

DCRC25-0095a

Tree Code State Statute

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Agenda

- Vested Rights
- State Law
- Closed Session

Tree Preservation Plans + Vested Rights

- Tree Preservation Plans (TPP) are a required application type for any development where trees are located with the development impact area.
- DDC requires TPP be submitted with the initial application for either:
 - Site plans (SUP, standard PD, or ZCP) or
 - Preliminary plat or replat
- This means a TPP application could trigger “vested rights” for a project.

What does “Vested Rights” mean?

- “**Vested Rights**” refers to an applicant’s rights to undertake and complete a development project and use a property under the regulations and conditions in place at the time of their initial application for the first in a series of required applications for the project.
- This ensures **uniformity and consistency** in regulations for the duration of a project by “**freezing**” the regulations in place at a given time by filing a permit application with the City.
 - Applicants may “cherry pick” later adopted regulations which they feel may benefit their project.
- Vesting is address at the state and local level:
 - Texas Local Government Code Chapter 245 – sets minimum standards for all cities to follow
 - Denton Development Code Section 2.5.6 – local process for someone to claim vested rights

Vested Rights – TLGC Ch. 245

- Under state statute:
 - **"Permit"** means a license, certificate, **approval**, registration, consent, **permit**, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or **other form of authorization required by law, rule, regulation, order, or ordinance** that a person **must obtain to** perform an action or **initiate, continue, or complete a project** for which the permit is sought.
 - **"Project"** means an endeavor over which a regulatory agency exerts its jurisdiction and for which **one or more permits are required** to initiate, continue, or **complete the endeavor**.
- An applicant's vested rights begin **accruing with the filing of the original plan or plat** that gives the city "fair notice" of a project.
 - **Filing:** application or plan is either submitted directly or sent via USPS certified mail to the City
 - If a series of permits is required for a project, those **rules in effect at the time of the original application for the first permit** shall be **applied to all permits, plans, plats, etc.** that are a part of the project.
- Cities can adopt regulations that establish an expiration date that is:
 - Not less than **45 days for a permit application** if it was incomplete upon filing
 - Not less than **2 years for a permit**
 - Not less than **5 years for a project**
- Permits and Projects can only expire if **no progress** has been made towards completion of the project **in that time**

Vested Rights – TLGC Ch. 245.004

- Vesting **applies** to municipal zoning regulations that affect:
 - **Landscaping or tree preservation**
 - Open space or park dedication
 - Property classification
 - Lot size
 - Lot dimensions
 - Lot coverage
 - Building size
- Vesting **does not apply** to regulations for:
 - Construction permits of at least 2 years old for structures intended for human occupancy that were issued under building/fire/electric/plumbing/mechanical codes adopted by a national code organization
 - Colonias
 - Sexually oriented businesses
 - Development permit fees
 - Annexation (unless the regulation affects landscaping, tree preservation, open space, or park dedication)
 - Utility connection
 - Flood protection within a FEMA floodplain
 - Construction standards for public improvements on public land or easements
 - Prevention of imminent property destruction or injury to persons (unless the regulations address the topics listed in the section above)

DDC 2.5.6

- Process to establish vested rights by submitting a petition providing the facts and legal bases for their claim.
 - Staff reviews and forwards the complete application to the City Manager and City Attorney.
 - The City Manager must render a final determination within 30 days of the petition being filed.
- Determination is binding on City and applicant for a project's duration.

In practice, this process is not used for projects actively in review when new regulations go into effect; vested rights are assumed in those instances. This process is utilized when a project has been inactive and new regulations are in effect when it resumes.

Criteria for Decision:

1. Whether the city received **fair notice** of the project and the nature of the permit sought;
2. Whether the **nature and scope** of the project **prevents the city from applying one or more current regulations** to the proposed or pending applications;
3. Whether **any prior approved applications** for the property **have expired** or have been terminated in accordance with law;
4. Whether any **statutory exception** to a right asserted pursuant to TLGC, Chapter 245, is applicable to one or more current regulations;
5. Whether **any exemption from one or more regulations** under the DDC or city ordinances is applicable to the project; and
6. Whether the **project is dormant**.

