

## Chapter 102

# VEGETATION

### Article I. Trees.

#### Division 1. In General.

##### Section 102-1. Findings, purpose and intent.

(a) The City of Conroe is situated in the Piney Woods forest of east Texas. The City Council finds that trees are important public resources that contribute to the unique character of the city and its physical, historical, cultural, aesthetic, ecological and economic environment. Trees reduce the effects of pollutants, provide wildlife habitat, shade and cooling, and add value to real property. It is the goal of the City Council to secure these benefits by maintaining the urban forest canopy over a significant area of the city.

(b) This article is intended to prevent the indiscriminate cutting of trees in advance of development, to require the consideration of trees as a component of site design, and to allow for the commercially reasonable development of private property subject to minimum standards for the preservation and planting of trees. The provisions of this article shall not be construed or applied to preclude development or prohibit ingress or egress.

##### Section 102-2. Definitions.

*“Caliper”* refers to the trunk diameter of nursery stock trees planted to satisfy a requirement of this article. Caliper is measured six inches above the root ball for trees that are four inches in diameter or smaller, and twelve inches above the root ball for larger nursery stock.

*“Central business district”* means the nine block area of downtown Conroe that is bounded by Pacific Street, W. Phillips Street, San Jacinto Street and Metcalf Street.

*“Critical root zone”* means the area within a radius extending out from the trunk of a tree one foot per each diameter inch of the trunk as measured at breast height.

*“Diameter at breast height or DBH”* means the diameter of a tree trunk to the nearest inch measured 4.5 feet above ground level at the base of the tree. On sloping terrain the measurement is made on the uphill side of the tree.

*“Director”* means the officer or employee designated by the city administrator to administer the provisions of this article.

*“Development”* means the process of altering the condition of land by clearing, grading, construction or any activity that requires or results in the removal of protected trees. The term includes, but is not limited to any action that requires a building permit.

*“Hazard tree”* means a tree that endangers the public health, safety or welfare or that poses a threat of injury to persons or property, including other trees, by virtue of damage, disease, insect infestation, instability or other injurious conditions.

*“Healthy tree”* means a tree that is free from significant stress, damage, disease, insect infestation or other conditions that substantially reduce the prospect of long term viability. The tree shall have a fair to well developed crown and less than 20% deadwood.

*“Heritage tree”* means a tree of a species listed on the Texas Forest Service list of native and naturalized trees of Texas that has a circumference not less than 75% of the threshold circumference required for classification as a “big tree”.

*“Infrastructure”* means streets, sidewalks, drainage, water, sewer or other public utility improvements.

*“Lot”* means a parcel of land dedicated by subdivision plat for exclusive use for one or two family residential purposes.

*“Manufacturing”* means or refers to an activity within sectors 31 – 33 of the North American Industry Classification System.

*“Non-residential property”* means property that is developed for any purpose other than one or two family residential use. The term includes property developed for multi-family residential use such as apartments, condominiums or other similar forms.

*“Protected tree”* means a tree that is eight (8) inches or greater in diameter at breast height.

*“Residential property”* means property that is actually used for, or is dedicated or restricted to use for one or two family residential use. The term does not include multifamily residential use such as apartments, condominiums or other similar forms.

*“Warehousing”* means an activity within subsector 419 of the North American Industry Classification System. This definition specifically excludes self-storage businesses that rent storage spaces or units to the public.

*“Woodland tree stand”* means an area of contiguous wooded vegetation covering at least two thousand five hundred (2,500) square feet where the branches and leaves of the trees form a canopy over substantially all the area.

