

SEC. 51A-10.131 APPLICATION OF DIVISION

(a) This division applies to all property in the city except for:

(a) lots smaller than two acres in size that contain single family or duplex uses unless directed by a historic or conservation district, or overlay district; and

(b) lots in a planned development district with ~~landscaping and~~ tree preservation regulations that vary appreciably from those in this Article X, as determined by the building official.

(b) A demolition permit, is a declaration of intent to remove the single family or duplex use on the property. Upon the date of issue (12:01am) of the demolition permit, for purposes of this ordinance, the lot is determined to be vacant by the building official (the right of the exception is removed) until a future time 1) the structure remains standing and the unused demolition permit is closed (not expired) by the building inspector (being proof of the return of the single family or duplex use), or 2) a certificate of completion is provided to the property owner indicating a new structure for occupancy is completed on the property

(c) Recreation uses of ten acres or greater. On lots of ten acres or greater with public or private recreation uses, the property may conduct a forest stand delineation to calculate the tree canopy coverage of the property. The following conditions must apply:

(i) The measured tree canopy coverage is the baseline for determining the number of trees required for replacement by using the canopy cover replacement of legacy trees in the Sustainable Development Incentives replacement option. The property must maintain the balance of, or increase, the tree canopy coverage for the property recorded in the most recent FSD.

(i) In addition to their inclusion in the forest stand delineation tree canopy coverage, significant trees removed must be replaced in accordance with Section 10.134. Historic trees may not be removed.

SEC. 51A-10.132 TREE REMOVAL APPLICATIONS

(a) When a tree removal application must be approved and posted. A responsible party must post either an approved tree removal application in accordance with this section or a building permit in a conspicuous place at the entrances to the lot or tract, before removing or seriously injuring a protected tree on that lot or tract.

(b) Application for review. An application required under this section must be filed with the building official on a form furnished by the city for that purpose. The application must include the following:

(1) The name, address, telephone number, and signature of the applicant. ~~If the applicant is not the owner of the lot or tract, he shall submit a letter from the owner authorizing him to act on the owner's behalf.~~ The applicant may be the owner of the lot or tract or a contracted agent for the owner.

(2) The name, address, and telephone number of each owner of the lot or tract.

(3) The street address, **zoning district, overlay district,** of the lot or tract.

(4) A tree survey that shows the location, caliper, and name (both common and scientific) of all trees on the lot or tract (trees in close proximity that all have a caliper of less than eight inches may be designated as a "group of trees" with only the number noted), or an estimate of the total caliper inches of protected trees, calculated and documented in a manner determined by the building official to be reasonably accurate. The survey does not have to be prepared by a registered surveyor, architect, or landscape architect. Trees not proposed for removal or serious injury, or located within ~~50~~ 20 feet of proposed construction activity need not be shown on the survey unless the building official determines it would help evaluation of the application.

() A forest stand delineation, or FSD, may be provided for the purpose of calculating the total square footage of forest canopy coverage of building sites, and providing an ecological assessment of a property, as applicable. The FSD must be prescribed and approved by the building official. The forest stand delineation is applicable to:

- i.) Tree canopy cover assessment for protected single species tree stands of eastern redcedar or mesquite trees;
- ii.) Tree canopy cover credit for single family and duplex construction (10.135);
- iii.) Sustainable Development Incentives tree canopy cover assessment of development impact areas (10.135);
- iv.) Tree canopy cover assessment where trees are removed without authorization;
- v.) Tree canopy cover assessment on properties ten acres or larger with recreation uses.
- vi.) Forest analysis for baseline documentation to create a conservation easement (10.135).
- vii.) Forest analysis for establishment of a community management plan.

(5) All permits and approvals related to floodplain, wetland, or escarpment regulations required by city departments or other agencies.

(6) Any other reasonable and pertinent information that the building official determines to be necessary for review.

(c) Form of approval of tree removal application. A tree removal application is not approved until it has been signed by the building official.

