

FILE NUMBER: DCA178-012

DATE INITIATED: February 16, 2017

TOPIC: Neighborhood Forest Overlay (NFO)

CITY COUNCIL DISTRICTS: All

CENSUS TRACTS: All

PROPOSAL: Consideration of amending the Dallas Development Code to create regulations for a new overlay called a Neighborhood Forest Overlay.

SUMMARY: The proposal creates a new type of overlay called a Neighborhood Forest Overlay (NFO). The overlay is a zoning tool that provides regulations for the conservation and maintenance of the urban forest within the boundaries of the overlay. The process to establish an NFO is a neighborhood driven process, providing the neighborhood the opportunity to determine the conservation and management of their urban forest.

ZOAC RECOMMENDATION: Approval

STAFF RECOMMENDATION: Approval

BACKGROUND

- The concept of a Neighborhood Forest Overlay originated at ZOAC meetings during the amendment of ARTICLE X. LANDSCAPE AND TREE CONSERVATION REGULATIONS.
- During Council consideration and approval of Article X, direction to create regulations for a Neighborhood Forest Overlay was given.
- The Zoning Ordinance Advisory Committee (ZOAC) considered this issue at three public meetings: October 4, 2018; October 18, 2018; and on November 15, 2018, ZOAC recommended the proposal move to City Plan Commission (CPC).

GENERAL INFO/STAFF ANALYSIS:

The neighborhood forest overlay is provided for the purpose of promoting the health, safety, and the general welfare of present and future inhabitants of city neighborhoods through the managed conservation and protection of the trees in the community. It is intended to help promote or restore the character of established communities as recognized by its inhabitants; to stabilize and protect the air quality near homes; to conserve the city's tree canopy; to retain the living green infrastructure for reducing flood and stormwater effects; to protect property against depreciation; to encourage sustainable construction methods and design in redevelopment; and to assure the sustainability of neighborhoods for the future.

The trees of the city are a fundamental aspect of our living community that provide measurable and valuable services to our citizens. The management and continuity of the trees in the urban forest is both a responsibility and privilege to the people who receive these benefits. The tree protection, removal, and mitigation regulations are established primarily to promote the careful management and application of the young to mature trees on lots smaller than two acres with single family or duplex uses in residential districts.

Currently, lots smaller than two acres in size that contain single-family or duplex uses in residential districts are excluded from the tree protections of Division 51A-10.130. Urban Forest Conservation. Further, under a building permit for construction, lots one acre or less that do not contain single-family or duplex uses in residential districts are also exempt from the tree protections of Division 51A-10.130 Urban Forest Conservation within the unrestricted zone. The NFO would do two things within its boundaries: (1) remove unrestricted zones, and (2) allow tree protection on lots smaller than two acres in size that contain single-family or duplex uses in residential districts in tree conservation areas that are elected by the neighborhood.

The neighborhood forest overlay intends to provide opportunity for neighborhoods to conserve their existing urban forest by removing unrestricted zones and establishing tree conservation areas. The neighborhood forest overlay does not preserve trees, rather it provides a process for controlled removal and mitigation for the removal, and retention of an optional minimum tree canopy cover within the tree conservation area.

An NFO would be a neighborhood driven process, similar to the Neighborhood Stabilization Overlay (NSO) process, in order to apply the urban forest conservation division protections in Article X afforded other properties in the City of Dallas to the single-family and duplex use properties within the overlay area.

PROPOSAL:

When creating a Neighborhood Forest Overlay, the neighborhood has the latitude to choose the area of tree protection, or tree conservation area, from the following options:

1. Front yard setback
2. Front yard to structure
3. Front, side, and rear yard setbacks
4. Entire lot

The conservation, establishment, and maintenance of trees in Section 51A-10.136(a) apply to trees within a tree conservation area: (1) must be established and maintained in accordance with ANSI A300 standards for tree care operations and the ISA Best Management Practices; or (2) the American Standard for Nursery Stock Z60.