### **Section 102-3. Applicability and exemptions.**

(a) Except as otherwise provided by this section the requirements of this article are applicable throughout the corporate limits of the city and apply to all types of development or development activity by both public and private entities, including but not limited to:

- (1) The removal of any protected tree;
- (2) Clearing of all or a portion of property;
- (3) Subdivisions of land for any purpose;
- (4) Additions to non-residential buildings or parking lots that expand the footprint of the structure by thirty percent (30%) or more, or that add at least three thousand (3,000) square feet of area to the existing structure;
- (5) Construction of new non-residential structures for which a building permit is required; and

- (6) Construction of new one or two family residential structures.
- (b) This article does not apply to:
  - (1) Changes in the use or configuration of existing non-residential buildings or parking lots that does not expand the structure beyond the limits provided in (a)(4) of this section;
  - (2) Property located within the central business district;
  - (3) Clearing, maintenance or tree trimming within an easement or right-of-way by a railroad or utility company;
  - (4) The construction of streets or highways by or on behalf of a state or local government entity; and
  - (5) The removal or trimming of trees or other vegetation within or adjacent to street rights-of-way to conform to traffic safety rules requiring unobstructed views.

(c) Infill construction of single family residences on lots in residential subdivisions vested in regulations in effect prior to August 28, 2014 are subject to the requirements of Section 102-23(a) but are otherwise exempt from the requirements of this article.

#### **Section 102-4. Technical standards and specifications.**

The director is authorized to prepare technical standards and specifications to ensure the proper implementation of the provisions of this article. The technical standards and specifications shall include standards for tree preservation during construction, standards for planting, irrigation, maintenance, replacement and other related matters. When approved by the City Council such technical standards and specifications shall be incorporated into this article by reference and shall have the force of ordinance. In the event of any conflict between the provisions of this article and the provisions of the technical standards and specifications, the provisions of this article shall control.

#### **Section 102-5. Permit required for removal of protected tree.**

(a) A person shall not cut down, harvest or remove any protected tree unless authorized to do so under a permit issued as provided by this article. Only the following permits may issue to authorize removal of a protected tree:

- (1) A protected tree removal permit;
- (2) A forest management permit; or
- (3) A clearing permit issued in conjunction with a subdivision plat, building permit or other form of development permit that incorporates a tree preservation and landscape plan approved under this article.

(b) It is an exception to the requirement of this section that the removed tree was a hazard tree and posed an imminent threat to the safety of persons or property so that immediate removal was warranted.

(c) It is an exception to the requirement of this section that the tree was removed from a residential lot by or at the direction of the homeowner residing on the property.

**Section 102-6. Protected tree removal permit.**

(a) A protected tree removal permit shall be issued to authorize the removal of:

- (1) Any protected tree that is dead or dying;
- (2) Any protected tree that has become a hazard tree;
- (3) Any protected tree that obstructs the only practicable means of ingress or egress to or from property; or
- (4) Any other protected tree located on previously developed property provided that removal of the protected tree does not reduce the tree canopy below the required minimum tree canopy applicable to the property under section 102-11.

(b) A protected tree removed from previously developed property under a permit issued in accordance with this section must be replaced elsewhere upon the property unless the minimum canopy requirements of this article are satisfied without the necessity of replacement.

(c) A protected tree removal permit may authorize the removal of up to five (5) specific trees identified in the application and the permit expires thirty (30) days following the date of issuance. The director shall prescribe the form of application for a tree removal permit. An application fee in the amount set forth in appendix A must accompany each application.

**Section 102-7. Forest management permits.**

(a) A forest management permit may be issued to authorize the removal of protected trees from property appraised as timber land under subchapter E, Chapter 23, Texas Tax Code. Forest management activities must be conducted in accordance with a written forest management plan prepared by a Society of American Foresters certified forester based on generally accepted forest management practices that maintains a minimum of twenty (20) uniformly distributed mature canopy trees per acre. The plan may provide for the routine removal of hazard trees as well as for timber harvesting. A copy of the written forest management plan must accompany the permit application. A forest management permit authorizes the removal of hazard trees in conformity with the management plan without additional notice but the director shall be given notice of timber harvesting activities not more than twenty (20) or less than ten (10) days prior to the actual commencement of harvesting activities.

(b) A forest management permit shall not authorize the removal of healthy protected trees from any area within fifty (50) feet of a street right-of-way line or property boundary, except for the limited purpose of gaining access to the interior of the property. Understory preservation within the fifty (50) feet perimeter is also required as a condition of the permit. The permit application shall include a site map designating the desired point of access. Access clearing shall be limited to a corridor not greater than twenty-five (25) feet in width.

