

Section 18-339.-Purpose.

The purpose of this section is to preserve, protect, and enhance existing trees and mitigate the effects of tree removal within the City of Tomball. Trees, particularly native species, add natural beauty and distinct local character, add shade, promote water conservation, provide locations for habitat, and increase property values. The provisions of this section are intended to support the long-term viability of healthy trees and promote natural ecological, environmental, and aesthetic quality in the community.

Section 18-340.-Applicability.

The provisions of this section shall apply to all property within the city limits.

Section 18-341.-Exemptions.

Exemptions from the requirements of this section are as follows:

- (a) Trees that a degreed Urban Forester, registered Landscape Architect, or degreed Certified Arborist has determined and documented are dead, diseased, in severe decline, or deemed a safety hazard.
- (b) Trees within proposed public streets, utility easements, and required fire lanes.
- (c) Or as otherwise exempt under applicable law, including Section 212.905 of the Texas Local Government Code.

Section 18-342.-Appeals.

The City Council shall consider appeals if it determines that compliance with this section creates an undue hardship for the applicant. An applicant may submit an alternative plan or request relief from compliance as part of an appeal application.

Section 18-343.-Definitions.

Caliper inch. The diameter of the trunk of a tree as measured at twelve (12) inches above grade. This measurement method is used for replacement trees.

Diameter inch (diameter breast-height). The diameter of the trunk measured four-and-one-half feet (54 inches) above grade. This measurement method is used for mature trees during a tree survey.

Clear-cutting. The indiscriminate cutting, plowing, or grubbing of trees without regard to type or size for the purpose of clearing the land.

Critically alter. The uprooting, removing the canopy or severing the main trunk of a tree, or causing damage which may cause a tree to die. This includes but is not limited to the

removal of a tree from a property, damage inflicted upon a tree by machinery, storage of materials or the compaction of soil above the root system of a tree, a change in the natural grade above the root system of a tree, or excessive pruning.

Critical Root Zone. An area of root zone to be protected to ensure the viability of trees to be preserved during construction. The area is defined at a ratio of 1-inch trunk diameter = 1-foot of critical root zone radius.

Mitigation. The method by which trees are replaced whether through replanting on the subject property, planting or transplanting to another location or same property, or through payment of fees-in-lieu of replanting approved by the City.

Parcel of land. Land in the City of Tomball which has been platted or not platted.

Protective fencing. Chain link, silt fence, or other fencing used to protect preserved trees during construction activities.

Protected tree. Any tree species listed in the City of Tomball Tree Protection List (Table 18-344.1) that measures 18 diameter inches or larger. Species not listed in Table 3.1 do not require protection or replacement.

Tree, dead (or declining). A tree that is dead or in severe decline with substantial structural defects, no remedial options available, and no chance of recovery, as determined and documented by a degreed Urban Forester, degreed Certified Arborist, or registered Landscape Architect.

Tree, replacement. Trees planted to mitigate the loss of trees during development.

Tree fund. A City-administered fund established for collection of fees-in-lieu or replacement trees paid as mitigation and may include other contributions made in support of tree protection efforts.

Tree Survey. A plan or drawing to scale that identifies the exact size, location, condition (healthy, dead, or declining), and species of protected trees and the disposition of each protected tree during development. The plan shall indicate whether each protected tree is to be preserved or removed. The plan shall indicate the location and types of treatments to be utilized to protect trees during development such as fencing, mulching, root pruning, and other measures.

Section 18-344.-Protected tree species.

The requirements for tree replacement and mitigation as outlined in this section apply only to the trees listed in the City of Tomball Tree Protection List (Table 18-344.1).

Table 18-344.1

City of Tomball Tree Protection List	
Live Oak	Boxelder
Laurel Oak	Red Maple
River Birch	American Elm
Slippery Elm	Tuliptree
American Sycamore, Sycamore	Green Ash
White Ash	Sweet Gum

Section 18-345.-Tree removal permit.

- (a) Tree removal permit required. A tree removal permit is required for the removal of any protected tree within the City of Tomball. Trees on existing single-family and two-family residential properties are exempt from this requirement.
- (b) Tree Removal Permit Application. A tree removal permit application and any associated permit application fees established by the City shall be submitted to the Community Development Department in conformance with the requirements of this section.
- (c) Approval. The City Manager or his/her designee shall have the authority to issue a Tree Removal Permit if it complies with all the requirements of this Code
- (d) Expiration. A Tree Removal Permit shall expire two years after its issuance.

Section 18-346.-Tree survey.

- (a) Tree survey required.