Additional options may be elected by the neighborhood. These options, if elected, are only applicable should a property owner remove trees that would require mitigation.

Additional Options:

1. Tree canopy cover goal
 - Means the percentage of the tree canopy cover to be preserved or created in the tree conservation area.
 - The neighborhood would determine the minimum tree canopy cover percentage for the goal. Each property owner may determine actual tree canopy cover for their lot, to be verified and approved by the building official.
 - The minimum percentage would be determined by the median of the tree canopy coverage in the Tree Conservation Area on each lot in the subject NFO.

- If the tree canopy cover remains at or above the designated percentage of the tree conservation area canopy cover, removed trees do not require replacement. However, a minimum of one tree must remain in the front yard.
 - The standards for the 'Tree canopy cover goal' option are the regulations for 'Tree canopy cover credit for single family and duplex uses' in Article X Sec. 51A-10.135(e) amended for applicability to the overlay and tree conservation area.
2. Lots must maintain a designated number of trees in the front yard
- This option would be an added layer of protection to ensure that regardless of the selected mitigation method for tree removal, a minimum number of large or medium size trees in the front yard would be maintained. Replacement is not required in the case that a property falls below the minimum number of large or medium trees due to a reason enumerated in the defense to prosecution section of Article X.

Site Assessment Plan

Prior to any development, construction activity, or disturbance of an area that may affect trees within the tree conservation area, a tree removal application, or permits for construction or grading, a Site Assessment Plan must be submitted to the building official. The Site Assessment Plan must identify all trees of 4 inches in diameter and greater, or over 12 feet in height, based on plant type specification. The overlay regulations do not prohibit the removal or alteration of unprotected trees, or landscape ornamental and small trees, and other landscape shrubs, grasses, or other materials, that do not apply as a protected tree. However, any work or disturbance which includes significant soil compaction, trenching, tilling, excavation, paving, grading, chemical mixing, or pruning exceeding 10 percent tree canopy reduction, on the tree and within the dripline of the protected tree, is subject to the Site Assessment Plan review.

The Site Assessment Plan must show the following:

- Structures
- Paving
- Proposed development, construction or disturbance
- Location of all trees (including boundary trees) in tree conservation area, and 10 feet beyond, with the following elements:
 - Location
 - Diameter
 - Species
- Tree protection as applicable
- Replacement trees as applicable

If a tree removal application is approved to remove trees within the tree conservation area, then tree mitigation or replacement is required.

A five foot buffer around a dwelling unit, called the Structure Proximity Area, will be observed within all NFOs. Mitigation for the removal of trees is not required for qualifying trees within the Structure Proximity Area. More than 50% of the tree trunk at grade must be within the Structure Proximity Area to qualify for an exemption from mitigation. However, because the Structure Proximity Area is within the Tree Conservation Area, an approved tree removal application is required.

Article X calls for replacement of removed trees to meet or exceed the total classified diameter inches of the protected trees that were removed. Total classified diameter inches are mitigated at the following ratios:

- Historic Trees: 3:1
- Significant: 1.5:1
- Class 1: 1:1
- Class 2: 0.7:1
- Class 3: 0.4:1

Protected trees and unprotected trees are as defined in Article X. This stipulates that a tree is protected at a size of 8-inches in diameter unless it is a tree with a diameter of less than 10 inches located on a lot with an existing single family or duplex use that is occupied at the time of removal.

Protected Trees per Article X:

- A tree of any species that has a minimum diameter of eight inches.
- Any tree in a stand which projects a tree canopy over a building site in a forest stand delineation.
- A tree that was planted as a replacement tree.

Unprotected Trees per Article X:

- Callery pear (all cultivars), Chinaberry, Chinese tallow, Ilex species (except for yaupon holly and Possumhaw holly), Palm (all plants in Palmae), Tree-of-heaven or Ailanthus, other trees listed as invasive plants.
- Trees with a diameter of less than 10 inches at the point on the trunk 4.5 feet above the ground, located on a lot with an existing single family or duplex use that is occupied at the time of removal.

