

### ~~35.13.7.—Tree Preservation and Landscape Requirements.~~

#### ~~A.—Tree Preservation.~~

##### ~~1.—Purpose and Intent.~~

~~The Denton Plan identifies the importance of environmental management. The purpose of these regulations is to promote the preservation of trees, tree stands, including but not limited to remnants of the Cross Timbers Forest and existing tree canopy, to protect trees during construction, to facilitate site design and construction that contribute to the long term viability of existing trees which improves environmental conditions, specifically to comply with air and water quality regulations, to increase property values and to develop a process to control the removal of trees. It is the further purpose of this Subchapter to achieve the following broader objectives:~~

- ~~a.—Prevent untimely and indiscriminate removal or destruction of trees.~~
- ~~b.—Maintain and enhance a positive image of the City.~~
- ~~c.—Protect trees and promote the ecological, environmental and aesthetic values of the City.~~
- ~~d.—Preserve historic trees.~~
- ~~e.—Provide for a permitting and enforcement procedure.~~

##### ~~2.—Applicability.~~

- ~~a.—Unless exempt under Subsection C, this Subchapter shall apply to:~~
  - ~~i.—Undeveloped land.~~
  - ~~ii.—All property to be redeveloped including additions or alterations, but not including interior alterations or exterior alterations that do not change the footprint of the building, and that do not require the removal of trees.~~
  - ~~iii.—Gas Well Development including but not limited to gas well transmission lines.~~
  - ~~iv.—Right-of-way, streets, parks, and other public property under the jurisdiction of the City of Denton.~~
- ~~b.—To the extent there is a conflict between this Subsection and any other Subsection including but not limited to Subsection 35.17.9 (Upland Habitat Development Standards) the more stringent requirement shall apply that preserves the largest quantity of trees. To the extent there is a conflict between this Subsection and Subsection 35.22.5.A.8.C (Watershed Production Requirements for wells located in Flood Fringe or other ESAs), the gas well regulations, which requires one to one (1:1) mitigation, shall apply.~~
- ~~c.—Exemptions.~~
  - ~~i.—Developments that have a completed application on file for a final or Preliminary Plat for a single-family development or a Building Permit, whichever is applicable, as of the effective date of this Subchapter.~~
  - ~~ii.—Any development for which construction has begun on infrastructure improvements pursuant to an approved three (3)-way construction contract, including roads, as of the effective date of this Subchapter. In the event that construction of all infrastructure improvements in such a development ceases for a continuous period of one hundred eighty (180) days or longer, this exemption shall cease to apply on the one hundred eighty-first (181st) day after cessation of construction unless the City accepts the infrastructure improvements.~~

- ~~iii.—Property on which a single-family or two-family residential dwelling unit(s) exists.~~
- ~~iv.—Trees located in the visibility triangle area, as defined in the Transportation Criteria Manual.~~
- ~~v.—Public Utilities may be exempted from these requirements upon filing route plans prior to tree removal or construction, which satisfactorily demonstrate that the proposed installation lies within routes previously established by a current Master Plan for transportation or public utilities, or within an existing easement recorded prior to the effective date of this Subchapter.~~
- ~~vi.—Public Utilities have the right to trim, cut, and/or remove any and all trees that:
  - ~~(a) Interfere with or encroach upon the operations of existing public utilities; or~~
  - ~~(b) Create a safety issue for utility crews; or~~
  - ~~(c) Create a safety issue for the public.~~~~
- ~~vii.—City Landfill and Airport.~~
- ~~viii.—Nursery trees, including Christmas tree farms, that are planted and growing on the premises of a Wholesale Nursery that are intended for sale in the ordinary course of business.~~
- ~~ix.—Any tree determined to be diseased, dying, dead, creating a public nuisance or damaging a foundation by a qualified professional.~~
- ~~x.—Any tree determined to be causing a danger or be in 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.~~
- ~~xi.—Clearing of understory necessary to perform soil borings, boundary surveying of real property or to conduct tree surveys or inventories. As long as the clearing for surveying shall not exceed a width of two (2) feet for general survey (i.e. of easement boundary, etc.) and eight (8) feet for survey of property boundary lines and any tree having a ten (10) inch dbh or greater shall not be removed under this exemption during such boundary or general surveying.~~
- ~~xii.—Capital Improvement Projects awarded prior to the effective date of this Subsection.~~
- ~~xiii.—Property zoned Rural Residential (RD-5) or Rural Commercial (RC).~~

