NOTICE OF PUBLIC MEETING

TREE PRESERVATION BOARD

April 05, 2023 at 5:30 PM

Argyle Town Hall, 308 Denton Street, Argyle, Texas

AGENDA

Notice is hereby given as required by Title 5, Chapter 551.041 of the Government Code that the Argyle Tree Preservation Board will meet in a Tree Preservation Board on April 05, 2023 at 5:30 PM at the Argyle Town Hall, 308 Denton Street, Argyle, Texas.

CALL TO ORDER

CONSENT ITEMS

1. Consider approval of the minutes of Tree Preservation Board Meeting of November 2, 2022.

WORKSHOP ITEMS

2. Discuss the proposed Tree Rebate Program.

3. Discuss an ordinance amendment (TDS-23-002) to Article V, Tree Preservation of the Town of Argyle Town Development Standards regarding tree protection measures within the right-of-way, specified timeline for preserved trees on a site, and counting existing trees for the required landscaping within the landscape buffer.

ADJOURN

NOTE: As authorized by Section 551.071 of the Texas Government Code (Consultation with Town Attorney), this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the Town Attorney on any agenda item herein.

CERTIFICATION

I hereby certify the above Notice of Meeting was posted on the bulletin board at Argyle Town Hall, a place convenient and readily accessible to the general public at all times, and to the Town's website in compliance with Chapter 551, Texas Government Code, on **March 31, 2023, by 5:00 p.m.** and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Nabila Nur

Nabila Nur, AICP, Community Development Director

Persons with disabilities who plan to attend this public meeting and who may need auxiliary aid or services are requested to contact the Argyle Town Hall 48 hours in advance, at 940-464-7273, and reasonable accommodations will be made for assistance.

MINUTES OF THE TOWN OF ARGYLE
TREE PRESERVATION BOARD REGULAR MEETING
WEDNESDAY, NOVEMBER 2, 2022

A regular meeting of the Argyle Tree Preservation Board was held on Wednesday, November 2, 2022, at 5:30 p.m. This was an OPEN MEETING, open to the public, subject to the open meeting laws of the State of Texas and, as required by law, was hereby posted on October 28, 2022 at 5:00 PM, at Argyle Town Hall, giving notice of time, date, place, and agenda thereof.

TREE PRESERVATION BOARD MEMBERS PRESENT:
Paul Kula
Casey Stewart
Matt Nelson
Rebecca Lively-Oehlers
Jeff Castellanos

TREE PRESERVATION BOARD MEMBERS ABSENT:
Marilyn Lewis

STAFF PRESENT:
Cynthia Kirchoff, Town Attorney
Nabila Nur, Director of Community Development
Harrison Wicks, Principal Planner

REGULAR MEETING AGENDA

A. CALL TO ORDER – Chairman

The regular meeting was called to order at 5:36 p.m. by Chairman Paul Kula noting a quorum was present.

B. ACTION ITEM

1. Consider approval of the minutes of Tree Preservation Board Meeting of August 3, 2022.

Chairman Kula motioned to approve the minutes as presented. Board member Nelson seconded the motion and was approved 4-0. Board member Castellanos was absent.

C. WORKSHOP ITEMS

2. Discuss the general roles and responsibilities of the Tree Preservation Board.

The Board discussed this item. No action was taken on this item.

3. Discuss the direction provided by Town Council regarding the use of the Tree Reforestation Fund.

The Board discussed this item. No action was taken on this item.

D. ADJOURNMENT

With no further business to attend, the meeting was adjourned at 6:07 PM.

APPROVED THIS THE 5th DAY OF APRIL 2023.

WITNESS:

Paul Kula, Chairman

Nabila Nur, Director of Community Development

PLANNING AND ZONING COMMISSION
STAFF REPORT

Meeting Date: April 5, 2023

To: Tree Preservation Board

From: Nabila Nur, AICP, Director of Community Development
Harrison Wicks, Principal Planner, Community Development

Subject: WORKSHOP ITEM: Amendments to Tree Preservation Regulations

Purpose:

Discuss an ordinance amendment (TDS-23-002) to Article V, Tree Preservation of the Town of Argyle Town Development Standards regarding tree protection measures within the right-of-way, specified timeline for preserved trees on a site, and counting existing trees for the required landscaping within the landscape buffer.

Background:

The Planning and Zoning Commission, while also acting as the Tree Preservation Board, recently brought up the issue of trees within the right-of-way being exempted from the tree protection requirements. Town Council also supported further analysis on this matter and instructed staff to investigate it. Staff reviewed regulations from several other cities and towns on this matter. Many surrounding cities and towns such as Roanoke and Flower Mound allow similar exemptions for trees within the right-of-way. However, Southlake has provisions that account for tree protection measures within the right-of-way, but replacement requirements do not apply within the right-of-way. Staff finds Southlake's approach feasible for Argyle as well. A tree protection plan can be required with a right-of-way permit application, where the contractor will be required to identify the trees that would be preserved and the ones that are subject to removal. The trees identified to be preserved shall be required to incorporate tree protection measures during the construction activities.