(d) Separate offense for each tree removed or seriously injured without a permit. A responsible party commits a separate violation of this section for each tree removed or seriously injured without authorization by a building permit or approved tree removal application that is posted at the lot or tract.

(e) Decision of the building official. The building official shall deny a tree removal application if the removal or serious injury is not in the public interest. This decision must be based on the following factors:

- (1) The feasibility of relocating a proposed improvement that would require the removal or serious injury of the tree.
- (2) The cost of preserving the tree.
- (3) Whether the lot or tract would comply with this article after the removal or serious injury.
- (4) Whether the removal or serious injury is contrary to the public health, safety, or welfare.
- (5) The impact of the removal or serious injury on the urban and natural environment.
- (6) Whether an economically viable use of the property will exist if the application is denied.
- (7) Whether the tree is worthy of preservation, is a significant tree, or a historic tree.
- (8) Whether the tree is diseased or has a short remaining life expectancy.
- (9) The effect of the removal or serious injury on erosion, soil moisture retention, flow of surface waters, and drainage systems.
- (10) The need for buffering of residential areas from the noise, glare, and visual effects of nonresidential uses.
- (11) Whether a landscape plan has been approved by the board of adjustment, city plan commission, or city council.
- (12) Whether the tree interferes with a utility service.
- (13) Whether the tree is near existing or proposed structures.
- (14) Whether the proposed mitigation for tree removal or serious injury is sufficient.

If the tree removal application or building permit is approved, or when an unauthorized tree removal occurs, one or more healthy replacement trees must be planted in accordance with the following requirements.

(1) Quantity. The total caliper of replacement trees for protected trees must equal or exceed the total caliper of the protected trees removed or seriously injured.

() The total caliper of replacement trees for significant trees or legacy trees must equal or exceed three times the total caliper of the significant trees removed or seriously injured.

() The total caliper of replacement trees for historic trees must equal or exceed five times the total caliper of the historic trees removed or seriously injured.

(2) Species. A replacement tree ~~must be one of the following trees,~~ is an approved tree as determined by the director, and no one species of tree may constitute more than 30 percent of the replacement trees planted on a lot or tract of more than one acre.

APPROVED REPLACEMENT TREES

SCIENTIFIC NAME — COMMON NAME

Acer barbatum var. *Caddo* — Caddo Maple

Acer grandidentatum — Bigtooth Maple

Acer buergerianum — Trident Maple

Carya illinoensis — Pecan

Cercis canadensis — Redbud

Chilopsis linearis — Desert Willow

Diospyros texana — Texas Persimmon

Diospyros virginiana [male only] — Common or American Persimmon

Fraxinus americana — White Ash

Fraxinus texensis — Texas Ash

Gleditsia triacanthos var. *inermis* — Thornless Honeylocust

Gymnocladus dioicus — Kentucky Coffeetree

Ilex decidua—Possumhaw or Deciduous Holly
Ilex vomitoria—Yaupon Holly
Juglans microcarpa—Texas Black Walnut
Juniperus ashei—Ashe Juniper
Juniperus virginiana—Eastern Red Cedar
Lagerstroemia indica—Crepe Myrtle
Liquidambar styraciflua—Sweetgum
Magnolia grandiflora—Southern Magnolia
Pinus eldarica—Eldarica, Mondell, or Afghan Pine
Pinus nigra—Austrian or Black Pine
Pinus thunbergii—Japanese Black Pine
Pistacia chinensis—Chinese Pistachio
Prosopis glandulosa—Mesquite
Prunus mexicana—Mexican Plum
Quercus buckleyi—Texas Red Oak
Quercus durandii—Durrand Oak
Quercus fusiformis—Escarpment Live Oak
Quercus macrocarpa—Bur Oak
Quercus muhlenbergii—Chinkapin Oak
Quercus shumardii—Shumard Oak
Quercus virginiana—Live Oak
Sapindus drummondii—Western Soapberry
Sideroxylon lanuginosum—Chittamwood or Gum Bumelia
Sophora affinis—Eve's Necklace
Taxodium ascendens—Pond Cypress