~~3.—Permit Required.~~

- ~~a.—No person, directly, or indirectly, shall cut down, destroy, remove or move, or intentionally destroy or damage any Quality Tree, Protected Tree, or Historic Tree without first obtaining a Tree Removal Permit and complying with the requirements of this Subsection.~~
- ~~b.—No grading shall take place on any undeveloped property that contains trees subject to this Subsection without obtaining a Tree Removal Permit.~~
- ~~c.—No heavy equipment shall be moved onto a site prior to all applicable permits being issued.~~
- ~~d.—Trees greater than three (3) inches dbh and not identified as a Quality Tree, Protected Tree, or Historic Tree within this Subsection may be removed with a Permit.~~
- ~~e.—Trees less than three (3) inches dbh and not identified as a Historic Tree may be removed without a Permit.~~
- ~~f.—A Permit is required for the removal of five (5) or more trees on a single-family lot.~~

~~4.—Permit Review and Approval Process.~~

- ~~a.—The Director shall adopt rules establishing the requirements for the permitting and approval process in the Application Criteria Manual. The rules shall include information required by the Director to determine if the application is complete.~~
- ~~b.—A request for Tree Removal Permit shall be submitted and approved prior to the removal of any Quality Tree, Protected Tree, or Historic Tree in the City.~~
- ~~c.—A complete application shall be submitted along with the application fee, if required. The fees shall be established by City Council and published in the Application Criteria Manual.~~
- ~~d.—A Tree Inventory Plan and a Tree Replacement/Mitigation Plan, if required, must be submitted with the Tree Removal Permit application prepared by:
  - ~~i.—A registered landscape architect;~~
  - ~~ii.—An urban forester;~~
  - ~~iii.—A botanist;~~
  - ~~iv.—An arborist; or~~
  - ~~v.—A professional land surveyor that has documented completion of at least eight (8) hours of training in Texas tree identification.~~~~
- ~~e.—Permits for tree removal issued in connection with a Building Permit or clearing and Grading Permit shall be valid for the same period of time. Tree Removal Permits issued not in connection with a Building Permit or clearing and Grading Permit are valid for one hundred eighty (180) days.~~
- ~~f.—After the Tree Removal Permit is issued, the Permit holder shall post a tree protection sign, supplied by the City, at each entrance to the property and at any other location designated by the City.~~
- ~~g.—Upon the request of the applicant, the Planning Director shall be authorized to work with the owners, developers, and builders to make non-substantive changes, within the scope of the ordinance, to plans, permits, and other requirements throughout the development and construction processes that will provide the greatest reasonable tree survival. The decision of the Planning Director may be appealed by the applicant to the Planning and Zoning Commission under Subsection 35.3.5.~~
- ~~h.—The applicant may file an application for relief from the Tree Preservation/Mitigation requirements in this Subsection pursuant to Subsection 35.3.11 on grounds therein specified to the City Council within ten (10) calendar days of the posting of the decision by the DRC. The Council shall decide the petition based upon the criteria in Subsection 35.3.11.~~

~~5.—Tree Designations.~~

~~a.—Protected Trees.~~

~~Any healthy tree with an eighteen (18) inch or greater dbh and not in a Quality Tree Stand or a Mesquite, Bois D'Arc, Locust Hackberry and/or Cottonwood species. All trees greater than eighteen (18) inches dbh shall be considered a Protected Tree unless a detailed tree inventory is submitted by an applicant verifying the presence of Mesquite, Bois D' Arc, Locust Hackberry and/or Cottonwood species.~~