A tree survey shall be submitted prior to removal of any protected trees. The tree survey shall be performed and certified by a degreed Urban Forester, degreed Certified Arborist, or registered Landscape Architect. The submitted tree survey shall include the exact size, location, condition (healthy, dead, or declining), and species of each tree that measures 18 caliper inches or larger and is listed on the City of Tomball Tree Protection List (Table 18-344.1). It is recommended that the tree survey include trees that measure eight (8) caliper inches or larger to retain eligibility for preserved tree credits according to Section 18-349. – Tree Preservation Incentives and Section 50-115 – Screening, Buffering, and Fencing Requirements of this Code.

- (b) Tree survey requirements.

The tree survey shall be submitted on a scaled drawing of the property which includes the following information:

- (1) A vicinity map locating the property within the community;
- (2) The boundaries of the property and its calculated area;

- (3) The location of all existing streets, drainage and utility easements that are on or adjacent to the property;
 - (4) The location of any required buffer zones;
 - (5) Include all protected trees 18-inch diameter or larger and all trees 8-inch diameter or larger that will be preserved for tree credits. Each protected tree that is individually located by the survey will need to be flagged with blue plastic flagging. The tree survey submittals must include a table cross referenced to the diagram with the identification number, species, and diameter; and
 - (6) Location of tree protection fencing installed at the edge of the Critical Root Zone as defined by a ratio of one (1) inch trunk diameter to one (1) foot of radius.
- (c) Alternatives to a tree survey.
- (1) No Protected Trees on Site. In lieu of a tree survey, the applicant may submit an affidavit from a degreed Urban Forester, degreed Certified Arborist, or registered Landscape Architect certifying that there are no protected trees on the property or all protected trees on the property are entirely dead or in severe decline. The affidavit shall be approved by the City Manager or his/her designee to be accepted as an alternative to the required tree survey.
 - (2) Preservation areas. In lieu of a tree survey, the applicant may submit a landscape plan together with the plat submittal or a tree removal permit depicting no-disturbance preservation areas that include substantial existing tree canopy coverage that will not be disturbed or critically altered during grading or construction, with the following conditions:
 - (a) The no-disturbance preservation areas shall constitute a minimum of 20% of the parcel area.
 - (b) To confirm the existence of substantial existing tree canopy coverage in the designated areas, the submittal shall include aerial photographs and on-site photos.
 - (c) Trees within the designated areas do not need to be identified as a protected tree species.

Section 18-347.-Buffer zones.

For plats submitted after the effective date of this provision that are adjacent to existing properties zoned for residential uses that are not part of the new subdivision, a buffer zone is required in the new subdivision along the common boundary between the new subdivision and the existing residential zone. The buffer zone shall be established as a platted reserve restricted exclusively for trees and landscaping, being a strip not less than 18 feet deep running parallel and adjacent to the common boundary. Outside of any existing

or proposed easement within the buffer zone, all trees and underbrush within this buffer zone, if they exist, are subject to mandatory preservation.

Exemptions from the buffer zone requirements include:

- (a) Subdivisions that are less than ten acres in size; and
- (b) Replats of existing subdivisions where the boundary between the subdivision being replatted and the existing residential zone is unchanged and where additional lots are not being created along the boundary.

Section 18-348.-Tree Replacement Standards

- (a) Mitigation of Removed Trees. Protected trees meeting the minimum size and species requirements shall be replaced at a rate of 1 inch caliper of new trees for every 1-inch diameter of protected trees removed. The total number of caliper inches required to be mitigated shall not exceed 100 caliper inches per acre.
- (b) Replacement Tree Size. All replacement trees required per the mitigation ratio shall be a minimum of four (4) caliper inches. Trees must be a species listed in City of Tomball Tree Replacement List (Table 18-348.1).
- (c) Landscape Credit. Replacement trees that are planted on site as mitigation for removal of protected trees are eligible to be counted toward the landscaping requirements of Section 50-115 – Screening, Buffering, and Fencing Requirements.
- (d) Timing of Mitigation Compliance.
 - (1) Replacement trees shall be planted within 90 days of issuance of tree removal permit. If the replacement trees cannot be planted within 90 days, the City Manager or his/her designee may approve a delay in replacement of up to six months after the date of tree removal permit issuance.
 - (2) If an applicant cannot replace the mitigation trees required or gain approval to plant on an alternate site, a fee-in-lieu payment into the tree fund shall be required before the tree removal permit can be issued.

