

Chapter 5

Tree Preservation

(10/6/2014)

Section 5.1 Purpose of This Chapter

The intent of this Chapter is to encourage site planning which furthers the preservation of trees and natural areas; to protect trees during construction; to facilitate site design and construction which contribute to the long term viability of existing trees; and to control the removal of trees when necessary. It is the further intent of this Chapter to achieve the following broader objectives:

Protect healthy trees and preserve the natural ecological environmental and aesthetic qualities of the City.

Protect and increase the value of residential and commercial properties within the City.

Prohibit the indiscriminate clear cutting of property.

Section 5.2 Authorization for Adoption of This Chapter

The regulations contained in this Chapter have been adopted under the authority of *Chapter 51 – General Powers of Municipalities of the Texas Local Government Code*, which authorizes a municipality to adopt ordinances, rules, or police regulations that are for the good government, peace, or the trade and commerce of the municipality. This Chapter is also adopted under the authority of *the Home Rule Charter of the City of Colleyville*, which authorizes the City Council to exercise all powers granted to municipalities by the Constitution or the laws of the State of Texas.

Section 5.3 Variances and Appeals

Except where provided in this chapter, any person seeking approval of a development as required by this Land Development Code may request a variance from a requirement contained in this chapter, or appeal a decision of an Administrative Official by submitting a request using the procedures described in *Chapter 1 – General Provisions* of this Land Development Code.

Section 5.4 Definitions

Definitions applicable to this Chapter may be found in *Chapter 2 – Definitions* of this Land Development Code.

Section 5.5 Tree Removal Permit

No person directly or indirectly shall cut down, destroy, remove, move, or effectively destroy through damaging the roots, trunk or canopy, any tree situated on property regulated by this Chapter without first obtaining a tree removal permit, unless otherwise exempted by the provisions of this Chapter.

Section 5.6 Applicability

The terms and provisions of this Chapter shall apply to real properties, persons and trees as follows:

- A. Properties which are regulated by this Chapter:
 - 1. Any real property upon which any protected tree is located.
 - 2. All municipal / public domain property.

Section 5.7 Permit and Fee Requirements

The Administrative Official is responsible for the review and approval or disapproval of all requests for tree removal permits. The request shall be submitted in accordance with the requirements specified herein.

- A. Tree Removal Permit: A request for a tree removal permit must be submitted and approved prior to the removal of any tree. Where any tree is slated for removal, no site grading, dirt disturbance or new construction may occur on the property until a tree removal permit has been issued.
- B. Fees: All tree removal permits shall be accompanied by a check made payable to the City of Colleyville per the following schedule:
 - 1. The resident of a single family home removing all or a portion of a tree which exists on the lot of record on which the single family home is built:.....*no fee required. Exception: For properties larger than two acres in size, if more than five protected trees are removed as part of a tree removal permit, the administrative official may require payment of a fee per sub-section two below only if the Administrative Official determines an intent to "clear cut" the property as described in Section 5.10(A)1b.*
 - 2. All other properties including rights-of-way:.....*\$50.00, plus \$25.00 per protected tree on the property, right-of-way, or development site. For residential subdivisions, the entire subdivision shall be considered the development site. Upon application submittal, the total number of protected trees on the site, including exempted areas, shall be indicated on the application form in order to determine the fee, which shall be paid at the time of submittal. If, upon review of the application and/or tree preservation plan, it is determined that the amount of protected trees tallied is incorrect, the difference in the fee calculation shall be paid, or refunded, prior to the issuance of the tree removal permit.*

Section 5.8 Submittal Requirements for Tree Removal Permits

Any tree removal permit request that requires the removal of a protected tree shall be accompanied by a tree preservation plan. As determined by the Administrative Official, tree removal permit applications that require no fee as listed in Section 5.7(B) above or require the removal of a minimal amount of trees on existing developed properties or within existing rights-of-way may not require a complete tree preservation plan and may only require a description of the trees to be removed showing a limited portion of a site or right of way may be based on an exhibit showing only that portion of the site.