~~b.—Historic Trees.~~

- ~~i.—A Historic Tree is a healthy tree that stands at a place where an event of historic significance occurred that had local, regional, or national importance; or at the home of a citizen who is famous on a local, regional, or national basis.~~

~~ii.—A tree may also be considered historic if it has taken on a legendary stature to the community; mentioned in literature or documents of historic value; or considered unusual due to size, age or has landmark status.~~

~~iii.—The Historic Landmark Commission will make recommendations for Historic Tree designations to the Planning and Zoning Commission (which will conduct a public hearing and include property owner notification) for ultimate approval by the City Council. Upon designation, each tree shall be added to a Historic Tree Registry map to be maintained by the Director.~~

~~c.—Quality Trees.~~

~~All healthy trees that have a dbh that is greater than six (6) inches, but is less than eighteen (18) inches and not within a Quality Tree Stand. All trees shall be considered Quality Trees unless a detailed tree inventory is submitted by an applicant identifying Secondary Trees.~~

~~d.—Quality Tree Stands.~~

~~Three (3) or more contiguous Quality Trees whose canopies are generally clustered together creating a contiguous drip line. All Tree Stands shall be considered Quality Tree Stands unless a detailed tree inventory is submitted by an applicant identifying the tree stand as a Secondary Tree Stand.~~

~~e.—Large Secondary Trees.~~

~~All healthy Mesquite, Bois Arc, Locust Hackberry and/or Cottonwood trees with an eighteen (18) inch or greater dbh.~~

~~f.—Secondary Trees.~~

~~All healthy Mesquite, Bois D' Arc, Locust Hackberry and/or Cottonwood trees that have a dbh that is greater than six (6) inches, but is less than eighteen (18) inches.~~

~~g.—Secondary Tree Stands.~~

~~Three (3) or more contiguous Secondary Trees whose canopies are generally clustered together creating a contiguous drip line. A Secondary tree stand must consist of a minimum eighty (80) percent of Secondary tree species.~~

~~6.—Preservation.~~

~~The following shall apply unless an application for relief is filed and approved under Subsection 35.3.11.~~

~~a.—Any tree designated as a Historic Tree shall be preserved.~~

~~b.—Any tree designated as a Protected Tree or a Large Secondary Tree shall be preserved unless mitigated under the requirements of Subsection 7.~~

~~c.—The minimum percentages of all dbh or percentage tree canopy of Quality Trees, Quality Tree Stands, Secondary Trees and Secondary Tree Stands that must be preserved as shown on Table 35.13.7.A and Table 35.13.7.B.~~

~~d.—All percentages relating to preservation stated within this section shall be based on the initial Tree Inventory Plan. Any subsequent redevelopment of property must minimally preserve the applicable percentage of the total dbh of quality trees as indicated by the initial tree survey.~~

~~e.—A notation shall be placed on the Site Plan or Final Plat identifying each Quality Tree, Quality Tree Stand, Protected Tree Secondary Tree, Secondary Tree Stand and/or Historic Tree required to be preserved under this Subsection. The notation shall limit~~

any future unauthorized land disturbing activity or construction that would impact and/or damage the tree(s) to be preserved or protected.

~~7. Mitigation.~~

~~If preservation cannot be reasonably achieved, then the following mitigation standards shall apply.~~

~~a. Protected Trees and Large Secondary Trees may be removed if mitigated as identified on Table 35.13.7.A and Table 35.13.7.B.~~

~~i. Exception: For applicants removing trees to facilitate installation of gas wells (including roads, pad sites, and gathering lines), gas transmission lines, or to facilitate installation of communications infrastructure or utilities which do not otherwise meet this code's definition of a Public Utility, the following mitigation standard shall apply instead, without regard to tree designation or lot type: For every six (6) inches dbh or larger tree removed, the applicant shall mitigate the removal by paying the established tree mitigation fee for twenty-five (25) percent of the total dbh removed for such six (6) inch dbh or larger trees. Fees must be paid prior to tree removal, pursuant to the procedures established by subsection 35.13.7.A.7.e.~~

