



City of Wilmer
Serving Our Community

TREE PRESERVATION ORDINANCE

Sec. 1.07.001 Purpose and intent

(a) The purpose of this article is to encourage the preservation of mature trees that once removed can be replaced only after generations, to preserve protected trees during construction and to control the removal of protected trees when necessary. It is the intent of this article to achieve the following:

- (1) Prohibit the indiscriminate clearing of property.
- (2) Protect and increase the value of residential and commercial properties within the city.
- (3) Maintain and enhance a positive image for the attraction of new business enterprises to the city.
- (4) Protect healthy quality trees and promote the natural ecological environmental and aesthetic qualities of the city.
- (5) Help provide needed shaded areas in order to provide relief from the heat by reducing the ambient temperature.
- (6) Help prevent erosion.

(b) The city may issue a stop-work order for any development or construction project at any time if the tree preservation requirements within this article are not being met. Efforts will be made to allow a developer or builder to comply before the project is shut down.

(Ordinance 10-0401, ex. A, sec. 18.01, adopted 4/1/10)

Sec. 1.07.002 Definitions

Critical root zone. The area of undisturbed natural soil around a tree defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the drip line. (Ordinance 10-0401, ex. A, sec. 18.02, adopted 4/1/10)

DBH - Diameter-at-breast-height (caliper). Tree trunk diameter measured in inches at a height of four and one-half (4.5) feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the tree shall be measured in two places, the narrowest point beneath the split and 1/2 the sum of the calipers of the trunks immediately above the split. Whichever is the greater measurement is to be

the measurement applied. If there is no single trunk above ground level to measure, the measurement shall be the sum of the main trunk, plus 1/2 of all other branches of the calipers of the various trunks at 4.5 feet. (Ordinance 17-1221, sec. 1, adopted 12/21/17)

Drip line. A vertical line run through the outermost portion of the canopy of a tree and extending to the ground.

Governmental entity. Any political subdivision or unit of government having regulatory or supervisory authority over construction and development including the city, independent school districts, the state, the county, the United States of America and federal agencies.

Multi-trunk tree. Tree with more than one trunk arising at or near the ground.

Protective fencing. Snow fencing, chain-link fence, barbed wire fence, orange vinyl construction fencing or other similar fencing with a four-foot (4') approximate height.

(Ordinance 10-0401, ex. A, sec. 18.02, adopted 4/1/10)

Replacement tree. A self-supporting woody perennial plant listed on the approved replacement trees grouping (at appendix B the end of this article), that is the same size as the tree which is removed or multiple trees of at least two-inch (2") DBH that, when added together, equal or exceed the diameter of tree removed, as approved by the superintendent of public works or his/her designee. Replacement trees are designated "R" following the tree name in appendix B to this article.

Residential structure.

1. A manufactured home as that term is defined by section 1201.003 of the Texas Occupations Code;
2. A detached one-family or two-family dwelling, including the

- accessory structures of the dwelling;
3. A multiple single-family dwelling that is not more than three stories in height with a separate means of entry for each dwelling, including the accessory structures of the dwelling; or
 4. Any other multifamily structure.

(Ordinance 17-1221, sec. 1, adopted 12/21/17)

Tree. A tree is a self-supporting, woody perennial with usually a solitary trunk or main stem. For the purpose of this article, a tree shall include all trees listed as trees in Shummer and Mailer's "Illustrated Flora of North Central Texas" published by the Botanical Research Institute of Texas and authored by George Diggs, Barney Lipscombe and Robert O'Kennon.

- *Tree, protected.* A tree, the trunk of which has a DBH of 4" (approximately 12" circumference), for trees listed as large trees in appendix B to this article and 2" (approximately 6 inches in circumference) for trees listed as small trees in appendix B to this article.

(Ordinance 10-0401, ex. A, sec. 18.02, adopted 4/1/10)

Sec. 1.07.003 Development plats and site plan requirements

All development plats and site plans shall include a tree survey. The tree survey shall include the elevation of the trees, range of height and caliper of the trees, the predominant species within an area, and the general appearance of the trees with regard to health and location with regard to property lines. Individual trees which are healthy and have a DBH of four (4) inches or greater for large trees or DBH of 2" or greater for small trees or which are otherwise noteworthy because of species, age, size, or rarity shall be specifically located, as well as the protected trees that are proposed for removal through the permit process. The tree survey shall be submitted to the superintendent of public works or his/her designee as part of the development/planning process. Any tree plan or survey which shows protected trees will be removed shall be accompanied by a tree removal application and a plan for replacement pursuant to the tree replacement definition. The burden shall be upon the applicant to show the necessity for all protected trees being removed. (Ordinance 10-0401, ex. A, sec. 18.04, adopted 4/1/10)

