

EXHIBIT A TO ORDINANCE NO. 2026-XX-XX-XX

Sec. 101-256. Tree protection requirements.

- (a) Tree root protection shall be installed prior to the start of any site work, including demolition or site preparation, and be maintained continuously throughout the project. Tree protection shall be removed at the end of the project after all construction and final grading is complete, but before final inspection. Any premature removal or failure of tree protection can lead to root damage and require remedial tree care.
- (b) Fencing is the primary method of tree protection and is intended to prevent access to the Critical Root Zone (CRZ). Tree fencing shall have a minimum height of five feet. Fencing shall be chain link installed on steel t-posts with a maximum spacing of ten feet between posts. Fencing shall be installed around or beyond the CRZ of all preserved trees or any natural areas designated for preservation. "Critical Root Zone" as used in this section has the same definition as used in section 107-371 for the residential zoning district or Section 107-386 for zoning districts other than the residential district.
- (c) Mulch is required for any section of the CRZ that is not protected by fencing or under existing hardscape and has not been approved for impacts (such as building footprint or driveway). Mulch used for tree protection shall be any natural wood type. Rough single grind mulch, which resists compaction better than double grind and is usually less expensive is preferred, but any natural wood type is acceptable. Dyed mulch or mulch made from non-biological material such as rubber or stone shall not be used as tree protection.
- (d) Mulch shall be installed to a minimum depth of eight inches and maximum of 12 inches. Mulch shall be replenished as required and shall not be piled against the tree trunk.

Sec. 107-34. Fences.

- (a) Except as otherwise provided in this section, no front-yard fence may be erected or maintained.
- (b) A front-yard fence complying with the criteria provided in this subsection (b) of this section is allowed on property in a residential zoning district. The following criteria shall apply to such a fence:
 - (1) The height shall not exceed three feet measured perpendicular from the adjacent finish grade;
 - (2) Piers or posts may exceed the maximum height and fencing adjacent to the pier or post by four inches;
 - (3) On sloped lots, to accommodate variations in elevation of the ground beneath a fence segment between two piers or posts, a fence may exceed the maximum height by up to six inches, provided that the average height of such fence segment does not exceed the maximum height;
 - (4) The fence shall be constructed of such materials or in a manner to allow for an average of 80 percent visibility through the fence;
 - (5) All fence components shall be a minimum of 15 feet from the curb, or edge of the street pavement where there is no curb;
 - (6) The fence shall have columns, posts, or supports that are metal, brick, rock, stone, or wood;
 - (7) If only one side of the fence is stained wood or other finished material, the finished side shall face away from the interior of the property; if support components are provided on only one side of the fence, such support components shall be on the side facing the interior of the property;
 - (8) If a fence crosses a driveway or means of vehicular access to the property, the fence and any gate shall be located so that entering vehicles will be completely off the street when stopped for the gate to open, and such gate shall open parallel to or away from the street;
 - (9) No chain link, barbed wire, or electrified fences shall be installed or maintained;
 - (10) No fence, including decorative or ornamental fence tops, shall be designed to include or be constructed of barbed wire, broken glass or any exposed sharp or pointed materials that may penetrate or impale persons or animals.
- (c) On a corner lot, a fence may be erected and maintained in a side yard and rear yard adjacent to a street, but may be located no closer than 15 feet from:
 - (1) The edge of the street curb closest to the property, if the street has a curb; or
 - (2) The edge of the street pavement, if there is no curb.
- (d) If a fence along the side or rear of a lot or property is erected to the property line, adequate access to utility lines and meters shall be provided.
- (e) In no event may a fence be erected or maintained in or upon a city right-of-way or public right-of-way, except when installed by the city or its agents for municipal purposes.
- (f) All fences shall be maintained in good condition.
- (g) See Section 107-32(d) for additional corner lot requirements and Section 107-81 for additional residential fence requirements.

Sec. 107-71. Building height.

