grounds to withhold or delay issuance of other permits and revocation of a certificate of occupancy.

Secs. 28.06.011—28.06.050. Reserved.

DIVISION 2. STANDARDS - INDIVIDUAL RESIDENTIAL LOTS AND SMALL PROJECT LANDSCAPING AND TREE PRESERVATION

Sec. 28.06.051. Maintenance requirements.

The owner shall be responsible for (unless otherwise specified herein):

- (1) Planting and maintaining trees in a manner which conforms to the American National Standards Institute (ANSI) A-300 “Standards for Tree Care Operations” and following all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.
- (2) Regular maintenance of all required landscaped areas and plant materials in a vigorous and healthy condition, free from diseases, pests, weeds, and litter. This maintenance shall include weeding, watering, fertilization, pruning, mowing, edging, mulching, or other necessary maintenance in accordance with generally accepted horticultural practice.
- (3) Limitation of water due to drought restrictions placed by the City, Dripping Springs Water Supply Corporation, West Travis PUA, or any other water provider temporarily suspends the watering requirement in subsection (2).
- (4) A violation of this section is an offense under section 28.06.008.

Sec. 28.06.052. Tree preservation.

(a) Protected trees are defined as follows:

- (1) Protected Trees;
 - (A) Heritage Trees;
 - (B) Standard Trees.
- (2) Hardwood trees defined in Sec. 28.06.004 “Definitions”
- (3) Standard Trees. The following species are considered protected Standard trees with at least one (1) trunk being equal or greater than the respective size (DBH):

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- i. Texas Persimmon (*Diospyros texana*) - five (5) inch DBH;
 - ii. Texas Redbud (var. *texensis*) - five (5) inch DBH;
 - iii. Texas Mountain Laurel (*Sophora secundiflora*) - five (5) inch DBH;
 - iv. Condalia (*Condalia hookeri*) - five (5) inch DBH;
 - v. Possum Haw (*Ilex decidua* - in floodplain only) - five (5) inch DBH;
 - vi. Hawthorne (*crataegus texana*) - five (5) inch.
- (4) Heritage Trees. A Heritage tree means a tree of eighteen (18) inches or greater DBH for all tree species except the following species are Heritage with at least one (1) trunk being eight (8) inches or greater DBH (the value of the eight (8) inches or greater trunk is the value given to these small tree species):
- i. Texas Persimmon (*Diospyros texana*);
 - ii. Texas Redbud (var. *texensis*);
 - iii. Texas Mountain Laurel (*Sophora secundiflora*);
 - iv. Condalia (*Condalia hookeri*);
 - v. Possum Haw (*Ilex decidua* - in floodplain only);
 - vi. Hawthorne (*crataegus texana*).
- (5) Non-native Trees. Non-native invasive tree species are not protected. Non-native invasive tree species means the following tree species:
- i. Chinese Pistache (*Pistacia chinensis*);
 - ii. Chinaberry (*Melia azedarach*);
 - iii. Chinese Tallow (*Sapium sebiferum*);
 - iv. Tree of Heaven (*Ailanthus altissima*);
 - v. Salt Cedar (*Tamerix* species).
 - vi. Japanese Ligustrum (*Ligustrum japonicum*).
 - vii. Nandina (*Nandina domestica*);
 - viii. Paper Mulberry (*Broussonetia papyrifera*)

(b) Minimum Tree Preservation Requirements

(1) No Heritage tree shall be removed from any property within the municipal boundaries of the City of Dripping Springs without following the provisions as stated below except where exempted.

(2) Tree Preservation by Land Use:

(A) A property owner may remove any tree, other than a Heritage tree, on property owned where the removal is not due to a residential development resulting in five or more dwelling units or due to commercial, industrial, government, or multi-family development.

(B) All Heritage trees on any lot shall be preserved unless the tree falls under an exception or a waiver to remove the tree is granted by the development review committee. Heritage trees within clearing and installation for infrastructure (roads, utilities, etc.) shall not be removed without a waiver from the development review committee and mitigation.

