

1) Tree Protection

- a) 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.
- b) Authority. The provisions of this section are adopted in accordance with state law and the City Charter. The provisions of this section shall be administered by the City Manager or his/her designee.
- c) Applicability. The provisions of this section shall apply to all property within the City limits. Applications for site development permits, approval of subdivisions of land or plats or tree removal requests within the City limits submitted after the date of adoption of this Code shall account for protected trees within the subject property in accordance with the provisions of this section and otherwise comply with the requirements of this section.
- d) Exemptions. Exemptions from the requirements of this section are as follows:
 - i) Subdivisions of land that total five (5) acres or less, or, where no subdivision is proposed, parcels of land five (5) acre or less.
 - ii) Trees that a degreed Urban Forester, Landscape Architect, or degreed Certified Arborist has determined and documented are dead, diseased, in severe decline, or deemed a safety hazard.
 - iii) Proposed public streets, utility easements, and required fire lanes.
 - iv) Or as otherwise exempt under applicable law, including Section 212.905 of the Texas Local Government Code.

2) 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.

Floodplain. The area designated as being within the 100-year floodplain on the Federal Emergency Management Agency (FEMA) flood insurance map (FIRM).

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.

Street perimeter buffer. A required buffer located at the perimeters of a proposed development site which is directly adjacent to a street or roadway. These areas are considered as areas of high visual impact, and preservation of existing vegetation located along the perimeter of the proposed development site is highly encouraged and used to screen the site and minimize potential nuisances between land uses.

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

Protected Tree. Any tree species listed as a shade tree in *City of Tomball Approved Tree, Shrub, Groundcover, and Vine List* that measures 18 diameter inches or larger and is within a building setback area as defined by the City's Zoning Ordinance. Species not so listed 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, shade. The largest plants in the landscape that provide the overhead structure needed for shading and under which other plants live and grow. They spread and give overhead structure when they reach maturity.

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.

3) Protected Tree Species

- a) The requirements for tree replacement and mitigation as outlined in this section apply only to the shade trees listed in the *City of Tomball Approved Tree, Shrub, Groundcover, and Vine List*.

4) Tree Removal Permit

- a) Tree Removal Permit Required. A tree removal permit is required for the removal of any Protected Tree for properties greater than five (5) acres within the City of Tomball.
- 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. All applications and filings shall meet the requirements as defined by the tree removal application checklist, as exists or may be amended, which shall be established and maintained by the Director of Community Development.
- 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) Appeals. See *Section 10 - Appeals* for appeals.
- e) Expiration. A tree removal permit shall expire two years after its issuance.

5) 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, registered Landscape Architect, or a registered professional land surveyor. 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. 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 8 – 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 diagram of the property. The diagram shall be at a scale of not less than one inch to 100 feet and may be an engineered drawing, survey, or other accurate illustration of the existing conditions which includes the following information:
 - i) An area map locating the property within the community;
 - ii) The boundaries of the property and its calculated area;
 - iii) The location of all existing streets, drainage and utility easements that are on or adjacent to the property;
 - iv) The location of any required Forested Buffer Zones;
 - v) 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 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.
 - vi) Location of tree protection fencing to be installed at edge of the Critical Root Zone as defined by a ratio of 1 inch trunk diameter = 1 foot of radius.

c) Alternatives to a Tree Survey.

- i) No Protected Trees on Site. In lieu of a tree survey, the applicant may submit a sworn affidavit from a degreed Urban Forester, degreed Certified Arborist, registered Landscape Architect, or a registered professional land surveyor 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.
- ii) Preservation Areas. In lieu of a tree survey, the applicant may submit a landscape plan together with the preliminary 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:
 - (1) The no-disturbance preservation areas shall constitute a minimum of 20% of the plat area;
 - (2) To confirm the existence of substantial existing tree canopy coverage in the designated areas, the alternative plan submittal shall include aerial photographs and on-site photos. City staff may deem it necessary to conduct a visit to the project site for visual confirmation, and if so, the applicant shall allow such visit;
 - (3) Trees within the designated areas do not need to be identified as a protected tree species; and
 - (4) The areas may be selected by the applicant, prioritized in the following order.
 - (a) Floodplains and riparian corridors;
 - (b) Street perimeter buffer areas;
 - (c) Parkland, open spaces, and outdoor amenity spaces;
 - (d) Other areas, as selected by the applicant.
 - (5) The City Manager or his/her designee must approve the landscape plan with the designation of the preservation areas, such approval may be withheld at the sole discretion of the City Manager or his/her designee.

6) Forested Buffer Zones

- a) Where property is being developed adjacent to existing residential subdivisions or properties zoned for residential uses that are not part of the new development, a buffer zone is required in the new subdivision development along the common boundary between the two subdivisions. 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 and not less than 15 feet deep behind the back line of any easement or series of abutting parallel easements along the common boundary. All trees and underbrush within this buffer zone are subject to mandatory preservation.

7) 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. Tree must be a species listed in *Table 1.1 Shade Trees*

- 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* of this Code.
- d) Timing of Mitigation Compliance.
 - i) 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.
 - ii) 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.

8) Tree Preservation Incentives

- a) Preserved Tree Credits. Trees listed in Table 1.1 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* of this Code.
- b) Preserved tree credits will be granted according to the standards set out in Table 2.1.

Table 1.1

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.

9) 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.

10) Appeals

- a) The Board of Adjustments shall consider an appeal seeking alternative compliance if it determines that all options to achieve compliance with this section have been exhausted and the required mitigation creates an undue hardship for the applicant. An applicant may submit an alternative compliance plan or request for relief from compliance as part of an appeal application to the Board of Adjustments. The applicant's proposed alternative compliance plan shall clearly delineate any proposed reductions to the standards and depict alternative standards or relief.

11) 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.
 - i) Mitigation fees paid as provided by *Section 9 – 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.
 - ii) 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 of new 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.
 - iii) The City Manager or his/her designee shall establish a dedicated account to be known as the Tree Enforcement Fund.
 - (1) Penalties for violation paid as provided by *Section 12 – Penalties and Enforcement* 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 hire or contract with an urban forester 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.

12) Penalties and Enforcement

- a) Enforcement. The City shall determine compliance and enforcement in accordance with the provisions of this Code.
- a) Penalties. It is unlawful for any person to critically alter or remove a protected tree without mitigation in accordance with the provisions of this section. Any person, firm, corporation or entity violating any provision of this Code, as they exist or may be amended, could be deemed guilty of a misdemeanor, and on conviction thereof, could be fined accordance

with City’s Codes of Ordinances ***Sec. 1-14. - General penalty for violations of Code; continuing violations.*** A violation of any provision of this Code shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Code shall not preclude Tomball from filing suit to enjoin the violation. Tomball retains all legal rights and remedies available to it pursuant to local, state and federal law.

- b) **Violations.** Each preserved tree that is removed without a tree removal permit shall be considered a separate occurrence. If individual trees cannot be identified but there is evidence of a violation, every 1,200 gross square feet of tree canopy removed, as identified on an aerial image within the last 12 months, shall be considered a separate occurrence.
- c) **Clear-cutting.** Clear-cutting of a property within 90 days of submitting a preliminary plat for the property or a portion thereof while also seeking approval of annexation, zoning, utility agreement, development agreement, economic incentives, or other discretionary approvals of the Tomball City Council could result in denial or refusal of consideration.
- d) **Severability.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

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