

# Late Backup

#38

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 6-3-48 AND CHAPTER 25-8, SUBCHAPTER B, ARTICLE 1 OF THE CITY CODE RELATING TO TREE PROTECTION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

## PART 1. FINDINGS.

The City Council finds that:

- (1) The urban forest has social, ecological, cultural, economic, historical, and aesthetic benefits for the citizens of Austin.
- (2) A healthy urban forest enhances the health and welfare of the citizens of Austin.
- (3) The urban forest is an asset and important part of the City's infrastructure that city policy seeks to protect.
- (4) The health of the urban forest is entrusted to the City Council for the benefit of current and future citizens of Austin.
- (5) The potential for development to negatively impact the urban forest, including the largest and most significant trees, requires reasonable regulations.
- (6) Mitigation of tree removal through planting new trees can be an effective means of reducing such negative impact and preserving the urban forest.

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PART 2. Section 25-8-602 (*Definitions*) of the City Code is amended to read as follows:

## § 25-8-602 DEFINITIONS.

In this article:

- (1) HERITAGE TREE means a tree that has at least one stem with a diameter of 24 inches or more, measured four and one-half feet above natural grade, and is a species prescribed in Appendix \_\_\_\_\_ of this Chapter, or by resolution of the city council.

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(2)(4) OWNER includes a lessee.

(3)(2) PROTECTED TREE means a tree with a diameter ~~[circumference]~~ of 19 ~~[60]~~ inches or more, measured four and one-half feet above natural grade.

(4)(3) REMOVAL means an act that causes or may be reasonably expected to cause a tree to die, including:

- (a) uprooting;
- (b) severing the main trunk;
- (c) damaging the root system; and
- (d) excessive pruning.

**PART 2.** Section 25-8-603 (*Administration*) of the City Code is amended to read:

**§ 25-8-603 ADMINISTRATION.**

(A) A city arborist, appointed by the director of the Planning and Development Review Department, shall implement this article.

(B) The ~~[Watershed Protection]~~ Planning and Development Review Department shall adopt administrative rules for the implementation of this subchapter ~~[to:]~~.

(C) The rules shall:

- (1) describe methods to protect trees against damage during development;
- (2) identify actions that will constitute removal; [and]
- (3) identify the root areas that require protection against soil compaction or the effects of impervious paving;
- (4) identify mitigation measures (including without limitation payments in lieu thereof) and methods of calculation for fiscal security to ensure performance of mitigation measures that may be required under article 1 of this subchapter.

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**PART 3.** Section 25-8-604 (*Development Application Requirements*) of the City Code is amended by amending Subsection (C) and adding a new Subsection (D) to read:

- (C) For an application for preliminary plan, final plat without a preliminary plan, or site plan approval that proposes the removal of a protected tree, the city arborist must review the application and make a recommendation before the application may be administratively approved or presented to the Land Use Commission or city council, if applicable.
- (D) For an application for preliminary plan, final plat without a preliminary plan, or site plan approval that proposes the removal of a heritage tree, the applicant must file a request for a variance from 25-8-641 before the application for preliminary plan, final plat without a preliminary plan, or site plan approval may be administratively approved or presented to the Land Use Commission or city council, if applicable.

**PART 4.** Section 25-8-605 (*Waiver and Modification of City Requirements*) of the City Code is amended to read:

**§ 25-8-605 WAIVER AND MODIFICATION OF CITY REQUIREMENTS.**

(A) If enforcement of a City department policy, rule, or design standard will result in removal of a protected or heritage tree, the [~~Watershed Protection~~] Planning and Development and Review Department may request that the responsible City department waive or modify the policy, rule, or design standard to the extent necessary to save the tree.

(B) The responsible City department may waive or modify the policy, rule, or design standard after determining that a waiver or modification will not result in a serious or imminent adverse effect.

(C) The city manager shall resolve differences of opinion between the [~~Watershed Protection~~] Planning and Development Review Department and another City department under this section.

**PART 5.** Chapter 25-8, Subchapter B, Article 1 (*Tree and Natural Area Protection*) of the City Code is amended to add a new section 25-8-606 to read:

**§25-8-606 ANNUAL REPORT.**

The city arborist shall annually report to the Environmental Board and the Urban Forestry Board. The report shall include, but is not limited to, impacts to protected or heritage trees, tree promotional programs, and urban forestry planning efforts.