What does this mean for Tree Code Updates?

- Although the City may update its tree preservation regulations periodically, projects already in review will continue to be processed under prior regulations.
 - There are still projects in development today that utilized the 2002 DDC tree regulations.
 - Developers may “opt in” to the new regulations if they find it would benefit their project.

State Law: Tree Removal, Mitigation, Maintenance

- Texas Agriculture Code Chapter 251
- Tree Trimming Case Law
- Texas Local Government Code Chapter 212.905
- Closed Session

Texas Agriculture Code Chapter 251

- Applicable sections effective since 1981; most recent revision effective September 1, 2023
- Restricts governmental regulations (tree preservation standards and tree removal fees) for agricultural uses unless necessary to protect persons from immediate health/safety danger.

Agricultural uses are exempt from Tree Code

Tree Trimming

- While Texas does not have a specific state statute, there have been court cases over the years that address this topic
- Texas case law gives property owners the right to trim overhanging limbs (considered encroachments) up to the property line
- The tree must not be trimmed to such an extent as to damage or harm the long-term health of the tree (civil matter)
- [Trees - Neighbor Law - Guides at Texas State Law Library](#)

TLGC 212.905

- Effective December 1, 2017
- Gives municipal authority to set tree preservation standards and charge tree removal fees
- Specifies required tree replacement credit
- Provides situations in which tree removals cannot be prohibited and fees cannot be assessed

Tree Mitigation Fees TLGC 212.905

(b) A municipality **may not require a person to pay a tree mitigation fee** for the removed tree if the tree:

(1) is located on a property that is an **existing one-family or two-family dwelling** [*single family dwelling or duplex*] that is the person's residence; and

(2) is **less than 10 inches in diameter** at the point on the trunk 4.5 feet above the ground

DDC Subsection 7.7.4B.1c: preservation requirements only applicable to trees 10 inches and greater for single-family and duplex uses

Tree Credit TLGC 212.905

- (c) A municipality that imposes a tree mitigation fee for tree removal on a person's property must allow that person to apply for a credit for tree planting under this section to offset the amount of the fee.
- (d) An application for a **credit** under Subsection (c) **must be in the form and manner prescribed by the municipality**. To qualify for a credit under this section, a tree must be:
- (1) **planted on property**:
 - (A) for which the tree mitigation fee was assessed; or
 - (B) **mutually agreed upon** by the municipality and the person; and
 - (2) **at least two inches in diameter** at the point on the trunk 4.5 feet above ground

Municipal Discretion TLGC 212.905

(g) As long as the municipality meets the requirement to provide a person a credit under Subsection (c), this section does not affect the ability of or require a municipality to determine:

- (1) the **type of trees** that must be planted to receive a credit under this section, except as provided by Subsection (d);
- (2) the **requirements for tree removal** [**minimum preservation & tree protection**] and corresponding tree mitigation fees, if applicable;
- (3) the requirements for **tree-planting methods and best management practices** to ensure that the tree grows to the anticipated height at maturity; or
- (4) the **amount of a tree mitigation fee**.

Tree Removal TLGC 212.905

(h) A municipality may not prohibit the removal of or impose a tree mitigation fee for the removal of a tree that:

- (1) is diseased or dead; or
- (2) poses an imminent or immediate threat to persons or property.

**DDC Tree
Preservation
subsection
exemptions:**

- c. Any tree determined to be diseased beyond recovery, dying, dead, creating a public nuisance or damaging a foundation by a qualified professional;
- d. Any tree determined to be causing a danger, or to constitute a hazardous condition, as a result of a natural event such as tornado, storm, flood or other act of God, that endangers the public health, welfare or safety and requires immediate removal;

Next Steps

- 7/14/2025 Meeting: Discussion around Takings and possible Sustainability presentation
- Subsequent meetings: Code Amendment Presentations
- Reminder: Please submit any Tree Code questions to Staff

Questions?