Article X also provides several methods of compliance with tree replacement. The applicable methods within an NFO are listed below:

1. Replacement and mitigation on the site of removal
 - The minimum total caliper of replacement trees must equal or exceed the total classified diameter inches of the protected trees removed or seriously injured as listed in Section 51A-10.134(c)(1)(B).
2. Replacement by legacy tree
 - Each tree planted as a legacy tree is given a 12 inch replacement credit.
3. Replacement on other property
 - Replace within boundaries of NFO.
 - If replacement is not possible within NFO, the tree must be replaced within five miles of the NFO.
4. Payment into reforestation fund
 - Mitigation requirements may be met by making a payment into a special city account upon finding that other mitigation methods cannot fulfill requirements.

Process to Establish an NFO

1. Formation of Neighborhood Committee
 - When a neighborhood determines that they are interested in creating an NFO, they form a committee and petition the city.
 - Neighborhood Committee consists of the owners of at least 10 properties within the proposed overlay or all property owners if less than 10 properties in the proposed overlay.
 - The Neighborhood Committee will submit a map showing the entire boundary of the NFO, their proposed Tree Conservation Area option, and any other additional option they have selected.
2. NFO may be placed on:
 - An area primarily containing lots smaller than two acres in size that contain single-family or duplex uses in residential districts.
 - May contain vacant lots and lots greater than two acres in size even though those lots will not be subject to the overlay regulations.
 - An identifiable portion of a planned development, conservation district, or form district which portion is restricted to residential uses.

3. Area
 - Contains at least 50 lots in a compact, contiguous area, or be an original subdivision if the subdivision contains fewer than 50 lots.
 - May contain as few as 10 lots if lots are alongside a *primary natural area* or if the lots maintain a current forest cover of mature large and medium trees, including significant trees, or trees established prior to the original subdivision. (As defined in Article X, *primary natural area* means an ecologically sensitive area including 100-year flood plain and riparian areas, wetlands or 50-foot wetland buffer)
 - Boundary lines should be drawn to include blockfaces and to the logical edges of the area or subdivision, as indicated by a creek, street, subdivision line, utility easement, or zoning boundary line. Boundary lines that split blockfaces in two should be avoided.

4. Staff conducts community meeting
 - As soon as possible after the neighborhood committee expresses their desire to apply for a NFO, the department will conduct a neighborhood meeting. The department will give notice of the neighborhood meeting to all property owners within the proposed district as evidenced by the last approved city tax roll at least 10 days prior to the neighborhood meeting.
 - Staff will meet with the community, inform them about NFOs, describe the options that the community can elect for their NFO, and what is required for staff to accept their application to establish an NFO.
 - The neighborhood will determine what options to include in the NFO request.
 - If the tree canopy cover goal option is elected, staff will provide a spreadsheet to the neighborhood committee to record the tree canopy cover in the Tree Conservation Area on each lot. Staff will instruct the neighborhood committee on how they measure the tree canopy coverage.
 - Staff will verify the data and calculate the median that will determine the minimum tree canopy cover percentage for the subject NFO.

5. Staff provides petitions to the Neighborhood Committee
 - The petition must include:
 - A map showing the boundaries of the proposed overlay
 - Tree conservation area proposed
 - Additional options (if elected)

- The name and address of all property owners within the proposed district
 - A statement that by signing the petition the signers are indicating their support of the overlay
6. Neighborhood Committee gathers property owner signatures
- The elected tree conservation area option will determine the percentage of property owner signatures required for an application to be accepted.
 - Options 1 (Front yard setback) and 2 (Front yard to structure) require signatures from 60% of property owners within the NFO.
 - Options 3 (Front, side, and rear yard setbacks) and 4 (Entire lot) require signatures from 70% of property owners within the NFO.
 - If petitions signed by 75% or more of the lots within the proposed district the application fee is waived.
 - The petition must be submitted to the department with the following:
 - The dated signatures of property owners within the proposed district in support of the proposed district.
 - A list of the names and addresses of the neighborhood committee members.
 - A map showing the boundaries of the proposed overlay
 - Any other information the director determines is necessary.
7. Staff verifies signed petitions and places the NFO request on the City Plan Commission agenda for public hearing
8. City Plan Commission meeting and public hearing
9. City Council votes on establishing an NFO at public hearing
10. Upon establishment of an NFO, each lot would be filed in the county deed records to give notice of the regulations imposed