(c) A forest management permit remains in effect for a period of five (5) years and may be renewed multiple times for so long as the property continues to be appraised as timber land. A copy of the current forest management plan must accompany each application for renewal of the permit. The director shall prescribe the form of application for a forest management permit. An application fee in the amount set forth in appendix A must accompany each application.

## **Division 2. Tree Preservation and Development Planning.**

### **Section 102-10. Preservation adjoining residential property.**

(a) Where non-residential property is developed adjacent to existing one or two family residential developments, a residential buffer zone is required on the non-residential property along the common boundary. The buffer zone adjacent to residential development shall be a strip not less than eighteen (18) feet deep running parallel and adjacent to the common boundary and not less than fifteen (15) feet deep behind the back line of any easement or series of abutting parallel easements along the common boundary.

(b) Protected trees located within a residential buffer zone are subject to mandatory preservation and no permit shall issue to authorize the removal of any healthy protected tree except where the removal is necessary for the construction of infrastructure, driveways or on premise advertising signs.

### **Section 102-11. Minimum tree canopy required for development.**

(a) Property developed for any purpose must meet the minimum tree canopy requirements of this section. Where the canopy of preserved trees is insufficient to meet the required minimum, then additional canopy shall be provided by new tree planting.

(b) The minimum required tree canopy for development is:

- (1) 20% of the gross area of property developed for use by manufacturing or warehousing establishments; and
- (2) 30% of the gross area of property developed for all other residential and non-residential purposes.

(c) Not less than one-third of the required canopy must be provided through preservation of existing trees. Except for the required preservation of protected trees located in a residential buffer zone the developer shall not be required to preserve trees at any particular location and the developer may designate which trees on the property will be preserved to satisfy the requirements of this section.

### **Section 102-12. Parking lot trees.**

In the case of new parking lots or additions to existing parking lots sixty (60) square feet of tree canopy must be preserved or planted for each additional parking space. Parking lot trees must be located in the interior of the parking lot or in an area immediately adjacent to the parking lot. For parking lots of 250 spaces or more, at least fifty percent (50%) of the parking lot canopy must be located within the interior of the parking lot. Only trees of the preferred species listed in section 102-17 may be used to satisfy the planting requirements of this section and all such trees must be at least three inch caliper and a minimum of six (6) feet in height. A minimum of 25% of the planted parking lot trees must be at least four inch caliper trees.

**Section 102-13. Required buffering of parking lots.**

(a) New parking lots shall be effectively buffered from street view. Buffering shall consist of shrubs planted along each perimeter line of a parking lot which faces a public street, exclusive of driveway entrances and pedestrian walkways.

(b) Shrubs shall be planted, maintained and replaced as necessary to ensure compliance with the minimum number applicable to each perimeter line based upon the following formula:

$$\text{Required Shrubs} = \text{Perimeter in Feet}/3$$

(c) Shrubs in the number required by this section shall be placed uniformly to provide substantially the same density of ground cover along the entire perimeter line. Shrubs shall be maintained at a height of not more than 36 inches or less than 24 inches as measured from the surrounding soil line.

**Section 102-14. Pre-development planning process.**

(a) Except as expressly provided by this chapter, no development shall occur unless the site of the proposed work is covered by an approved tree preservation and landscape plan. The location of all proposed buildings and improvements shall be oriented by the applicant, at the applicant's sole discretion, taking into consideration the existing tree stock and other relevant characteristics of the site.

(b) The applicant shall propose the location of woodland tree stands or individual trees for which preservation credits are requested. A tree located outside a woodland tree stand shall not receive preservation credit unless the tree has a diameter at breast height (DBH) of at least 6 inches. The applicant shall consider the preservation of trees in areas visible from abutting streets and public spaces. Preservation credits shall be denied for trees located in existing or proposed easements or rights-of-way where there is a reasonable possibility that removal of the tree will be required for utility operations. New tree stock shall be planted where the required minimum canopy is not met through preservation alone. Preservation credits shall be calculated prior to calculating the canopy area to be supplemented by new tree stock.