Sec. 1.07.004 Pre-clearing conference/inspection

- a. After final plat approval, including amended plats, replats or site plans, but prior to any clearing, pruning, or trimming, tree removal or grading, a tree protection management conference shall take place to review procedures for protection and management of all tree protection elements.
- b. Prior to the approval of pruning, trimming or removal of any trees, the applicant shall mark clearly all trees to be preserved and notify the city of the marking(s). The city shall inspect and verify the marking not to exceed a two-week period. All protected trees shall be marked in accordance with signage or markings as determined by the superintendent of public works.
- c. Prior to the commencement of grading, all tree markings and protective fencing as described within this article, must be installed by the developer and must be inspected by the city.
- d. Within two (2) weeks of notification by the public works department that final acceptance of the subdivision by the city is imminent; a final inspection of the tree preservation methods must be performed.
(Ordinance 10-0401, ex. A, sec. 18.05, adopted 4/1/10)

Sec. 1.07.005 Tree pruning restrictions

- a. General. No protected tree shall be pruned in such a manner, which significantly disfigures the tree, or in a manner that would reasonably lead to the death of a tree, except where such pruning is necessary for safety and utility reliability.
- b. Permit requirements. All utility companies shall be required to file in the office of the superintendent of public works or his/her designee a set of pruning specifications (updated annually) to be followed by all pruning contractors working for the company within the city. Prior to beginning any pruning not requested by the owner of the tree, the contractor shall submit to the city an application for a pruning permit for approval. Such permit shall be effective for a one-year period. In addition, written notice of pruning must be given by the utility to the landowner at least two weeks prior to any pruning activity on or adjacent to a landowner's property. When allowed,

utility companies may prune trees as necessary to re-establish disrupted utility service without obtaining a permit.

- c. Standards for pruning. All pruning shall be in accordance with the most recent version of the National Arborist Association Standards for Pruning of Shade Trees which shall be on file in the office of the city secretary and supervised by the superintendent of public works or his/her designee or private property owner as applicable. Under no circumstances shall “topping” of trees be permitted as that term is defined in Neil Sperry's books titled Neil Sperry's Guide to Texas Gardening and 1001 Most Asked Texas Gardening Questions.

(Ordinance 10-0401, ex. A, sec. 18.10, adopted 4/1/10)

Sec. 1.07.006 Tree replacement requirements

In the event that it is necessary to remove a protected tree, the applicant shall be required to replace the protected tree being removed with an approved replacement tree, as defined herein.

1. Replacement restriction. Any required replacement tree shall not be planted within an area such that the mature canopy of the tree will interfere with overhead utility lines, or that the mature root zone of the tree interferes with underground public sanitary sewer, water and all other utility easements or where the tree will obstruct sidewalks or present hazards to the safe use of roadway by way of visual impairment.
2. Landscaping plans. Trees required to be added per the landscaping requirements in the zoning ordinance or by virtue of deed restrictions shall not be considered as replacement trees.
3. Placement location. Should a lot or parcel of land requesting the removal of trees not be large enough to accommodate the replacement of the caliper inches removed, the superintendent of public works and/or his/her designee may require an alternate location(s) within the city to place the total caliper inches removed.
4. Replacement requirement. Trees shall be replaced 1 for 1 in measured DBH of the trees removed.

(Ordinance 10-0401, ex. A, sec. 18.18, adopted 4/1/10)

Sec. 1.07.007 Tree protection measures during construction

A major purpose of this article is to protect all protected trees that are not required to be removed to allow approved construction to occur. The following procedures are required in the situations noted, however, the superintendent of public works or his/her designee may accommodate unique circumstances.