Zoning Ordinance Advisory Committee (ZOAC) Meeting Minutes

Motion to accept staff's recommendation for amendments to the Dallas Development Code to create regulations for a new overlay called a Neighborhood Forest Overlay as presented.

Motion: Brown

2nd: Davis

Result: Passed: 6-0

For: Shidid, Murphy, Benedict, Davis, Brown, and Behring

Against: none

Absent: Gomez

DRAFT

SEC. 51A-4.511. NEIGHBORHOOD FOREST OVERLAY.

(a) Findings and purpose.

(1) The city council intends to provide a means of conserving and maintaining the existing urban forest within the boundaries of neighborhood forest overlays.

(2) The neighborhood forest overlay is provided for the purpose of promoting the health, safety, and the general welfare of present and future inhabitants of city neighborhoods through the managed conservation and protection of the trees in the community. It is intended to help promote or restore the character of established communities as recognized by its inhabitants; to stabilize and protect the air quality near homes; to conserve the city's tree canopy; to retain the living green infrastructure for reducing flood and stormwater effects; to protect property against depreciation; to encourage sustainable construction methods and design in redevelopment; and to assure the sustained stability of neighborhoods for the future.

(3) A neighborhood forest overlay is a neighborhood-driven process that extends the protections prescribed within Division 51A-10.130, "Urban Forest Conservation," to the properties within the overlay area that contain single-family and duplex uses in residential districts on lots smaller than two acres in size.

(b) Interpretations. Except as otherwise provided in this subsection, the regulations in Article X apply in neighborhood forest overlay districts. Sections 51A-10.135(c), 51A-10.135(d), 51A-10.135(e), and 51A-10.135(f) do not apply. If there is a conflict between this section and Article X, this section applies. If there is a conflict between a neighborhood forest overlay ordinance and Article X, the neighborhood forest overlay ordinance controls.

(c) Definitions. In this section:

(1) **MEDIAN** means the middle number in a set of numbers where one-half of the numbers are less than the median number and one-half of the numbers are greater than the median number. For example, 4 is the median number of 1, 3, 4, 8, and 9. If the set of numbers has an even number of numbers, then the median is the average of the two middle numbers. For example, if the set of numbers is 1, 3, 4, 6, 8, and 9, then the median is the average of 4 and 6, or 5.

(2) **NEIGHBORHOOD COMMITTEE** means the owners of at least 10 properties within a proposed overlay.

(3) **STRUCTURE PROXIMITY AREA** means the five foot area around a dwelling unit.

(4) TREE CONSERVATION AREA means the area of tree protection and the site subject to urban forest conservation regulations.

(d) Petition, initiation, and process.

(1) Except as provided in this subsection, the procedures for zoning amendments contained in Section 51A-4.701, "Zoning Amendments," apply.

(2) A neighborhood forest overlay may only be placed on an area:

(A) containing lots that are primarily smaller than two acres in size;

(B) developed primarily with single family or duplex structures; and

(C) that is zoned either:

(i) as a residential district; or

(ii) as a planned development district, conservation district, or form district (or portion thereof) that is restricted to single family or duplex uses.

