



19ZA-007

STAFF REPORT

APPLICANT:

City of Galveston

REQUEST:

Text Amendment

APPLICABLE ZONING LAND USE REGULATIONS:

Article 9 Landscaping, Division
9.500 Tree Preservation

PROPOSED TEXT AMENDMENT:

Include additional standards for offenses and restitution for unpermitted tree removal

EXHIBITS:

A – Text Amendment

STAFF:

Catherine Gorman, AICP
Assistant Director/HPO
409-797-3665
cgorman@galvestontx.gov

Executive Summary:

Some deficiencies in the Tree Preservation Division of the Land Development Regulations have recently been identified by Staff:

1. Lack of clear statement that a permit is required for removal of a significant tree (tree with a diameter at breast height (DBH) of 10 inches or greater). Staff is recommending additional language in Section 9.501 (E) to clearly indicate that a permit is required prior to the removal of a significant tree.
2. Lack of sufficient standards to address offenses and restitution for unpermitted tree removal. Currently, when removing a significant tree, the removal must be mitigated either by planting the same number of caliper inches removed or payment into a mitigation fund. The mitigation fees are:
 - \$125 per caliper inch of tree removed for 10 inch DBH to 12 inch DBH caliper trees.
 - \$200 per caliper inch of tree removed for over 12 inch DBH caliper trees.

Staff has identified is the lack of mitigation requirements in the case of a violation. The unpermitted removal of a significant tree is considered a violation of the Land Development Regulations, a misdemeanor punishable by a maximum \$500 fine. Municipal Court is not authorized to apply the mitigation fees in the case of unpermitted removal and the maximum fine that could be levied is \$500 per tree. However, the minimum mitigation fee is \$1,250 per tree. Staff is concerned that this discrepancy could lead to an increase in violations. To address this concern, Staff is proposing that Municipal Court be authorized to apply the mitigation fee and impose an additional fine.

3. Lack of language addressing activities that may harm trees and cause them to die. Staff is concerned that this oversight may cause persons to harm their trees and cause them to die to circumvent the regulations. Staff is proposed language to clarify that it is a violation to perform activities to a significant tree that results in the decline in health or death such as pruning of large limbs, tree topping, destruction of bark, and/or detrimental activities within the critical root zone.

Criteria for Text Amendments:

Per Section 13.700: Text Amendments of the Land Development Regulations: Recommendations and decisions regarding petitions for amendments to the text of these regulations are legislative in nature, but shall be based on consideration of all the following criteria:

1. The proposed amendment will help to implement the adopted City of

**Criteria for Text Amendments
Cont.**

Galveston 2011 Comprehensive Plan or if it involves a topic that is not addressed or not fully developed in the City of Galveston 2011 Comprehensive Plan, the proposed amendment will not impair the implementation of the adopted City of Galveston 2011 Comprehensive Plan and other adopted special-area and special-topic plans when compared to the existing regulations.

2. The proposed amendment is consistent with the stated purposes of these regulations.
3. The proposed amendment will maintain or advance the public health, safety, or general welfare.
4. The proposed amendment will help to mitigate adverse impacts of the use and development of land on the natural or built environment, including, but not limited to mobility, air quality, water quality, noise levels, storm water management, wildlife protection, and vegetation or will be neutral with respect to these issues.
5. The proposed amendment will advance the strategic objectives of the City Council such as fiscal responsibility, efficient use of infrastructure, public services, and other articulated City objectives.

Per Section 13.700: Text Amendments of the Land Development Regulations:

Purposes: Text amendment proposals shall serve the following purposes:

1. Advancing the goals, objectives and policies of the City's Comprehensive Plan and other adopted special-area and special-topic plans;
2. Securing adequate light, air, convenience of access, and safety from fire, flood and other danger;
3. Lessening or avoiding congestion in public ways; Promoting the public health, safety, comfort, morals, convenience and general welfare; and Otherwise accomplishing the purposes of Texas Local Government Code Chapter 211, Municipal Zoning Authority.