- A. TREE PRESERVATION PLAN – Note: a tree preservation plan shall be submitted with a tree removal permit application form including payment of the required fee. The items required on a tree preservation plan shall, at a minimum, include the following:
 - 1. Title Block: includes street address; legal description (lot and block, subdivision name); date or revised date, north arrow; graphic (and written) scale; name, address, telephone number of owner and of person preparing the exhibit.

2. Location of all existing or proposed structures, improvements and site uses including pavement and landscaping, setback, easements and service connections, all properly dimensioned and referenced to property lines,
3. Existing and proposed site elevations, grades and major contours. Construction details of permanent grade changes around all trees.
4. Location of trunks, canopies and species of all existing protected trees, graphically differentiating between the trees to remain and those to be removed. A plus (+) character shall indicate trunk location and concentric circle shall indicate the size and canopy configuration. All protected trees shall be assigned a unique number classification.
5. Proposed general areas or locations of the replacement trees.
6. Locations of all critical root zones as defined in Chapter 2 – Definitions.

Additionally, tree information required shall be summarized in tabular form on the mitigation table in a format matching the example below and shall include:

7. The detailed list of trees to be removed including the classification number, exempt or non-exempt status, and whether the tree is to be saved or removed.
8. The total diameter of trees to be removed.
9. Replacement trees listed by species name, quantity, size and total diameter required for replacement of trees. (See Section 5.15 for replacement tree list.)
10. The tree preservation plan must be prepared and sealed by a registered landscape architect in the State of Texas.

| Example of Tree Survey and Mitigation Table to Be Inserted on Preservation Plan | | | | | | | |
|--|--------------------------------|-----------------------------|---------------------------------------|--|---|--|---|
| Tree Species | Number of Trees on Site | Total Caliper Inches | Number of Exempt Trees Removed | Caliper Inches Exempt to be Removed | Number of Non-Exempt Trees Removed | Caliper Inches Non-Exempt to be Removed | Replacement Trees to be Planted (3" Caliper) |
| Red Oak | 12 | 108 | 3 | 42 | 1 | 12 | 4 |
| Post Oak | 35 | 350 | 18 | 168 | 2 | 24 | 8 |
| Cedar | 10 | 89 | 1 | 12 | 0 | 0 | 0 |
| Pecan | 5 | 75 | 0 | 0 | 5 | 75 | 25 |
| | | | | | | | |
| TOTAL | 62 | 622 | 22 | 222 | 8 | 111 | 37 |

- B. Permit Validity: Permits for tree removal issued in connection with a building permit, subdivision plat and site plan shall be valid for the period of that plat's, building permit's or site plan's validity. Permits for tree removal not issued in connection with a building permit, subdivision or a site plan shall become void thirty (30) days after the issue date on the permit.
- C. Timing of Submittal: The tree preservation plan shall be submitted as follows:
 1. New subdivisions that include new streets and/or significant public improvements – submitted on or before the subdivision plat application submittal.

2. New commercial construction – submitted on or before the submittal of the required administrative site plan application.
 3. New home construction on existing platted lots – submitted on or before the building permit application submittal.
 4. All other situations – as required by the Administrative Official.
- D. Construction Plan Notations - The following notes shall be required to be shown on all construction plans:
1. All trees shown on this plan to be preserved shall be protected during construction with temporary fencing. Tree protection fences shall be installed prior to the commencement of any site preparation work (clearing, grubbing or grading).
 2. Fences shall completely surround the tree or clusters of trees. The fence shall be located at the outermost limits of the tree branches or critical root zone. The fence will be maintained throughout the construction project in order to prevent the following.
 - a. Soil compaction in the critical root zone resulting from vehicular traffic or storage of equipment or materials.
 - b. Critical root zone disturbances due to grade changes greater than two inches (2") cut or fill or boring which was not authorized by the City.
 - c. Wounds to the trunk, limbs or exposed roots by mechanical equipment.
 - d. Other activities detrimental to trees such as chemical storage, cement truck cleaning, and fires.
 3. In cases of area constraints where the protective fence is closer to the trunk than four feet (4'), the trunk must be protected with strapped-on planking to a height of eight feet (8') or to the limits of the lower branching.
 4. All grading within critical root zones of protected trees shall be performed by hand or small equipment to minimize damage. Prior to grading, relocate the protective fencing to two feet (2') behind the grade change area.
 5. Trees most heavily impacted by construction activities should be watered deeply once a week during periods of hot and dry weather. Tree crowns should be sprayed with water periodically to reduce dust accumulation on the leaves.
 6. Trenching for landscape irrigation shall be located as far from the existing trunks as possible.
 7. Pruning to provide clearance for structures, vehicular traffic and equipment shall take place before construction begins.