(3) The boundary lines of a neighborhood forest overlay should be drawn to include blockfaces on both sides of a street, and to the logical edges of the area or subdivision, as indicated by a creek, street, subdivision line, utility easement, zoning boundary line, or other boundary. Boundary lines that split blockfaces in two should be avoided. The minimum area of a subdistrict within a district is one blockface. An overlay:

(A) must contain at least 50 lots in a compact, contiguous area, or be an original subdivision if the subdivision contains fewer than 50 single family or duplex structures; or

(B) may contain less than 50 lots, but no less than 10 lots, if the lots are located alongside a primary natural area or if the lots maintain a current forest cover of mature large and medium trees, including significant trees, or trees established prior to the original subdivision.

(4) A neighborhood forest overlay may contain vacant lots and lots greater than two acres in size even though those lots will not be subject to the overlay regulations. Vacant lots within the boundaries of a neighborhood forest overlay, however, are not subject to the unrestricted zone exception in Section 51A-10.134(b).

(5) The neighborhood committee may request a petition form by submitting a request to the department on a form furnished by the department. The request

must include the boundaries of the proposed district. The boundaries of the proposed district must comply with the requirements of this section.

(6) As soon as possible after the department provides the neighborhood committee with a petition form, the department shall conduct a neighborhood meeting. The department shall give notice of the neighborhood meeting to all property owners within the proposed overlay as evidenced by the last approved city tax roll at least 10 days prior to the neighborhood meeting.

(7) The petition must be on a form furnished by the department. The petition form must include a map of the boundaries of the proposed overlay, a list of the proposed regulations, the name and address of all property owners within the proposed district, and a statement that by signing the petition the signers are indicating their support of the overlay.

(8) The petition must be submitted with the following:

(A) The dated signatures of property owners within the proposed overlay in support of the proposed overlay.

(i) For a proposed overlay with 50 or fewer single family or duplex structures, the signatures on the petition must be dated within three months following the date of the neighborhood meeting.

(ii) For a proposed overlay with more than 50 single family or duplex structures, the signatures on the petition must be dated within six months following the date of the neighborhood meeting.

(iii) If the proposed overlay is pursuant to Sections 51A-4.511(d)(2)(A) or 51A-4.511(d)(2)(B), 60 percent of property owner signatures are required for staff to accept the petition.

(iv) If the proposed overlay is pursuant to Sections 51A-4.511(d)(3) or 51A-4.511(d)(4), 70 percent of property owner signatures are required for staff to accept the petition.

(B) The application fee, if applicable.

(i) If a petition is signed by property owners of fewer than 75 percent of the lots within the proposed district, the application fee must be paid.

(ii) If a petition is signed by property owners of 75 percent or more of the lots within the proposed district, the application fee is waived.

(iii) If the proposed overlay is authorized pursuant to Section 51A-4.701(a)(1), the application fee is waived.

- (C) A map showing the boundaries of the proposed district.
- (D) A list of the names and addresses of the neighborhood committee members.
- (E) Any other information the director determines is necessary.

(9) A public hearing to create an overlay is initiated by submission of a complete petition or by authorization pursuant to Section 51A-4.701(a)(1).

(10) For purposes of Section 51A-4.701, “Zoning Amendments,” once a complete petition has been submitted to the director, the neighborhood forest overlay shall be treated as a city plan commission authorized public hearing. If the district is initiated by petition, the notice of authorization contained in Section 51A-4.701(a)(1) is not required.

(11) Along with any other required notice, at least 10 days prior to consideration by the city plan commission, the director shall mail a draft of the proposed neighborhood forest overlay ordinance and a reply form to all owners of real property within the area of notification. The reply form must allow the recipient to indicate support or opposition to the proposed neighborhood forest overlay and give written comments. The director shall report to the city plan commission and the city council the percentage of replies in favor and in opposition and summarize any comments.

(12) Upon passage of a neighborhood forest overlay ordinance, the director shall file a copy of the ordinance in the county deed records to give notice of the regulations. The director shall also file in the county deed records a verified written instrument listing each property by the street address, if available, the legal description of the real property, and the name of the owner, if available.

(e) Neighborhood forest overlay.

(1) In general.