~~Taxodium distichum — Bald Cypress~~

~~Ulmus crassifolia — Cedar Elm~~

~~Ulmus parvifolia — Lacebark Elm~~

~~Viburnum rufidulum — Rusty Blackhaw~~

(3) Location. The replacement trees must be planted on the lot from which the protected tree was removed or seriously injured, except as otherwise allowed by Section 51A-10.135. Replacement trees may not be planted within a visibility triangle, a water course, in above-ground planters, within twenty feet horizontally of an overhead electric distribution or transmission line, or an existing or proposed street or alley unless the tree is authorized by license and permit, and required to be in the street by a zoning ordinance.

(4) Minimum size. A replacement tree must have a caliper of at least two inches.

(5) Timing.

~~—(A)— Except as otherwise provided in Subparagraphs (B) and (C), all replacement trees must be planted within 30 days after the removal or serious injury of the protected trees.~~

~~—(B)— If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official may permit the property owner to plant the replacement trees during the six-month period.~~

~~—(C)— If the property owner provides the building official with a performance bond or a letter of credit in the amount of the total cost of purchasing and planting replacement trees, the building official may permit the property owner up to 18 months to plant the replacement trees, with the following restrictions:~~

~~—(i)— for single family or multifamily developments, at least 50 percent of the total caliper of replacement trees must be planted before 65 percent of the development has received a final building inspection or a certificate of occupancy, and all replacement trees must be planted prior to the completion of the development; and~~

~~—(ii)— in all other cases, the replacement trees must be planted prior to the issuance of a certificate of occupancy.~~

~~—(D)— A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree that complies with this section.~~

() All replacement trees must be planted within 30 days of removal with a tree removal application, except as provided in this section.

() If the property owner provides the building official with an affidavit that all replacement trees will be planted within six months, the building official may permit the property owner to plant the replacement trees during the six month period.

() If the property owner submits an application for a building permit for construction for the tree removal property within the six month period, the tree replacement requirements may be transferred to the building permit for final completion of all tree replacement prior to a final certificate of occupancy or certificate of completion for the property.

() If the property owner does not submit an application for a building permit for construction within the six month period after the tree removal permit, all tree replacement must be completed within 30 days after the six month period.

() For residential subdivisions and multi-phased commercial development, the tree replacement may be completed in accordance with a **comprehensive tree replacement plan** for the subdivision. The building official may permit the property owner the time required to complete the development project to plant the replacement trees, with the following restrictions:

() A projected landscape plan identifying all proposed landscaping for the properties within the subdivision must be provided by a landscape architect and designed according to the soil and area requirements of Section 51A-10.104. The plan will specify the minimum tree size and general species distribution for the properties in accordance with Article X landscape requirements. The tree replacement for the development identified on the plan must be completed prior to the final certificate of occupancy or certificate of completion for the project.

() All required tree replacement which is not scheduled by approved design to be applied to the property under the comprehensive tree replacement plan must be completed within 30 days of issuance of the tree removal permit or building permit for removing trees.

SEC. 51A-10.134 ALTERNATIVE METHODS OF COMPLIANCE

(a) If the building official determines that, due to inhospitable soil conditions or inadequate space, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the lot where the protected tree was removed or seriously injured (the "tree removal property"), the responsible party shall comply with one or more of the following requirements:

(1) Donate the replacement tree to the city's park and recreation department. If the director of the park and recreation department does not accept the tree, the responsible party must comply with one or more of the other alternative methods of compliance listed below.

