

Section 8.8 Tree and Habitat Protection

(1) Purpose and Intent

The purpose of this section is to conserve, protect and enhance existing healthy and safe trees and natural landscape. It is recognized that the preservation of existing trees contribute to the overall quality and environment of the City. Trees can and do contribute to the process of purification, oxygen, regeneration, groundwater recharge, reduction of pollution and contaminants in aquifers, erosion and dust control, abatement of noise, provide wildlife habitat and enhance property values. ~~Indiscriminate clearing or stripping of natural vegetation on any parcel is prohibited.~~

(2) Applicability and Exemptions

- a. Applicability. The provisions of this Section are applicable to the following:
 - i. New Development. All new residential and nonresidential development within the City limits or its extraterritorial jurisdiction.
 - ii. Redevelopment. Redevelopment of any ~~residential or~~ nonresidential property within the City limits or its extraterritorial jurisdiction which results in an increase in the building footprint or the total destruction and reconstruction.
 - iii. All tree removal regulations are subject to the provisions of Local Government Code section 212.905. State law will control, in the event of any conflict between the regulations of this section and state law provision.
- b. Permitting Exemptions. The following areas are exempt from the tree removal ~~permitting~~ requirements of this section but are subject to the mitigation requirements identified in this section:
 - i. Building Footprint. Trees located within, and within ten feet (10') of, the building footprint;
 - ii. Access. Areas necessary for the minimum required site access; and
 - iii. OSSF. Trees located within the area of a proposed on-site sewage facility (OSSF)
 - iv. Right-of-way. Trees located within a right-of-way to be dedicated to and maintained by the City; and
 - v. Easements. Trees located within any utility easement
 - vi. Existing single/two family dwellings trees less than a Tree Circumference (TC) of 31.5 inches
 - vii. State law exceptions.
- ~~c. Preservation Exemptions. The following areas are exempt from the preservation requirements of this section:~~
 - ~~i. Right-of-way. Trees located within a right-of-way to be dedicated to and maintained by the City; and~~
 - ~~ii. Easements. Trees located within any utility easement~~
 - ~~iii. State law exceptions.~~

(3) Removal or Destruction of Tree(s)

It will be unlawful for any person to remove, destroy, or cause the removal or destruction of any tree that has a tree circumference (TC) 28 inches or larger (Protected Tree) and which is located on property pursuing new development, a plat, or infrastructure improvements within the city limits or ETJ without submitting Tree Plan to City Staff and receiving approval. Failure to comply with this section will result in increased tree mitigation fees as per fee schedule. A Heritage Plan is required

EXHIBIT B

~~to be reviewed and approved by the Planning and Zoning Commission and City Council prior to any construction activity that is likely to endanger a Heritage Tree, TC 75 inches or larger. The tree trunk circumference is measured at diameter of breast height (DBH), or four and a half (4 ½) feet, as detailed by the Texas Forest Service.~~

(4) Damaged Tree(s)

If a tree is diseased, dead, or has sustained damage that creates an immediate hazard to life or property, the City Manager (or designee) may not prohibit ~~approve~~ the removal of such tree. In addition, the removal of dead or diseased tree may be removed with a written statement from a professional service or arborist.

(5) Tree Plan

- a. Types. This Section is applicable to the following types of trees:
- Protected Tree - A Protected Tree is defined as a tree with a minimum TC of 28 inches and a maximum TC of 74.9 inches.
 - Heritage Tree - A Heritage Tree is defined as a tree with a minimum TC of 75 inches or larger.
- b. Measurement. The tree trunk circumference is measured at Diameter of Breast Height (DBH) or four and a half (4 ½) feet above ground, as detailed by the Texas A&M Forest Service.