Additionally, Staff has received some queries recently regarding the timeline for the preserved trees on a site. The regulations specify that a replacement tree must survive at least three years from the time of planting, otherwise it would need to be replanted. However, no such reference is provided for preserved trees. Generally, staff interprets that the preserved trees must survive the development activities through protective measures, and the developer must mitigate if a preserved tree dies within three years from the time the development is accepted by the Town. After that three-year period, the mitigation requirements do not apply anymore if the preserved tree does not survive. Staff believes it would be beneficial to identify that on the ordinance for clear enforcement purposes. There is a provision under Section 14.5.10.B Developer's Agreements that specifies a three-year maintenance bond for this purpose,

however, the provision implies that it may only apply when a developer's agreement is in place, when all developments may not have such agreements. Staff attempts to clarify that provision to allow an all-encompassing enforcement as well.

Staff has also seen an increased pattern in recent landscape plans requesting variances to utilize existing trees within the landscape buffer as the required trees, which is currently not allowed. Staff sees some practical advantage of allowing existing "protected" trees within the landscape buffer to be utilized as the required buffer trees of the same category, as it promotes the preservation value and serves the same purpose for the buffer. This approach is consistent with other municipalities as well. The credit should be provided at a 1 to 1 ratio on the number of trees. Shrubs cannot be counted toward the required shrubs requirement for this purpose.

Staff has included these revisions to the tree preservation regulations for Tree Preservation Board's consideration. This item has also been scheduled P&Z's consideration as a public hearing item.

Attachments:

Exhibit A – Revised Tree Preservation Regulations (with track changes)
Exhibit B – Comparison with other communities

Article V.
TREE PRESERVATION

Sec. 14.5.1. Purpose and Intent.

The purpose of this article is to encourage the preservation of mature trees and natural areas, to preserve protected trees during construction, and to provide for the removal of protected trees when necessary. It is the intention of the Town of Argyle to:

1. Prohibit the indiscriminate clearing of property;
2. Protect and increase the value of residential and commercial properties within the town;
3. Maintain and enhance a positive image for the attraction of new businesses and residents to the town;
4. Protect healthy mature trees and promote the natural ecological, environmental and aesthetic qualities of the town;
5. Preserve the rural forested character of the town;
6. That trees be protected as part of the subdivision and the platting process; and
7. Maintain 35 percent tree canopy cover in the town.

(Ord. No. 2022-04 , § 2, 3-21-22)

Sec. 14.5.2. Extraterritorial Jurisdiction.

This article shall apply in all areas within the jurisdiction of the Town, including the exterritorial jurisdiction. (ETJ).

(Ord. No. 2022-04 , § 3, 3-21-22)

Sec. 14.5.3. Tree Preservation Board.

The Planning and Zoning Commission is hereby designated as the Tree Preservation Board.

(Ord. No. 2022-04 , § 4, 3-21-22)

Sec. 14.5.4. Applicability.

A. *Properties Requiring a Tree Removal Permit.* All public or private properties, including rights-of-way, public easements, franchises, public or private utility easements, and oil and gas pipeline easements shall be subject to a tree removal permit, except as provided in this section.

B. *Protected Trees.*

1. A protected tree is a tree that has a trunk caliper of six inches or more, as measured at four and one-half feet above natural grade level, and is one of the species listed in Section 14.5.50.

2. A person must not, directly or indirectly, cut down, destroy, move or remove, 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.

C. *Specimen Trees.*

1. A specimen tree is any tree listed on the town's protected tree list that has a minimum trunk caliper of 13 inches and up to 19 inches in diameter as measured at four and one-half feet above natural grade level. On a going-forward basis (as land is platted), a listing and map of all designated specimen trees shall be maintained and updated by the Town Administrator or his designee and made available to the public upon request. In addition to the provisions of this subsection, a specimen tree shall be any other tree that has been designated by the Town Council, upon recommendation by the Tree Preservation Board, after public hearing and due notice to the owner of the tree, to be of high value because of its type, size, age or other relevant criteria.

2. A person must not, directly or indirectly, cut down, destroy, move or remove, or effectively destroy through damaging, any specimen tree situated on property regulated by this article without first obtaining a tree removal permit unless otherwise specified in this article.

D. *Majestic Trees.*

1. A majestic tree is any tree listed on the town's protected tree list that has a minimum trunk caliper of 20 inches in diameter and above as measured at four and one-half feet above natural grade level. A listing and map of all designated majestic trees shall be maintained and updated by the Town Administrator or his designee and made available to the public upon request. In addition to the provisions of this subsection, a specimen tree shall be any other tree that has been designated by the Town Council, upon recommendation by the Tree Preservation Board, after public hearing and due notice to the owner of the tree, to be of high value because of its type, size, age or other relevant criteria.

2. A person must not, directly or indirectly, cut down, destroy, move or remove, or effectively destroy through damaging, any majestic tree situated on property regulated by this article without first obtaining a tree removal permit unless otherwise specified in this article.

E. *Exceptions.*

1. *Residential Properties.* A residence, regardless of zoning, used as an existing owner-occupied homestead shall be exempt from the tree protection and replacement requirements of this article as it pertains to that property, including contiguous parcels owned by the same property owner. This exemption does not apply to undeveloped property, or to properties zoned for commercial uses or designated for commercial uses on the land use plan.

2. *Identified on an Approved Landscape Plan.* A tree removal permit shall not be required for the removal of a protected tree if the protected tree to be removed is shown and noted as such on an approved tree protection plan as approved by Town Council.

3. *Public Safety.* A tree removal permit shall not be required if a tree endangers the public health, welfare or safety, and immediate removal is required as determined in writing by the Town Administrator or designee.