(2) Plant the replacement tree on other property in the city that is within ~~one mile~~ **five miles** of the tree removal property. The property where the replacement tree will be planted may be renovated for the tree planting by the responsible party, or by the receiver, and then the responsible party's property

may obtain tree canopy cover credit for legacy trees under Sustainable Development Incentives. The tree canopy cover goal for the zoning for the removal property will apply to the remotely planted trees if placed in legacy tree planting conditions, as long as the responsible party must obtains the written approval of the building official for:

(A) a site plan indicating the location of the tree to be removed or seriously injured, the address of the property where the replacement tree will be planted, and a site plan indicating the location of the replacement tree; and

(B) a written agreement between the owner of the property where the replacement tree will be planted and the responsible party, to ~~assume mutual~~ transfer responsibility for the replacement tree under this article to the receiving party. An agreement may be initiated and structured to be monitored and managed by a non-profit association dedicated to tree advocacy or the conservation of land.

(C) a written affidavit, if applied through the Sustainable Development Incentives, where the owner of the property where the replacement tree will be planted agrees to sustain the tree for the natural life of the tree and will be the responsible party for the replacement tree. Any removal, or serious injury, of the protected tree will be subject to replacement by this ordinance as a significant tree.

(3) Make a payment into a special city account, to be known as the Reforestation Fund, in accordance with Subsection (c).

(4) Grant a conservation easement to the city in accordance with Subsection (d) and the following paragraphs:

(A) The conservation easement area must contain protected trees with a combined caliper equal to or exceeding the caliper for which replacement tree credit is being requested.

(B) The conservation easement area must be a minimum of 25 percent of the size of the development impact area on the tree removal property.

~~———— (B) If the conservation easement area is 25 percent or less than the area of the tree removal property, the responsible party will get credit for trees in the conservation easement area, on an inch for inch basis, up to a maximum of 50 percent of the total caliper of replacement trees required.~~

~~———— (C) If the conservation easement area is more than 25 percent and less than 50 percent of the area of the tree removal property; the responsible party will get credit for trees in the conservation easement area, on an inch for inch basis, up to a maximum of 65 percent of the total caliper of replacement trees required.~~

~~———— (D) If the conservation easement area is 50 percent or more of the area of the tree removal property, the responsible party will get credit for trees in the conservation easement area, on an inch for inch basis, up to a maximum of 80 percent of the total caliper of replacement trees required.~~

(5) Sustainable Development Incentives, or SDI. Complete site planning, construction, and post-construction maintenance for non-residential properties two acres and larger and apply enhanced landscaping and maintenance to establish legacy trees for future tree canopy cover establishment on site.

(a) A qualified development for the SDI must meet the following prerequisites:

1) A pre-development forest stand delineation and conceptual landscape plan conforming to the zoning regulations for the property, must be provided by a qualified land professional, arborist, or landscape architect, to the building official prior to submittal for a building permit. The plan must identify the areas of tree preservation, and selected areas for legacy tree planting, as they relate to proposed buildings and other site improvements.

2) All tree preservation and legacy tree plantings must fully apply Article X tree protection of 10.136 and soil area and tree spacing standards of 10.104.

3) A qualified arborist must be consulted throughout the development and provide periodic inspections of the preserved trees, confirm the standards for tree planting of the legacy trees, and report findings to the building official before the final landscape inspection.

4) Sustainable construction practices must be communicated with all contractors and verify training in a report to the building official before final landscape inspection.

5) A soil management plan for the landscape areas on the site with an emphasis on soil conditions for 'legacy' trees must be provided with the landscape plan for review. Indigenous vegetation must be retained and protected except in immediate areas of development, or except to control or remove invasive plants.

6) Restore quality top soils disturbed during construction where applicable.

7) Grading and clearing in or around the development impact area may not encroach in a floodplain area, escarpment zone, wetland, or within 50 feet of a streambank, except in conjunction with the construction of drainage facilities, approved through private development engineering review. Development must be fitted to the topography and soils to minimize cut and fill sections. Grading near preserved trees, and around the edge of the development impact area, must be planned and implemented so as to have the least disturbance on the area's natural topography, watercourses, vegetation, and wildlife. This may preclude all development in certain areas.