**PART 6.** Section 25-8-621 (*Permit Required for Removal of Protected Trees; Exceptions*) of the City Code is amended to read:

**25-8-621 PERMIT REQUIRED FOR REMOVAL OF PROTECTED TREES; EXCEPTIONS.**

(A) Except as otherwise provided in this section, a person may not remove a protected tree unless the ~~[Watershed Protection]~~ Planning and Development Review Department has issued a permit for the removal under this division.

(B) A person may, without a permit, remove a damaged protected tree that is a hazard to life or property if the tree is removed within seven days of being damaged. The ~~[Watershed Protection]~~ Planning and Development Review Department may extend this deadline for widespread and extensive storm damage.

(C) A person may, without a permit, remove a protected tree if the tree is identified for removal on an approved preliminary plan, final plat or site plan.

~~[(D) A person may, without a permit, remove a protected tree if the tree is identified for removal in a capital improvement project when the project is approved by council.]~~

**PART 7.** Subsection(C) of Section 25-8-622 (*Application for Removal*) of the City Code is amended to read:

(C) An application for removal of a protected tree must:

(1) be filed with the director of the Planning and Development Review Department; and

(2) include the information prescribed by the Administrative Manual.

**PART 8.** Section 25-8-624 (*Approval Criteria*) of the City Code is amended to read:

**§25-8-624 APPROVAL CRITERIA.**

(A) The ~~[Watershed Protection]~~ Planning and Development Review Department shall approve an application to remove a protected tree only after determining that the tree:

**[COMMENT: No changes to the current practice with respect to protected trees should be made.]**

(1) prevents reasonable access to the property;

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- (2) prevents a reasonable use of the property;
- (3) is a hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree;
- (4) is dying or 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.

(B) If an application filed by a political subdivision of the state is approved under Subsection (A) (2), the Land Use Commission may, in its discretion, review the approval.

(C) For an application to remove a protected tree located on private property, an applicant must request a variance from the Board of Adjustment if the variance would eliminate the reason for removal of the tree.

(1) The application to remove the protected tree may not be approved unless the variance is denied.

(2) An application fee is not required for a variance request required by this subsection.

(3) This subsection does not apply to an application that may be approved under Subsection(A)(3), (4), or (5).

***[COMMENT: No changes to the current practice with respect to protected trees should be made.]*** (D) The [Watershed Protection] Planning and Development Review Department shall [may] require mitigation or payment

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in lieu thereof [~~including the planting of replacement trees,~~] as a condition of application approval. A removal permit may not be issued until the applicant satisfies the condition or posts fiscal security to ensure performance of the condition within one year. This subsection does not apply to an application that may be approved under Subsection (A)(3), (4), or (5).

*[COMMENT: The addition of the last sentence makes protected tree requirements match with heritage trees.]*

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**PART 9.** Section 25-8-625 (*Action on Application*) of the City Code is amended to read:

**§ 25-8-625 ACTION ON APPLICATION.**

(A) The [~~Watershed Protection~~] Planning and Development Review Department shall take action on [~~approve or deny~~] an application to remove a protected tree:

(1) not later than the 10<sup>th</sup> working day after the complete application is filed; or

(2) if a variance request is required by Subsection 25-8-624 (C) (*Approval Criteria*), not later than the [~~55<sup>th</sup> day after the application is filed~~] 10<sup>th</sup> working day after the request is denied.

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(B) [~~If a variance request is required by Subsection 25-8-624 (C) (Approval Criteria), the Watershed Protection and Development Review Department shall notify the applicant of the 55-day review period.~~

(C) An application to remove a tree that is not associated with a pending subdivision, site plan, or building permit application submitted to the City is automatically granted if the [~~Watershed Protection~~] Planning and Development Review Department does not take action on [~~deny~~] the application before the expiration of the applicable deadline in Subsection (A).

