Andrew,

Please, post this email and the 3 attachments in the PC backup for the 10.29.19 meeting, under the LDC Revision.

Thanks,
Michael Fossum

Commissioners,

This email proposes specific alternatives. Please, help the heritage trees in Austin. Please, watch this video because these are the size of heritage trees that will be removed administratively with the LDC Revision:

https://www.youtube.com/watch?v=XGDS5Ei5Csk&list=PLpA7Mkeve_L_toeMEa01Ruhbw0LTKna95&index=16&t=9s

Please, delete the changes made to the Heritage Tree Ordinance (HTO) with the LDC Revision because they will nullify the HTO and allow the removal of the oldest and largest healthy heritage trees. Council did NOT give staff direction to change the HTO in their May 2, 2019 memo that was the direction for the LDC Revision.

The proposed changes will severely weaken the HTO and the protection it provides for heritage trees, causing irreparable harm to the city and the residents. The changes will also violate the Climate Change Emergency policy directing the City Manager to “incorporate climate resilience policies during implementation and planned updates of the Austin Community Climate Plan, and to other City plans with climate impacts (to ensure climate change and resiliency efforts are strong, effective, and aligned), including......the Flood Mitigation Plan,......the Land Development Code.” See attached excerpts from the Resolution declaring a “Climate Change Emergency.”

1. **Delete 23-4C-3020 Administrative Modification to remove or impact a heritage tree that has at least one stem that is 30 inches DBH or larger for properties that front a corridor.**

   Instead, add height entitlements (additional height) if heritage trees with a single stem 30 inches or larger in properties facing corridors are preserved on site or transplanted, and keep the current public process for heritage trees in that range.

   Rationale: The LDC Revision will delete the existing public process for heritage trees with one stem 30” or larger along corridors, and will change it into an administrative variance process. This will allow the removal of the oldest and largest healthy heritage trees along corridors with an administrative process that lacks transparency. Heritage trees in this size range are irreplaceable and are at least 150 years old. Some are 700 years old or older.
Since 2010, developers have been making the extra effort of incorporating the heritage tree into the design of the site or transplanting the heritage tree because they want to avoid delays and the transparency of the public process. **Without a public process, these heritage trees will be removed with administrative variances because of the lack of a transparent process that enables pressuring staff for those administrative variances.**

Heritage trees do not reduce housing capacity, even for high density developments. Typically, the heritage trees get incorporated into the design and become the centerpiece of the entrance to the site, an impressive heritage tree that is an asset and attracts people. If transplanted, they get transplanted to a better location in the site or nearby.

If there is case where preserving a heritage tree reduces housing capacity, then additional height could be given as an entitlement instead of removing the heritage trees. In fact, the first HTO case, the building at Bowie St, demonstrated with calculations made by the developers’ architects that the small space that the tree required to be preserved at its original location (1/3 into the site), could be compensated by adding only 1 story to the building. The developer decided to transplant the heritage tree to the back of the garage near the creek, where there’s a trail so that the community can enjoy it. This case showed that even when the heritage tree is in the middle of the development, adding only 1 story can compensate for the space and units lost to preserve a small area for the heritage tree.

The Staff Report dated 10.04.19 states that the administrative variance for these larger heritage trees will be **limited to projects with at least 75 percent residential square footage and at least 10% affordable housing (defined as 80 MFI for own, 60% MFI for rental).** Heritage trees facing corridors should not be removed administratively for 10% affordable housing at 80% MFI because currently all developments offer 10% at 80% MFI and still have to abide by the public process for heritage tree variances. In addition, affordable housing in the LCD Revision does not provide true or sufficient affordable housing because:

- An applicant may pay a fee in lieu of providing on-site affordable units in compliance with Subsection 23-4E-1050(C) (Housing Fee-In-Lieu) and Section 23-4E-1060 (Non-Residential and Mixed Use Bonus Fee). This fee is small and insignificant compared to the environmental and health benefits the preserved heritage tree will provide over its remaining life of hundreds of years.
- Land dedication may be proposed as an alternative to on-site production of affordable units. Almost never occurs and is also insignificant compared to the environmental and health benefits.
- Affordable ownership units are defined at 80% MFI or less, and rental units are at 60% MFI or less, but downtown (density bonus) ownership units are at 120% MFI or less, and rental units are at 80% MFI or less.