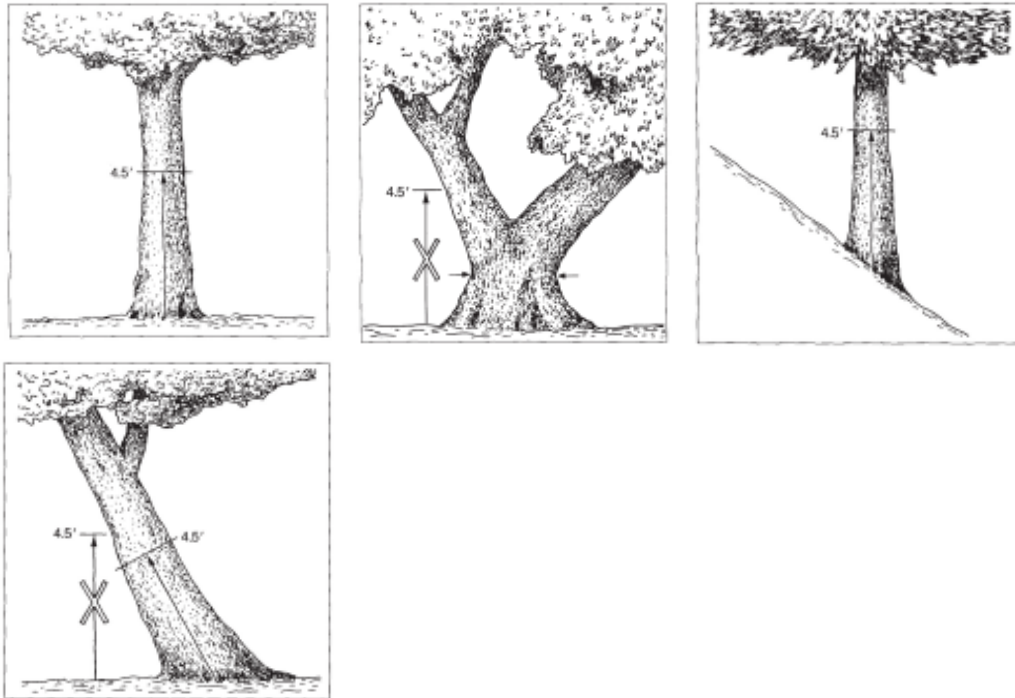


Figure 8.1 Texas A&M Forest Service Diameter of Breast Height (DBH) examples

- c. For new construction on a tract, a Tree Plan identifying the location, species, circumference, and approximate canopy coverage of all healthy trees, that have a TC 28 inches or larger when measured at DBH. A Tree Plan is required to be recommended by the Planning and Zoning Commission and approved by City Council prior to the commencement of construction activity if any Heritage trees are to be removed.
- d. A Tree Plan shall meet the following requirements:
- For construction on a tract, a Tree Plan identifying the location, species, circumference,

EXHIBIT B

- and approximate canopy coverage of all trees, that have a TC 28 inches or larger when measured at DBH shall be submitted.
- ii. For properties pursuing new development, expansion, plat approval, or infrastructure improvements, a Tree Plan shall be submitted prior to or in conjunction with the Preliminary Plat or site development permit application. However, no site development permit shall be approved prior to approval of a Tree Plan.
- ~~e. A Tree Plan may be submitted prior to or in conjunction with Preliminary Plat or Site Development Permit applications.~~
- f. A Tree Plan ~~will~~ shall designate all Protected and Heritage trees proposed for removal and will describe the measures proposed to protect the remaining trees during the development of the property. The plan will also describe in detail the efforts made to preserve Heritage Trees and explain why a Heritage Tree is proposed for removal. The Tree Plan ~~will~~ shall also reflect that all proposed tree removal will be done in accordance with the City's Oak-wilt Control Ordinance, Article 1.07.2 the City's Code of Ordinance.
- g. Replacement of trees is required and is described below in Section 8.8(7)b & c. The Tree Plan shall include a planting diagram to show where new trees will be planted.
- h. The Tree Plan will also require the developer or property owner to provide a tree preservation warranty to the City, which shall obligate the then owner of the property to replace any tree (or trees) reflected on the tree survey and which are the subject of the warranty. The term of the warranty shall be two (2) years from the date that a building permit is filed for building construction projects or two (2) years from the date construction is commenced for infrastructure improvements related to development projects. Each tree that is covered by a tree preservation warranty must be identified on the tree plan. If any tree is required to be preserved and which is the subject of a tree preservation warranty shall die during the term of the tree preservation warranty, the tree shall be replaced in accordance with the provisions of this Code. The City may require such owner to replace a tree (or trees) that has died at any time during the term of the tree preservation warranty, and, if such owner fails to replace the tree within ninety (90) days of the city's written request to replace same, the city at its sole option may refuse to issue any new building permits, accept any development application, or accept any infrastructure improvements from such owner. Nothing in this subsection shall exclude any and all remedies otherwise provided by law. The seller of property subject to a tree preservation warranty shall provide a copy of the warranty and attached tree survey to prospective buyers.