4. *Utility Service Disruption.* A tree removal permit shall not be required if a tree has disrupted a public utility service due to a tornado, storm, flood or other acts of God. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.

5. *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 of the licensee which are so planted and growing for the

sale or intended sale to the general public in the ordinary course of the licensee's business. This may also apply to a nursery established and so designated by a developer of a large project within the town, where trees are intended for landscaping future phases of such larger project.

6. *Dead or Diseased Trees.* If a certified arborist provides a tree survey and report to the Town showing that the trees proposed to be removed are already dead, dying, or fatally diseased and such report is provided to and approved by the Town prior to such removal, mitigation shall not be required. The Town Administrator, or designee, can request any other information they deem necessary to prove the trees are dead, dying, or fatally diseased.

7. *Right-of-way.* ~~A tree located in the public right-of-way shall be exempt from the tree preservation and replacement requirements of this article.~~ Any protected trees within public right-of-way or utility easements that the Town Administrator or designee determines do not have to be altered shall be subject to the tree protection requirements but not to the tree replacement requirements.

8. The terms and provisions of this article shall not apply to any property for which a recorded plat has been approved by the town and filed in the plat records of the county prior to June 27, 2017.

9. A tree removal permit shall not be required for a property owner establishing, or reestablishing, a fence within ten feet of their property line.

(Ord. No. 2020-06 , § 2, 3-24-20; Ord. No. 2020-18 , § 7, 8-17-20; Ord. No. 2022-04 , § 2—5, 3-21-22)

Sec. 14.5.5. Tree Replacement Requirements.

A. *Replacement Trees.* In the event that a tree removal permit is granted, the applicant shall replace the protected trees being removed with trees listed in Section 14.5.50 the Town's Approved Plant List:

1. *Protected Trees.* Replace with tree(s) having a total caliper width equivalent to that of the trees to be removed. Replacement trees shall be a minimum of four-inch caliper measured four and one-half feet DBH from the ground, and ten feet in height when planted.

2. *Specimen Trees.* Replace with tree(s) having a total caliper width equivalent to that of the trees to be removed. Replacement trees shall be a minimum of six-inch caliper measured four and one-half feet DBH from the ground, and ten feet in height when planted.

3. *Majestic Trees.* Replace with tree(s) having a total caliper width equivalent to that of the trees to be removed. Replacement trees shall be a minimum of ten-inch caliper measured four and one-half feet DBH from the ground, and ten feet in height when planted.

4. *Multi-trunk Trees.* Replace with tree(s) having a total caliper width equivalent to that of adding the total caliper of the largest trunk to one-quarter the caliper of each additional trunk. Replacement trees shall be a minimum of four-inch caliper measured four and one-half feet DBH from the ground, and ten feet in height when planted.

   Example: If a ten-inch protected tree is removed, then that tree must be replaced by trees with a total caliper width of ten inches. This total caliper width could be satisfied by one ten-inch caliper replacement tree, or any other combination allowed providing a total caliper width of ten inches. Each replacement tree shall meet the minimum caliper inch at time of planting based on the tree type of protected, specimen, or majestic as stated in Section 14.5.5.A of this article.

B. *Replacement Procedures.* Replacement trees shall be located on the subject site whenever possible. However, if this is not feasible, the Town Administrator or designee has the authority to allow the plantings to take place on another property, including land owned by the Town, such as parkland.

C. *Time of Replacement.* Replacement trees shall be planted within 365 days of the date of the tree removal permit.

D. ~~*Longevity and Duration.* A replacement tree that dies or becomes diseased within three years after planting shall be replaced.~~

E. *Reforestation Fund.* If approved by the Town Administrator or designee, based on a determination that the Town's policy on tree preservation might be better accomplished through a fee payment rather than the actual planting of trees, the applicant may make a payment into the reforestation fund, which shall be a special account administered by the Town, in lieu of compliance with this division. The funds shall be used for purchasing, planting, transplanting, and maintaining trees for a period of three years on public property, including public and/or capital improvement projects, street beautification projects, or for acquiring and preserving wooded property. The amount of payment required shall be calculated based on current market prices for the cost of acquiring the total caliper inches (based on Section 14.5.5.A of this article) of trees to be replaced, planting, and maintenance of trees for a period of one year. Other eligible uses of reforestation funds shall be to support programs for the public purpose of increasing the tree canopy within the Town of Argyle and/or educating citizens and developers on the preservation, care, and maintenance of trees. Proceeds from the reforestation fund shall not be used to meet any requirements for preservation, mitigation, landscaping, buffering, streetscaping, or similar requirements of a developer's private property unless approved by the Town Council. Voluntary contributions for tree planting shall be placed in the tree fund.

(Ord. No. 2020-06 , § 2, 3-24-20; Ord. No. 2020-18 , § 2, 8-17-20; Ord. No. 2022-04 , § 6, 3-21-22)

Sec. 14.5.6. Tree Protection.

The following procedures are required to protect all protected trees which have not been approved for removal.

A. *Tree Survey and Protection Plan Required.* A tree survey and protection plan shall be required with any development application or process, including but not limited to, site plans, plats, zoning changes, master development plan, oil and gas drilling permits, construction plans, and building permits, or as determined by the Town Administrator or designee.

1. In order to ensure that contractors adequately protect trees during development of the property and before construction, the following shall be required as a part of all plats, or prior to approval of all construction plans, if not previously submitted with the plat, and shall be submitted to the town unless determined otherwise by the Town Administrator or designee.