The current HTO is a tree preservation ordinance that is flexible and fair, and does not stop development. After adoption of the HTO in 2010, residential building permits (single and multifamily) increased from 8,786 in 2010 to 19,219 in 2012. See attached chart.

Currently, developers are required to preserve the healthy heritage trees in that range by making minor site or building modifications to incorporate them into the design, preserve them on site by applying to other variances that would allow retaining the heritage trees, or transplant them if not possible to incorporate them. Under the current HTO, a heritage tree can be removed if:

- the tree is not healthy,
- an imminent safety hazard,
- prevents access to property,
- prevents a use of property,
- cannot be transplanted,
- cannot be incorporated in the site,
- no other variances can be applied for to preserve the tree,
• tree cannot be transplanted.

These conditions are similar to those proposed in the LDC Revision with the exception that currently there is a public process for that range with a review by the Environmental Commission and approval/denial by the Planning Commission, while the LDC revision proposes an administrative process for the heritage trees in that range facing corridors. Many of the best and largest heritage trees face corridors.

What is an administrative variance? That is a variance approved by staff that the public never knows occurred until the community realizes that the heritage tree was removed. Tree permits for residential units are posted online but they can only be reviewed after the heritage tree is removed, to check if an administrative variance was approved. Similarly, the administrative variance for commercial developments is granted without any permit, only with a note in the site plan that the heritage tree will be removed. But since site plans are not readily available for review, the public only knows that there was an administrative variance after the heritage tree is removed. Furthermore, if by any chance a citizen knew that an administrative variance was going to be awarded, the citizen cannot advocate for the tree since it’s a staff decision.

The commissioners have seen several cases where the developer did not want to abide by the heritage tree ordinance so they had to appear in front of the Environmental and Planning commissions since staff could not grant an administrative variance. The last land use commission variance application, the McHone case at 2111 Rio Grande April 2019 is a perfect example. The developer had not met any of the requirements to remove the heritage tree and did not work with staff at all to preserve the tree, but instead pressured staff for an administrative variance which could not be given since a public process was required.

The City of Austin recognized the importance of preserving these larger heritage trees in 2010 when Mayor Leffingwell issued the current Heritage Tree Ordinance as a compromise after many meetings with the community including tree advocates and developers. Tree advocates wanted to preserve all heritage trees and have a public process for all. Developers did not want to preserve but mitigate (fee in lieu) heritage trees and have administrative process for all. The compromise was that the heritage trees in the range of 24 to 29.95 inches in diameter at DBH (4 ft. above grade) would have an administrative process, while the larger ones with a single stem of 30 inches or larger in diameter at DBH would have a public process. The current HTO process has been working fine and in a fair manner since 2010.

Healthy heritage trees help with many goals of the City of Austin Climate Change Emergency because they are powerful tools for fighting climate change. Heritage trees that are preserved are green infrastructure, and mitigate global warming through carbon storage and carbon sequestration, reduce carbon emissions, ozone and air pollution, provide shade and reduce the heat island effect, clean the air, reduce energy consumption, provide wildlife habitat, etc. Heritage trees provide mental and physical health benefits, and increase property values and retail sales. Please, see attached list of benefits provided by heritage trees with quantifications for various Texas cities compiled in 2011.

Heritage trees are the workhorses of the urban forest and provide at least 10 times more ecological benefits per year than young trees. The benefits lost because of heritage tree removal cannot be replaced by planting small trees. Many years will pass before small trees will provide the benefits that heritage trees provide. Planting new trees is good, but preserving existing healthy heritage trees is critical.

2. Delete in 23-4C-3040 Land Use Commission Variance item (3) The location of the tree impacts access requirements or public safety.