~~(6)~~ — Heritage Plan

- ~~a. For new construction on a tract, a Heritage Tree Plan identifying the location, species, circumference, and approximate canopy coverage of all healthy trees, that have a TC 75 inches or larger when measured at DBH.~~
- ~~b. A Heritage Plan must be submitted to the City, reviewed by City Staff, and voted on by the Planning and Zoning Commission before a Preliminary Plat or Site Development Permit is forwarded to City Council. It must be approved by the City Council before a Final Plat is approved.~~
- ~~c. A Heritage Plan may be submitted before or in conjunction with platting or Site Development Permit applications.~~
- ~~d. A Heritage Plan will designate all Heritage Trees proposed for removal, and any Heritage Trees~~

EXHIBIT B

- ~~whose health is likely to be threatened by construction activity. The plan will also describe in detail the efforts made to preserve Heritage Trees and explain why a Heritage Tree is proposed for removal. The Heritage Plan will also reflect that all proposed tree removal will be done in accordance with the City's Oak Wilt Control Ordinance, Article 1.07.2 the City's Code of Ordinance.~~
- ~~e. Replacement of trees is required and is described below in Section 8.8(7)c. The Heritage Plan shall include a planting diagram to show where new trees will be planted.~~
- ~~f. As stated in Section 8.8 (5)e., a warranty is required for all trees TC 28 inches or larger and shall apply to Heritage Trees.~~

(7) Removal and Mitigation Criteria

- a. Removal by Right. Protected Trees, including Heritage Trees, located within 10 feet of the perimeter of the proposed building footprint, the area over an OSSF, areas necessary for site access, or within areas designated for the construction or installation of public facilities such as streets or utilities may be removed at the discretion of the applicant, provided that the terms of Sections 8.8(7)b-c. (below) are satisfied;
- b. Removal and Mitigation of Protected Trees. Developers of land are encouraged to preserve protected trees whenever possible. An applicant may remove Protected Trees if approved mitigation is provided. ~~Generally speaking,~~
- ~~i.~~ Mitigation shall be at a 1:1 ratio for TC inches to be removed.
 - ~~ii.~~ Mitigation shall not allow planting of *Quercus Buckleyi* (Red Oak) Tree Species
 - ~~iii.~~ The applicant may plant smaller trees to replace Protected Trees, provided that no tree smaller than TC 8 inches is generally allowed, and that the total tree coverage on the lot (as measured in TC inches) is approximately the same as pre-development conditions.
 - ~~iv.~~ In cases where soil, slope, lot size, or other natural constraints make replacing the same number of TC inches unfeasible, the City Manager (or his designee), may, at their sole discretion, allow some or all of the mitigation to take place on a separate, public site within the City, or on lands owned by an association that operates and maintains trails, open space, or parkland within the City and that are usable by residents of the general area where the applicant's land is located. ~~In addition,~~
 - ~~v.~~ the City Manager at their sole discretion, (or designee) may allow mitigation by payment of fee for some or all of the Protected Trees to be removed, ~~if the City's fee schedule includes a provision for Fee In Lieu of Replacement Trees.~~
- c. Removal and Mitigation of Heritage Trees.
- ~~i.~~ Heritage Trees may not be removed during construction, except under certain specific circumstances:
 - 1. If the tree is sick or diseased and meets the criteria laid out in Section 8.8(4); or
 - 2. If the tree is within the footprint as described in Section 8.8(7)a; or
 - 3. if the removal is approved by the City Council after consideration by the P&Z, with a formal recommendation from the P&Z to the Council on whether to approve the removal.
 - ~~ii.~~ If any Heritage Trees are planned for removal, they must be identified and clearly marked on the Heritage Plan. The Heritage Plan must also identify any Heritage Trees that are likely to be endangered by construction activity which might sever or compress the root zone, or

EXHIBIT B

otherwise threaten the health and life of the tree, as determined by a reasonable person. The City Council may grant removals under Section 8.8(7)c.i-3 (above) at its sole discretion. In considering whether to allow the removal of Heritage Trees, the City Council shall consider whether removal is absolutely necessary to allow the applicant to meet reasonable, investment-backed expectations for use of the property, and whether such use can be accomplished while preserving Heritage Trees.