Section 5.9 Minimum Tree Preservation Requirements

- A. Whenever a new residential subdivision plat is submitted for review, the Planning and Zoning Commission may evaluate whether an alternate street layout and grading plan which complies with all City subdivision standards would result in substantially greater compliance with the minimum tree preservation requirements of this section. In the event

such an alternate layout is determined by the Commission to be a reasonable use of the land then the applicant may substitute said alternative plan without being required to submit a new plat application. If, however, the applicant does not substitute said alternate layout or another acceptable plat to the Commission, failure of the applicant to do so shall be a basis for denial of the applicant's plat application.

- B. Minimum Existing Tree Preservation Requirements: When any new construction occurs, there shall be a minimum number of trees protected on the property. For new residential subdivisions, the entire boundary of the subdivision shall be considered as one property for the purpose of this section. The chart below shall be used to determine the minimum protection requirements:

Existing Tree Coverage Preservation Requirements:

| <i>Percentage of existing protected canopy tree coverage</i> | <i>Minimum percentage of the existing protected canopy tree coverage to be preserved</i> |
|--|--|
| 0% – 20% | 70% |
| 20.1 – 40% | 60% |
| 40.1% - 60% | 50% |
| 60.1% - 80% | 40% |
| 80.1% - 100% | 30% |

For the purpose of this section, canopy coverage shall be calculated based on the formula for the area of a circle with the individual tree radii equaling the diameter inches of the trunk of each protected tree measured at 4.5 feet above the base of the tree where it meets the ground. This calculation method may apply to developments approved, but not finalized, prior to October 6, 2014. Protected trees located within any of the exempted areas specified in Section 5.10(B) below may be credited toward the minimum existing preservation coverage requirements in the above table such that no more than 50% of the existing protected trees may be credited within an exempt area. NOTE: The minimum preservation coverage requirements listed above shall not be eligible for mitigation as described in Section 5.12.

- C. Exemption Provisions for Preserving Native Tree Stands: Given the requirements of Section B above, as an incentive for preserving groups of native trees in place, a development may be exempted from the mitigation requirements of Section 5.12. The purpose of the exemption would be to reward a more context sensitive approach in preserving native tree clusters such that the root systems of the trees to be preserved are not disturbed and the tree clusters left in their natural condition. In order to meet this exemption, the development must meet the following conditions:

1. The preservation area(s) shall, at a minimum, meet the requirements of Section B above with the following exception: the 50% credit provision shall not apply to the exemption provisions of this section;
2. The proposed preservation area(s) shall be identified on the tree preservation plan;
3. A minimum of 80% of the trees identified within the preservation area on the plan shall be regionally native trees, not classified as exempt, with emphasis given to native oak species;
4. Where possible, preserved trees should be grouped together with as few detached, designated preservation areas on the tree preservation plan as possible;
5. Final approval of the exemption provisions of this section shall be required by the Administrative Official. If approved, notwithstanding the requirements of Section D below, then all trees not located within a preservation area on the tree preservation

plan shall be classified as exempt from the mitigation provisions of Section 5.12 and the protection provisions of this chapter.

6. Approved preservation areas shall contain a perimeter fence, meeting the requirements of this chapter, around the entire preservation area until the development construction receives approval of a final inspection from the City. Said fence shall be placed a minimum of five feet from the outside edge of the drip line of any tree within said area. No earthwork, vehicle and equipment storage, or encroachments of any kind are permitted within the preservation area. No undergrowth shall be removed from a preservation area.
- D. Preservation of Heritage Trees: Heritage Trees, as defined in Chapter 2 - Definitions, may not be classified as exempted trees, regardless of whether or not they are located in any exempted area.