**Section 102-15. Reserved.****Section 102-16. Canopy measurement.**

(a) The canopy area of a woodland tree stand is the ground area within the smallest perimeter that contains all trees in the tree stand. The tree stand area may be surveyed on the ground or estimated from an aerial photograph depicting existing conditions.

(b) Individual trees not located within a woodland tree stand are classified by diameter at breast height (DBH) and receive the canopy area credit applicable to their trunk size classification as provided in Table I. Only healthy trees of a species on the Texas Forest Service list of native and naturalized trees of Texas, excluding those classified as shrubs, shall receive preservation credits.

**TABLE I. CANOPY AREA CREDITS FOR INDIVIDUAL TREES**

DIAMETER AT BREAST HEIGHT (DBH)	CANOPY CREDIT
At least 6", but less than 12" DBH	800 square feet
At least 12", but less than 18" DBH	1000 square feet
At least 18" DBH	1200 square feet
Heritage Tree	1800 square feet

(c) The preservation of trees that are visible from the adjoining street is preferred. As a bonus to encourage preservation, any preserved tree that is visible from the public street and located within 100 feet of the right of way shall receive a credit equal to 125% of the value in Table I.

**Section 102-17. New and replacement trees.**

(a) Only trees of the preferred species listed in Table II of this section are considered acceptable for new and replacement tree planting. Additional tree species may be considered and approved on a case by case basis by the director and such trees will receive the canopy credit applicable to the species height class. New trees must be a minimum of three inches in caliper at planting and receive the canopy credit listed in Table II. Each new tree must be planted in a pervious area containing not less than 162 square feet per tree.

**TABLE II. PREFERRED SPECIES LIST**

Tree Species & Height at Maturity	Growth Rate	Leaf Type	Canopy Credit
Large Over 40' tall	Loblolly Pine *	fast	800 square feet
	Slash Pine *	fast	
	Water Oak *	fast	
	Live Oak*#	slow	
	Cedar Elm	medium	
	Green Ash *	fast	
	Shumard Oak *	fast	
	Southern Red Oak	medium	
	Sweetgum	fast	
	River Birch	fast	
	American Elm	fast	
Red Maple *	fast		
Medium 25' to 40' tall	Winged Elm	medium	600 square feet

	Chinese Pistache	fast	deciduous	
	Lacebark Elm *	fast	deciduous	
Small Less than 25'	<b>Carolina Laurelcherry*</b>	medium/fast	evergreen	300 square feet
	Little Gem Magnolia	PwrL	evergreen	
	Rusty Blackhaw	PwrL	deciduous	
	Fringetree	Pwrl	deciduous	
	Hophornbeam	Pwrl	deciduous	

\* Denotes required species suitable for residential planting

# Residential planting credit for Live Oaks shall be limited to one tree per lot

PwrL denotes trees only suitable for planting under or adjacent to power lines

(b) Not less than fifty percent (50%) of the new trees planted shall be evergreen and not more than seventy-five percent (75%) may be of the large tree category.

(c) Tree species planted under or near overhead power lines must be chosen from the Small Tree category of Table II. Large species trees shall not be planted within thirty (30) feet of overhead power lines. Medium species trees shall not be planted within twenty (20) feet of overhead power lines.

**Section 102-18. Tree preservation and landscape plan.**

(a) The tree preservation and landscape plan shall be a scaled diagram overlaying the site plan and drawn to the same scale. Two copies of the plan shall be provided. The landscape plan shall be a plat plan which shows the proposed development including all details necessary for preservation of existing trees during construction and for the installation of any new trees or other required landscape improvements required by this article. The tree preservation and landscape plan must show the following:

- (1) the proposed location of all utility easements necessary to serve the property;
- (2) the footprint of all proposed buildings, parking lots and detention ponds;
- (3) the outline of each woodland tree stand to be preserved;
- (4) the location, size and variety of each additional tree that will be preserved for credits;
- (5) the location and variety of each tree to be planted to achieve the required minimum canopy; and
- (6) any other information required by the director to calculate the required canopy or amount of earned credits.