8) Utility easement planning and locations must be designed for least impact to preserved trees and sensitive land area.

9) Water conservation irrigation standards must be designed for optimum water conservation management on the property, with dedicated irrigation for all legacy trees.

10) A sustainable site maintenance, schedule, and implementation plan covering a minimum of ten years must be written by a qualified professional and implemented for the development, and retained on the property.

(b) Existing healthy large and medium trees preserved on the property are provided tree replacement credit by establishing the tree canopy cover of eligible preserved trees in the development impact area by completing a forest stand delineation and a conceptual landscape plan. The qualified trees must be preserved as required in 10.104.

(c) Legacy trees may be established on the property in enhanced landscape areas for tree replacement credit. The tree credit is achieved by planting an approved large or medium tree in a minimum surface soil area, and volume, which is determined best suited to establish and sustain the tree to full maturity projected over an extended period of time. Legacy trees and their tree credit cover are established as follows:

1) Large canopy trees must be planted in an unencumbered surface soil area of at least 500 square feet (or 1500 cubic feet) per tree. The area is must be increased to 750 square feet in shallow soils of less than two feet in depth. Large canopy legacy trees will provide a projected 1200 square feet per legacy tree to the tree canopy cover total for the development.

2) Medium canopy trees must be planted in an unencumbered surface soil area of at least 400 square feet (or 1200 cubic feet) per tree. The area must be increased to 600 square feet in shallow soils of less than two feet in depth. Medium canopy legacy trees will provide a projected 750 square feet per legacy tree to the tree canopy cover total for the development.

(d) The cumulative tree canopy coverage of existing trees in the development impact area, and planted legacy trees on the final approved landscape plan determines the credited tree canopy cover and then compared to the projected tree canopy goal of the zoning district of the site. The required tree replacement inches is reduced by the percentage of legacy tree cover and existing tree cover in the development impact area as compared to the goal tree canopy cover for the zoning district. The tree canopy cover goal for each district range from 30-60%.

(e) A development which demonstrates by a SITES rating sheet a minimum compliance with SITES (Sustainable Sites Initiative) Certified-rating or greater may achieve additional credit based on the percentage of the achieved score relative to SITES Platinum-rating. The percentage increase of projected tree canopy may be applied to each legacy tree if approved by the building official.

(f) Legacy trees may be planted on other property as stipulated in 51A-10.135(a)(2).

(6) Tree Canopy Cover Credit for all single family and duplex construction. Protect a portion of the existing tree canopy over the single family or duplex construction building site for a calculated reduction of tree replacement.

(a) The tree canopy cover credit square feet threshold goal is 40 percent of the building site. If the goal is not achieved, a penalty is not applied for not attaining the goal.

(b) All healthy existing large and medium trees preserved on the building site, and boundary trees, may be measured for total square footage of tree canopy cover, except for invasive trees and trees located within 20 feet on center of the nearest overhead public electric distribution line.

(c) Large and medium nursery stock trees applied as landscaping may qualify for tree canopy cover measurement at time of planting for 100 square feet of tree canopy cover under the forest stand delineation. If the tree canopy cover goal is met, additional landscape trees are not required, except that one tree must be provided in the front yard. (see landscape requirements for SF)

(d) Existing large and medium healthy trees preserved in the front yard setback may qualify for double the total square footage of tree canopy cover over the property.

(d) Qualifying trees must be protected according to Section 10.136. Boundary trees located on adjoining properties must be protected to the drip line according to the tree protection plan.

(e) The tree canopy cover must be measured by a forest stand delineation, prescribed and approved by the building official. The forest stand delineation must be provided by a qualified professional. The reported calculated tree canopy coverage and comparison to the goal canopy coverage must be approved by the building official. For example, a tree canopy cover of 30 percent of applicable trees will qualify for a reduction of 75 percent (30/40) of tree replacement requirement. (10/26) - also refer to definitions for 'boundary tree' and 'forest stand delineation'.