- iii. If any Heritage Tree removals are granted, the applicant shall meet all the mitigation and replacement conditions outlined in 8.8(7)b. (above), except that any decisions delegated to the City Manager in that paragraph shall be made by the City Council.

(8) Protection of Trees During Construction

All protected trees next to an excavation site or a construction site for any building, structure, or street work will be guarded with a good substantial fence, frame, or box not less than 4 feet high and surrounding the entire protected zone of the tree(s). Barriers will be approved by the City Engineer, or his / her designee, and will be in place before any site clearance or other site-disturbing act commences. Developer to bear burden of watering/ sustained growth of impacted existing trees and new replacement trees indicated on Tree Plan. The protection barrier will also include the following:

- a. Location. The protection zone ~~shall be based on latest TXDOT Tree Protection Details should be located a minimum of one (1) foot per tree for each TC 3.1-inch of the tree -- for example, 10 feet from a tree with an average TC 31-inch~~
- b. Building Materials. All building material, dirt, excavation or fill materials, chemicals, construction vehicles or equipment, debris, and other materials will be kept outside the barrier.
- c. Term. Barriers will remain in place until the final building and landscape site inspections are satisfactorily completed for the issuance of the Certificate of Occupancy (CO) and/or Final Acceptance is issued.

(9) Denial of Tree Plan

The denial by City Staff of a Tree Plan may be appealed to the City Council if the request for appeal is submitted at least 10 days before the next scheduled meeting after the applicant is notified of the Tree Plan denial. The appeal will be heard at ~~the next~~ a regularly scheduled City Council meeting.

(10) Exclusions

The proposed removal of *Celtis Occidentalis* (Hackberry), *Melia Azedarach* (Chinaberry) and *Ligustrum spp.* (Ligustrum) are excluded from the requirements of this Section. The proposed removal of *Juniperis Ashei* (Common Ashe Juniper or Cedar), *Juniperus Virginiana* (Eastern Red Juniper or Cedar) and *Prosopis spp.* (Mesquite), which are TC 48 inches caliper in size or smaller are also excluded from the requirements of this Section.

(11) Penalties

Any violation of this Section is subject to penalty in accordance with Section 12, Compliance and Enforcement, of this Code.

Chapter 10 Signs

Section 10.1 Purpose, Applicability and Effect

(2) Applicability and Effect

- a. Applicability. A sign may be erected, placed, established, painted, created, or maintained in the City or ETJ only in conformance with the standards, procedures, exemptions, and other requirements of the Section.
- b. Effect. The effect of this Section as more specifically to do the following:
 - i. Permit System. Establish a permit system to allow a variety of types of signs in Mixed Use Village, Neighborhood Commercial, Community Facilities and Logistics zones and a limited variety of signs in other zoning districts, subject to the standards and the permit procedures of this Chapter;
 - ~~ii. No Permit Required. Allow signs that are small, unobtrusive, and incidental to the principal use of the respective lots on which they are located, subject to the substantive requirements of this Chapter, but without requirements for permits;~~
 - ~~iii. Exempt Signs. Allow signs that are small, unobtrusive, and incidental to the principal use of the respective lots on which they are located, subject to the substantive requirements of this Chapter;~~
 - iv. Temporary Signs. Provide for temporary signs ~~without commercial messages~~ in limited circumstances;
 - v. Prohibited Signs. Prohibit all signs not expressly permitted by this Chapter; and
 - vi. Enforcement. Provide for the enforcement of the provisions of this Chapter.
- c. Penalties. ~~See Chapter 12 Compliance and Enforcement. Any person, firm, association of persons, corporation, or other organization violating any of the provisions of Chapter 10 will be guilty of an offense under this Chapter and will be subject to penalty as defined in Chapter 12, Compliance and Enforcement, of this UDC.~~