- (a) No portion of any building or structure (except a chimney, attic vent, lightning rod, or any equipment required by the city building code) may exceed 35 feet in height. Except as may be required by applicable codes, no chimney, attic vent, lightning rod or required equipment may extend more than three feet above the highest point of the following: the coping of a flat roof, the deck line of a mansard roof, or the gable of a pitched or hipped roof.
- (b) No part of a building or structure, exclusive of the exceptions outlined in this chapter may break this plane. The maximum allowable building height is 25 feet at a horizontal distance of ten feet from the property line, as measured from the original native ground surface or finished grade, whichever is lower. For each additional foot of horizontal distance beyond ten feet from the property line, the building height may increase by one foot, up to a maximum of 35 feet. The maximum height of 35 feet is allowed at a horizontal distance of at least 20 feet from the nearest property line.
- (c) Should a landowner believe the slope of a lot be so severe that the requirements proposed above have extreme adverse impact on the lot, an owner may seek relief from these requirements by variance granted by the board of adjustment.
- (d) Original native ground surface may be adjusted graphically as a straight line across unusual or minor topographic variations, including pools, ponds, existing basements, rock outcroppings, depressions, and natural drainage ways, with the intent to approximate the original grade of the property without penalty for previous construction.
- (e) Building height may be increased below the parallel plane by way of excavation, when starting a minimum of 20 feet horizontal from the side or rear property lines, as follows:
 - (1) As to the portion of the building above the excavated area: Forty feet above finished floor for uppermost surface of eave/parapet;
 - (2) As to the portion of the building above the excavated area: Forty-five feet above finished floor for ridgeline of sloped roof with a minimum of three over twelve roof pitch.
 - (3) Any exposed foundation resulting from this increase may not exceed 18 inches.
- (f) The parallel plane may not be breached.
- (g) Foundation exposure within public view from the right-of-way cannot exceed six feet in height. Foundation exposure within public view from the right-of-way must be screened such that the unscreened portion does not exceed two and a half feet in height.
- (h) Should some portion of the buildable area reside on or have a common boundary with a flood plain or drainage easement, and it can be shown that such conditions would have extreme adverse impact on the lot's buildable area, an owner may seek relief from the requirements of section 107-71(b) by special exception granted by the board of adjustment. In such cases, the board may grant a special exception such that the maximum height limits as stated in Section 107-71(b) are increased for up to five additional feet of building height.

~~Sec. 107-83. Special exception.~~

~~Should some portion of the buildable area reside on or have a common boundary with a flood plain or drainage easement, and it can be shown that such conditions would have extreme adverse impact on the lot's buildable area, an owner may seek relief from the requirements of section 107-71(b) by special exception granted by the board of adjustment. In such cases, the board may grant a special exception such that the maximum height limits as stated in section 107-71(b) are increased for up to five additional feet of building height.~~

Sec. 107-118. Special uses.

- (a) Subject to approval by the city council, the following special uses may be permitted in the C district:
- (1) Facilities for assembling of and testing electronics components;
 - (2) Child day care facilities, provided this is the only use on the particular lot;
 - (3) Banks or savings and loan associations, including automated teller machines (ATMs);
 - (4) Parking garages, provided that the garage is an accessory to the primary use on the same lot or an adjacent commercial lot;
 - (5) For lots with frontage on Bee Cave Road, a personal wireless telephone service facility;
 - (6) Research laboratories;
 - (7) Cafes, cafeterias, or restaurants without outdoor dining;
 - (8) Cafes, cafeterias, or restaurants with outdoor dining;
 - (9) Convenience stores;
 - (10) Grocery or food specialty stores;
 - (11) Package liquor stores;
 - (12) Automotive service stations;
 - ~~(13) Parking garages, provided that the garage is an accessory to the primary use on the same lot or an adjacent commercial lot;~~
 - ~~(14)~~ (13) Clinics without overnight facilities;
 - ~~(15)~~ (14) Hardware stores; and
 - ~~(16)~~ (15) Facilities for assembling computer software products.

127 **Sec. 107-370. Applicability.**

128 This subdivision applies to property in the residential zoning district, ~~and to any other property to which~~
129 ~~section 107-341 of this Code does not apply.~~

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Sec. 107-386. Non-residential tree canopy management.