(A) A neighborhood forest overlay establishes regulations that must be selected from the options described in this subsection.

(B) The regulations of the neighborhood forest overlay must reflect the existing forest conditions within the neighborhood.

(C) Except as provided in the neighborhood forest overlay, all regulations of the underlying zoning remain in effect.

(2) Tree conservation area.

(A) The neighborhood committee will select their tree conservation area from the following options:

- (i) Front yard setback.
- (ii) Front yard to structure.
- (iii) Front, side, and rear yard setbacks.
- (iv) Entire lot

(B) The conservation, establishment, and maintenance of trees in Section 51A-10.136(a) apply to trees within a tree conservation area.

(3) Additional options.

(A) Tree canopy cover goal option. To reduce tree replacement requirements, a portion of existing tree canopy coverage over a tree conservation area must be preserved.

(i) The tree canopy cover goal is determined by the neighborhood during the petition process. The minimum percentage is to be determined by the median of the tree canopy coverage in the tree conservation area on each lot within the proposed overlay.

(ii) Healthy large and medium trees preserved in the tree conservation area, including boundary trees, may be included in tree canopy cover calculations. Invasive trees and trees located within 20 feet on center of the nearest overhead public electric line are not included in the calculation.

(iii) Each large and medium nursery stock tree planted as landscaping may also qualify as 300 square feet of tree canopy cover. If the tree canopy cover goal is met, additional landscape trees are not required, except that one tree must be provided in the required front yard.

(iv) Boundary trees located on adjacent private property must be protected to the drip line according to the tree protection shown on the site assessment plan.

(v) The tree canopy cover for the tree conservation area on the lot may be measured by the property owner, and verified and approved by the building official.

(B) Minimum front yard tree option. Lots must maintain a minimum number of trees in the front yard, as designated by the neighborhood forest overlay ordinance. Replacement is not required in the case that a property falls below the minimum number of large or medium trees due to a reason enumerated in the defense to prosecution section of Section 51A-10.140(b).

(4) Structure proximity area. More than 50 percent of the tree trunk at grade must be within the structure proximity area to qualify for an exception from mitigation. An approved tree removal application is required prior to tree removal.

(5) Site assessment plan. Prior to any development, construction activity, or disturbance of an area that may affect trees within the tree conservation area, a tree removal application, or permits for construction or grading, a site assessment plan must be submitted to the building official. The overlay regulations do not prohibit the removal or alteration of unprotected trees, or landscape ornamental and small trees, or other landscape shrubs, grasses, or other materials, that do not qualify as a protected tree. Any work or disturbance which includes significant soil compaction, trenching, tilling, excavation, paving, grading, chemical mixing, or pruning exceeding 10 percent tree canopy reduction, on the tree and within the dripline of the protected tree, is subject to the site assessment plan review. The site assessment plan must show the following:

- (A) Structures.
- (B) Paving.
- (C) Proposed development, construction or disturbance.
- (D) Location, diameter, and species of all trees (including boundary trees) in the tree conservation area, and 10 feet beyond.
- (E) Tree protection, as applicable.
- (F) Replacement trees, as applicable.

(6) Tree mitigation. Upon approval of tree removal within the tree conservation area, or an unauthorized removal of a protected tree, tree mitigation or replacement is required in accordance with Section 51A-10.134(c). The applicable methods are:

- (A) Replacement on the site of removal.
- (B) Replacement with a legacy tree on the site of removal.
- (C) If replacement is not possible on the lot of removal then:
 - (i) Replacement on other property within boundaries of NFO.
 - (ii) If replacement is not possible within NFO, the tree must be replaced within five miles of the NFO.

(D) Payment into reforestation fund. This option is only available if the building official determines that, due to restrictive site conditions, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the tree removal property or comply with one or more of the mitigation methods in this section.

(f) Criminal responsibility and defenses to prosecution. The criminal liability and defenses to prosecution provisions in Section 51A-10.140 apply to properties subject to a neighborhood forest overlay.