(Ordinance 10-0401, ex. A, sec. 18.19, adopted 4/1/10)

Sec. 1.07.008 Prohibited activities

The following activities shall be prohibited within the limits of the critical root zone of any protected tree subject to the requirements of this article:

1. Material storage. No materials intended for use in construction or waste materials accumulated due to construction, excavation or demolition shall be placed within the limits of the critical root zone of any protected tree.
2. Equipment cleaning/liquid disposal/material storage. No equipment shall be cleaned, or other potentially damaging liquids deposited or allowed to flow overland within the limits of the critical root zone of a protected tree. This would include, but not be limited to, paint, oil, petroleum products, solvents, asphalt, concrete, mortar, pesticides, herbicides, fertilizer, or other similar materials that may be toxic or harmful to trees or vegetation. Further, no equipment or other materials including dirt shall be stored within the critical root zone. No soil of a depth greater than 2 inches shall be placed in the critical root zone.
3. Tree attachments. No signs, wires or other attachments, other than those of a protective nature, shall be attached to any protected tree.
4. Vehicular traffic. No vehicular and/or construction equipment traffic or parking shall take place within the limits of the critical root zone of any protected tree other than on an existing street pavement. This restriction does not apply to single incident access within a critical root zone for purposes of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance or emergency restoration of utility service or routine mowing operations.

5. (5) Grade changes. No grade changes (cut or fill) shall be allowed within the limits of the critical root zone of any protected tree unless adequate construction methods are approved by the superintendent of public works or his/her designee.
6. (6) Impervious paving. No paving with asphalt, concrete or other impervious materials in a manner which may reasonably be expected to kill a tree shall be placed within the limits of the critical root zone of a protected tree.

(Ordinance 10-0401, ex. A, sec. 18.20, adopted 4/1/10)

Sec. 1.07.009 Prior to construction

The following procedures shall be followed on all types of construction projects including but not limited to residential subdivisions, commercial, multifamily, manufacturing developments, residential builders and municipal/public, utility easement, right-of-way, manufactured housing development, road construction, and sidewalk construction:

1. Tree flagging. All protected trees on the subject property within forty (40) feet of a construction area or surface improvements such as driveway, walks, etc., shall be flagged with bright fluorescent orange vinyl tape of at least 2" width wrapped around the main trunk at a height of four (4) feet or more such that the tape is very visible to workers operating construction equipment. This shall include the flagging of all protected trees adjacent to R.O.W. within approved residential subdivisions during the construction of the roadway. All flagging shall remain in place during the entire phase of construction at all times.
2. Open space flagging. All trees or groups of trees within areas intended to be saved as open space shall be enclosed with bright fluorescent orange vinyl tape of at least 2" width along all areas of possible access or intrusion by construction equipment. Tape shall be supported at a maximum of twenty-five (25) foot intervals by wrapping trees or other approved methods. Single incident access for the purposes of clearing underbrush is allowed. All flagging shall remain in place during the entire phase of construction at all times.

3. Protective fencing. Protective fencing will be located at the drip lines of all protected trees that border the limits of construction as designated by the superintendent of public works or his/her designee.
4. Bark protection. In situations where a protected tree remains in the immediate area of intended construction, the tree shall be protected by enclosing the entire circumference of the tree with 2" x 4" lumber encircled with wire or other means that do not damage the tree. The intent here is to protect the bark of the tree against incidental contact by large construction equipment.

(Ordinance 10-0401, ex. A, sec. 18.21, adopted 4/1/10)

Sec. 1.07.010 Permanent construction methods

- a. Boring. Boring of utilities under protected trees may be required in certain circumstances. When required, the length of the bore shall be the width of the critical root zone at a minimum and shall be a minimum depth of forty-eight (48) inches.
- b. Trenching. All trenching where possible shall be designed to avoid trenching across the critical root zone of any protected tree. This shall not inhibit the placement of necessary underground services such as electric, telephone, gas, etc. No trenches in the critical zone of a protected tree may be left open for more than 24 hours.
- c. Root pruning. It is required that all roots two (2) inches or larger in diameter which are exposed as a result of trenching or other excavation be cut off square with a sharp medium tooth saw and covered with pruning compound within two hours of initial exposure.
- d. Rehabilitation. All post boring and trenching in the critical root zone and root pruning shall require rehabilitation treatments of watering and fertilizing with root stimulator as recommended by the superintendent of public works or his/her designee.

(Ordinance 10-0401, ex. A, sec. 18.22, adopted 4/1/10)

Sec. 1.07.011 Maintenance after development

If any of the trees required to be retained or trees planted as a part of this article should die within a period of one (1) year after completion of the activities

associated with construction, the person or entity that is required to plant the replacement tree(s) shall replace the trees within six months at a ratio of one-to-one with an approved identical size tree from the replacement protected tree/replacement list (appendix B to this article) which is the same size as the tree removed. (Ordinance 10-0401, ex. A, sec. 18.23, adopted 4/1/10)