2. *Tree Survey and Protection Plan.* A tree protection plan shall include the following:

a. The graphic exhibits required for a tree removal application as specified in Subsection 14.5.9.A.2 of this section.

b. A graphics legend to be used throughout the plans for the purposes of showing the following: trees to be flagged, protective fencing, trees requiring bark protection, boring, and areas of cut and fill impacting protected trees.

c. Graphic tree exhibit showing the type of tree being removed and being preserved, and the features of those trees, including the critical root zone, trunk, canopy, drip line and caliper.

d. Graphic exhibits showing methods of protection to include fences, boarded skirts, etc.

e. Graphic exhibits showing construction methods to include grade changes, boring, trenching, etc. All requirements of the tree preservation ordinance shall be shown graphically on all applicable sheets within the construction plans.

f. Critical root zone is defined as trees to be represented on plans by a concentric circle centered on the trunk location, with a diameter equal in feet to twice the number of inches of the tree' s trunk diameter. For example, a tree with a 15-inch trunk diameter would be represented at plan scale by a 30-foot diameter circle.

B. *Landscape Plan.* The tree survey and protection plan must be accompanied by a landscape plan.

C. *Prior to Construction.* Unless otherwise approved in writing by the Town Administrator or designee, the following procedures shall be followed on all construction projects:

1. *Tree Flagging.* All protected trees on the subject property within 50 feet of a construction area or surface improvements such as driveways and walks, shall be flagged with bright fluorescent orange vinyl tape wrapped around the main trunk at a height of four feet or more, such that the tape is very visible to workers operating construction equipment.

2. *Open Space Flagging.* All trees or groups of trees within areas intended to be saved as open space shall be enclosed with fluorescent orange tape along all areas of possible access or intrusion by construction equipment. Tape shall be supported at a minimum of 25-foot intervals by wrapping trees or utilizing another approved method. Single incident access for the purposes of clearing underbrush is allowed.

3. *Protective Fencing.* All protected trees within 50 feet of a construction area that are not shown to be removed shall be protected by plastic (or equivalent) protective fencing around the critical root zone that must be at least four feet high for protected and specimen trees and six feet high chain link fencing for majestic trees. A "tree protection notice" sign shall be required to be placed on all chain link tree protection fencing.

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 two-inch by four-inch lumber encircled with wire or other means that do not damage the tree. This will protect the bark of the tree against incidental contact by large construction equipment.

D. *Prohibited Activities Adjacent to Tree.* 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 excavation or demolition, shall be placed within the limits of the critical root zone of any protected tree.

2. *Equipment Cleaning/Liquid Disposal.* No equipment shall be cleaned, or other materials or liquids deposited or allowed to flow over land within the limits of the critical root zone of a protected tree. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.

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 paved street or parking lot. This restriction does not apply to single incident access within the 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. *Grade Changes.* No grade changes in excess of two inches (cut or fill) shall be allowed within the limits of the critical root zone of any protected tree unless adequate construction methods are utilized which have been approved by the building official.

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 except as otherwise allowed in this article.

E. *Permanent Construction Methods.*

1. *Boring.* Boring of utilities under protected trees may be required in certain circumstances. When required, the length of the bore shall be at a minimum the width of the critical root zone, and shall be at a minimum depth of 48 inches.

2. *Grade Change.* Grade changes within the critical root zone of a protected tree should not exceed two inches. If more than 25 percent of the critical root zone is disturbed by trenching or a grade change greater than two inches, the applicant may be required to prune the root zone or tree canopy in accordance with industry standards, or take some other mitigative measure to help preserve the health of the tree.

3. *Trenching.* All trenching shall be designed to avoid crossing the critical root zone of any protected tree.

4. *Root Pruning.* It is recommended that all roots two inches or larger in diameter which are exposed as a result of trenching or other excavation, shall be cut off in accordance with industry standards and covered with pruning compound within two hours of initial exposure.

F. *Preserved Tree Criteria.* A protected tree shall be considered to be preserved only if a minimum of 75 percent of the critical root zone is maintained at undisturbed natural grade and no more than 25 percent of the canopy is removed due to building encroachment.

(Ord. No. 2020-06 , § 2, 3-24-20; Ord. No. 2020-18 , §§ 5, 6(Exh. B), 8-17-20)

Sec. 14.5.7. Tree Pruning.

A. *Generally.* No protected tree shall be pruned in a manner which significantly disfigures the tree or in a manner which would reasonably lead to the death of the tree, unless required for safety.

B. *Pruning Permit Requirements.* All utility companies shall maintain a set of pruning specifications which shall be available to the Town upon request and shall be followed by all pruning contractors working for the company within the Town.

C. *Allowed Pruning.*

1. *Pruning for Construction.* The Town Administrator or designee may approve pruning of a protected tree in cases where a protected tree must be pruned to remove branches broken during the course of construction, or where protected trees must be strategically pruned to allow construction of a structure. When allowed, all pruning shall be in accordance with approved arboricultural techniques.

2. *Normal Maintenance.* Normal pruning required promoting tree health and vitality is permitted provided, however, that such pruning does not remove greater than ten percent of the tree mass.

D. *Required Pruning.* The owners of any tree adjacent to a public right-of-way shall be required to maintain a minimum clearance of 14 feet above the traveled surface or curb of a public street or trail. The town shall also have the right to prune trees overhanging the public right-of-way as necessary to preserve the public safety.