And add “tree prevents reasonable access to property” to 23-4C-2040 Protected Trees.

Rationale: The language “the location of the tree impacts access requirements or public safety” is vague and prone to abuse. With the LDC Revision, the remaining heritage trees with one stem 30” or larger not facing corridors,
which are required to go to a public process, will also be removed if the location of the tree impacts access requirements or public safety. The current HTO code does not have this text.

In the current HTO, access and safety are addressed with “tree prevents reasonable access to property” and “tree is an imminent hazard”. These statements are much more descriptive and specific to extreme cases that warrant attention, than the proposed “tree impacts access or public safety.”

Impact will be on the eye of the beholder. Impact could be anywhere from a minor to a major impact. What is an impact to access? What is an impact to public safety?

In addition, the proposed statement “the location of the tree impacts public safety” is redundant because in the current HTO as well as the LDC revision, the heritage trees must also meet the protected tree requirements, and that includes the following requirement “tree poses an extreme risk to life or property.” That statement addresses tree impact to public safety already.

3. Replace in 23-4C-2040 Protected Trees item “(1) The tree poses an extreme risk to life or property”, with “(1) Tree is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree.”

Rationale: Instead of imminent hazard, with the LDC Revision heritage trees will be removed if they are rated an Extreme Risk. This is bad because the assessment of the tree being an extreme risk is very subjective, in spite of Tree Risk Assessment certifications for arborists. Extreme Risk is defined as a tree that has started to fail or is very likely to fail in the near future and poses severe consequences to people or property. This rating is obtained with the International Society of Arboriculture Tree Risk Assessment form that is subjective.

Often, certified arborists hired by developers rate these heritage trees as extreme risk while independent arborists say that the same trees are fine. Then staff says that they can’t oppose the developer’s arborist report even if their own assessment disagrees with the alleged extreme risk rating. To make matters worse, a false report can be challenged in a public process, not in an administrative one. The recent 2111 Rio Grande case is also a perfect example of a false Extreme Risk rating. The developer’s own report showed that the real risk was in a range from Moderate to Extreme, but the report only stated an Extreme risk.

Best regards,
Michael E. Fossum, MBA
Executive Director
Austin Heritage Tree Foundation

BACKUP MATERIAL

ITEM 1:

LDC REVISION, DIVISION 23-4C-3: HERITAGE TREES  https://app.box.com/s/hhyb966zfkimj0pz4cad1e61cunhrzj 4C-3 pg. 2

23-4C-3020 Administrative Modification

C) For a property that fronts a corridor designated by Division 23-3A-5 (Growth Concept Map and Transit Priority Network), the director may grant an administrative modification from Section 23-4C-3010 (Removal or Impact Prohibited) to remove or impact a heritage tree that has at least one stem that is 30 inches DBH or larger after determining, based on the city arborist’s recommendation, that the heritage tree meets the criteria in Subsection 23-4C-2040(A) (Protected Trees), and that:
ITEM 2:
LDC REVISION, DIVISION 23-4C-3: HERITAGE TREES  https://app.box.com/s/hhyb966zkfkmj0pz4cad1e61cunhrzj 4C-3
pg. 3

23-4C-3040 Land Use Commission Variance

(A) The Land Use Commission may grant a variance from Section 23-3C-3010 (Removal or Impact Prohibited) to remove or impact a heritage tree that has at least one stem that is 30 inches DBH or larger after determining, based on the city arborist’s recommendation, that the heritage tree meets the criteria in Subsection 23-4C-2040 (A) (Protected Trees), and:

(1) The applicant has applied for and been denied a variance, waiver, exemption, modification, or alternative compliance from another City Code provision that would eliminate the need to remove or impact the heritage tree, as required in Section 23-4C-3060 (Variance Prerequisite); and

(2) Removing or impacting the heritage tree is not the result of a method chosen by the applicant to develop the property, unless the design will allow for the maximum provision of ecological service, historic, and cultural value of other trees on the site or requirements.