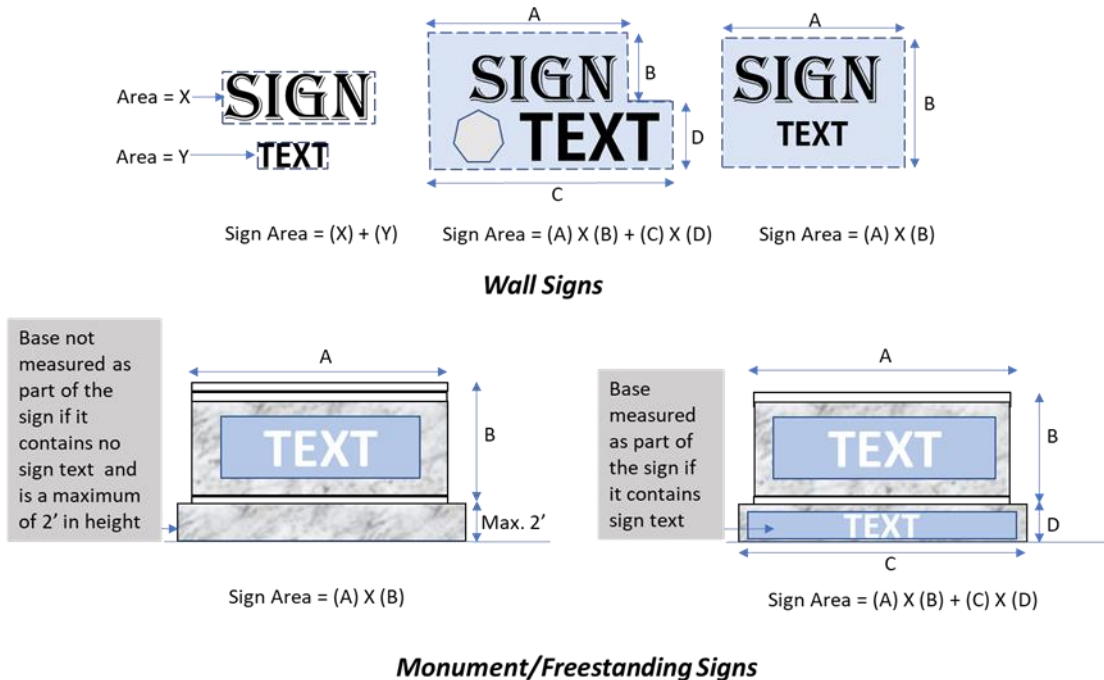
Section 10.2 Calculations

(1) Calculation of Sign Sizes

- a. Area of a Sign.

Wall Sign: The area of a sign will be calculated by means of the ~~total square foot of the sign area smallest square, circle, rectangle, triangle, or combination thereof, that will encompass the extreme limits of the writing, representation, emblem, or other display, together~~ with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed.

EXHIBIT B



Section 10.3 General Requirements Sign Permits.

(1) Permits Required

- a. Sign Requiring Permit. If a sign requiring a permit under the provision of this Chapter is to be placed, constructed, erected, or modified on a lot either within the City limits or the City's extraterritorial jurisdiction (ETJ), the owner of the lot will obtain a sign permit prior to the construction, placement, erection, or modification of such a sign in accordance with the requirements of Section XX below.
- b. Signs in ETJ. Signs located in the ETJ are to be regulated by the sign development standards applied to comparable uses of similar businesses (see Table XX below) within the City limits under the following conditions:
 - i. Businesses and Non-Single Family Residential Properties on FM-3351 IH-40. Properties with frontage on FM-3351 IH-40 must comply with the sign regulations described in the Logistics Zoning District.

Other Businesses and Non-Single Family Residential Properties not located on FM-3351 used for non-single family residential uses in the ETJ must comply with sign regulations described in the Neighborhood Commercial Zoning Districts. Single Family Residential. Properties used for single family residential uses within the ETJ, must comply with sign regulations described in the Rural Residential Zoning Districts.

Section 10.4 Exempt, Prohibited and Nonconforming Signs

(1) Exempt Signs.

The following signs will also be exempt from regulations under this Chapter:

- a. Any public notice or warning required by a valid and applicable federal, state, or local law, regulation, or ordinance;
- b. Informational sign used by the City for the primary purpose of public notifications;
- c. Temporary real estate signs not exceeding six square feet in area and three feet in height in residential zoning districts and not exceeding 64 square feet in area and 12 feet in height in other zoning districts that advertise the property on which the sign is located for sale or lease. These signs must be removed within seven days after the property is sold or leased;
- d. Works of art that do not include a commercial message. Determination on if the art has a commercial message or not will be made by the City Manager (or designee);
- e. Holiday lights and decorations. Lights and decorations installed on a temporary basis in recognition of religious, state, or national holiday or holiday season with no commercial message;
- f. Traffic control signs on private property. Traffic control signs on private property, such as stop, yield, and similar signs, the face of which meet Department of Transportation standards and that contain no commercial message;
- g. Scholastic signs. Scholastic signs are regulated through the deed restrictions or HOA regulations, which are not enforced through this code or the City. Scholastic signs on a flag pole are not applicable to this section and shall be permitted as a flag pole sign. such as Longhorns, Aggies etc. that meet HOA guidelines. Owners are strongly encouraged to review their deed restrictions before installing such signs. The City does not enforce private deed restrictions or HOA regulations.