E. *Clear-cutting or Tree-topping Prohibited.* The clear-cutting of trees or tree-topping of trees is prohibited.

(Ord. No. 2020-06 , § 2, 3-24-20; Ord. No. 2022-04 , § 7, 3-21-22)

Sec. 14.5.8. Tree Planting.

A. *Overhead Lines.* Replacement trees shall not be planted in a location where the mature canopy of the tree will interfere with overhead utility lines.

B. *Underground and Surface Utilities.* Replacement trees shall not be planted in a location where the mature root zone of the tree will interfere with underground public utility lines. No trees shall be planted within ten feet of a fire hydrant.

C. *Acceptable Trees.* The trees listed in Section 14.5.50 of this article are acceptable trees for replacement trees.

(Ord. No. 2022-04 , § 8, 3-21-22)

Sec. 14.5.9. Tree Removal Permit Review and Approval.

A. *Submittal Requirements.*

1. *Tree Removal Permit Required.* A request for a tree removal permit must be submitted and approved prior to the removal of any protected tree in the town unless the tree is exempt under a provision of this article.

2. *Tree Removal Application.* All requests for tree removal permits must be accompanied by a tree removal application and a graphic exhibit showing at least the following items:

   a. Appropriate title (i.e., tree removal permit exhibit);

   b. Title block includes street address, lot and block, subdivision name, city and date of preparation;

   c. North arrow, graphic and written scale in close proximity;

   d. Name, address and phone of owner and person preparing the exhibit;

   e. Location of all right-of-way lines and public easements within 50 feet of the trees proposed for removal;

   f. Location of all buildings, structures, pools, parking, and other improvements which are existing or intended on the lot easements within 50 feet of the tree proposed for removal;

   g. A grading plan including all areas of proposed cut/fill, and the drainage flow line, if applicable;

   h. Limits of construction line shown, if applicable;

   i Location of all protected trees and thicket boundaries within 50 feet of any construction area, with a description of the size and types of trees;

   j. The location of all protected tree(s) which are to be removed;

   k. Caliper (four and one-half feet from ground), Latin and common name of tree to be removed; size of tree to be removed; and

   l. Location of any required replacement trees shown with caliper size and common name of tree.

   m. These requirements may be modified by the Town Administrator or designee as needed to administer this article. An aerial photograph may be allowed if it clearly meets these requirements.

3. *Application for Two or Less Trees.* Notwithstanding Subsection (A)(2) of this section, a property owner desiring to remove up to two protected trees may submit a simplified application by submitting a letter stating the reason for removing the tree(s), and identifying the tree(s) to be removed on a plot plan or aerial photograph of the site, along with the caliper, species and a photograph of the tree to be removed.

B. *Authority for Review of Application.* Upon receipt of the permit application, the Town Administrator or designee, based on a recommendation of a landscape architect approved by the Town Administrator or designee, may take one of the following actions:

1. *Deferral of Decision.* The Town Administrator or designee may defer the approval of a tree removal permit to the Planning and Zoning Commission in their role as Tree Preservation Board for any reason. All decisions made by the Planning and Zoning Commission, in their role as Tree Preservation Board, shall be final.

2. *Approval.* The Town Administrator or designee shall issue a tree removal permit if it is determined that:

a. The tree removal permit is compliant with a tree preservation and landscape plan previously approved by town council; or

b. The tree constitutes a hazard to life or property which cannot be reasonably mitigated without removing the tree;

c. The tree is dying, dead, or diseased to the point that restoration is not practical; or

d. All reasonable efforts have been made to avoid removing the tree for the development and removal cannot be avoided.

3. *Refusal.* The Town Administrator or designee shall deny a tree removal permit if it is determined that:

a. Removal of the tree is not reasonably required in order to conduct anticipated activities; or

b. A reasonable accommodation can be made to preserve the tree.

C. *Appeal of Decision.* Any decision made by the Town Administrator or designee may be appealed to the Planning and Zoning Commission in their role as Tree Preservation Board. All decisions made by the Tree Preservation Board shall be final unless an appeal is filed to the Town Council within ten days. A super-majority vote by the Town Council shall be required to overturn a denial by the Tree Preservation Board.

D. *Permit Expiration.* Tree removal 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. A permit for tree removal not issued in connection with a building permit or a site plan shall become void 180 days after the issue date on the permit.

(Ord. No. 2020-06 , § 2, 3-24-20; Ord. No. 2020-18 , § 8, 8-17-20; Ord. No. 2022-04 , § 15, 3-21-22)

Sec. 14.5.10. Enforcement.

A. *Offense.* It shall be an offense punishable by a fine of up to $2,000.00 for any tree removed in violation of this article. Each tree removed shall count as a separate offense. Each day the property continues in violation shall count as a separate offense.

B. ~~*Developer's Agreement.* All developer' s agreements shall state that a~~All construction activities shall meet the requirements of the tree preservation ordinance (this article). The developer, at its sole expense, shall furnish or cause to be furnished, all labor, materials, equipment, accessories, and services necessary to maintain all plant materials when and as they become damaged or die. ~~In addition, a three-year maintenance bond shall be provided for all replacement and existing trees as provided for in this article.~~ Within three

years following the issuance of a final acceptance of the development ~~tree removal permit~~, the property for ~~which such permit was issued will~~ may be inspected by the Town. If the inspection reveals that any replacement or existing trees have died or are not expected to survive, then the applicant shall replace such dead or dying trees within 90 days following notice. In the event the applicant fails to replace the dead or dying trees, then the penalties provided herein may be sought by the Town.

