

ORDINANCE NO. 2019-24

AN ORDINANCE OF THE CITY OF BUDA, TEXAS, AMENDING THE BUDA UNIFIED DEVELOPMENT CODE, SUBSECTION 4.04.01 TREE PRESERVATION AND MITIGATION (AMENDING ORDINANCE 2017-13) PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR PENALTIES; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Buda, Texas (the "City") is a home-rule municipality located in Hays County, Texas, created in accordance with the provisions of Chapter 9 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City Council finds it is necessary to meet changing conditions and in the best interest of the City to modify the City's Unified Development Code; and

WHEREAS, the City adopted a Unified Development Code on October 2, 2017; and

WHEREAS, the City finds the amendment of the Unified Development Code, Subsection 4.04.01 necessary for the protection and preservation of trees in public spaces; and

WHEREAS, the City finds that the amendment of the Unified Development Code, Subsection 4.04.01 was recommended by the Sustainability Commission for approval on September 5, 2019, and the Parks Commission for approval on September 18, 2019; and

WHEREAS, the City finds that the amendment of the Unified Development Code, Subsection 4.04.01 was recommended by the Planning and Zoning Commission of the City of Buda following a public hearing on October 22, 2019; and

WHEREAS, the City published Notice of Public Hearing on October 30, 2019 in the Hays Free Press, a legal newspaper regularly published in Hays County, Texas and generally circulated in Hays, Travis, and Caldwell Counties; and

WHEREAS, the City finds the City Council of the City of Buda conducted the noticed public hearing on the proposed amendment on November 19, 2019; and

WHEREAS, the City finds that this Ordinance was passed and approved at a meeting of the City Council of the City of Buda held in strict compliance with the Texas Open Meetings Act at which a quorum of the City Council Members was present and voting.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BUDA, TEXAS:

Section 1: The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2: The Unified Development Code, Subsection 4.04.01 (Exhibit "A"), attached hereto and incorporated herein, is hereby adopted.

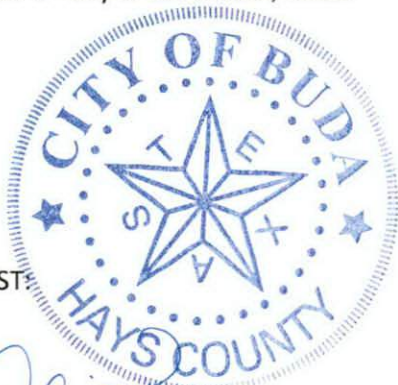
Section 3: Severability. If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

Section 4: Passage. Pursuant to Section 3.12(A) of the City Charter, the Council determined that the first reading of this ordinance is sufficient for adequate consideration by an affirmative vote of five or more members of the City Council during the first reading and the Ordinance was passed by the affirmative vote of four or more members of the City council; therefore, this Ordinance is adopted and enacted without further readings. In the event a second reading is necessary, this Ordinance is adopted and enacted upon the affirmative vote of four or more members of the City Council upon second reading.

Section 5: Penalty. Any person who violates, or any person who causes or allows another person to violate, any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00). Each occurrence of any violation of this Ordinance shall constitute a separate offense. Each day in which any violation of this Ordinance occurs shall constitute a separate offense.

Section 6: Effective Date. This Ordinance shall take effect immediately after its final passage and any publication in accordance with the requirements of the City of Buda and the laws of the State of Texas.

PASSED, APPROVED AND ADOPTED on first and final reading by the City Council of the City of Buda, on this the 3rd day of December, 2019.



ATTEST:


Alicia Ramirez, City Clerk

CITY OF BUDA, TEXAS


George Haehn, Mayor

Exhibit "A"

Subsection 4.04 Tree Preservation and Park Land Dedication

4.04.01 Tree Preservation, Mitigation, and Care

A. Purpose

The purpose of this section is to conserve, protect, and enhance existing healthy and safe trees and natural landscape.

B. Applicability and Exemptions

- 1. The provisions of this section are applicable to the following:
 - a. All new residential and nonresidential development within the City limits or its ETJ including public property.
 - b. Redevelopment of any residential or nonresidential property within the City limits or its ETJ that results in an increase in the building footprint or the total destruction and reconstruction.
 - c. Any proposed removal of a Protected, Signature, or Heritage Tree (as defined in C. Tree Preservation) within the City limits or its ETJ including public property.
- 2. Trees located within the area of a proposed on-site sewage facility (OSSF) if authorized by the City Engineer are subject to the Tree Mitigation requirement but are exempt from the Tree Removal Permit requirement.
- 3. Trees located within a **Right-of-Way** or drainage easement dedicated to and maintained by the City are exempt from the Tree Preservation requirement.