ITEM 3:
LDC REVISION, DIVISION 23-4C-2040 PROTECTED TREES  https://app.box.com/s/hhyb966zkfkmj0pz4cad1e61cunhrzj , 4C-2 pg. 2

(1) The tree poses an extreme risk to life or property;

(2) The tree is dead;

(3) The tree is affected by an irreversible condition;

(4) The tree prevents reasonable use of the property; or
(5) For a tree located on public property or a public street or easement:
   (a) The tree prevents the opening of necessary vehicular traffic lanes in a street or alley as identified in the requirements and policies of the Transportation Plan or Transportation Criteria Manual; or
   (b) The tree prevents the construction of utility or drainage facilities that may not feasibly be rerouted and reasonable alternative construction methods have been exhausted.

CURRENT CODE

§ 25-8-624 – PROTECTED TREES APPROVAL CRITERIA


(1) prevents reasonable access to the property
(2) prevents a reasonable use of the property;
(3) is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree;
(4) is dead;
(5) is diseased, and:
   (a) restoration to sound condition is not practicable; or
   (b) the disease may be transmitted to other trees and endanger their health; or
(6) for a tree located on public property or a public street or easement:
   (a) prevents the opening of necessary vehicular traffic lanes in a street or alley; or
   (b) prevents the construction of utility or drainage facilities that may not feasibly be rerouted.

DIVISION 3. - HERITAGE TREES

§ 25-8-642 - ADMINISTRATIVE VARIANCE.

(A) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (Removal Prohibited) to allow removal of a heritage tree only after determining, based on the city arborist's recommendation, that the heritage tree:
   (1) is dead;
   (2) is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree; or
   (3) is diseased and:
      a) restoration to sound condition is not practicable; or
      b) the disease may be transmitted to other trees and endanger their health.
(B) No application fee and no mitigation are required for a variance request under subsection (A).
(C) The director of the Planning and Development Review Department may grant a variance from Section 25-8-641 (Removal Prohibited) to allow removal of a heritage tree that does not have at least one stem that is 30 inches in diameter or larger measured four and one-half feet above natural grade only after determining, based on the city arborist's recommendation, that the heritage tree meets the criteria in Section 25-8-624(A) (Approval Criteria) and that:
   (1) the applicant has applied for and been denied a variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 25-8-646 (Variance Prerequisite); and
(2) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, unless removal of the heritage tree will result in a design that will allow for the maximum provision of ecological service, historic, and cultural value of the trees on the site.

(D) A variance granted under this section:

(1) shall be the minimum change necessary;
(2) shall require mitigation as a condition of variance approval for variances requested under Subsection (C) of this section; and
(3) may not be issued until the applicant has satisfied the mitigation conditions required under this Subsection (D)(2) or posted fiscal security adequate to ensure performance of the mitigation conditions not later than one year after issuance of the variance.

(E) The director of the Planning and Development Review Department shall prepare written findings to support the grant or denial of a variance request under Subsection (C) of this Section.

Source: Ord. 20100204-038.

§ 25-8-643 - LAND USE COMMISSION VARIANCE.

(A) The Land Use Commission may grant a variance from Section 25-8-641 (Removal Prohibited) to allow removal of a heritage tree that has at least one stem that is 30 inches or larger in diameter measured four and one-half feet above natural grade only after determining, based on the city arborist's recommendation, that the heritage tree meets the criteria in Section 25-8-624(A) (Approval Criteria), and that:

(1) the applicant has applied for and been denied a variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 25-8-646 (Variance Prerequisites); and
(2) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, unless removal of the heritage tree will result in a design that will allow for the maximum provision of ecological service, historic, and cultural value of the trees on the site.

(B) A variance granted under this section:

(1) shall be the minimum change necessary;
(2) shall require mitigation as a condition of variance approval; and
(3) may not be issued until the applicant has satisfied the mitigation conditions required under this Subsection (B)(2) or posted fiscal security adequate to ensure performance of the mitigation conditions not later than one year after issuance of the variance.

