

**TOWN OF ARGYLE, TEXAS
ORDINANCE NO. 2022-04**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS, AMENDING ARTICLE V, TREE PRESERVATION, OF THE TOWN DEVELOPMENT STANDARDS REGARDING HERITAGE TREES, TREE CANOPY COVER, CHANGING TREE BOARD TO TREE PRESERVATION BOARD, TIME OF REPLACEMENT, LONGEVITY AND DURATION OF TREE REPLACEMENT, CALCULATING CALIPER OF MULTI-TRUNK TREES, PROHIBITING THE CLEAR-CUTTING OF TREES AND TREE TOPPING, DEFINITION OF ACCEPTABLE TREES FOR TREE MITIGATION, PROVIDING FOR APPROVAL OF TREE MITIGATION INCENTIVES, AND ADDING AND DELETING TREES FROM PROTECTED TREE LIST; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Argyle (“Town”) is authorized to regulate various aspects of development within the Town and its extraterritorial jurisdiction; and

WHEREAS, the Town Council has investigated and has determined that tree preservation related to development is necessary to protect the health, safety, and welfare of the public; and

WHEREAS, the Town Council deems the passage of this Ordinance to be in the best interest of the citizens of Argyle.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS:

Section 1. Findings Incorporated. That all matters stated hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

Section 2. Amendment to Section 14.5.1. That Article V, Tree Preservation, Section 14.5.1, Purpose and Intent, of the Town of Argyle Development Standards is hereby amended to read as follows:

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% tree canopy cover in the town.

Section 3. Amendment to Section 14.5.2. That Article V, Tree Preservation, Section 14.5.2, Exterritorial Jurisdiction, of the Town of Argyle Town Development Standards is hereby amended to read as follows:

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

Section 4. Amendment to Section 14.5.3. That Article V, Tree Preservation, Section 14.5.3, Tree Preservation Board, of the Town of Argyle Town Development Standards is hereby amended to read as follows:

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

Section 5. Amendment to Section 14.5.4. That Article V, Tree Preservation, Section 14.5.4, Applicability, of the Town of Argyle Town Development Standards is hereby amended to read as follows:

- 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.
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.

Section 6. Amendment to Section 14.5.5. That Article V, Tree Preservation, Section 14.5.5, Tree Replacement Requirements, of the Town of Argyle Town Development Standards is hereby amended to read as follows:

- 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.

Section 7. Amendment to Section 14.5.7. That Article V, Tree Preservation, Section 14.5.7, Tree Pruning, of the Town of Argyle Town Development Standards is hereby amended to add E. to read as follows:

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

Section 8. Amendment to Section 14.5.8. That Article V, Tree Preservation, Section 14.5.8, Tree Planting, of the Town of Argyle Town Development Standards is hereby amended to add C. to read as follows:

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

Section 9. Amendment to Section 14.5.10. That Article V, Tree Preservation, Section 14.5.10, Enforcement, of the Town of Argyle Town Development Standards is hereby amended to add G. to read as follows:

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

Section 10. Amendment to Section 14.5.12. That Article V, Tree Preservation, of the Town of Argyle Town Development Standards is hereby amended to add Section 14.5.12, Incentives, to read as follows:

Sec. 14.5.12. Incentives. 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.

Section 11. Amendment to Section 14.5.13. That Article V, Tree Preservation, of the Town of Argyle Town Development Standards is hereby amended to add Section 14.5.13, Registration of Heritage Trees, to read as follows:

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.

Section 12. Amendment to Section 14.5.14. That Article V, Tree Preservation, of the Town of Argyle Town Development Standards is hereby amended to add Section 14.5.14, Definitions, to read as follows:

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 feet 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.

Section 13. Amendment to Section 14.5.15. That Article V, Tree Preservation, of the Town of Argyle Town Development Standards is hereby amended to add Section 14.5.15, Definitions, to read as follows:

Section 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 (5) 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.

Section 14. Amendment to Section 14.5.49. That Article V, Tree Preservation, Section 14.5.49, Protected Tree List, of the Town of Argyle Town Development Standards is hereby amended to add the species American Elm, Slippery Elm, and Winged Elm under “Large Trees” and delete the species “Bradford Pear” under Small Trees.

Section 15. Amendment to Change to Tree Preservation Board. That Article V, Tree Preservation, is hereby amended throughout to replace each instance of “Tree Board” with “Tree Preservation Board.”

Section 16. Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance or the Town's Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not exceeding Two Thousand and No/100 Dollars (\$2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the Town from filing suit to enjoin the violation. The Town retains all legal rights and remedies available to it pursuant to local, state, and federal law.

Section 17. Cumulative Clause. This Ordinance shall be cumulative of all other Ordinances of the Town of Corinth and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance or where expressly repealed hereby. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

Section 18. Severability Clause. If any section, subsection, clause, phrase, or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unconstitutional, the remaining sections, subsections, clauses, phrases, and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 19. Savings Clause. In the event of a conflict between the provisions of this Ordinance and any other regulation or rule prescribed by charter, another ordinance, resolution or other authorization of the Town, the provisions of this ordinance shall control. Notwithstanding the foregoing, all rights and remedies of the Town are expressly saved as to any and all complaints, actions, claims, or lawsuits, which have been initiated or have arisen under or pursuant to such conflicting Ordinance, or portion thereof, on the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose the conflicting Ordinance shall remain in full force and effect.

Section 20. Effective Date. This Ordinance shall take effect immediately from and after its passage and approval.

PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF ARGYLE, TEXAS, ON THIS THE 21ST DAY OF MARCH, 2022.

APPROVED:

Bryan Livingston, Mayor

ATTEST:

APPROVED AS TO FORM:

~~Dianna Buchanan, Town Secretary~~

~~Brenda McDonald, Town Attorney~~