**PART 10.** Section 25-8-626 (*Effective Date and Expiration of Approval*) of the City Code is amended to read:

**§ 25-8-626 EFFECTIVE DATE AND EXPIRATION OF APPROVAL.**

(A) Approval of an application to remove a protected tree is effective immediately.~~[-~~

(1) ~~on the third day after it is granted; or~~

(2) ~~immediately, if the application was approved under Subsection 25-8-624(A)(3),(4), or (5) (Approval Criteria).]~~

(B) An approval to remove a protected tree expires:

(1) one year after its effective date; or

(2) for a development described in Subsection 25-8-621(C) ~~[or (D)]~~

(*Permit Required For Removal Of Protected Trees; Exceptions*), when the development plan expires.

**PART 11.** Chapter 25-8 Subchapter B, Article 1 (*Tree and Natural Area Protection*) of the City Code is amended to renumber Division 3 (*Shoreline Relocation; Lake Fill*) as Division 4 and add a new Division 3 to read:

**Division 3. Heritage Trees.**

**§ 25-8-641 REMOVAL PROHIBITED.**

(A) Removal of a heritage tree is prohibited unless the Planning and Development Review Department has issued a permit for the removal under this division.

(B) A permit to remove a heritage tree may be issued only if a variance is approved under Section 25-8-642 (*Administrative Variance*) or 25-8-643 (*Land Use Commission Variance*).

(C) The requirements in this division apply to trees on private and public property. To the extent of conflict with another section of the Code, this division applies.

(D) A person may, without a variance, remove a damaged heritage tree that is a hazard to life or property if the tree is removed within seven days of being damaged. The director may extend this deadline for widespread and extensive storm damage.

**§ 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 dying or dead;
  - (2) is a 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 associated with a subdivision, site plan, or building permit application submitted to the City only after determining, based on the city arborist's recommendation, that under the development plan submitted, removal of the heritage tree will result in the protection of the maximum number of trees on the site.
- (D) 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 (i) has at least one stem less than 30 inches in diameter measured four and one-half feet above natural grade, or (ii) has at least one stem 30 inches or more but less than 42 inches if one or more of the requirements in Section 25-8-643(D) are met, 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) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall tree canopy benefits than is achievable without the variance; and

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- (2) the applicant has applied for and been denied (i) a variance, or (ii) an administrative waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree and allow for substantially similar development of the property, as required in Section 25-8-646 (*Variance Prerequisites*).

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(E) A variance granted under this section:

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

- (F) The director of the Planning and Development Review Department shall prepare written findings to support the grant or denial of a variance request under subsections (C) or (D) of this section.

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

- (A) ~~Except as provided in subsection (D) below,~~ the Land Use Commission may grant a variance from Section 25-8-641 (*Removal Prohibited*) to allow removal of a heritage tree ~~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:~~

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- (1) removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall tree canopy benefits than is achievable without the variance;
- (2) the applicant has applied for and been denied (i) a variance, or (ii) an administrative 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*).

(B) A variance granted under this section:

- (1) shall be the minimum change necessary;
- (2) shall require mitigation or payment in lieu thereof 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:

- (1) review by the Environmental Board; and
- (2) review by the Urban Forestry Board if the heritage tree is located on public property or a public street or easement.

(D) Approval of a variance for the removal of heritage tree by the Land Use Commission is not required in connection with a heritage tree that has at least one stem that is 30" in diameter or larger, but less than 42" in diameter, if the development proposed in connection with such removal meets one or more of the following conditions:

- (1) The proposed development is on a lot, tract or parcel of real property that is 2 acres or less;
- (2) the proposed development is on a lot, tract or parcel that is located on a Core Transit Corridor (as defined in Chapter 25-2, Subchapter E); or
- (3) the proposed development proposes mitigation or payment in lieu thereof that will mitigate the caliper inches removed at a rate 4 to 1.

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#### § 25-8-644 APPEAL.

(A) An applicant may appeal denial of an administrative variance under section 25-8-642 to the Land Use Commission.

(B) An appeal under this section requires:

- (1) review by the Environmental Board; and
- (2) review by the Urban Forestry Board if the heritage tree is located on public property or a public street or easement.

**§ 25-8-645 APPLICATION FOR VARIANCE.**

(A) For a heritage tree located on public property or a public street or easement, an application requesting a variance to allow removal of the heritage tree may be filed by:

- (1) a City department, public utility, or political subdivision with the authority to install utility lines or other public facilities in or above the property, street, or easement; or
- (2) the owner of property adjoining the site of the tree.