Section 5.10 Exempt and Non-Exempt Provisions

A. Exempted Persons

1. Exempted Persons: The following persons are exempt from the provisions of this Chapter only to the extent of their control over the particular class of properties and trees described below. Persons exempt from these provisions shall not be required to obtain tree removal permits.
 - a. An employee of the City of Colleyville, a public utility or an authorized contractor working in a dedicated public right-of way may in the course of business, may remove or prune that portion of a tree which prohibits the safe construction, repair or maintenance of a service line or facility.
 - b. The resident of a single family home may remove all or a portion of a tree which exists on the lot of record on which the single family home is built. Exception: For properties larger than two acres in size, if more than five protected trees are removed as part of a tree removal permit, the administrative official may require the resident to comply with the mitigation and preservation provisions of this chapter if it is deemed that an attempt to "clear-cut" all or a portion of the property in being made where no new accessory building, pool, building addition or other similar construction, not involving a principal permitted use, is being proposed as part of a submitted active building permit application. Any decision of the Administrative Official may be appealed per the provisions in Section 5.13. As it relates to this sub-section only, any appeal request shall not require payment of an application fee and said request shall be scheduled on the next available meeting.
 - c. A property owner or his authorized contractor, employee or tenant may remove a tree which has become severely diseased or damaged to the extent that it is beyond the point of recovery or is in danger of falling, as determined by the Administrative Official.
 - d. All landscape nurserymen shall be exempt from the terms and provisions of this section only in relation to those trees planted and growing on the nursery premises which are planted and grown for the sale or intended sale to the general public.
 - e. Any person may remove all or a portion of a tree which has disrupted a public utility service due to tornado, storm, flood, or other act of God, but only that portion of the tree which is necessary to safely restore normal utility service.

- f. The following persons shall be exempt from the tree replacement provisions of this Chapter. However, such persons shall provide tree protection and replacements as per this Chapter for all remaining trees in non-exempt areas.
 - (1) A person performing work authorized by a building permit in the residential buildable area (building setback envelope).
 - (2) A person performing work authorized by an approved site plan in the commercial building footprint.
 - (3) A person performing work authorized by the approved grading and drainage plan in the residential setback envelope as part of the construction of a new subdivision only.
 - (4) An employee of the City of Colleyville and a public utility. Persons specifically performing work on a public improvement as part of a new subdivision plat or a separate dedication instrument in a dedicated public right-of-way, drainage or utility easement are hereby exempt. For the purpose of this sub-section, public improvements shall include any drainage facilities, utilities or streets/sidewalks/trails. Fences, gates and open space amenities are not considered public improvements.

B. Exempted Areas

- 1. New Residential Subdivisions that include public or private street dedications: Except where noted above, the following areas shall be exempt from the tree preservation requirements of this chapter:
 - a. Rights-of-way of newly dedicated streets; lots containing private streets.
 - b. Easements, only where new public improvements or facilities are being constructed
 - c. Residential setback envelope
 - d. Residential driveway: Note: this area may only be declared exempt by the City Council in a situation where no reasonable alternative driveway placement exists on the property such that protected trees may be avoided. The City Council determination process shall be through the submittal of an appeal request. As it relates to this sub-section only, any appeal request shall not require payment of an application fee and said request shall be scheduled on the next available meeting.
- 2. Existing Platted Residential Lots and New Residential Subdivisions with no new public or private street Dedications: Except where noted above, the following areas shall be exempt from the tree preservation requirements of this chapter:
 - a. Residential setback envelope
 - b. Residential driveway: Note: this area may only be declared exempt by the City Council in a situation where no reasonable alternative driveway placement exists on the property such that protected trees may be avoided. The City Council determination process shall be through the submittal of an appeal request. As it relates to this sub-section only, any appeal request shall not require payment of

an application fee and said request shall be scheduled on the next available meeting.

3. Platted Commercial/Institutional Lots: Except where noted above, the following areas shall be exempt from the tree preservation requirements of this chapter:
 - a. Trees located within the new commercial/institutional building footprint and any tree located within five feet of said building footprint.