**Consideration for Text
Amendments**

Considerations: In preparation and considering proposals for text amendments, the Planning Commission and City Council shall pay reasonable regard to:

1. The Comprehensive Plan and related plans;
2. Current conditions and the character of current uses and structures in each district;
3. The most desirable use for which the land in each district is adapted;
4. The conservation of property values throughout the jurisdiction; and
5. Responsible development and growth.

Other Reviews

The Tree Committee would typically be asked to review any changes to the Tree Protection Division as a courtesy. However, due to the holidays, the Tree Committee will not be meeting again until the end of January. Staff would like to get these changes adopted as soon as possible. The Tree Committee has been briefed by email and no comments were received.

City Council has final decision making authority on this request. It will be reviewed at their January 23, 2020 meeting.

Staff Recommendation

Staff recommends approval of the request as submitted.

Respectfully Submitted,



Catherine Gorman, AICP
Assistant Director, HPO

December 12, 2019

Date

cumulative within a 24-month timeframe. For commercial complexes that consist of multiple parcels, the required landscaping shall be installed on all parcels.

Division 9.500 Tree Preservation (ORD. 18-047)

SEC. 9.501 PROTECTION OF EXISTING SIGNIFICANT TREES

- A. **Generally.** Sites shall be designed to preserve existing trees and tree stands that are considered “significant” as provided in this Section. Although not included in this Section, small trees provide benefits to the community as well. Species such as Yaupon, Possumhaw, Flameleaf Sumac, Wax Myrtle, and Redbud are native to the Island and Texas and highly adapted to the coastal environment. Small trees such as these with a 3 inch diameter at breast height (DBH) of the largest stem are encouraged to be preserved and are eligible for planting credits in Table 9.303, Mature Tree Preservation Standards.

For the purposes of this Division:

1. A significant tree has a diameter at breast height (DBH) of 10 inches or greater; and
 2. A significant tree stand is a group of trees with interconnected canopies that cover a total of at least 10,000 square feet of ground area.
- B. **Removal of Significant Trees and Stands of Trees.** The City Manager or City Arborist, if applicable, may approve the removal of a significant tree or tree stand if it is demonstrated that:
1. No reasonable alternative site design at the same development intensity could be approved that:
 - a. Would preserve the tree(s);
 - b. If large-scale preservation is not possible, would preserve the largest of the trees; or
 - c. If protection of the largest tree(s) is not possible, would preserve a greater number of trees than the proposed development design.
 2. It is located within 10 feet of an approved building footprint of new construction or addition;
 3. It is located within 6 feet of a utility easement and would interfere with the use of the easement as determined by the City Engineer;
 4. It is located within 8 feet of an approved outdoor recreation area that by its nature requires the removal of the trees, such as ball fields;
 5. It is ordered removed by the City Manager for other emergency reasons;
 6. It is being removed for agricultural purposes; or,
 7. It is certified to the City by an International Society of Arboriculture Certified Arborist or degreed Forester as having one or more of the following conditions:
 - a. Unhealthy or structurally unsound;
 - b. Damaged by natural causes beyond the point of recovery;
 - c. Diseased beyond the point of recovery;
 - d. Poses a threat to the public and must be removed as a safety measure; or

- e. No longer living.
- C. **Removal of Tree Stands.** Tree stands may be located across multiple parcels. In the event of an approved removal of a portion of a tree stand, the owner is encouraged to coordinate with adjacent property owners in order to reduce negative effects to the overall tree stand.
- D. **Exempted Trees.** Trees of any size that appear on the *Invasive and Noxious Weeds* list for the State of Texas promulgated by the United States Department of Agriculture or on the *Texas Noxious and Invasive Plants* list promulgated by the Texas Department of Agriculture are exempted from this Section and may be removed. Identification by an International Society of Arboriculture Certified Arborist and/or degreed Forester is recommended.
- E. **Permit Required.** A permit shall be obtained by the property owner prior to authorizing or subjecting a significant tree to removal.