4. Exempted Trees

Table 1. Exempted Trees

Common Name	Scientific Name
Hackberry	Celtis occidentalis
Eastern Red Cedar	Juniperus virginiana
Common Ashe Juniper	Juniperis ashei
Chinaberry	Melia azedarach
Mesquite	Prosopis spp.
Ligustrum	Ligustrum spp.
Chinese Tallow	Triadica sebifera
Bradford Pear	Pyrus calleryana

- a. A dead or diseased tree, which is deemed beyond the point of recovery and at risk of spreading the disease, as determined by a certified arborist;
- b. A tree that is deemed to be a threat to public health, safety or welfare, as determined by a certified arborist who has attained the ISA Tree Risk Assessment Qualification (TRAQ). The certified arborist shall submit a letter to the city within ten (10) days of the removal of the tree documenting the reasons for removal;
- c. Trees planted and growing on the premises for sale at a nursery; or
- d. The tree species indicated in **Table 1**.

Exhibit "A"

C. Tree Preservation

1. Protected Tree

Trees between eight (8) and twenty (20) Caliper inches are designated as "Protected Trees". Any Protected Trees not exempt from preservation in **B.2** above may be removed upon approval of a Tree Removal Permit by the **Director of Planning**. Any decision of the **Director of Planning** regarding a Tree Removal Permit may be appealed to the Board of Adjustment.

2. Signature Tree

Trees between twenty (20) and thirty (30) Caliper inches are designated as "Signature Trees". Any Signature Trees not exempt from preservation in **B.2** above may be removed upon approval of a Tree Removal Permit by the **Planning and Zoning Commission**. Any decision of the **Planning and Zoning Commission** regarding a Tree Removal Permit may be appealed to the **City Council**.

3. Heritage Tree

Trees of thirty (30) Caliper inches or greater are designated as "Heritage Trees". Any Heritage Trees not exempt from preservation in **B.2** above may only be removed upon approval of a Tree Removal Permit by the City Council following a public hearing. To issue a Tree Removal Permit, the **City Council** must find that no other alternatives for viable site development are possible and that the proposed removal is the minimum necessary relief required to allow for development on the property in a reasonable manner.

D. Tree Mitigation

Any trees that are removed or damaged as a result of the approval of a Tree Removal Permit or under the provisions of **B.2** above shall be mitigated for on the same site as the proposed development, in addition to landscape requirements. In the event that mitigation is not feasible on the same site as the proposed development, an Applicant may request to donate trees, meeting the mitigation requirements of this section, to be planted at public parks, schools, or other approved public facilities throughout the City or provide a fee in lieu of payment which will be used to place trees at public parks, schools, or other approved public facilities throughout the City.

1. Protected Trees

Protected Trees shall be mitigated at a one-to-one (1:1) Caliper inch ratio for every tree removed. Replacement trees shall have a minimum Caliper of three (3) inches.

2. Signature Trees

Signature Trees shall be mitigated at a three-to-one (3:1) Caliper inch ratio for every tree removed. Replacement trees shall have a minimum Caliper of three (3) inches.

3. Heritage Trees

Heritage Trees shall be mitigated at a four-to-one (4:1) Caliper inch ratio for every tree removed. Replacement trees shall have a minimum Caliper of five (5) inches.

4. Fee In Lieu of Tree Mitigation

a. The City Council may approve payment of a fee in lieu of replacement trees.

Exhibit "A"