(B) For a heritage tree located on private property, an application requesting a variance to allow removal of the heritage tree may be filed by:

- (1) the owner of the property on which the tree is located; or
- (2) the city arborist, if the tree is seriously diseased or is a safety hazard.

(C) An application requesting a variance to allow removal of a heritage tree must:

- (1) be filed with the director of the Planning and Development Review Department; and
- (2) include the fee prescribed by ordinance; and
- (3) include the information prescribed by the Administrative Criteria Manual.

(D) The application fee is not required if the application is based solely on the criteria in Subsections 25-8-642(A).

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**§ 25-8-646 VARIANCE PREREQUISITE.**

(A) If (i) a variance, or (ii) an administrative waiver, exemption, modification, or alternative compliance from another City Code provision would eliminate

the need for a variance from Section 25-8-641 (*Removal Prohibited*), and allow for substantially similar development of the property, before requesting a variance to allow removal of a heritage tree on private property the applicant must:

- (1) request (i) a variance, or (ii) an administrative waiver, exemption, modification or alternative compliance from the Code provisions that would eliminate the need to remove the heritage tree; and
  - (2) obtain a grant or denial of the variance, or administrative waiver, exemption, modification or alternative compliance that would eliminate the need to remove the heritage tree.
- (B) The request for a variance to allow removal of a heritage tree may not be considered unless the variance, or administrative waiver, exemption, modification or alternative compliance from other City Code provisions is denied.
- (C) The application fee for a variance or administrative waiver, exemption, modification or alternative compliance from another City Code provision required under this section is waived.
- (D) This section does not apply to an application for a variance to remove a heritage tree based on the criteria in Subsections 25-8-~~642~~ (A).
- (E) The body considering the variance, or administrative waiver, exemption, modification or alternative compliance will consider the benefit of preserving the heritage tree in determining whether to grant or deny the request for a variance, or administrative waiver, exemption, modification or alternative compliance from another City Code provision, and such preservation may be the basis to satisfy any required findings of fact.

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#### § 25-8-647 ACTION ON APPLICATION.

- (A) The director of the Planning and Development Review Department shall take action on a variance request to allow removal of a heritage tree:
- (1) not later than the 10<sup>th</sup> working day after the complete application is filed; or
  - (2) if a variance, waiver, exemption, modification or alternative compliance from another City Code provision is required under

Subsection 25-8-646 (*Variance Prerequisite*), not later than the 10<sup>th</sup> working day after the request is denied.

- (B) If the application is based on a damaged heritage tree constituting an immediate hazard to life or property, the application shall be approved or denied within 24 hours and no application fee shall be required.
- (C) An application to remove a tree that is not associated with a pending subdivision, site plan, or building permit application submitted to the City is automatically granted if the director does not act on the application before the expiration of the applicable deadline.

**§ 25-8-648 VARIANCE EFFECTIVE DATE AND EXPIRATION.**

- (A) Approval of a variance request to allow removal of a heritage tree is effective immediately.
- (B) A variance to allow removal of a heritage tree expires:
  - (1) one year after its effective date, provided that the mitigation conditions in the variance remain in effect until the conditions are met; or
  - (2) for an application that is associated with a pending subdivision, site plan, or building permit submitted to the City, when the development permit expires.

**PART 12.** Section 6-3-48 (*Review of Recommendation to Remove Protected Tree*) is amended to read:

**§ 6-3-48 REVIEW OF RECOMMENDATION TO REMOVE PROTECTED OR HERITAGE TREE.**

(A) Not later than the 10th business day before delivery of owner notification under Section 6-3-46 (*Notice of Abatement*), the urban forester shall submit to the city arborist a written request for review of removal of a protected or heritage tree under the jurisdiction of Subchapter B, Article 1 (*Tree and Natural Area Protection*) of Chapter 25-8 (*Environment*) of the Code.

(B) The city arborist shall respond to the urban forester with written comments not later than the 10th day after the date the request for review was submitted.

**PART 13.** This ordinance takes effect on \_\_\_\_\_, 2009.

**PASSED AND APPROVED**

\_\_\_\_\_, 2009

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Lee Leffingwell, Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Gentry  
City Clerk