The replacement trees that cannot be planted on the tree removal property, and for which credit cannot be given through a conservation easement under this paragraph, must be replaced by other methods set forth in this subsection, such that the replacement trees equal in total caliper the total caliper of the trees removed or seriously injured.

(b) Use of other property for tree replacement. A responsible party who obtains permission to plant the replacement tree on other tree replacement property in the city shall ensure that the planting and maintenance of the tree on the other tree replacement property complies with the requirements of this article. ~~The building official shall maintain a list of publicly or privately owned properties for which replacement trees are sought by groups such as homeowner's associations or school districts.~~

(c) Reforestation fund.

(1) The director of ~~development services~~ **sustainable development and construction** shall administer the reforestation fund to purchase trees to plant on public property, to produce and implement public urban forest education materials and programming, to create an urban forest master plan and to update periodically, to fund a staff position for managing and directing the fund for planting and urban forest education. ~~or and~~ to acquire conservation easements or wooded property. A minimum of fifty percent of all funds provided for each fiscal year must be available to planting trees on public property or to acquire conservation easements or wooded property.

(2) The amount of the payment required is calculated by using the formula for appraising the value of a tree, as derived from the most recent edition of the Guide for Establishing Values of Trees and Other Plants published by the Council of Tree & Landscape Appraisers, unless another publication is designated by the building official. If more than one tree is being removed or seriously injured or not planted, the values of the trees are added when calculating the payment required.

(3) All property purchased through this fund must be in ~~or partly in~~ the city of Dallas ~~and may not extend further than five miles from the Dallas city limit.~~

(d) Conservation easement.

(1) The city manager is authorized to accept and approve on behalf of the city a conservation easement to conserve trees and other natural features, upon:

(A) approval as to form by the city attorney; and

(B) a determination by the building official that the easement area is suitable for conservation purposes, based on:

() the approved submission of baseline documents prepared by a qualified professional describing the property's physical and biological conditions and the conservation values protected by the easement.

(i) the likelihood that the proposed conservation easement area would preserve native, and non-invasive, vegetation on a parcel otherwise attractive for development;

(ii) the overall health and condition of the trees on the conservation easement property;

(iii) the suitability of the area as a wildlife habitat; and

(iv) other unique features worthy of preservation, e.g. water channels, rock formations, topography, or rare herbaceous or woody plant species. , and

(v) the percentage of conservation easement land area in a flood plain does not exceed fifty percent of the overall conservation easement area.

(2) The conservation easement may be structured to be monitored and managed by a nonprofit association dedicated to the conservation of land, with the city as a joint grantee having the right, but not the duty, to monitor the management of the conservation area. ~~The joint grantee of a conservation easement may be an eligible grantee such that the grantor will have the option of receiving a property tax benefit on the assessed value of the conservation easement area.~~

(3) The city manager may not accept a sole or joint conservation easement on behalf of the city, unless and until the owner provides the building official with:

(A) a tree survey as set forth in Section 51A-10.132, or an estimate of the caliper and type of protected trees documented in a manner determined to be reasonably accurate by the building official, or a forest stand delineation prescribed by the building official; and

(B) a preservation strategy for the conservation easement area.

(4) No person may place playground equipment or park amenities in a conservation easement area unless the building official has made a written determination that the amenities indicated on a site plan are unlikely to be detrimental to the conservation easement area.

(5) Conservation easement areas must be in ~~or partly in the city of Dallas and may not extend further than five miles from the Dallas city limit.~~ (Ord. 25155)

SEC. 51A-10.136 CONSERVATION AND MAINTENANCE PRESERVATION OF PROTECTED TREES

(a) All trees on City property must be established and maintained in accordance with ANSI A300 standards for tree care operations.