~~b. Quality Trees, Quality Tree Stands, Secondary Trees and Secondary Tree Stands may be removed in excess of the minimum preservation requirement provided the excess removal is mitigated as identified on Table 35.13.7.A and Table 35.13.7.B.~~

~~i. Exception: For applicants removing trees to facilitate installation of gas wells (including roads, pad sites, and gathering lines), gas transmission lines, or to facilitate installation of communications infrastructure or utilities which do not otherwise meet this code's definition of a Public Utility, the following mitigation standard shall apply instead, without regard to tree designation or lot type: For every six (6) inches dbh or larger tree removed, the applicant shall mitigate the removal by paying the established tree mitigation fee for twenty-five (25) percent of the total dbh removed for such six (6) inches dbh or larger trees. Fees must be paid prior to tree removal, pursuant to the procedures established by subsection 35.13.7.A.7.e.~~

**Table 35.13.7.A  
Preservation & Mitigation Requirements for Infill Lots**

Lot Size	Historic Trees	Protected Trees	Quality Tree & Quality Tree Stands	Large Secondary Trees	Secondary Trees
Less than ½ acre	100% Preserved	None	None	None	None
½ acre to 1 acre	100%	If removed, mitigated at a 1:0.5 ratio.	None	If removed, mitigated at a 1:0.25 ratio.	None

1-acre to 2.0 acres	100%	If removed, mitigated at a 1:1 ratio.	None	If removed, mitigated at a 1:0.5 ratio.	None
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Table 35.13.7.B  
Preservation & Mitigation Requirements for Non-Infill Lots

Lot Size	Historic Trees.	Protected Trees	Quality Tree & Quality Tree Stands	Large Secondary Trees	Secondary Trees
Less than ½ acre	100%	If removed, mitigated at a 1:0.5 ratio	None	If removed, mitigated at a 1:0.25 ratio.	None
½ acre to 1 acre	100%	If removed, mitigated at a 1:1 ratio.	None	If removed, mitigated at a 1:0.5 ratio.	None
1 acre to 2.5 acres	100%	If removed, mitigated at a 1:1.5 ratio.	A minimum of 10% preserved in Single-family & Duplex Dwelling Developments: A minimum of 12.5% preserved in Multi-family and Non-residential developments. Up to 50% of the percentage required to be preserved may be mitigated under the requirements of this Subsection. at a 1:1 ratio.	If removed, mitigated at a 1:0.75 ratio.	A minimum of 5% preserved in Single-family & Duplex Dwelling Developments: A minimum of 6.25% preserved in Multi-family and Non-residential developments. Up to 50% of the percentage required to be preserved may be mitigated under the requirements of this Subsection. at a 1:0.5 ratio.

Greater than 2.5 acres	100%	If removed, mitigated at a 1:2 ratio.	A minimum of 20% preserved in Single-family & Duplex Dwelling Developments: A minimum of 25% preserved in Multi-family and Non-residential developments. Up to 50% of the percentage required to be preserved may be mitigated under the requirements of this Subsection. at a 1:1.5 ratio.	If removed, mitigated at a 1:1 ratio.	A minimum of 10% preserved in Single-family & Duplex Dwelling Developments: A minimum of 12.5% preserved in Multi-family and Non-residential developments. Up to 50% of the percentage required to be preserved may be mitigated under the requirements of this Subsection. at a 1:0.75 ratio.
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c.— Each replacement tree shall be a minimum of 2" caliper measured 6" above grade and at least 5' in height when planted.

d.— Upon completion of the three (3)-year landscape establishment period, for replacement trees, the City shall inspect the trees and determine whether ninety (90) percent of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City shall release the currency, bond or letter of credit. In the absence of such a finding, the Applicant shall be notified to replace any unhealthy or dead trees. If the applicant does not take remedial steps to bring the property into compliance, the City shall make demand for payment on the cash bond, surety bond, or letter of credit. The City may use all legal remedies to enforce this Subchapter in addition to making demand on the security provided herein.