C. Exempted Tree Species

1. Exempted Tree Species: The following tree species shall be exempt from the tree preservation requirements of this chapter:
 - a. Mesquite
 - b. Hackberry
 - c. Chinese Tallow
 - d. Cottonwood Trees under 18 inches in diameter width
 - e. Cedar trees (Cupressaceae family) - Exceptions: Any species of cedar utilized for required landscape screening as required by the Land Development Code or the provisions of any other City ordinance and/or conditional variance shall not be considered as exempt. Additionally, any Eastern Red Cedar planted as a replacement tree per the provisions of this chapter shall not be considered as exempt. Otherwise, any eastern red cedar that does not meet the above exceptions shall be considered exempt only if the tree is less than 13 inches in diameter width.
 - f. Other regionally non-native tree species not listed on the tree replacement list in Section 5.14 and as determined by the Administrative Official based on the written recommendation of a certified arborist and/or landscape architect contracted or employed by the City. Said written recommendation shall be kept on file in the appropriate development records for the property for which the determination is made.

Section 5.11 Tree Protection

A major purpose of this Chapter is to protect all trees which are not removed and to allow approved construction to occur. The following procedures shall apply to all types of construction projects, public and private, which involve development around trees.

The following procedures are deemed appropriate in the situations noted; however, unique circumstances may allow modifications if deemed necessary by the Administrative Official.

- A. Prohibited Activities: The following activities shall be prohibited within the limits of the critical root zone of any tree which is subject to the requirements of this Chapter.
 1. Material Storage: No materials intended for use in construction or waste materials accumulated due to excavation or demolition shall be placed within the limits of the critical root zone of any tree.

2. Equipment Cleaning / liquid disposal: No equipment may be cleaned or other liquids deposited within the limits of the critical root zone of a tree. This would include but not be limited to, paint, oil, solvents, asphalt, concrete, mortar or other materials.
 3. Tree Attachments: No signs, wires or other attachments, other than those of a protective nature shall be attached to any tree.
 4. Vehicular Traffic: No vehicular and construction equipment traffic or parking is allowed within the limits of the critical root zone of trees.
- B. Pre-Construction: The ensuing procedures shall be followed prior to construction.
1. Tree Flagging: All trees to be removed from the construction site shall be flagged with bright red vinyl tape wrapped around the main trunk at a height of four feet (4') or more such that the tape is visible to workers on foot or driving equipment.
 2. Tree Identification: All protected trees shall be tagged with the unique classification number described in Section 5.8. Said number shall correspond to the number listed on the tree protection plan and shall be clearly visible and legible on a metallic surface located between four and five feet above the base of the tree. The classification number shall remain on the tree until all construction is complete and final approval has been obtained by the City.
 3. Protective Fencing: All protected trees shall have protective fencing located at the tree's critical root zone. The protective fencing shall be comprised of orange vinyl construction fencing, with a minimum of four-foot (4') approximate height. The protective fencing may be located within the critical root zone of the specimen tree for approved construction only as determined by the Administrative Official. The fencing shall follow the delineation of the approved construction. In order to protect the trunk, the trunks of all protected trees shall be wrapped with orange vinyl construction fencing such that the trunk will be easily visible during construction activities.
 4. Bark Protection: in situations where a tree remains in the immediate area of intended construction, the tree shall be protected by enclosing the entire circumference of the tree's trunk with lumber encircled with wire or other means that does not damage the tree.
 5. Construction Pruning: In a case where a low hanging limb may be broken during the course of construction, the obtrusive limb may be cut. The limb shall be cut either flush to the trunk on or at the next joint of the limb. The wound shall then be sealed with pruning paint.

In no instance shall pruning involve a portion of the trunk or thirty percent (30%) of the entire canopy without the Administrative Official's prior approval.
 6. Site Signage: Prior to, and during, construction activities, a sign(s), clearly visible from any adjacent roadways, shall be placed by the developer stating the following: "All trees located within an orange fenced area are considered protected. To report any tree protection violations, please contact (phone number designated by the Administrative Official)". The Administrative Official may require the addition of more specific contact information to the sign. Lettering shall be a minimum of 8 inches in height, shall be legible and able to be read from a passing vehicle on any adjacent roadway. The sign dimensions shall, at a minimum, be five feet in width and height. The overall sign height shall be a minimum of eight (8) feet in height measured from the ground to the top of the sign. The sign colors shall be as follows: lettering shall be black, the sign background shall be fluorescent green.