(b) Where a property owner plans to retain protected trees on a site to be developed or otherwise disturbed in a manner that may affect protected trees, the following requirements must be met when making application, or prior to application, for a building permit :

(1) Tree protection plan. A tree protection plan submitted to the building official must be provided in accordance with the industry-consensus specifications found in ANSI A300 Standards for Tree Care Operations, as amended, and industry-consensus best management practices, and include the following:

(A) A site plan drawn to scale, indicating the location of land disturbance, clearing, grading, trenching, tree protection zones, general projection of the tree canopy area over the property, proposed underground utilities, staging areas for parking, material storage, concrete washout, and debris burn and burial holes where these areas might affect tree protection, and areas where soil compaction is likely to occur in a tree protection zone due to traffic or materials storage.

(B) A complete tree survey in accordance with the requirements set forth in Section 51A-10.132, or a forest stand delineation as prescribed by the building official. Significant and historic trees must be specifically designated on the survey.

(C) Detailed drawings and descriptions of any of the following tree protection measures that will be used during development.

(i) Tree protection fencing. Tree protection fences must be a minimum of four feet high, constructed with adequate, durable material (e.g. orange plastic construction fencing) approved by the building official, and located at the drip line or the edge of the critical root zone, whichever is farthest from the trunk, unless the building official determines that a fence line closer to the trunk will not be likely to result in damage to the tree. For purposes of this subsection, "drip line" means a vertical line

that runs from the outermost portion of the crown of a tree to the ground. The building official may require an expansion of the critical root zone or approve encroachment, as applicable. Once established, the fence line must remain in place as approved.

(ii) Erosion control fencing or screening. All protected trees or stands of trees, and tree protection zones must be protected from the sedimentation of erosion material. Silt screening must be placed along the outer uphill edge of tree protection zones.

(iii) Tree protection signs.

(iv) Transplanting specifications. Trees to be transplanted on property, or relocated from a remote property, must conform to industry-consensus specifications found in ANSI A300 Standard for Tree Care Operations, as amended.

(v) Tree wells, islands, retaining walls, and aeration systems.

(vi) Staking specifications.

(vii) Soil and root protection.

(viii) Trunk protection.

(ix) Tree and site watering plan.

(b) Implementation of tree protection plan.

(1) The responsible party must install and maintain all tree protection measures indicated in the approved plan prior to and throughout the land disturbance process and the construction phase.

(2) No person may disturb the land or perform construction activity until the required tree protection measures have been inspected by the building official.

(3) The responsible party must mulch areas where soil compaction is likely to occur as indicated on the plan with a minimum four-inch layer of processed pine bark or wood chips, or a six-inch layer of pine straw.

(4) If a cut is made to the root of a tree that is not intended to be removed or seriously injured as indicated on the plan, the cut must be made at a 90 degree angle.

(5) The responsible party must tunnel utilities if utilities are to run through a tree protection zone, rather than being placed along corridors between tree protection zones.

(6) The responsible party must provide water to the tree protection zone as needed due to weather or site conditions, with penetration to 6 to 18 inches of soil.

(c) Damage to protected trees. Where the building official has determined that irreparable damage has occurred to trees within tree protection zones, the responsible party must remove and replace those trees. The building official may determine irreparable damage to a tree based on, but not limited to, the following factors: a site evaluation, visible extensive damage to a tree root system, extensive soil compaction around the tree protection zone, visual evidence of required tree protection either removed or in disrepair, or a level one tree risk assessment. A direct appeal to the building official of the decision placed on a tree status, made prior to an appeal of 51A-10.138, may be considered only with a report by a certified arborist or other qualified arborist indicating the current condition and prognosis for the tree and the methods for remedy.

SEC. 51A-10.137 VIOLATION OF THIS DIVISION

Whenever any work is being done contrary to the provisions of this division, the building official may order the work stopped by notice in writing served on any person engaged in the work or causing the work to be done. A person issued this notice shall stop work immediately until authorized by the building official to proceed with the work.