- b. The fee shall be equal to the cost of the replacement trees and shall include the installation or planting cost. The Applicant shall submit a written estimate from a nursery as verification of the cost.
 - c. The fee in lieu option is available for only the following cases:
 - i. If the proposed subdivision is heavily treed and the existing tree canopy would prohibit the growth of the replacement trees, or
 - ii. If the required replacement trees were to be installed, then the replacement trees would be planted under the canopy of an existing tree.
5. Limitations of Species and Placement
- The Director of Planning is authorized to limit species and placement to protect aboveground and underground infrastructure.
- E. Tree Preservation Credits
- Protected Trees, Signature Trees, and Heritage Trees may be counted toward landscape requirements contained in **2.09.01. Landscaping**.
1. Protected Trees may be counted as one (1) **Shade Tree**.
 2. Signature Trees may be counted as three (3) **Shade Trees**.
 3. Heritage Trees may be counted as five (5) **Shade Trees**.
- F. Tree Removal Permit and Tree Preservation Plan
1. A Tree Removal Permit is required for the removal of any tree not exempted in **B** above.
 2. An Applicant for a Tree Removal Permit shall be submitted with any Site Plan Application that proposes the removal of any trees.
 3. For new development or redevelopment, the Application shall contain a Tree Preservation Plan showing the following:
 - a. Existing/proposed topography
 - b. Location of property lines, easement, rights of ways, setbacks, parking areas, and sidewalks
 - c. Location, species, size (in caliper inches), and Critical Root Zone of each Protected Tree, Signature Tree, and Heritage Tree, except those trees exempted by **B.4** above.
 - d. A tree inventory that summarizes the following:
 - i. Total number of Caliper inches on the site
 - ii. Total number of Caliper inches to be removed
 - iii. Total number of Caliper inches to be preserved
 - iv. Location of any proposed tree mitigation
 - v. Any proposed tree preservation credits
 - vi. A summary of the tree protection methods to be utilized
 - e. For removal of Protected, Signature, and Heritage trees not associated with development located on private or public property, a tree removal permit must be requested in writing to

Exhibit "A"

the Director of Planning on an approved form that includes the type of tree to be removed, the tree size, the reason for the removal, and any proposed mitigation actions.

- f. The city will determine whether the permit application is complete and notify the applicant of that determination no later than 10 days after the date the city receives the permit application.
- G. Removal of a Protected Tree, Signature Tree, or Heritage Tree without a Tree Removal Permit
Any Protected Tree, Signature Tree, or Heritage Tree that is damaged or removed without a Tree Removal Permit, including those damaged during construction or within two (2) years following issuance of a Certificate of Occupancy, shall be subject to the following penalties:
 1. Fine equivalent to three (3) times the cost of replacement trees, including installation or planting cost, and
 2. Mitigation of the removed tree(s) in accordance with **D. Tree Mitigation**, and
 3. Indefinite conservation of the area in which the tree was located and the tree's Critical Root Zone.
- H. Additional Provisions for Arbor Disease Centers
If project location is within one-half (1/2) mile of a documented arbor disease center according to the Texas Forest Service, then the Director of Planning is authorized to prescribe and restrict tree species use in landscaping or mitigation.
- I. Tree Care for Protected Tree, Signature Tree, or Heritage Tree
 1. Disease Control: To prevent the spread of Oak Wilt, trimming of oak trees is not permitted between February 1 through July 1 unless performed by an Arborist. Any outbreaks of Oak Wilt should be reported to the Director.
 2. Critical Root Zone Protection: Each Protected Tree, Signature Tree, or Heritage Tree shall have a Critical Root Zone surrounding the tree, measured at the drip line.
 - a. The following activities are prohibited in the Critical Root Zone:
 - i. Storage or parking vehicles, building materials, refuse, excavated spoils or dumping of poisonous or hazardous materials on or around tree and roots. Poisonous or hazardous materials include, but are not limited to, paint, petroleum products, concrete or stucco mix, dirty water or any other material which may be harmful to tree health;
 - ii. Cutting of tree roots by utility trenching, foundation digging, placement of curbs and trenches and other miscellaneous excavation without prior approval of the City;
 - iii. Soil disturbance or grade change;
 - iv. Impervious paving;
 - v. Vehicular traffic; and
 - vi. Drainage changes
 - b. Protection of public trees during construction. Any person, firm, corporation, or city department performing construction in the area of any public tree must employ

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appropriate measures to protect the tree, including, but not limited to, placing barriers around the tree to prevent any damage.

- i. All trees shall be protected by a fence, frame, or box constructed around the drip line of the preserved tree.
- ii. A minimum of three (3) inches of mulch or compost shall be spread beneath the drip line of the preserved tree unless other recommendations are made by an Arborist.
- iii. No person shall excavate any ditches, tunnels or trenches, place any paving material or place any drive or parking area within the drip line of any Protected Tree, Signature Tree, or Heritage Tree without prior written approval of the Director of Planning at the time of Site Plan approval.
- iv. No person shall attach any rope, wire, nails, advertising posters, or other contrivance to any Protected Tree, Signature Tree, or Heritage Tree.
- v. The use of any part of a tree as a winch support, anchorage, temporary power pole, sign post, or other similar function is prohibited.