- C. Improvement within the Critical Root Zone of a Tree: Design constraints often dictate that trees slated for preservation have some encroachment on their critical root zone, as defined in Chapter 2 - Definitions. The following is the minimum design criteria, which is allowed within the critical root zone of a tree. Development exceeding the criteria would put the tree at risk and therefore no longer be considered a preserved tree. In such a case replacement trees shall also be required.
1. Grade Changes: In the event that grade changes must be made around a tree or group of trees, the following shall be implemented in order to maintain oxygen and water exchange within the tree's critical root zone.
 - a. A minimum of seventy-five percent (75%) of the critical root zone must be preserved at natural grade with natural ground cover or landscaping for the tree to be considered a preserved tree.
 - b. No cut or fill greater than two inches (2") shall be located closer to the tree trunk than one half (1/2) of the radius of the critical root zone radius distance.
 - c. Increase Grade: Provide an aeration system just outside the tree's critical root zone. A dry well located a minimum of one-half (1/2) of the radius of the critical root zone.
 - d. Decrease Grade: Provide retaining walls outside the critical root zone to mitigate cuts.
 2. Boring of Utilities: May be permitted under protected trees in certain circumstances. The minimum length of the bore shall be the width of the tree's canopy and shall be a minimum depth of forty-eight inches (48").
 3. Trenching: irrigation systems shall be designed to avoid trenching across the critical root zone of any tree.
 4. Paving: A maximum of twenty five percent (25%) of the critical root zone of a tree may be covered with impervious paving. The pavement and the cut and fill for the pavement is to not exceed one-half (1/2) of the critical root zone radius distance.
- D. Special Designated Tree Protection Areas by Other Ordinances and Plats: Any specifically classified tree, landscape or other similar type of classification that prescribes that trees and/or existing landscaping shall be protected within a specifically defined area as a condition of a zoning ordinance such as PUD or SUP, variance and/or plat shall, at a minimum, meet the following provisions:
1. During any construction activities, said area shall be completely contained within a fenced area meeting the tagging and fencing requirements for tree protection in this chapter.
 2. Unless authorized as part of the original approving language for said area, or where another code requirement applies to the maintenance and upkeep of high grass, weeds and other related nuisances, no trees, landscaping, soil or vegetation of any kind may be removed, or otherwise disturbed, within said area and no construction of any kind may occur except
 3. Unless noted as part of the original approving language for said area, the exemption provisions for the resident of a single family home shall apply regarding the provisions of this section.

Section 5.12 Mitigation Requirements

Any protected tree which is six inches (6") or greater that is removed, destroyed or more than 50% damaged and does not meet the exemption provisions of this chapter shall be mitigated per the requirements of this section. In the event that the loss of a protected tree requires mitigation, the party responsible for mitigation shall either replace the protected tree(s) by planting new trees, pay a mitigation fee or a combination of both. For the purpose of this Chapter, trees removed within any City right-of-way or other City owned property by anyone not exempted by the provisions of this chapter shall be mitigated per the requirements of this section and other applicable City ordinances.

The mitigation authorized by this section is not meant to supplant good site planning. Tree replacement will be considered only after all design alternatives which could save more existing trees have been evaluated.

- A. Mitigation Through Planting New Replacement Trees: A sufficient number and diameter of replacement trees shall be planted in order to equal the total diameter inches or fraction thereof of trees six inches (6") or greater and slated for removal.
1. All medium and large, and palm replacement trees shall be a minimum of six inches (6") diameter when measured one foot (1') above the soil line and a minimum of 12 feet in height when planted. All screening and ornamental trees shall be a minimum of three inches (3") diameter when measured one foot (1') above the soil line and a minimum of eight (8) feet in height when planted.