SEC. 9.502 TREE REPLACEMENT (ORD. 18-047)

- A. **Generally.** The removal of significant trees or tree stands must be mitigated. All requests for the removal of significant trees or tree stands shall be accompanied by a tree mitigation plan. Mitigation shall be achieved by the planting of the same number of caliper inches removed, payment to the tree mitigation fund, or combination thereof.
- B. **Tree Replacement Required.** Significant trees or tree stands that are approved for removal shall be replaced based on one caliper inch of tree planted for one caliper inch of tree removed. All replacement shall occur on the property on which the removal occurred. All new tree species shall be from among tree species on a City approved plant list.

Trees planted as a requirement of this Section shall be inspected by the City Arborist, if applicable, for viability two years after planting. If the replacement trees are found to be dead or dying, they must be replaced following notification by the City. A planting plan and schedule shall be submitted within 45 days from the notification by the City. Failure to replace according to the approved planting plan and schedule shall constitute a violation of these regulations.

The tree replacement chart, below, shall be used to determine the total number and size of trees that shall be planted as replacement trees for all trees permitted to be removed. The replacement trees are based on the diameter in inches (DBH) of the trees to be removed. To determine the required replacement trees, calculate the total sum in inches of the diameters of all trees to be removed. This sum will result in one (1) single number in inches that represents the combined total of the diameters of all trees to be removed. Diameter measurement shall be rounded up to the nearest inch.

<i>Table 9.502 Tree Replacement Chart</i>			
Total diameter of tree(s) to be removed (Sum of inches at DBH)	Total number of replacement trees required (2" DBH minimum each: 12' minimum height) required		Total number of replacement trees required (4" DBH minimum each: 16' minimum height) required

10" - 12"	4	or	2
13" - 18"	6	or	3
19" - 24"	8	or	4
25" - 30"	10	or	5
31" - 36"	12	or	6
37" - 42"	14	or	7
43" - 48"	16	or	8
49" - 60"	20	or	10

Up to 30 percent of the two-inch DBH replacement tree requirement may be met by native species with a minimum height of eight feet and a minimum DBH of one inch at time of planting.

- C. **Tree Mitigation Fund.** In lieu of the tree replacement requirements, mitigation may be achieved through the contribution to an account dedicated to landscaping and trees for the City. The mitigation amount shall be established by the City Council as part of the annual budget process:
 1. \$125 per caliper inch of tree removed for 10 inch DBH to 12 inch DBH caliper trees.
 2. \$200 per caliper inch of tree removed for over 12 inch DBH caliper trees.
- D. **Combination.** Mitigation may be achieved through a combination of tree replacement and payment to the tree mitigation fund provided that the total of caliper inches approved for removal are mitigated.
- E. **Exempted Trees.** Trees that are being grown and removed for agricultural purposes; or trees that are certified to the City by an International Society of Arboriculture Certified Arborist or degreed Forester as having one or more of the following conditions are exempted from the tree replacement requirements of this section:
 1. Unhealthy or structurally unsound;
 2. Damaged by natural causes beyond the point of recovery;
 3. Diseased beyond the point of recovery;
 4. Poses a threat to the public and must be removed as a safety measure; or
 5. No longer living.

SEC. 9.503 OFFENSE AND RESTITUTION

- A. Any person who removes a significant tree without a valid permit authorizing such action or otherwise commits a violation under this subsection shall be guilty of a misdemeanor, which shall be punishable by a fine not to exceed \$500.00. Each subsequent day that elapses without the person obtaining a permit shall constitute a separate offense.

B. In any prosecution under this section, the prosecuting attorney shall seek and the judge is authorized to award restitution to be paid into the city tree mitigation fund, in an amount calculated by the City Manager or city arborist, if applicable, pursuant to the provisions below:

1. Restitution for removal of a significant tree with a caliper inch of tree removed of 10 inch DBH to 12 inch DBH shall be equal to the payment in lieu value of the tree plus an additional 100 percent penalty.

2. Restitution for removal of a significant tree with a caliper inch of tree removed for greater than 12 inch DBH shall be equal to the payment in lieu value of the tree plus an additional 200 percent penalty.

C. It is a violation of this section to perform activities that may result in the decline in health and/or death of a significant tree, including but not limited to pruning of large limbs, tree topping, destruction of bark leading to scarring on trunk, and/or detrimental activities (such as construction and/or soil compaction) within the critical root zone.