(C) Consideration of a variance under this section requires review by the Environmental Commission.

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Michael E. Fossum, Exec. Director,

BENEFITS FROM TREES

Fiscal And Economical Impact From Trees On The State Of Texas:

➢ Trees increase property values by up to 23% (Texas Forest Service, 1993). This increases local tax revenue, and decreases the amount of money needed to be sent from the state to support local school districts.
➢ Trees increase retail sales due to more attractive locations, which increases state sales tax revenue (Wolf, Journal of Arboriculture (29)3 2003).
➢ Trees improve aesthetics which increases tourism, increasing state sales tax revenue.
➢ Trees improve aesthetics at a relatively low cost compared to other beautification alternatives.
➢ Trees increase citizens’ physical and mental health.
➢ Trees should be recognized as capital assets and infrastructure by the state and federal agencies.
➢ More trees by Texas highways could increase life of shaded asphalt areas, which would result in significant savings on repaving costs.

Trees Facilitate Meeting State And Federal Regulations:

➢ Trees ease compliance with federal requirements (ozone level attainment, etc.). This is critical for Camp Bullis, and helped attract the Toyota plant to San Antonio.
➢ Trees allow meeting federal mandates to protect endangered species.
➢ Trees allow meeting TCEQ regulations.
➢ Trees allow meeting Low Impact Development design guidelines from EPA.
➢ Trees allow municipalities to adopt SMART Growth guidelines.
➢ Trees allow municipalities to be sustainable.

Trees Improve Water Quality:

➢ Trees improve stormwater runoff volumes and reduce peak flows, reducing stormwater management costs.
➢ Trees facilitate stormwater infiltration and treatment.
➢ Trees increase rainfall interception and filter water impurities.
➢ By reducing stormwater runoff, trees improve water quality and reduce creek erosion, sediment accumulation and floods.
➢ Example: Retaining trees in Charlotte, NC saved the city over $1.47 B in storm water management infrastructure (American Forest, Charlotte, 2003).
➢ Example: San Antonio’s urban forest (113K acres of tree canopy citywide) manages 974 million cubic feet of stormwater, valued at $624 million per year (American Forest, 2009).
Trees Improve Air Quality:

- Trees increase pollution removal (through phytoremediation).
- Example: San Antonio’s urban forest removes 12.7 million lbs. of air pollutants annually, valued at $30.2 million per year (American Forests, 2009).
- Example: In Houston and 8 surrounding counties, the regional urban forest (663 million trees) provides $295.7 million per year in air pollutant removal (Houston’s Regional Forest report, 2005).

Trees Mitigate Global Warming By Reducing Green House Gases:

- Trees increase carbon dioxide storage and sequestration.
- Trees allow future storage or banking of carbon offsets.
- Example: San Antonio’s urban forest stores 4.9 million tons of carbon and sequesters 38,000 tons of carbon annually.
- Example: In Houston and 8 surrounding counties, the regional urban forest provides $700 million per year in carbon storage and $29 million per year in carbon sequestration (Houston’s Regional Forest report, 2005).

Trees Increase Energy Savings And Decrease Temperature:

- Trees increase energy savings (shade and windbreaks), up to 35% (Duerksen, Planning Advisory Report, 1993).
- Trees remove demand for peak facilities.
- Trees reduce urban heat island effect.
- Trees reduce asphalt temperatures, resulting in longer life for shaded asphalt areas, saving up to 60% of repaving costs over 30 years (McPherson, Journal of Arboriculture (31)6, 2005)
- Trees reduce emissions from power plants by decreasing demand for air conditioning energy.
- Example: In Houston and 8 surrounding counties, the regional urban forest provides $131.1 million per year in energy savings (Houston’s Regional Forest report, 2005).