Examples-

- a. A total of 18" diameter to be removed shall be replaced with 3 – 6" diameter medium, large or palm trees.
 - b. A total of 18" diameter to be removed shall be replaced with 6 – 3" diameter screening and ornamental trees.
2. All replacement trees shall be a species listed on the replacement tree list and guaranteed for three years from the date of the final inspection and acceptance of the project. In instances where a replacement tree satisfies a landscaping requirement as regulated in Chapter 4-Landscaping and Buffering, then said tree shall be maintained per the provisions of Chapter 4.
 3. The location of replacement trees is restricted from utility easements and rights-of-way. The location shall not be in an area such that the mature canopy of the tree will interfere with overhead utility lines. No trees shall be planted within ten feet (10') of a fire hydrant.
 4. Replacement trees should be planted on the site from which existing trees are to be removed. If this is not feasible, an applicant may initiate a proposal to plant trees off-site. This may be approved if the planting site is no more than one-half mile from the site where the original trees were removed.
 - a. Replacement trees shall be planted prior to the issuance of the Certificate of Occupancy or project release. Optimum planting times do not always correspond to project completion. For that reason, replacement tree plantings may take place after the project is released by the City; provided, that before project release, a fiscal security is posted in the amount equal to the prevailing rate for installed trees with a three (3) year guarantee, plus fifteen percent (15%) to cover administrative cost.

- b. A minimum of 75 percent of all replacement trees planted as part of the required mitigation for a development under the provisions of this section shall be classified as a medium and large tree as listed on the replacement tree list
- B. Mitigation Through Payment of Fee: A monetary fee of \$250.00 per diameter inch of the tree(s) removed or damaged shall be assessed and paid to the City of Colleyville. All mitigation fees shall be deposited into the City's Tree Preservation Fund. All funds shall be paid prior to the final approval and/or issuance of the Certificate of Occupancy.
- C. Mitigation of Heritage Trees: Heritage Trees, as defined in Chapter 2 – Definitions and noted in Section 5.8:
 - 1. A monetary fee of \$500.00 per diameter inch of the Heritage Tree removed or damaged shall be assessed and paid to the City of Colleyville and deposited into the City's Tree Preservation Fund. All funds shall be paid prior to the final approval and/or issuance of the Certificate of Occupancy. or;
 - 2. If replacement trees are to be planted, the total amount of replacement inches to be planted shall be in an amount that is twice the diameter inches of the Heritage Tree(s) removed and shall, otherwise, meet the requirements of Section A above.
- D. Colleyville Tree Preservation Fund: All mitigation fees and non-criminal penalties mentioned below shall be paid into the Colleyville Tree Preservation Fund. The fund shall be administered by the City Manager or his/her designee and shall only be used for the planting of new trees on City owned or leased properties, rights-of-way and other public properties such as public schools, county and State properties located within the City of Colleyville.
- E. If any protected tree dies within three (3) years of the issuance of the certificate of occupancy, final inspection or acceptance of public improvements and is brought to the attention of the city manager or his/her designee, the original permit applicant shall be subject to the replacement/mitigation requirements for protected trees per this section.

Section 5.13 Penalties and Violations

- A. Civil Penalties: If any protected tree is removed from any real property without a tree removal permit, or if a protected tree is injured during construction where an active tree removal permit has been issued because of failure to follow required tree protection measures of this chapter such that the tree dies or may reasonably be expected to die, the City shall have the authority to impose the following penalty:
 - 1. The violator shall plant new trees at a rate that is three times the diameter inches of tree(s) removed. All plantings shall meet the requirements of Section 5.12. For example, if a 20 inch diameter width tree is removed in violation of this Chapter, then a minimum of 60 inches of new trees shall be planted. A planting plan for the new trees shall be provided to the Administrative Official no later than 30 days from the date of the offense. The new trees shall be planted no later than 90 days from the date of the offense or, if the site is under construction, the new trees shall be planted when all other required landscaping and/or mitigation is planted. The City shall have the authority to hold any development related administrative approvals for the property on which the violation occurred and may impose a stop work order until the penalty is addressed through the submittal of an approved planting plan and/or the planting of new trees. In the event that the trees are not planted within the prescribed timeframe, the City may delay any related administrative approvals for the property and may impose a lien on the property until such time the trees are planted.