e.— Tree Fund.

i.— The City shall administer the Tree Fund. Tree Funds shall be used to purchase, plant, and maintain trees, to preserve wooded property remaining in a naturalistic state in perpetuity, to perform and maintain a City wide tree inventory, and to educate citizens and developers on the benefits and value of trees, all within the City of Denton. The Tree Fund may also be used to support programs for the public purpose of increasing the tree canopy within the City of Denton as approved by City Council.

ii.— Proceeds from the Tree Fund shall not be used to meet any requirements for preservation, mitigation, landscaping, buffering, streetscaping, or similar requirements in the Denton Development Code and the Denton Code of Ordinances.

- ~~iii. The applicant shall pay the fees established by City Council and published in the Development Review Fee Schedule in the Application Criteria Manual. The fee shall be based on the fair market value of materials and labor at the time of planting and the reasonable estimated cost for maintenance and irrigation for a period of three (3) years.~~
- ~~iv. Fees contributed to the Tree Fund shall be paid prior to the issuance of a Clearing and Grading Permit on all Commercial, Industrial, or Multi Family Residential developments, prior to final approval of a Gas Well Development Plat and prior to filing a Final Plat in the Denton County Clerk's Office for all Single family Residential Subdivisions.~~
- ~~v. Voluntary contributions for tree preservation shall be placed in the Tree Fund.~~
- ~~f. Tree Trusts.
 
  - ~~i. Areas of a minimum of one (1) acre that have the characteristics of Cross Timber Forests are eligible to be classified as a Tree Trust.~~
  - ~~ii. Designation of a Tree Trust and transfer of tree credits shall be approved by the DRC Chairman.~~
  - ~~iii. Tree Trusts shall be preserved with a permanent easement that shall limit any future land disturbing activity or construction that would impact and/or damage the tree(s) and shall run with the land and be binding upon all successors and assigns of the current owner. Methods for the long-term conservation of said trees may include permanent conservation easements, restrictive covenants, or other such legal mechanisms.~~
  - ~~iv. Only portions of a Tree Trust not designated towards tree credit may be used for mitigation as identified in this Subsection.~~
  - ~~v. Trees that are required to be preserved in compliance with other development regulations shall not be credited towards the Tree Trust.~~
  - ~~vi. Areas that are un-developable, including but not limited to undeveloped floodplain, wetlands and riparian areas, shall not be designated as Tree Trusts.~~
  - ~~g. Areas that are un-developable, including but not limited to floodplain, wetlands and riparian areas, shall not be designated as Tree Trusts.~~~~

~~8. Alternative Tree Preservation Plan.~~

~~An applicant may propose an Alternative Tree Preservation Plan which meets or exceeds the goals and objectives of this Subchapter but does not meet the standards of this Subchapter. The Alternative Tree Preservation Plan provides the option to address the criteria through a flexible discretionary process reviewed by the Planning and Zoning Commission utilizing the Planning and Zoning Commission Procedure process outlined in Subchapter 3.~~

- ~~a. Criteria for Approval. The goals and objectives which must be met, and by which the proposal will be judged are:
 
  - ~~i. The proposed Alternative Tree Preservation Plan adequately achieves, or is an improvement on, the intent of the requirements of this Subsection.~~
  - ~~ii. Assure quality development that fits in with the character of Denton.~~~~

~~9. Preservation Incentives.~~

- ~~a. Tree Credits.~~

- ~~i.—All Quality Trees and Quality Tree Stands that are preserved beyond the minimum requirements identified in Table 35.13.7.A and Table 35.13.7.B shall be credited towards landscape canopy requirements as identified in Table 35.13.7.C.~~
- ~~ii.—All Quality Tree Stands with existing understory that are preserved beyond the minimum requirements identified in Table 35.13.7.A and Table 35.13.7.B shall be credited towards landscape canopy requirements at a ratio of one to two (1:2).~~
- ~~iii.—Unless trees preserved are an integral part of the parking lot design, they will not be credited towards parking lot canopy requirements.~~
- ~~iv.—Unless trees preserved are an integral part of a required buffer design, they will not be credited towards buffer requirements.~~