Additional Economic Benefits From Trees For Municipalities:

- Trees increase tax revenues by:
  - Increasing property values by up to 23% (TFS 1993).
  - Lowering turnover of rental houses which increases tax revenues.
  - Increasing rents by an average of 7% (Laverne, Journal of Arboriculture (29)5 2003).
  - Increasing attractiveness of retail settings, which increases sales and tax revenues. Businesses with green areas and trees attract customers who pay 11% more for goods (Wolf, Journal of Arboriculture (29)3 2003).
- Trees are capital assets and infrastructure of the cities and counties. For example, the replacement value of the Houston regional forest trees was calculated to be $206 billion in 2005 (Houston’s Regional Forest report, 2005).
- Tree mitigation fees defray the cost of purchasing public trees.

Social, Psychological, Community And Historical Benefits From Trees:

- Trees improve aesthetics.
- Trees improve citizens’ physical and mental health.
- Trees increase willingness of citizens to participate in outdoor activities, which decrease obesity.
- Trees increase sense of community.
- Heritage trees increase historical value of community.
- Trees improve wildlife habitat.
On August 8, 2019 the City Council passed a Resolution declaring a “Climate Change Emergency.” Heritage trees are existing green infrastructure that mitigate the effects of climate change at no cost to the city. Parts of the resolution pasted below relevant to heritage trees are shown in bold font.

Council Member Alter stated at the meeting:

“The climate crisis is an emergency. We must treat it like one. An emergency threatens our very being. In an emergency, we marshal all our resources towards solving the problem.”

From the text of the Resolution:

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:
Austin City Council declares a climate emergency and calls for an immediate emergency mobilization to restore a safe climate.

WHEREAS, Health and Environment was identified as one of six priority Strategic Outcomes of Austin Strategic Direction 2023, with indicators including climate change and resilience and environmental quality.

BE IT FURTHER RESOLVED:

Additionally, the City Manager is directed to examine other objectives related to greenhouse gas emissions reduction (such as those set by the Austin Energy Resource Generation and Climate Plan) and identify the feasibility of accelerating the timelines of achieving such objectives.

The City Manager is directed to incorporate climate resilience policies during implementation and planned updates of the Austin Community Climate Plan, and to other City plans with climate impacts (to ensure climate change and resiliency efforts are strong, effective, and aligned), including: the Austin Energy Resource, Generation, and Climate Protection Plan, the Zero Waste Master Plan, the Hazard Mitigation Plan, the Flood Mitigation Plan, Water Forward, the Land Development Code, the Energy Code, the Austin Strategic Mobility Plan, Public Health Emergency Preparedness plans, and other City plans. The City Manager is also directed to examine existing City plans to identify those that may be outdated.

The City Manager is directed to identify innovative policy approaches to address the climate crisis’s causes as well as mitigation strategies, including the promotion of natural systems, green infrastructure, and carbon sequestration; the role of tree planting as a carbon offsetting strategy; public cooling spaces to combat heat waves; and updated information about the heat island effect in Austin and strategies to mitigate this effect.
Austin's Tree regulations do not stop development and provide flexibility and balance.

Development is booming in Austin.

Residential Building Permits
Residential Permits, Austin MSA

Residential Permits by County, 2011

<table>
<thead>
<tr>
<th>County</th>
<th>Total</th>
<th>Single-family units</th>
<th>Multi-family units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austin MSA</td>
<td>10,239</td>
<td>6,231</td>
<td>4,008</td>
</tr>
<tr>
<td>Bastrop County</td>
<td>60</td>
<td>80</td>
<td>0</td>
</tr>
<tr>
<td>Caldwell County</td>
<td>12</td>
<td>12</td>
<td>0</td>
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<tr>
<td>Hays County</td>
<td>2,474</td>
<td>996</td>
<td>1,478</td>
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<tr>
<td>Travis County</td>
<td>5,761</td>
<td>3,292</td>
<td>2,469</td>
</tr>
<tr>
<td>Williamson County</td>
<td>1,912</td>
<td>1,851</td>
<td>61</td>
</tr>
</tbody>
</table>

Note: Additional residential permits data is available via the Chamber’s Economic Indicators page. Source: U.S. Bureau of the Census.