In addition to any enforcement of criminal or civil violations on the property or responsible party, the building official may impose a mitigation requirement for the removal, or serious injury, of protected trees enacted without a tree removal application or a building permit upon a written notice of the violation of the ordinance. The mitigation may be applied as replacement of nursery stock trees on the property based on a tree mitigation plan provided by the responsible party, and on determination by the building official it is practicable to plant trees on the vacant property, or as a fee to be applied to the Reforestation Fund, with the amount as determined in Section 51A-10.135. The building official may authorize an alternative method of replacement which equals or exceeds the tree replacement requirement for the property.

The responsible party must provide a tree survey or a forest stand delineation identifying all tree sizes and species, or tree canopy coverage, on the property. If the responsible party fails to provide the required information within five days of the notice of violation, thereafter the building official may conduct a forest stand delineation using aerial imagery, field analysis, or other reasonable and pertinent information the building official needs to review and to identify the square footage of tree canopy coverage for determining the tree replacement requirements for the property. The rate per square foot of tree canopy will be calculated at a rate of two dollars per square foot of illegally removed trees.

Upon a finding by the building official of assessed removal of the trees, the building official may charge the property for the responsibility of replacement of the protected trees with a written notification to the responsible party. The tree replacement or mitigation must be completed within 30 days of the date of the notification. If the tree mitigation is not completed, the building official is authorized to restrict building permits on the property until the tree mitigation, and any city code violations on the property, are remedied.

SEC. 51A-10.138 APPEALS

In considering an appeal from a decision of the building official made in the enforcement of this division, the sole issue before the board of adjustment shall be whether or not the building official erred in his or her decision. The board shall consider the same standards that the building official was required to consider in making the decision.

SEC. 51A-10.139 FINES

A person convicted of violating this division shall be subject to a fine of not less than \$2,000.00 per protected tree removed or seriously injured without authorization, and not less than \$2,000.00 per day for any other violation of this division.

SEC. 51A-10.140 CRIMINAL RESPONSIBILITY AND DEFENSES TO PROSECUTION

(a) A person is criminally responsible for a violation of this division if the person:

(1) removes or seriously injures, or assists in the removal or serious injury of, a protected tree without complying with the requirements of this division; or

(2) owns part or all of the land where the violation occurs.

(b) It is a defense to prosecution under this section that the act is included in one of the enumerated categories listed in this section. No approval of a tree removal application is required if the tree:

(1) was dead and the death was not caused by an intentional or negligent act of the owner or an agent of the owner;

(2) had a disease or injury that threatened the life of the tree and was not caused by an intentional act of the owner or an agent of the owner;

(3) was in danger of falling or had partially fallen and the danger or the fall was not due to an intentional act of the owner or an agent of the owner;

(4) was in a visibility triangle (unless the owner was legally required to maintain the tree there) or obstructed a traffic sign;

(5) interfered with service provided by a public utility within a public right-of-way;

(6) threatened public health or safety, as determined by one of the following city officials:

(A) the chief of the police department;

- (B) the chief of the fire department;
- (C) the director of public works and transportation;
- (D) the director of street services;
- (E) the director of sanitation services;
- (F) the director of code compliance;
- (G) the director of park and recreation; or
- (H) the director of ~~development services~~ sustainable development and construction;
- (I) the director of aviation;

(7) was designated for removal without replacement in a landscape plan approved by the city council, city plan commission, or board of adjustment;

(8) interfered with construction or maintenance of a public utility or public street;

(9) was removed or seriously injured to allow construction, including the operation of construction equipment in a normal manner, in accordance with infrastructure engineering plans approved under Article V of Chapter 49 or street paving and grading in a public right-of-way, storm drainage easement, detention or retention pond designation, or bridge construction, for private development under Section 51A-8.404; ~~or.~~

~~(10) was removed or seriously injured to allow construction of improvements in accordance with a building permit.~~