(b) The landscape and tree preservation plan must include or be accompanied by an irrigation plan. No irrigation shall be required for undisturbed natural areas or for existing trees to be preserved.

(c) Trees may be planted or preserved within storm water detention areas provided that the trees do not interfere with the drainage or substantially impair the storm water detention function.

**Section 102-19. Clearing permits.**

(a) A clearing permit may issue to authorize the removal of protected trees in conformity with a tree preservation and landscape plan that has been approved in conjunction with the approval or

issuance of a subdivision plat, building permit or other form of development permit. A clearing permit is valid for sixty (60) days from the date the permit is issued. A fee in the amount set forth in Appendix A based on the class of development must be paid prior to the issuance of a clearing permit. Compliance with the tree preservation and landscape plan is a condition of the clearing permit and no related development permit and no certificate of occupancy or certificate of acceptance for subdivision improvements may be issued until the director confirms that the development has been completed in conformity with the tree preservation and landscape plan.

(b) A partial clearing permit may be issued prior to the approval of any subdivision plat, building or development permit application in order to allow pre-development clearing of a portion of the land. An application to obtain a partial clearing permit prior to approval of a subdivision plat or building or development permit must include a map or drawing of the property on which the applicant designates tree bearing areas that include at least 30% of the property that will be set aside as a preservation bank for future preservation planning. No clearing or tree removal within the preservation bank is permitted without an approved tree preservation and landscape plan for the property. Not later than 180 days after the issuance of a partial clearing permit the developer must submit a proposed tree preservation and landscape plan for the property. When a tree preservation and landscape plan is approved and a final clearing permit is issued the developer may remove any excess trees in the preservation bank that are not required to conform to the approved preservation plan. If the preservation requirement cannot be satisfied by the trees in the preservation bank then the preservation deficit shall be made up by new planting at a 2 to 1 ratio. A surety bond in the amount of \$50,000 shall be required to secure the developer's obligation to submit a tree preservation and landscape plan and to preserve trees in the preservation bank pending the subsequent approval of a tree preservation and landscape plan for the property.

### **Section 102-20. Accommodation of Development Standards.**

(a) The City Council recognizes that in certain instances the goal of this article must be balanced against potentially conflicting objectives arising from other development regulations. The director may modify or waive the application of development standards as provided in this section when the director determines that the modification will facilitate the tree preservation requirements of this article and will not substantially increase the risk of unsafe traffic conditions or congestion, inconvenience to pedestrians, or flooding.

(b) Up to fifteen percent (15%) of required parking spaces may be waived if compliance with the canopy requirements cannot otherwise be achieved through preservation and if the reduction in parking area results in an equivalent increase in the area of preserved canopy.

(b) Sidewalks may be relocated, reduced in width or otherwise modified, where the application of sidewalk standards would otherwise conflict with tree preservation and canopy objectives.

(c) The director shall consider the effect on site drainage of low impact development strategies incorporating tree preservation and tree planting and, guided by generally accepted engineering standards and practices, may approve offsetting reductions to the size of onsite storm water detention facilities.

### **Section 102-21. Protection of critical root zone during construction.**

(a) A maximum of 30% of the area within the critical root zone of a protected tree shall be encroached with temporary or permanent improvements and the remaining area shall be kept free of

improvements and be protected during construction. Prior to development activities the contractor shall construct a protective fence with a minimum height of four (4) feet that encircles the critical root zone area to be preserved around each protected tree or tree stand. Protective fencing must be made of orange plastic mesh net with t-posts, including a top rail or other type of support. Protective fencing shall remain in place through the completion of development activities.