**Table 35.13.7.C**  
**Credit Received towards landscape canopy requirements for Preservation Beyond Minimum Requirements Identified in Table 35.13.7.A and Table 35.13.7.B**

Tree Classification	Credit Ratio
Quality Tree	1:1.3
Quality Tree—Oak Species	1:1.5
Quality Tree Stands without understory	1:1.55
Quality Tree Stands consisting of a minimum 90% Oak Species	1:1.75
Quality Tree Stands with understory	1:1.8
Quality Tree Stands consisting of a minimum 90% Oak Species with understory	1:2

~~b.—Parking Spaces.~~

~~For every twelve (12) dbh of Quality Tree(s) that have been protected on site, beyond the minimum requirements identified in Table 35.13.7.A and Table 35.13.7.B one (1) parking space may be added to or subtracted from the required number of parking spaces up to a fifteen (15) percent increase or decrease. Upon the approval of the Director of Planning and Development, a waiver of up to thirty (30) percent may be granted.~~

~~c.—Parking Lot Design.~~

~~The Director of Planning and Development may allow parking lot design and parking lot landscaping requirements to vary from adopted standards to preserve existing trees.~~

~~d.—Subdivision Design.~~

~~The following incentives may be approved by the DRC Chairman and must be commensurate with the quality and character of the trees to be preserved:~~

- ~~i. Block length may be increased up to twenty five (25) percent.~~
- ~~ii. Cul De Sac length may be increased up to twenty five (25) percent.~~
- ~~iii. Alternative sidewalk locations.~~
- ~~iv. Offset street location within a right-of-way.~~
- ~~e. Other Incentives.~~

~~The employment of the following incentives must be approved by City Council and must be commensurate with the quality and character of the trees to be placed within a conservation easement or otherwise conserved and the extent to which the preserved land contributes to the preservation of the remnants of the Cross Timber Forest. Incentives may include but are not limited to:~~

- ~~i. Fee waivers or credits,~~
- ~~ii. Reduced open space/park land dedication requirements,~~
- ~~iii. Reduction of monetary assessments relative to agricultural rollback taxes,~~
- ~~iv. Tax abatements,~~
- ~~v. Tax Increment Financing,~~
- ~~vi. Chapter 380 grant of money,~~
- ~~vii. Transfer of Development Rights, and/or~~
- ~~viii. Purchase of Development Rights—purchase by Government or Trust.~~

#### ~~10. Enforcement.~~

- ~~a. The City Arborist, Building Official or an authorized representative of the City shall have the authority to place a Stop Work Order on any activity involving the removal of Protected Tree(s), Protected Tree Stand, Historic Tree(s) Quality Tree(s) or Quality Tree Stand(s) or that may otherwise endanger trees contrary to the provisions of this Subsection and applicable Criteria Manuals. The Building Official may deny all Permits and Certificates of Occupancy for any site which is not in compliance with this Subsection and applicable Criteria Manuals.~~
- ~~b. A person is criminally responsible for a violation of this subsection if the person removes, assists in the removal or causes the removal of a tree without complying with the requirements of this subsection or owns part or all of the land where the violation occurs.~~
- ~~c. Each tree removed in violation of this Subsection shall constitute a distinct and separate offense.~~
- ~~d. Each tree preserved or planted under this Subsection that is removed, destroyed or dies within three (3) years of approval shall constitute a distinct and separate offense.~~
- ~~e. It shall be an affirmative defense that trees are injured or destroyed by natural causes, natural disasters, including but not limited to tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent unauthorized actions of third parties.~~
- ~~f. The enforcement and penalty provisions of Subsection 35.1.10.4 shall apply to this Subsection.~~