(a) *Definitions.* For purposes of this section,

- (1) A "protected tree" means a tree of a "protected species" tree as defined in part II, Land Development Code, chapter 107, division 10, subdivision 3 (sections 107-369 through 107-385) having a trunk with a diameter not less than 12 inches nor more than 24 inches, measured 4½ feet above natural grade, as measured by an arborist.
- (2) "Heritage tree" means a tree of a "protected species" as defined in part II, Land Development Code, chapter 107, division 10, subdivision 3 (sections 107-369 through 107-385) having a diameter of 24 inches or more, measured 4½ feet above natural grade, or a tree cluster, as measured by an arborist.
- (3) "Diameter at breast height" or (DBH) means the diameter of a tree at a height of 4½ feet above natural grade.
- (4) "Critical root zone" means "the area around and under a tree having a radius of one foot per inch of DBH from the trunk of the tree outwards and 24 inches in depth. For example, for a tree having a ten-inch DBH, the critical root zone is ten feet out from the trunk and 24 inches deep.
- (5) "Tree cluster" means a cluster of two or more trees of a "protected species" located less than ten feet apart having a combined total diameter of 24 inches or more.

(b) The requirements of Part II, Land Development Code, chapter 107, division 10, subdivision 3 (sections 107-369 through 107-385) addressing protection of protected trees, shall apply to any property within any zoning district other than the residential zoning district. To the extent of any conflict between part II, Land Development Code, chapter 107, division 10, subdivision 3 (sections 107-369 through 107-385) and this section, this section shall control.

(c) In addition to the requirements of subsection (b), the following requirements for the preservation and protection of protected and heritage trees shall apply to any property, including any property within the city's rights-of-way, within any zoning district other than the residential zoning district.

- (1) *Permit required.* A grading plan, tree survey, and tree protection plan shall be submitted prior to any tree removal, clearing or grading, filling, or other form of site development. No tree may be removed, nor shall any clearing or grading permit, site development plan, building permit, or tree removal permit be issued until a tree survey is submitted and tree protection plan is submitted and approved.
- (2) *Tree survey requirements.* The tree survey shall address all requirements specified in section 107-376, development application requirements, indicate all existing, live, healthy trees with an eight-inch or larger diameter and all protected and heritage trees, and shall indicate the diameter, location, and species of each tree. Trees observed to be distressed will be indicated with an asterisk on the tree list. Trees shall be represented by circles indicating the diameter of the tree. Unbroken circles indicate trees that are to remain. Dashed circles indicate trees that are to be removed, including trees identified to be distressed. Protected trees proposed to be removed to accommodate the development shall be indicated, along with the proposed replacement trees.
- (3) *Credit for preservation of existing trees.* Preservation of existing protected species trees and heritage trees that are located outside the required 75-foot greenbelt may be credited toward required plantings (for example, landscape requirements, street trees, trees in parking areas) but not for required mitigation according to the following table:

Type of tree	DBH	Credit factor *
Protected species	4-7.9 inches	1.15:1
Protected species	8-12 inches	1.5:1
Protected species	greater than 12 inches	2.0:1
Tree cluster		1.5:1 for each inch within the cluster

*Credit factor provides tree credits per tree preserved.

Where the application of a credit factor produces a fractional number, rounding up to the next whole number of "credited" trees is permitted.

Example: Preservation of one ten-inch diameter protected species tree produces a credit equal to 1.5 trees of required planting.

(4) *Mitigation.* Any protected or heritage trees that are removed as a result of approval of a tree removal permit must be mitigated by planting of a tree of the same species on the same property in the following ratios:

- a. For each protected tree removed, one new tree of a protected species having a similar mature canopy spread as the removed tree, with a DBH of at least four inches and 14 feet in height,
- b. For each heritage tree removed, three new trees of a protected species having a similar mature canopy spread as the removed tree, with a DBH of at least four inches and 14 feet in height.

An exception to the mitigation requirements may be granted by the building official, with the approval of the city arborist, if the applicant demonstrates: (1) the existing tree canopy would prohibit the growth of the replacement tree(s); or (2) the required replacement trees to be installed would be planted under the canopy of an existing tree. A permit authorizing the removal of a protected or heritage tree shall require mitigation as specified above.