C. *Construction Permits.* Prior to issuance of a permit to do site work, including a grading permit, a tree survey and tree protection plan for the development shall be approved. These plans may be combined on one or more drawings.

D. *Building Permit.* No building permit shall be issued unless the applicant signs an application or permit request, or a statement, that binds the applicant to ensuring that all construction activities shall meet the requirements of this article. The Town staff may make a copy of this article and other relevant town policies available to the applicant, upon request. Reasonable charges for copies may apply.

E. *Acceptance of Improvements.* No acceptance of public improvements shall be authorized until all fines for violations of this article have been paid to the town or otherwise disposed of through the municipal court.

F. *Certificate of Occupancy.* No certificate of occupancy shall be issued until all fines for violations of this article have been paid to the town or otherwise disposed of through the municipal court.

G. *Approved Site Plan.* A property with an approved site plan shall be subject to this article and tree mitigation requirements.

(Ord. No. 2020-18 , § 4, 8-17-20; Ord. No. 2022-04 , § 9, 3-21-22)

Sec. 14.5.11. General Provisions.

A. *Existing Trees.* Existing trees shall be preserved and protected pursuant to the provisions of this article.

B. *Consistency with Other Plan.* Landscaping shall be consistent with the Town Development Standards.

C. *Sight Distance Easements at Street and Driveway Intersections.* Landscaping must meet the requirements for sight distance easements as established in the Thoroughfare Plan and the Town Development Standards.

D. *Provision of Open Space and Landscaping.* Open space and landscaping shall be provided in a manner consistent with the following:

1. Current policies relating to key elements of open space which are embodied in the Comprehensive Plan.
2. Open space elements that are located primarily along the floodplain, drainage areas, existing ponds, unique land forms, scenic vistas, land with slopes in excess of 25 percent, and natural tree thickets.
3. All existing trees and ponds within open space zones shall be protected and preserved where possible. Ponds may be altered or relocated if approved as part of the landscape plan.

E. *Landscape Plan.* A landscape plan shall be prepared in accordance with this article.

Sec. 14.5.12. Incentives.

A. Any tree mitigation incentives will be reviewed on a case-by-case basis. The Tree Preservation Board will review the incentives and make a recommendation to the Town Council. The Town Council makes the final decision on tree mitigation incentives.

~~A.~~B. Existing protected trees that are preserved within required landscape bufferyard area may be counted for credit toward the requirements of bufferyard trees per Section 14.3.67.I. at a ratio of 1 to 1 (number of trees). Shrubs cannot be counted toward the required shrubs requirement for this purpose.

(Ord. No. 2022-04 , § 10, 3-21-22)

Sec. 14.5.13. Registration of heritage trees.

A. *Heritage Tree Defined.* A heritage tree is a healthy tree designated by a certified arborist that is listed on the protected tree list that is unique and important to the Town because of its species, age, size, and location.

B. *Registration.* To register a heritage tree on public or private property with the Town, the owner of a heritage tree shall complete the registration form prepared by the Town and submit it to the Town Administrator for approval. The Town Administrator shall approve the registration if it is determined that the tree complies with the definition of heritage tree in this section.

C. *Appeal.* Any decision made by the Town Administrator may be appealed to the Tree Preservation Board. All decisions made by the Tree Preservation Board shall be final unless an appeal is filed to the Town Council with ten days.

D. *Heritage Tree Credit.* A replacement credit of 3.0 times the diameter-at-breast-height (dbh) of said tree preserved may be counted toward meeting the tree mitigation and replacement required for the removal of protected trees on the same property.

E. A listing and map of all designated heritage trees shall be maintained and updated by the Town Administrator or his designee and made available to the public upon request.

(Ord. No. 2022-04 , § 11, 3-21-22)

Sec. 14.5.14. Definitions.

The following definitions apply to this article:

Heritage tree is a designated tree that is listed on the protected tree list that is unique and important to the Town because of its species, age, size, and location.

Majestic tree is a tree listed on the protected tree list that has a minimum trunk caliper of 20 inches in diameter and above as measured at four and one-half feet above natural grade level.

Protected tree is a tree listed on the protected tree list that has a trunk caliper of six inches or more as measured at four and one-half feet above the natural grade.

Specimen tree is a tree listed on the protected tree list that has a minimum trunk caliper of 13 inches and up to 19 inches in diameter as measured at four and one-half fee above natural grade level.

Any definitions not expressly defined in this section or enumerated in Article V Tree Preservation shall be found in the Texas A&M Forest Service Tree Dictionary.

(Ord. No. 2022-04 , § 12, 3-21-22)

Sec. 14.5.15. Tree removal permit on property used for agricultural purposes.

No fee shall be charged to make application for a tree removal permit for the removal of protected trees located on property having an agricultural use. However, if within any 12-month period, tree removal permits for the removal of 20 or more protected trees are issued for the same agricultural property or tract, or any of its

portions, and the land ceases to be used for agricultural purposes at any time within five years after the permit is obtained to remove the trees, the owner of the land must comply with tree replacement and mitigation requirements as provided in this ordinance. The requirement to replace trees shall be binding upon the person subject to such permit even if such person sells, assigns, or transfers the property. If the Town Administrator grants the application for a tree removal permit, the permit shall be executed by the applicant and shall provide that in the event of a sale, assignment or transfer of the subject property, the owner may either obtain the consent of the person to whom the property was sold, assigned or transferred to permit the replacement on such property, or may make payment to the reforestation fund as provided in this ordinance.