2. If the violator, due to property constraints or other impediments, cannot plant the required new trees mentioned in Section One, the violator may petition the City Council through the appeal process mentioned in Section 5.14 to allow a monetary penalty in lieu of the above planting requirements. Said monetary penalty shall be a minimum of \$750.00 per caliper inch of diameter width of the protected tree(s) removed or damaged, payable to the tree preservation fund mentioned above. If a tree is removed without authorization and the size of the tree cannot be determined given the lack of a tree survey or other official documentation, then the minimum penalty shall be \$15,000.00 per tree. If approved by the City Council, said penalties shall be paid no later than 30 days from the action of the City Council. The City shall have the authority to hold any development related administrative approvals for the property on which the violation occurred and may impose a stop work order until the penalty is paid. In the event that the penalty is not paid within the prescribed timeframe, the City may impose a lien on the property until such time the penalty is paid.

B. **Criminal Penalty:** In addition to the civil penalties of this chapter, any person violating or failing to comply with any provision or requirement of this Chapter, including but not limited to the mitigation requirements of this section, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall, without exception, be fined the maximum amount of \$2,000.00. A separate offense shall be deemed committed upon each day during or on which each separate violation or failure to comply occurs or continues to occur and shall be punishable as such.

Section 5.14 Appeals

Any appeal to the provisions of this chapter and/or any appeal to a decision of the Administrative Official relative to the provisions of this chapter shall be heard by the City Council.

Section 5.15 Replacement Tree List

The following is the list of appropriate and approved replacement trees which have been selected on the basis of their suitability in the urban environment of North East Tarrant County.

| REPLACEMENT TREE LIST | | | |
|-------------------------------|--------------------------------|--------------------------------------|---------------------|
| <u>SCREENING TREES</u> | <u>ORNAMENTAL TREES</u> | <u>MEDIUM AND LARGE TREES</u> | <u>PALMS</u> |
| ARBORVITAE | BLUE POINT JUNIPER | AMERICAN ELM | CALIFORNIA FAN PALM |
| BLUE POINT JUNIPER | CAROLINA BUCKTHORN | ARISTOCRAT PEAR | MEXICAN FAN PALM |
| CHINESE PHOTINIA | CAROLINA CHERRY LAUREL | ARIZONA CYPRESS | NEEDLE PALM |
| CAROLINA CHERRY LAUREL | CRAPE MYRTLE | BALD CYPRESS | SABAL PALM |
| EAST PALATKA HOLLY | DECIDUOUS HOLLY | BOIS D' ARC | WINDMILL PALM |
| EASTERN RED CEDAR | DESERT WILLOW | BUR OAK | |
| LITTLE GEM MAGNOLIA | EAST PALATKA HOLLY | CEDAR ELM | |
| NELLIE R. STEVENS HOLLY | FIG | CHINESE PISTACHE | |
| SAVANNAH HOLLY | ITALIAN CYPRESS | CHINQUAPIN OAK | |
| WAX MYRTLE | JAPANESE MAPLE | DEODAR CEDAR | |
| YAUPON HOLLY | LACEY OAK | EASTERN RED CEDAR | |
| | MEXICAN BUCKEYE | EVE'S NECKLACE | |
| | NELLIE R. STEVENS HOLLY | FOREST PANSY REDBUD | |
| | OKLAHOMA REDBUD | GINKGO BILOBA | |

| | | | |
|--|-----------------------|---------------------|--|
| | SAVANNAH HOLLY | LACEBARK ELM | |
| | SUMAC | LITTLE GEM MAGNOLIA | |
| | TEXAS MOUNTAIN LAUREL | LIVE OAK | |
| | VITEX | PECAN | |
| | WAX MYRTLE | PERSIMMON | |
| | YAUPON HOLLY | SHANTUNG MAPLE | |
| | | SHUMARD RED OAK | |
| | | SOUTHERN MAGNOLIA | |

Section 5.16 Amendments

Reserved for listing of amendments to this Chapter.

| Ord. Number | Date | Subject |
|--------------------|-------------|---|
| O-00-1214 | 4-18-00 | Adoption of Tree Preservation in Land Development Code |
| O-09-1734 | 11-4-09 | Amendments to Chapter 5 based on recommendations of consultant |
| O-14-1933 | 10/6/2014 | Comprehensive amendments including incentives for preserving native tree stands, addition of fees, changes to penalties and other modifications |