Section 10.6 Political Signs Electioneering on City-Owned or Controlled Public Property**(1) Purpose**

The purpose of this Section is to provide reasonable regulations for electioneering on City-owned or controlled public property when such property is used as an election polling place. These regulations are intended to mitigate safety concerns, prevent damage to public property, and ensure that such property is sufficiently available for patrons who use the facilities other than for election purposes.

(2) Definitions

The following words, terms and phrases, when used in this Section, have the meanings ascribed to them as follows:

- a. *Electioneering* means the posting, use, or distribution of political signs or literature.
- b. *Polling place* means a city-owned or controlled public property that is being used as an election polling place.
- c. *Voting period* means the period each day beginning the hour the polls are open for voting and ending when the polls close or the last voter has voted, whichever is later.

(3) Permits

No permit will be required under this Section for on-premises signs. Any sign listed in this Section will be erected and maintained in a safe condition in conformance with all other requirements of this Chapter.

(4) Regulations and Exceptions

EXHIBIT B

- a. Election Signs. All election signs must comply with State law and City regulations.
- b. Electioneering. Political signs may be placed on public property used for the conduct of early voting and used for polling on voting day subject to compliance with State law and City regulations.
- c. All Political signs located on public property shall be removed no later than three (3) business days after conclusion of voting unless State law prohibits removal of signs after time period. Any signs remaining after three business days will be removed by the City and held until the seventh (7) day after the conclusion of voting and will be disposed of after the seventh day.
- d. A limit of 5 political signs per candidate will be allowed on public property. The City will maintain a diagram designating prohibited areas pursuant to Election Code § 61.003, as amended.
- e. ~~The following regulations apply to electioneering on the premises of public property during the voting period. It is an offense for any person to:~~
 - i. ~~Leave any electioneering sign or literature on public property that is used as a polling place other than during the voting period and for one day before and after the voting period;~~
 - ii. ~~Comply with State Law distance requirements on engaging in electioneering on driveways, parking areas, on medians within parking areas, on the premises of a polling location;~~
 - iii. ~~Attach, place or otherwise affix or erect any electioneering sign, literature or material in any area designated as a planting or landscaped area or to any tree, shrub, building, pole, or other improvement on public property used as a polling location;~~
 - iv. ~~Place any electioneering sign or literature within ten (10) feet of the public road way adjacent to the public property where a polling location is located;~~
 - v. ~~Place an electioneering sign on the premises that exceeds thirty six (36) square feet and is more than eight (8) feet in height, including any supporting poles, or to utilize any stake more than 18 inches long or 1 foot in diameter. Stakes may not be buried to a depth greater than ten (10) inches; and~~
 - vi. ~~Pursuant to Election Code § 61.003, to post, use or distribute political signs or literature in any area of the premises of the City Hall except those areas in which electioneering is allowed. The City will maintain a diagram designating prohibited areas pursuant to said Election Code, as amended.~~
- f. ~~The regulations set forth in in this Chapter will not apply to any City of Fair Oaks Ranch authorized signs, materials or other messages on its property.~~

~~(5) — Remove and Dispose of Political Sign(s)~~

- a. ~~In addition to imposing any criminal penalty, the City Manager may, without notice, remove and dispose of electioneering sign(s) located in violation of this section.~~
- b. ~~Section 10.3(6) of this Code prohibiting signs in the public right-of-way except for those specifically licensed or permitted by the City, State or a political subdivision of the State exercising jurisdiction where the sign is located will be strictly enforced. The City Manager or designee may request that signs in a public right-of-way be removed by the appropriate political subdivision.~~

~~(6) — Term of Electioneering on Public Property~~

~~The authority to conduct electioneering on public property under this Section is limited to the~~

EXHIBIT B

Unified Development Code

City of Fair Oaks Ranch

~~polling place where the voting is conducted and only for the voting period, such that at the end of the voting period, all signs and vehicles must be removed.~~