(5) *Prohibition on removal of heritage trees.* Removal of a heritage tree is prohibited unless a heritage tree removal special exception is granted under subsection (6) or a certified arborist confirms that the heritage tree is either: (i) dead; (ii) is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree, in whole or in part; or (iii) is diseased and restoration to sound condition is not practicable or the disease may be transmitted to other trees and endanger their health. The city administrator shall have the authority to determine whether such documentation is in order and may consider specific safety situations in light of potential hazards to life or property. In the case of an imminent hazard to life or property under subsection (ii), documentation may be submitted within 72 hours after the action is taken.

(6) *Heritage tree removal special exception.* Except as provided in subsection (5), removal of a heritage tree is prohibited unless a heritage tree removal special exception is granted by the board of adjustment upon a finding that: (i) all reasonable efforts have been made to avoid removing the tree, (ii) the location of the tree precludes all reasonable access to the property or all reasonable use of the property, and (iii) removal of the tree is not based on a condition caused by the method or design chosen by the applicant to develop the property.

(7) *Limitation on removal of a protected tree.* A protected tree may be removed upon the determination of the city arborist and approval of the building official if: (i) the tree is damaged by natural causes or is diseased beyond the point of recovery, (ii) the tree is in danger of falling, or (iii) the tree is dead. Any application to remove a protected tree shall be supported by certification by a certified arborist that one or more of these conditions exists and such conditions shall be reviewed by the city arborist. In addition, removal may be approved upon the grant of a special exception by the board of adjustment upon a finding that (i) all reasonable efforts have been made to avoid removing the tree, (ii) the location of the tree precludes all reasonable access to the property or all reasonable use of the property, and (iii) removal of the tree is not based on a condition caused by the method or design chosen by the applicant to develop the property.

(d) *Pre- and post-construction tree protection plan.* A pre- and post-construction tree protection plan shall be submitted with the tree permit and shall include the following:

- (1) Irrigation and fertilization are required for any protected or heritage tree that will be or have been disturbed by construction activities, including disturbance of the critical root zone. Fertilizers must be

- phosphate-free. The tree protection plan shall describe the plan for irrigation and fertilization during the construction period until final installation of all landscaping.
- (2) The tree protection plan shall describe all measures to be taken during construction to protect any protected and heritage trees from damage during construction, including rigid fencing, shielding, and signage, as necessary. Tree protection shall include rigid fencing placed with a radius of at least ten feet from the trunk or at the critical root zone, whichever is greater, unless property lines or other features prohibit a complete radius. Rigid fencing shall consist of chain link or wood fencing not less than four feet high at the drip line of the tree. Stakes shall be no more than six feet apart and at least 1½ deep into the ground. Rigid fencing shall be at least three feet in height. Tree protection shall remain in place until final landscaping installation is approved by the city administrator or designee.
- (3) *Protection of critical root zone.* Construction within or impervious paving over the critical root zone of any protected or heritage tree is prohibited. A minimum of 50 percent of the critical root zone of any protected tree or heritage tree must be preserved at natural grade and with natural ground cover. No cut or fill nor any deposit or stockpiling of earthen materials in their natural state greater than four inches will be located closer to the tree trunk than one-half the CRZ radial distance. No grade changes, excavation or trenching shall be permitted within the limits of the critical root zone unless adequate construction methods are approved by the city arborist.
- (4) Parking or storing of vehicles, equipment or materials allowed within the critical root zone or any protected or heritage tree is prohibited. The plan shall designate where all construction equipment and materials will be stored outside the critical root zone.
- (5) Activities requiring approval of the city arborist shall be identified in the tree protection plan and shall be submitted for review and comment to the city arborist, along with such fees as are required by the city to cover all costs of the review process.
- (e) *Violations/penalties.*
- (1) It shall be an offense for a person:
- a. To fail to perform an act required by the provisions of this section;
 - b. To fail to timely comply with any term of a permit issued pursuant to this section, including terms regarding the preservation of heritage trees and the planting and maintenance of required replacement trees;
 - c. To hire, engage, or permit any person engaged in the business of tree planting, maintenance, or removal to perform such services on property in the city without a permit issued by the city pursuant to this Code;
 - d. Except as expressly allowed pursuant to this subdivision, to remove or to cause the removal of a heritage or protected tree without first obtaining a permit therefor;
 - e. To transfer property subject to obligations arising from a permit issued pursuant to this section if all obligations with respect to such permit are not then fulfilled unless the transferee of the property agrees in writing submitted to the city secretary to assume such permit and all obligations with respect to the protection of heritage trees and the planting and maintenance of required replacement trees; or
 - f. To fail to submit an application for a permit as required by this section.
- (2) An offense shall constitute a Class C misdemeanor punishable by a fine not to exceed \$1,000.00. An offense committed intentionally, knowingly, recklessly, or with criminal negligence shall be punishable by a fine not to exceed \$2000.00 per offense. Each tree damaged or removed in violation of this division shall constitute a separate offense. A failure to plant and maintain a required replacement tree shall constitute a separate offense. Each day a violation continues shall constitute a separate offense. The owner or tenant of any building, structure, or premises and any designer, builder, contractor,