Sec. 1.07.012 Enforcement

- a. If any tree is removed in violation of these requirements, or if any tree required to be retained or replaced as a condition of these regulations dies or is removed, including any injury to a tree resulting from failure to follow required tree protection measures which causes or may reasonably be expected to cause the tree to die, the city shall have the authority to impose the following administrative and civil penalties on the violator.
 1. A monetary penalty of at least \$100.00 but no more than \$500.00 per caliper inch will be assessed.
 2. Replacement with new tree(s) having a total tree caliber width equivalent to twice that of the removed tree(s). Such replacement tree(s) shall have a minimum caliper width of three inches DBH and shall be planted in a location(s) either within the development site or on nearby public properties as approved by the superintendent of public works or his/her designee.
- b. Any person, firm, corporation, agent, or employee thereof who violates any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction hereof shall be fined a penalty of a sum not to exceed five hundred dollars (\$500.00) for each offense and a separate offense shall be deemed for each tree removed. The unlawful destruction or removal of each protected tree shall be considered a separate offense and each offense subjects the violator to the maximum penalty of \$500.00 per tree for each day that the tree is not replaced.
- c. No acceptance of public improvements shall be authorized until all fines and penalties for violations of this article have been paid to the city.
- d. No certificate of occupancy shall be issued until all fines and administrative and civil penalties for violations of this article have been paid to the city.

(Ordinance 10-0401, ex. A, sec. 18.24, adopted 4/1/10)

Sec. 1.07.013 Additional regulations; building permit

No building permit shall be issued unless the applicant signs an application or permit request which states that all construction activities shall meet the requirements of the tree preservation ordinance. The city secretary shall make available to the applicant a copy of the tree preservation ordinance. (Ordinance 10-0401, ex. A, sec. 18.25, adopted 4/1/10)

Secs. 1.07.014–1.07.030 Reserved

Sec. 1.07.031 Required

No person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree situated on property regulated by this article without first obtaining a tree removal permit unless otherwise specified in this article. (Ordinance 10-0401, ex. A, sec. 18.06, adopted 4/1/10)

Sec. 1.07.032 Activities covered; who must comply

(a) New developments. All developments for which building permits have yet to be issued as of the effective date of this article shall be subject to the requirements for tree protection and replacement specified herein. (Ordinance 10-0401, ex. A, sec. 18.08, adopted 4/1/10)

(b) Exceptions. A tree removal permit shall not be required (and tree protection and replacement shall not apply) under any of the following circumstances: (Ordinance 17-1221, sec. 2, adopted 12/21/17)

1. Agricultural. Property zoned agricultural and being actively used for agricultural purposes shall be exempt from the requirements specified herein. (Ordinance 10-0401, ex. A, sec. 18.09, adopted 4/1/10)
2. Homeowners. The owner of a residence who uses the residence as his homestead shall be exempt from the requirements of this article as it

pertains to that residential property, but only within a radius of 250 feet of the primary dwelling shall a tree removal permit not be required. (Tree replacement/mitigation shall not be required for tree removal on the entire property if the provisions of subsection (8) below apply.) (Ordinance 17-1221, sec. 2, adopted 12/21/17)

3. Developers/builders/contractors. All builders and contractors who have not submitted a request for a building permit as of the effective date of this article are subject to the requirements herein. All developers who have not submitted a plat as of the effective date of this article are subject to the requirements herein.
4. Rights-of-way. Right-of-way owned or leased by a governmental entity as of the effective date of this article.
5. Damaged/diseased trees. The tree is dead, diseased, damaged beyond the point of recovery, in danger of falling, or endangers the public health, welfare or safety as determined by the superintendent of public works or his/her designee.
6. Utility service interruption. The tree has disrupted a public utility service due to a tornado, storm, flood or other act of God. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.
7. Business interests. The following business ventures shall be exempt from the requirements specified herein as follows:
 - a. Landscape nursery. All licensed plant or tree nurseries shall be exempt from the tree protection and replacement requirements and from the tree removal permit requirements only in relation to those trees planted and growing on the premises which are so planted and growing for the sale to the general public.
 - b. Golf course. Golf courses shall be exempt from the tree protection and replacement requirements and from the tree removal permit requirements for removal of protected trees within areas designated as tee boxes, fairways or greens. All other areas shall be subject to these requirements.

(Ordinance 10-0401, ex. A, sec. 18.09, adopted 4/1/10)

8. Tree replacement and/or mitigation fees shall not be required if the removed tree is:
 - a. Located on a property that is an existing one-family or two-family dwelling that is the person's residence; and
 - b. Is less than ten (10) inches in diameter at DBH.

