
7.7.4 Tree Preservation.

H. Tree Replacement.

1. In the event that it is necessary to remove a protected tree(s) as allowed in this section, the applicant shall be required to replace the tree(s) being removed with healthy trees or pay a mitigation fee as explained hereafter.
 - a. If it is determined that tree replacement is required, the tree preservation/replacement plan must be approved prior to approval of a final plat or replat and a note shall be placed on that plat referencing the approved tree replacement plan.
 - b. If platting is not required, the tree replacement plan shall be included as part of a site plan approval or tree removal permit.
2. In accordance with TLGC, § 212.905, as amended, replacement trees must:
 - a. Be planted on property in which they were removed; or
 - b. Be planted at a location mutually agreed upon by the city and the property owner; and
 - c. Measure at least two inches ~~dbh~~ DBH when planted.
3. In order to ensure biodiversity and protect against tree diseases, if 20 or more replacement trees are planted, no one species of tree may exceed ~~30~~ 20 percent of the total new trees on the site, and no more than 30 percent of the same genus may be planted on-site.
4. To determine the replacement inches required by this section, the applicant shall inventory and combine the total inches of ~~dbh~~ DBH of all protected trees that are to be removed and that are located within the development impact area.
6. The total of the required inventories represents the replacement inches that shall be replaced through new tree plantings or preservation of existing trees. New trees required to satisfy the landscaping provisions of this section shall be counted towards satisfying this requirement.
7. Once each tree on the site is inventoried, tree mitigation shall be calculated as follows and as shown in Table 7.C: Sample Tree Mitigation Worksheet. The calculated ~~dbh~~ DBH of each tree shall be the ~~dbh~~ DBH of the tree multiplied by the appropriate classification ratio as described in paragraph 4 above. The total calculated ~~dbh~~ DBH shall be the sum of all these trees.
8. ~~In accordance with TLGC, § 212.905, as amended, a credit of 50 percent shall automatically be given to the total calculated dbh DBH for all residential development, and 40 percent for nonresidential development. The preliminary mitigation dbh DBH is 50 percent of the total calculated dbh DBH for all residential, or 40 percent for nonresidential. Mixed-use developments shall be credited at the residential rate of 50 percent.~~

Trees proposed to be credited against the required mitigation total shall be:

 - a. Of a native species and categorized as a large or medium canopy tree.
 - b. Planted in an area with a minimum soil surface area of 450 square feet
9. After calculating the preliminary mitigation ~~dbh~~ DBH and subtracting the preserved credits, any remaining ~~dbh~~ DBH is defined as the mitigation ~~dbh~~ DBH. The mitigation ~~dbh~~ DBH is required to be

satisfied either by the planting of new trees on-site ~~with an equivalent total dbh~~ or by using one of the alternative methods described in Subsection 7.7.4J.

10. If any preserved and/or replacement tree(s) dies or shows signs of decline within ~~three~~ five years of initial planting or issuance of certificate of occupancy, the current property owner shall be subject to the same replacement requirements per these requirements, unless otherwise exempt or deemed a non-protected tree.

J. **Tree Preservation Relief Provisions.**

1. **Purpose.** The purpose of this provision allows a determination of whether the application of this DDC, as applied to a tree removal application and related development applications, would if not modified or other relief granted, may unreasonably burden the development of the property.
2. **Review Procedure.**
 - a. A property owner or his authorized agent may file an application for relief to the Board of Adjustment, in accordance with Subsection 2.8.1: Variance and the criteria below, to remove up to 100% of trees on-site in exchange for paying the assessed mitigation fee as noted in 7.7.4.G.1.b.ii.a. Trees to be preserved shall be credited against the mitigation total in accordance with 7.7.4.I. ~~under this subsection following a final decision to deny or conditionally grant an application for a tree removal permit.~~
 - b. ~~The Director has the authority to establish requirements for applications for tree preservation relief in the Application Criteria Manual.~~ No application shall be accepted for filing until the following have been completed:
 - i. Payment of the fee established by the City Council ~~has been paid;~~
 - ii. Submittal of a tree survey of the subject property prepared by or under the supervision of an ISA certified or ASCA registered arborist, a SAF certified forester, botanist, registered landscape architect, or a professional land surveyor in coordination with an ISA certified arborist, TFA Accredited Forester, or an ASCA registered arborist; and
 - ii. Submittal of a written narrative describing how the criteria for approval are met.
 - c. ~~Upon approval of an application for relief in whole or in part by the City Council, the Director shall process the tree removal permit and related development applications pursuant to the relief granted on the application for relief approved by the City Council.~~ Staff shall review the application and recommend approval or denial of the relief request to the Board of Adjustment.
 - d. ~~A denial of an application for relief by the City Council is a final determination.~~ A denial of an application for relief by the Board of Adjustment may be appealed to a district court or county court of law within 10 days after the date the decision is filed in accordance with TLGC, Chapter 211, pursuant to Subsection 2.8.1.
3. **Criteria for Approval.** The Board of Adjustment shall consider the criteria in Subsection 2.8.1D: Variance Approval Criteria. ~~In addition to deciding whether to grant relief to the applicant, the City Council shall consider whether there is any evidence from which it can reasonably conclude that the application of all or a part of the provisions of this DDC that apply to tree preservation may deprive the applicant of all economically viable use of the property, based on the following factors:~~
 - a. ~~Whether there is a unique physical circumstance on the property.~~
 - b. ~~Whether the proposed design has minimized the loss of trees to the extent possible.~~
 - c. ~~Whether preservation and/or mitigation unduly burdens the development of the property.~~

K. **Alternatives to Tree Replacement Requirements.** In order to satisfy the mitigation ~~dbh~~ [DBH](#), the property owner may use any combination of alternative methods of compliance listed below. These alternative methods may also be used in combination with or in lieu of tree replacement, so long as the total replacement ~~dbh~~ [DBH](#) is satisfied by one or all methods

2. **Tree Donation.** The developer may donate, [plant, irrigate, and warranty at the property owner's expense](#), the replacement tree(s) to the City's Parks Department for planting within the city, with the approval of the Parks Director.
3. **Conservation Easement.** The property owner may request to grant a conservation easement by plat to the city that includes protected trees and non-protected trees beyond the minimum preservation amount, and with a combined ~~dbh~~ [DBH](#) equal to or exceeding the ~~dbh~~ [DBH](#) for which mitigation is being requested.
 - a. In addition to the tree survey and preservation/replacement plan, a detailed baseline document describing the property's physical and biological condition, the general age of any tree stands, locations of easements and construction, [conservation easement maintenance plan](#), and the conservation values protected by the easement, shall be required.
 - b. The city may decline the request for a conservation easement for any reason; however a request so declined will not satisfy the mitigation requirement and mitigation must be achieved in a different manner as described above.