3. Trees in public spaces

a. Authority and Power

- i. Delegation of authority and responsibility. The Director of Planning and/or his designee shall have the authority and responsibility to plant, prune, maintain and remove trees and woody plants growing upon on city streets, rights-of-ways, city parks, and other public property. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.
- ii. Coordination among city departments. All city departments will coordinate as necessary with the Director and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements and other public properties not under direct jurisdiction of the Director.
- iii. Interference. No person shall hinder, prevent, delay, or interfere with the Director or his agents while engaged in carrying out the execution or enforcement of this Ordinance.

b. Tree advisory board. The Parks Commission shall act as the Tree Advisory Board for matters related to trees located in public spaces. Duties include promotion of Arbor Day activities, coordination of tree planting and maintenance on city property, support public awareness and education programs related to trees, review city department concerns related to tree care, submit an annual report on activities to the City Council, assist with annual application for the Tree City USA designation, develop a list of recommended trees for planting on city property, and other duties that may be assigned by the City Council.

c. Tree planting and care standards

- i. Standards. All planting and maintenance of public trees shall conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care

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Operations" and shall follow all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.

- ii. Requirements of franchise utility companies. Franchise utility companies shall provide advance notice to the City of their intended non-emergency tree pruning schedule and location of impacted areas. The maintenance of public trees for utility clearance shall conform to all applicable utility industry standards and be completed with qualified line clearance tree trimmers. If in the course of non-emergency tree pruning it is determined by a certified arborist that the pruning of a tree will be detrimental to the health and safety of the tree, the franchise shall provide a written assessment and recommendation for the tree to the Director of Planning. This assessment will list all viable and reasonable alternatives. If no viable solution can be reached, the tree will be made safe and left in place. If the tree later dies, the franchise will not be held liable to mitigate the tree if ANSI A-300 standards were followed to trim the tree.
 - iii. Tree species list. The Director shall develop and maintain an official list of desirable tree species for planting on public property in two size classes: Ornamental (20 feet or less in height at maturity) and Shade (greater than 20 feet at maturity). Only trees from this approved list may be planted without written approval from the Director.
 - iv. Planting distances. The Director shall develop and maintain an official set of spacing requirements for the planting of trees on public property. No tree may be planted within the visibility triangle of a street intersection or within ten (10) feet of a fire hydrant.
 - v. Planting trees under electric utility lines. Only trees listed as Ornamental trees on the official city tree species list may be planted under or within fifteen (15) lateral feet of any overhead utility wire. No trees shall be planted within ten (10) feet of ground utility boxes.
 - vi. Protection of public trees during construction. Any person, firm, corporation, or city department performing construction in the area of any public tree must employ appropriate measures to protect the tree, including, but not limited to, placing barriers around the tree to prevent any damage.
- d. Adjacent owner responsibility
- i. The owner of land adjacent to any city street or highway may plant and maintain trees in the adjacent parkway area. Property owners are responsible for the reasonable and routine maintenance of trees and other landscaping in the adjacent parkway area.
 - ii. No property owner shall allow a tree, or other plant growing on his or her property or within the adjacent parkway to obstruct or interfere with pedestrians or the view of drivers, and emergency vehicles, thereby creating a hazard. If an obstruction persists, the Director shall notify the property owner to prune or remove the tree or plant. If the owner fails to comply with the notice, the City may undertake the necessary work and charge the cost to the property owner.
- e. Prohibition against harming public trees

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- i. It shall be unlawful for any person, firm or corporation to damage, remove, or cause the damage or removal of a tree on public property without written permission from the Director.
- ii. It shall be unlawful for any person, firm or corporation to attach any cable, wire or signs or any other object to any street, park, or public tree unless the City's Arborist reports that it will not negatively impact the tree and with approval by the Director.
- iii. It shall be unlawful for any person, firm or corporation to "top" any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical may be exempted from this provision at the determination of the Director.

J. Certain trees declared a nuisance

Any tree, or limb thereof, on public or private property determined by the Director to have contracted a lethal, communicable disease or insect; to be dead or dying; to obstruct the view of traffic signs or the free passage of pedestrians or vehicles; or that threatens public health, safety, and welfare is declared a nuisance and the City may require its treatment or removal. Private property owners have the duty, at their own expense, to remove or treat nuisance trees on their property. The City may remove such trees at the owner's expense if the owner does not comply with treatment and/or removal as specified by the Director within the written notification period.