(Ord. No. 2022-04 , § 13, 3-21-22)

Secs. 14.5.16—14.5.48. Reserved.

Sec. 14.5.49. Longevity and Duration.

A. ~~*Longevity and Duration.*~~ A replacement tree that dies or becomes diseased within three years after planting shall be replaced.

B. A preserved tree that dies or becomes diseased within three years of the acceptance of the development shall be replaced or mitigated in accordance with the provisions of this Article.

Sec. 14.5.50~~49~~. Protected Tree List.

Large Trees	**Large Trees**	**Small Trees**
Pecan	Bur Oak	Aristocrat Pear
Chinese Pistache	Texas Persimmon	Crape Myrtle
Chinquapin Oak	Western Soapberry	*Vasey Oak*
Live Oak	American Elm	*Mexican Plum*
Red Oak	Slippery Elm	*Yaupon Holly*
Shumard Oak	Winged Elm	Golden Raintree
Lacey Oak		*Southern Wax Myrtle*
Cedar Elm		*Redbud*
Texas Ash		Japanese Black Pine
White Ash		*Rusty "Blackhaw" Viburnum*
Bald Cypress		*Shining Sumac*
Laurel Oak		*Possumhaw Holly*
Post Oak		
Sycamore		

*Additional trees may be approved as appropriate by the Tree Preservation Board.

(Ord. No. 2022-04 , §§ 14, 15, 3-21-22)

Sec. 14.5.51~~0~~. Approved Plant List.

Large Trees (within parking areas or as street trees)	**Large Trees (non-vehicular areas)**	**Small Trees**
Bald Cypress	*Bur Oak*	Carolina Buckthorn
Cedar Elm	Bigalow Oak	*Crape Myrtle*

Chinese Pistache
Chinquapin Oak
Lacey Oak
Laurel Oak
Live Oak
Mexican White Oak (Monterrey Oak)
Montezuma Cypress
Pecan
Pond Cypress
Post Oak
Red Oak
Shumard Oak
Sycamore
Caddo Maple
Durrand Oak
Lacebark Elm
Mexican Sycamore
Texas Persimmon
Texas Walnut
Western Soapberry
Eve's Necklace
Golden Raintree
Japanese Black Pine
Mexican Buckeye
Mexican Plum
Possumhaw Holly
Redbud
Rusty "Blackhaw" Viburnum
Shining Sumac
Southern Wax Myrtle
Vasey Oak
Yaupon Holly

Evergreen Shrubs (Acceptable for low (5' or less) screening)
Dwarf Abelia
Dwarf Yaupon Holly
Dwarf Burford Holly
Japanese Boxwood
Eleagnus
"Berries Jubilee" Holly
Carissa Holly
"Dazzler" Holly
Nandina

Evergreen Shrubs (Acceptable as noted for 6' screening)
Red Tip Photinia
Cleyera
Nellie R. Stevens Holly
Waxleaf Ligustrum
Chinese Photinia
Abelia
Burford Holly
"Mary Nell" Holly

Other Shrubs

Possumhaw Holly
Chinese Holly
Juniper
Sumac
Fragrant Mimosa
American Beauty Berry
Barberry
Autumn Sage
Evergreen Sumac

Ground Cover
Asian Jasmine
Honeysuckle
English Ivy
Liriope
Monkey Grass
Vinca (Periwinkle)
Trailing Juniper
Hardy Plumbago

Notes: Plants in italics are preferred due to their lower water as designated in "Landscape Water Conservation Xeriscape" published by the Texas Agricultural Extension Service. (See http://aggie-horticulture.tamu.edu/extension/xeriscape/xeriscape.html)

Additional plant material may be approved as appropriate by the Tree Preservation Board.

(Ord. No. 2017-15, 6-27-17; Ord. No. 2020-18 , § 3(Exh. A), 8-17-20; Ord. No. 2022-04 , § 15, 3-21-22)

EXHIBIT B

Argyle	Do the standards address both replacement trees and preserved trees with a particular timeline in the event they die or become diseased?	How long is the period to require replacement of dead/dying trees?	AFTER the required period, if an existing, or preserved tree dies, does it need to be replaced?	Can preserved trees be credited towards the minimum landscape requirements?	Exception for ROW
Section 14.5.10 Enforcement - *Developer's Agreement*. All developer' s agreements shall state that all construction activities shall meet the requirements of the tree preservation ordinance (this article). The developer, at its sole expense, shall furnish or cause to be furnished, all labor, materials, equipment, accessories, and services necessary to maintain all plant materials when and as they become damaged or die. In addition, a three-year maintenance bond shall be provided for all replacement and existing trees as provided for in this article. Within three years following the issuance of a tree removal permit, the property for which such permit was issued will be inspected by the Town. If the inspection reveals that any replacement or existing trees have died or are not expected to survive, then the applicant shall replace such dead or dying trees within 90 days following notice. In the event the applicant fails to replace the dead or dying trees, then the penalties provided herein may be sought by the Town. **Sec. 14.5.5 Tree Replacement Requirements** - Longevity and Duration. A replacement tree that dies or becomes diseased within three years after planting shall be replaced.	Yes/No, the standards say three years for replacement trees, existing trees are mentioned within Developer Agreement section, creating confusion.	3 years	No	No, except for trees designated as a heritage tree, then a replacement credit of 3.0 times the dbh of said tree preserved may be counted toward meeting the tree mitigation and replacement required for the removal of protected trees on the same property.	Yes, Article V, Sec 14.5.4.E.7, Right-of-way. A tree located in the public right-of-way shall be exempt from the tree preservation and replacement requirements of this article.