Table 18-348.1

City of Tomball Tree Replacement List	
Japanese Red Maple (requires pm shade)	Oklahoma Redbud
Crabapple (requires pm shade)	Prairie Fire Flowering Crabapple
Saucer Magnolia (requires pm shade)	Chinese Pistache or Pistachio
Flowering Pear	Little Gem Magnolia
Desert Willow	Japanese Persimmon
Kousa Dogwood (requires pm shade)	Mexican Plum (requires pm shade)

Possumhaw Holly	Redbud
Bradford or Aristocrat Pear, Cleveland Pear	American Holly
Arizona Cypress	Caddo Sugar Maple
Eastern Redwood Cedar or Eastern Red	Cedar
Lacebark Elm	Texas Red Oak
Chinquapin Oak	Red Maple
Sawtooth Oak	Willow Oak
American Sweetgum	Green Ash
Bald Cypress	Bur Oak
Live Oak	Pin Oak
Southern Magnolia	Sugar Maple
Water Oak	Cedar Elm
Overcup Oak	Shumard Oak
River Birch	Dawn Redwood
Leyland Cypress	London Plane Tree
Pecan	American Sycamore, Sycamore
Tuliptree Liriodendron	Slippery Elm
Boxelder	Tuliptree
Laurel Oak	White Ash
American Elm	Sweet Gum

Section 18-349.-Tree Preservation Incentives

- (a) Preserved Tree Credits. Trees listed in the City of Tomball Tree Replacement List (Table 18-348.1) that are preserved onsite and measure eight (8) diameter inches or greater may be credited toward the replacement trees required for mitigation or toward the landscape requirements in Section 50-115 – Screening, Buffering, and Fencing Requirements.
- (b) Preserved tree credits will be granted according to the standards set out in Table 18-349.1.

Table 18-349.1

Preserved Tree Size (in diameter inches)	Credits Toward Replacement Tree Requirement (Mitigation)
8” – 11”	8 caliper inches
12” – 17”	12 caliper inches

- (c) Code Conflicts. In certain cases, the preservation of protected trees may be desirable enough to take priority over full compliance of certain conflicting subdivision and zoning regulations, including, but not limited to, setbacks, lot design standards, building heights, sidewalks, lighting, signage, parking spaces, parking lot design, and driveway separation. When a conflict exists between the preservation of a protected tree and the provisions of subdivision or zoning ordinances, the applicant may request an alternative standard or design. The applicant’s request may be considered and approved by the City Manager or his/her designee, provided that a reasonable application of public health and safety standards are maintained with the proposed design.

Section 18-350.-Alternative Mitigation Methods

- (a) Fee-in-Lieu payment. If replacement tree plantings cannot be fully accommodated on site with adequate space and conditions for long-term health, then an alternative fee-in-lieu payment to the Tree Mitigation Fund, which is hereby established, may be considered. If the applicant can demonstrate every effort has been made to plant the required replacement trees on site, the City Manager or his/her designee may consider a fee-in-lieu payment for the remaining balance of replacement tree value. Payments to the fund will be on a per caliper inch basis at a rate established in the City's Master Fee Schedule. Replacement trees and fee-in-lieu payments may be combined to satisfy the requirement.
- (b) Off-site mitigation. If replacement tree plantings cannot be fully accommodated on site, then replacement trees may be proposed to be planted in a location mutually agreed upon by the City Manager or his/her designee and the applicant, including parks and other public places such as streets, medians, and other common open spaces.

Section 18-351.-Tree Mitigation and Enforcement Funds

- (a) The City Manager or his/her designee shall establish a dedicated account to be known as the Tree Mitigation Fund.
 - (1) Mitigation fees paid as provided by Section 18-350 – Alternative Mitigation Methods of this article shall be recorded for the benefit of the fund and accounted for in a manner that distinguishes such funds from other general funds of the city. The balance of such fund remaining at the end of each fiscal year shall be appropriated as the beginning balance of the fund for the following fiscal year. The assets of the fund may be used as provided by this section, and for no other purpose.
 - (2) The assets of the fund shall be expended to purchase and plant new trees in the public parks, parkways, medians and rights-of-way of public streets and upon the grounds of other public property of the city. Planting costs payable from the fund include the installation of related irrigation equipment and other measures necessary to the protection and subsequent maintenance following planting. An amount not to exceed 20 percent of the fund balance at the beginning of each fiscal year may be expended to promote public awareness of the objectives of this article, including Earth Day, or Arbor Day programs for the distribution of sapling trees to the general public.
 - (3) The City Manager or his/her designee shall establish a dedicated account to be known as the Tree Enforcement Fund.
 - (a) Penalties for violations paid shall be recorded for the benefit of the fund and accounted for in a manner that distinguishes such funds from other general funds of the City. The balance of such fund remaining at the end of each fiscal year shall be appropriated as the beginning balance of the fund for the following fiscal year. The assets of the fund may be used as provided by this section, and for no other purpose.

- (b) The assets of the fund can be expended to hire or contract with an Urban Forester, Arborist, or Landscape Architect to help with enforcement, inspections and reviews as well as to promote public awareness of the objectives of this article and may be used for necessary expenses, equipment, or contractual obligations related to the enforcement of this article.