(b) The following activities within the critical root zone are prohibited:

- (1) No cutting, filling, trenching or other disturbance of the soil is permitted unless otherwise authorized by this article and the zone shall be maintained at natural grade;
- (2) No construction or waste materials shall be placed or stored within the zone;
- (3) No harmful liquids shall be allowed to flow into the zone, including without limitation, vehicle or equipment wash water, paint, oil, solvents, asphalt, concrete, mortar or other materials;
- (4) No vehicle or equipment traffic or parking shall be allowed within the zone; and
- (5) No signs, wires or other attachments, other than those of a protective nature, shall be attached to any protected tree.

(c) Where it is not practical to trench around the critical root zone of a protected tree any utility installation through the critical root zone shall be accomplished by boring at a minimum depth of forty-eight inches (48") under the entire length of the zone. Irrigation trenching within a critical root zone shall be minimized and placed radially to the tree trunk in a manner that minimizes damage to the roots.

(d) All irrigation trenching within the critical root zone shall be by hand work with no roots over one inch diameter being cut.

### **Section 102-22. Post development maintenance and replacement.**

(a) Protected trees, parking lot trees and shrubs, and replacement or mitigation trees must be maintained in a healthy condition for at least one year following the issue of a certificate of occupancy. The property owner is responsible for irrigating, fertilizing, pruning and other maintenance of such trees and shrubs as needed. Preserved or planted trees that die within the maintenance period must be replaced within 90 days with new trees meeting the requirements of Section 102-17. Planted trees that die during the maintenance period must be replaced on a one to one basis. Preserved trees that die during the maintenance period must be replaced with new trees having a total canopy value that is not less than the canopy of the tree to be replaced. Replacement trees and shrubs planted to satisfy the requirements of this section are subject to a one year maintenance period and must be replaced if they fail to survive the extended maintenance period.

(b) Trees on residential lots are not subject to the one year maintenance period established by this section. A homeowner is not required to replace a lot tree that dies or is removed by or with the consent of the homeowner.

### **Section 102-23. Additional requirements for residential development.**

(a) Each building permit for a new one or two family dwelling shall require the preservation or planting of at least three trees. At least one tree must be located in the front yard of the dwelling and must have a minimum caliper of four inches. The remaining required trees must have a minimum caliper of three inches and shall be placed in either the front or rear of the lot. The trees must be one of the preferred species suitable for residential development listed in Section 102-17. No certificate of occupancy shall issue for any new one or two family dwelling until this requirement has been satisfied.

(b) A canopy credit of 2200 square feet per lot shall be applied toward the total canopy requirement applicable to the subdivision section without requiring a survey of the trees located on each lot. Additional canopy credit for on lot preservation shall not be allowed unless the total on lot canopy exceeds 2200 square feet due to the preservation of healthy protected trees having a minimum diameter at breast height of six inches and the protected trees are included in the tree survey and shown on the landscape and tree preservation plan. Protected trees that are preserved for additional on lot credit must be protected from removal by a preservation easement.

(c) Where canopy credit in excess of that allowed under (b) of this section is required to achieve the required minimum, then off lot preservation and planting within the same subdivision section shall be required. Proposed preservation areas should, to the extent practical, be evenly distributed throughout the subdivision.

### **Division 3. Administration and Enforcement.**

#### **Section 102-31. Variance procedure.**

(a) The director may grant a variance to the requirements of this article where literal enforcement will result in unnecessary hardship. A variance shall not be granted unless:

- (1) the variance is not contrary to public interest;
- (2) the variance will be in harmony with the spirit and purpose of this article;
- (3) the variance will not substantially weaken the general purposes of the regulations herein established for the protection of trees and the promotion of canopy; and
- (4) the variance granted is limited in scope to that relief which is necessary to relieve the hardship condition.

(b) All variance requests must be made in writing to the director and must include the subject of the requested variance and the justification for granting the variance, including a description of the hardship condition that will result if the requested relief is not granted. The applicant has the burden of demonstrating that sufficient evidence exists for granting the variance. The director may deny or grant the variance as requested, or may allow an alternate form of relief. The director shall issue a decision in writing not later than thirty (30) days following the date the variance request is received.