agent or other person who knowingly commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and subject to the penalties as provided herein.

(3) The city arborist, city council, or other duly authorized city official may issue a stop work order in connection with site clearing, site preparation, any permitted development of the property from which a heritage tree is removed without authorization or upon the occurrence of any other violation of this subdivision or of any term of a permit issued pursuant to this subdivision. Any person, including a workman on the site, who fails to comply with a stop work order shall be guilty of a misdemeanor punishable as provided for in the penalty section hereof. It shall be unlawful for any person to do any work on the site covered by the stop work order unless and until a new permit, application, or site plan has been filed and processed in accordance with the provisions of this chapter and the city council has granted approval to a new permit, application, or site plan which corrects the violations covered in the stop work order and all fees and fines have been paid.

(4) No certificate of occupancy shall be issued for a building or other structure that is not then in compliance with any permit issued pursuant to this subdivision. No certificate of occupancy shall be issued for a building or other structure that is not then in compliance with any permit issued pursuant to this subdivision for removal of a protected tree.

(5) Any temporary occupancy permit issued pending any completion of any required planting due to seasonal suitability of planting shall state the day by which planting shall be completed or an extension requested, and shall be revoked if the required planting is not completed or an extension granted by the stated date.

(6) *Injunction and other remedies.* Any tree removal or other work done contrary to any of the provisions of this section or to any of the details contained in any final site plan approved by the city or to any of the conditions imposed in connection with the granting of any application required by this section is hereby declared to be unlawful and shall constitute a violation of this section. The city council may direct the city attorney to initiate injunction, mandamus, abatement, or any other action available in law or equity to prevent, enjoin, abate, or correct unlawful tree removal or other work.

(f) *To the extent of conflict with another section of the Code, this section controls.*

Sec. 107-422. Nonconforming buildings, structures.

Any nonconforming building or structure may, so long as it remains otherwise lawful, be continued subject to the following requirements and limitations:

- (1) Except as otherwise required by ordinance or law, a nonconforming building or structure may not be altered in a manner that increases the extent of its nonconformity.
- (2) Except as otherwise required by ordinance or law, a nonconforming building or structure must be brought into conformity if:
 - a. Fifty percent of the square footage of the building or structure is demolished, excluding a permit for interior construction or remodeling only; or
 - b. If the nonconforming building or structure is moved, it shall conform to the regulations for the district within or into which it is moved.
- (3) The provisions of subsection (2)a of this section do not apply to the demolition of the roof of a building or structure.
- (4) If the nonconforming building or structure, other than a dwelling, is damaged or destroyed by fire or other accident or natural means, the building official shall, upon application by the owner thereof, issue a permit for repair or reconstruction of the building or structure, provided that the repair or reconstruction conforms ~~with the construction materials standards set forth in section 107-107,~~ the compatibility standards set forth in section 107-116, and will not increase the extent of the nonconformity of the building or structure.
- (5) If the nonconforming building or structure that is a dwelling is damaged or destroyed by fire or other accidental or natural means, the building official shall, upon application by the owner thereof, issue a permit for repair or reconstruction of the building or structure if the repair or reconstruction will not increase the extent of the nonconformity of the building or structure.
- (6) Nothing in this article shall be deemed to:
 - a. Prevent ordinary repairs to nonconforming buildings or structures;
 - b. Prevent alterations of or extensions to nonconforming building or structures as required by law or ordinance; or
 - c. Prevent the restoration to a safe condition of any nonconforming building or structure, or portion thereof, declared to be unsafe by the building official or other duly authorized official.