(C) Tree preservation in Historic Districts shall comply with both this Article and the code and implementation manuals for the districts. When in conflict, the stricter requirement applies.

(3) All healthy Heritage and Standard trees shall be preserved in the Water Quality Protection Zones as defined in Article 22.05. This prohibition shall apply unless tree removal is specifically approved by the development review committee for allowable development in the WQBZ as defined by Water Quality Ordinance [22.05.017(d)].

(c) Healthy protected trees (as defined herein) that are Heritage trees as defined that require removal to accommodate the development shall be replaced as directed herein. Trees identified as dead, diseased, or posing an imminent threat or hazard to people or property by a Certified Arborist shall not be included in tree preservation requirements evaluation.

(d) Any activity that damages trees on adjacent lots is prohibited.

(e) A violation of this section is an offense under section 28.06.007.

Sec. 28.06.053. Mitigation for Tree Removal.

(a) Mitigation for all removed Heritage trees not covered by an exception is required. For all removed Heritage trees in accordance with tree preservation requirements or after a waiver is approved for removal in excess of the tree preservation requirements the inches (DBH) required for mitigation will be determined by the development review committee in consultation with the City Arborist.

(b) Protected trees which are removed shall be mitigated using any combination of the following:

(1) Preservation of existing protected trees >6 inches in DBH above minimum preservation requirements;

(A) A survey including existing, live, healthy protected trees with a six-inch DBH in diameter must be submitted if mitigation is sought including any tree being used for mitigation.

(B) Credit for preservation shall be given at .5 : 1.

(C) In addition, preservation of existing Ashe Juniper (*Juniperus ashei*); Huisache (*Acacia farnesiana*); Mesquite (*Prosopis glandulosa*); and Arizona Ash (*Fraxinus velutina*) > 6 inches in DBH provide credit at .5:1 inches.

(2) Relocation of the removed tree onsite, mitigation is required for relocated trees if mortality occurs within 3-years of the relocation;

(3) Replacement by new protected tree species, or alternative native trees approved by the development review committee; and/or

(4) Payment of a fee in lieu of tree replacement.

(c) Mitigation cannot be accomplished by only using one of methods “1” thru “4” above. They must be used in combination in a balance approved by the development review committee.

- (d) The preservation of healthy Standard trees on-site is encouraged and may be used as mitigation to offset the removal of Protected Heritage trees. The mitigating trees may be of any protected tree species with an aggregate DBH in inches of the trees removed (1:1). Mitigating trees should be >6 inches in DBH, in good health, and clear of existing or proposed utility easements and overhead electric lines. Existing Heritage trees cannot be used to mitigate for the loss of Heritage trees.
- (e) Replacement trees may be of any protected tree species or alternative approved indigenous tree with an aggregate DBH in inches of the trees removed with ratio of (3:1) for Heritage trees.
- (f) Replacement trees shall be a minimum of two and a half caliper inches measured 6 inches from ground level and a minimum height of 8 feet when planted.
- (g) When possible, replacement trees shall be planted on the same lot according to an approved Tree Preservation Plan. Replacement trees may be planted on another lot if approved by the Development Review Committee.
- (h) Fee in lieu of replacement:
 - (1) If all or a portion of the required replacement trees will not be planted on-site or on a site approved by the development review committee, payment of a fee in lieu of replacement shall be made, which shall be deposited into the City’s Landscaping Fund. The fee shall be determined as follows in the Table below;

Table Mitigation methods for tree removal

Tree Classification	Tree Diameter Removed (DBH)	Tree Planting: Aggregate DBH in inches of trees removed	Mitigation Fee per inch (DBH) of tree removed
Heritage	18.0” or greater or as listed herein	3:1	<u>\$450</u>

Sec. 28.06.054. Exceptions.