(c) An applicant seeking approval for the development of a tract of land that is two (2) acres in size or less shall, as a matter of right, be entitled to a variance relieving the applicant of the preservation requirements of this article. Tract size shall be determined by considering all contiguous property under common ownership. An applicant entitled to a variance of the preservation requirement shall be required to comply with the minimum canopy standard through any combination of new tree planting or mitigation payments.

(d) An applicant who disputes the decision of the director may appeal the variance decision to the municipal planning commission. Any appeal must be made in writing and must be filed with the director within ten (10) days following the date of the initial written decision. The director shall refer the appeal to the planning commission and the decision of the planning commission shall be final.

### **Section 102-32. Mitigation payments in lieu of preservation or planting.**

(a) An applicant may seek a variance as to all or a portion of the tree preservation or planting requirements upon the condition that the applicant pay mitigation fees in lieu of preservation or planting. An applicant for a variance bears the burden of demonstrating that application of the preservation or planting requirement will result in unnecessary hardship.

(b) Mitigation fees authorized by this section shall be payable at the rate of \$1.50 per square foot of additional canopy necessary to achieve the coverage applicable to the property after allowance for all other credits.

### **Section 102-33. Tree mitigation fund.**

(a) The director of finance shall establish a dedicated account to be known as the Tree Mitigation Fund. Mitigation fees paid as provided by section 102-32 of this article shall be recorded for the benefit of the fund and accounted for in a manner that distinguishes such funds from other general funds of the city. The balance of such fund remaining at the end of each fiscal year shall be appropriated as the beginning balance of the fund for the following fiscal year. The assets of the fund may be used as provided by this section, and for no other purpose.

(b) The assets of the fund shall be expended under the direction of the director of parks and recreation and may be used to purchase and plant new trees in the public parks, parkways, medians and rights-of-way of public streets and upon the grounds of other public property of the city. Planting costs payable from the fund include the installation of related irrigation equipment and other measures necessary to the protection and subsequent maintenance of new trees for a period of up to three years following planting. An amount not to exceed 20% of the fund balance at the beginning of each fiscal year may be expended to promote public awareness of the objectives of this article, including Earth Day or Arbor Day programs for the distribution of sapling trees to the general public .

### **Section 102-34. Penalties for violation.**

(a) Any person, firm or corporation who violates a provision of this article shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding five hundred dollars (\$500). In cases of offenses involving the illegal removal of trees, the removal of each tree constitutes a separate offense. In cases of continuing violation, each separate day that a violation continues constitutes a separate offense.

(b) Any person, firm or corporation that removes a protected tree without having secured a permit to authorize such removal shall be subject to a civil penalty in the amount of two hundred dollars (\$200) times the total diameter inches of all unlawfully removed protected trees. The civil penalty authorized by this paragraph may be imposed by the director in addition to the misdemeanor penalty in paragraph (a) of this section. The imposition of a civil penalty may be appealed to the municipal planning commission. Any appeal must be made in writing and must be filed with the director within ten (10) days following the date of the initial written decision. The director shall refer the appeal to the planning commission and the decision of the planning commission shall be final.

(c) Where illegal tree removal has occurred and the physical evidence has been removed from the site the civil penalty may be assessed based on the estimated diameter of removed trees. For purposes of such estimation the aggregate diameter of trees per acre is assumed to be 200 diameter inches per acre.

(d) The imposition of a civil penalty under this section suspends all permits or permit applications issued to or for the benefit of the party responsible for payment of the civil penalty and all work under any such permits shall cease until the civil penalty is fully paid.

### **Section 102-35. Bond.**

Prior to the issuance of any permit requiring approval of a tree preservation and landscape plan under Sec. 102-19 of this article the permit applicant shall submit a surety bond or other form of financial guarantee payable to the City to secure the applicant's compliance with this article. The bond shall be in a form acceptable to the City and in an amount equal to \$1.50 times the total canopy area applicable to the project, but in no event shall exceed \$50,000. The bond or other financial security shall be maintained in effect until the expiration of the one year maintenance period required by Section 102-22.