Sec. 1.07.033 Authority for review

The superintendent of public works or his/her designee shall be responsible for the review and approval of all requests for tree removal permits and tree replacement plans submitted in accordance with the requirements specified herein. (Ordinance 10-0401, ex. A, sec. 18.12, adopted 4/1/10)

Sec. 1.07.034 Deferral

The superintendent of public works shall be allowed to consider variances to the tree removal permit and tree replacement plan where literal enforcement would result in creation of an unnecessary hardship on impractical application of the plan considering the physical characteristics of the lot or parcel of land in question, except that any variance request for the removal of three (3) protected trees or more within 90 days, shall be deferred directly to the city council. (Ordinance 10-0401, ex. A, sec. 18.13, adopted 4/1/10)

Sec. 1.07.035 Appeals

Any decision made by the superintendent of public works or his/her designee may be appealed directly to the city council. All decisions made by the city council shall be final. (Ordinance 10-0401, ex. A, sec. 18.14, adopted 4/1/10)

Sec. 1.07.036 Review

An application for removal of a protected tree shall be approved when a showing is made that the location of the tree would prevent reasonable access to the property, or would preclude reasonable and lawful use of the property. Prior to determining that a protected tree precludes reasonable access to or use of the property, design alternatives shall be explored and demonstrated to be inappropriate, impractical and/or cost prohibitive. An applicant shall be responsible for submitting design alternatives and evidence of their impracticality and/or cost prohibitive factors. In all instances, removal of a protected tree shall

be approved if it is determined by the superintendent of public works or his designee that the tree constitutes a hazard to life or property that cannot reasonably be mitigated without removal, or that the tree is dead, dying or diseased to the point that restoration to sound health conditions is not practicable, or that its disease can be expected to be transmitted to other trees and to endanger their health. (Ordinance 10-0401, ex. A, sec. 18.15, adopted 4/1/10)

Sec. 1.07.037 Application; fees; map; expiration

The superintendent of public works or his/her designee shall establish administrative procedures necessary to facilitate the implementation of this section. Such administrative procedures shall be subject to approval by the city council. (Ordinance 10-0401, ex. A, sec. 18.16, adopted 4/1/10)

- (1) Tree removal permit. An application for tree removal and site clearing permit must be submitted and approved prior to the removal of any protected tree in the city unless the tree is exempt under a provision of this article. (See appendix A to this article for example permit application). If the tree for the permit for tree removal is on the applicant's property, the applicant may apply for a credit for tree planting, in accordance with the replacement/mitigation ratio as set forth in section 1.07.006(4) of this article, to offset the amount of the replacement/mitigation fee, as set forth in the master fee schedule, as amended. To qualify for this credit, a replacement tree must be:

- (A) Planted on property:
 - (i) For which the tree replacement/mitigation fee is assessed; or
 - (ii) Mutually agreed upon by the municipality and the person; and
- (B) At least two (2) inches in diameter at DBH.

Ordinance 17-1221, sec. 3, adopted 12/21/17)

1. Fees. All tree removal permits shall be accompanied by a check made payable to the city in the amount specified by the city council.
2. Tree location map. All requests for tree removal permits must be accompanied by a map showing at a minimum the requirements as listed

in subsection (4) below. These requirements may be modified by the superintendent of public works or his/her designee as needed to administer this article. Upon prior approval by the superintendent of public works or his/her designee, the map exhibit may be limited only to the applicable portion of the site.

(1) Map requirements. Maps shall show the location of all buildings, structures, pools, utilities, other improvements intended on the lot and limits of construction line shown if applicable. Location of tree(s) to be removed and replacement trees is tied down with dimensions from two nearest property lines. Caliper and common name of tree to be removed. Any required replacement trees shown with caliper size and common name of tree.

(2) Permit expiration. Permits for tree removal issued in connection with a building permit or site plan shall be valid for the period of that building permit's or site plan's validity. Permits for tree removal not issued in connection with a building permit or a site plan shall become void one hundred eighty (180) days after the issue date on the permit.

(Ordinance 10-0401, ex. A, sec. 18.16, adopted 4/1/10)

Sec. 1.07.038 Action on permit application

The superintendent of public works or his/her designee [or] the city council shall deny a tree removal permit if it is determined that:

- (1) Removal of the tree is not necessary in order to conduct anticipated activities on the property;
- (2) A reasonable accommodation can be made to preserve the tree; or
- (3) The purpose and intent of this article is not being met or is being circumvented by the applicant.

(Ordinance 10-0401, ex. A, sec. 18.17, adopted 4/1/10)