Exceptions: The following shall be exempt from the Tree Preservation requirements for Heritage trees of Section 28.06.052:

Lots on which buildings were constructed prior to the adoption of this ordinance and

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- (a) subsequently damaged by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind, provided a Building Permit is issued for restoration within 12 months after the damage occurs and additional square footage is not proposed.
 - (b) Trees that are dead, diseased, or posing an imminent threat or hazard to people or property as determined by a tree survey and a letter from a Certified Arborist.
 - (c) Trees causing physical damage to existing structures, drainageways, utility systems or facilities in the public right of way as determined by the city engineer or their designee.
 - (d) Protected trees damaged or destroyed by floods, fire, wind or other natural causes.
 - (e) Trees identified by a Certified Arborist as dead, diseased, or posing an imminent threat or hazard to people or property shall not be included in tree preservation requirements evaluation.

Sec. 28.06.055. Oak Wilt Management

- (a) Trimming or cutting of any oak species is prohibited from the first day of February to the last day of July. Permission may be granted by the development review committee to any person wishing to trim or cut an oak tree susceptible to oak wilt during the prohibited months, provided that the person agrees to comply with this section as it relates to painting wounds. Trimming or cutting of trees are allowed during the prohibited months if done in response to damage caused by weather. Trimming or cutting can be done by the entity, property owner, or a licensed professional or landscape company. In the case of oak species, wounds must be painted with an acceptable wound dressing within 30 minutes from the time of cutting.
- (b) Contractors or individuals identified pruning any oak without a demonstrated ability to seal all wounds greater than 0.75 inches within 30 minutes of the time of cutting will be required to cease all work until a wound sealant is onsite and utilized on the project.
- (c) Infected red oaks that die in late summer, fall or early winter should be cut down and burned when allowed, buried, or chipped soon after discovery to prevent fungal mats that may form on these trees the following spring.
- (d) Potential oak wilt investigations should be performed by a member of the Texas Forest Service, a Certified Arborist or the City Arborist. For information on oak wilt identification, spread and management reference www.texasoakwilt.org.
- (e) In the case of emergencies due to tree damage from weather events or other natural disaster the requirement for licensed professional tree care or landscaping company for review for trimming during prohibited months is not required if not available. In addition, painting within 30 minutes at the time of cutting is not required, but painting shall be done as soon as possible.

Sec. 28.06.056 Irrigation Requirements

- (a) Watering landscaping by hose-end sprinklers or permanently installed automatic sprinkler systems between 10 a.m. and 7 p.m. is prohibited.
- (b) Watering by hand-held hose, drip irrigation, or soaker hose is allowed at any time. No more than three hours per day maximum is allowed.

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- (c) Watering or irrigating of any landscaping in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, parking area, street, alley, gutter, or ditch is prohibited. Irrigation systems shall not spray water on or over any surface listed above.
 - (d) All restrictions herein are in addition to any restrictions placed by a utility provider including the Dripping Springs Water Supply Corporation, the West Travis County PUA, or the City of Dripping Springs. In addition, all irrigation should be installed in compliance with the Texas Administrative Code Chapter 344 and any other state requirements. All restrictions herein are in addition to any restrictions placed by a utility provider including the Dripping Springs Water Supply Corporation, the West Travis County PUA, or the City of Dripping Springs.
 - (e) A small project that is a subdivision of four or less units that uses drip irrigation in all open, park, and common areas will receive a credit of fifty percent (50%) of water reuse fees in Section 22.06.007 – Development requirements.
 - (f) Irrigation with reuse water or in septic fields can be done in addition to the limitations to those listed in this Section including additional time so long as all other requirements are met.
 - (g) A violation of this section is an offense under section 28.06.007.

28.06.057 Appeal of Development Review Committee

Any applicant may appeal a final decision of the development review committee to the city council. The appeal must be in writing and submitted within ten (10) days of receipt of the development review committee's decision to the city administrator. The city council will hear the appeal within thirty (30) days of receipt of the appeal in writing. The decision of the city council is final.