Northlake	Do the standards address both replacement trees and preserved trees with a particular timeline in the event they die or become diseased?	How long is the period to require replacement of dead/dying trees?	AFTER the required period, if an existing, or preserved tree dies, does it need to be replaced?	Can preserved trees be credited towards the minimum landscape requirements?	Exception for ROW
Article 9.10 Landscaping and tree protection - Replacement. 1. Any landscape element that dies, or is otherwise removed, shall be replaced within 3 months.	No, only landscape elements are specified for replacement, not preserved trees	Unclear, since the section appears to only address landscape plant materials, they are required on the site at all times	Not specified	Yes, per Article 9.10 - Native shade trees (Table 9.3) greater than 6" dbh that are preserved shall be credited towards the minimum landscape requirements at a ratio of 2 to 1.	No exception for ROW

Denton	Do the standards address both replacement trees and preserved trees with a particular timeline in the event they die or become diseased?	How long is the period to require replacement of dead/dying trees?	AFTER the required period, if an existing, or preserved tree dies, does it need to be replaced?	Can preserved trees be credited towards the minimum landscape requirements?	Exception for ROW
Per 7.7.4.H.10 - If any preserved and/or replacement tree(s) dies within three years of initial planting or issuance of certificate of occupancy, the current property owner shall be subject to the same replacement requirements per these requirements, unless otherwise exempt or deemed a non-protected tree.	Yes	3 years	No	Yes, per 7.7.5.A.3 - All replacement trees included as part of the approved tree preservation/replacement plan shall be credited against the trees planted, as required by this section. (Landscape and Tree Canopy Requirements)	No exception for ROW

Flower Mound	Do the standards address both replacement trees and preserved trees with a particular timeline in the event they die or become diseased?	How long is the period to require replacement of dead/dying trees?	AFTER the required period, if an existing, or preserved tree dies, does it need to be replaced?	Can preserved trees be credited towards the minimum landscape requirements?	Exception for ROW
Sec 82-245, Any plant material not surviving shall be replaced within 30 days of its demise. Variances because of seasonal requirements can be granted by the town manager or designated representative	Unclear, the section appears to only address landscape trees	Unclear, since the section appears to only address landscape plant materials, they are required on the site at all times	Not specified	Yes, per Sec. 94-40, Existing trees that are preserved within required street yard landscaping areas shall be counted for credit toward the requirements of section 82-241 of this Code, street yard landscaping, provided that they are located within the street yard and/or parking area. Sec 94-67 limits credit for existing trees to either landscaping or mitigation	Yes, per Sec 94-81, All easements and rights-of-way included on a record plat approved by the town and filed in the plat records of the county.

Roanoke	Do the standards address both replacement trees and preserved trees with a particular timeline in the event they die or become diseased?	How long is the period to require replacement of dead/dying trees?	AFTER the required period, if an existing, or preserved tree dies, does it need to be replaced?	Can preserved trees be credited towards the minimum landscape requirements?	Exception for ROW
Sec 11, G, Replacement trees shall be required under the following conditions: b. to replace a tree that was identified on a tree preservation and replacement plan but dies within two (2) years of the date it was planted.	Yes	2 years	No	Yes, per Sec 11, H, trees identified on a tree preservation plan or trees identified to be replaced shall be eligible to meet the requirements and credits of the Zoning Regulations for areas of the site not within a Landscape Buffer. The minimum landscape requirements of a Landscape Buffer shall be met in addition to this Section, when applicable	Yes, per Ch. 9 Sec. 11. All easements and rights-of-way included on a final plat approved by the City and filed in the plat records of Denton County, Texas.

Southlake	Do the standards address both replacement trees and preserved trees with a particular timeline in the event they die or become diseased?	How long is the period to require replacement of dead/dying trees?	AFTER the required period, if an existing, or preserved tree dies, does it need to be replaced?	Can preserved trees be credited towards the minimum landscape requirements?	Exception for ROW
Per Sec. 9.5.379, Longevity and duration: If a replacement tree dies within three years from the date it was planted, the person subject to the requirement to plant the replacement tree must replace the dead tree with another replacement tree within 90 days of the order of the administrative official ordering such replanting. This requirement to replace trees shall be binding upon the person subject to such order even if such person sells, assigns, or transfers the property. In the event of such a sale, assignment or transfer of property, the person subject to such order may either obtain the consent of the person to whom the property was sold, assigned or transferred to permit the replacement on such property, or may make payment to the reforestation fund as provided in this article.	No, it only addresses replacement trees	3 years	No	Yes, per Landscape Ord 544-B, Existing Tree Credit Calculation: Existing trees which are saved in landscape areas and have at least 75% of the 'Critical Root Zone' within that area shall be granted credits toward reducing the required plantings	Yes/No, not listed as an exception, howver, per Sec 9.5.378, Any protected trees within public R.O.W. or utility easements that the administrative official determines do not have to be altered shall be subject to the tree protection requirements but not to the tree replacement requirements.