

## 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 director of public works or the officer or employee designated by the director 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.

*“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 six (6) inches or greater in DBH, or a smaller tree minimum three (3) inches but less than six (6) inches DBH that has been planted or preserved in conformity with a canopy plan approved in connection with a permit issued under this article.

*“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.

*“Understory”* means the underlying layer of vegetation growing below the forest canopy including smaller trees, saplings and shrubs, but not including grasses or other ground covering vegetation.

*“Warehousing”* means an activity within subsector 419 of the North American Industry Classification System. This definition specifically excluded 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 trees are at a density of at least one protected tree per five hundred (500) square feet of land and where the branches and leaves 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.

#### **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 may 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) No person may 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 timber harvesting permit; or
- (3) 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 may 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) 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. Timber harvesting permit.**

(a) A timber harvesting permit may be issued to authorize the removal of timber from the interior of property appraised as timber land under subchapter E, Chapter 23, Texas Tax Code. Harvesting 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. A copy of the written forest management plan must accompany the permit application.

(b) A timber harvesting permit may not authorize the removal of trees or understory 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. 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) The director shall prescribe the form of application for a timber harvesting 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 of protected trees in preservation zones on non-residential property.**

(a) The following areas of all non-residential tracts or parcels are designated tree preservation zones:

- (1) a strip twenty-five (25) feet deep along the front of the property, running parallel and adjacent to the rear line of any easement or series of easements abutting the street right-of-way, or adjacent to the right-of-way if there are no abutting easements; and
- (2) a strip eighteen (18) feet deep along any side street, running parallel and adjacent to the rear line of any easement or series of easements abutting the street right-of-way, or adjacent to the right-of-way if there are no abutting easements.

(b) Where non-residential property is developed adjacent to existing one or two family residential developments, a preservation zone is required along the common boundary. The preservation 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.

(c) Protected trees located within a preservation 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) All property developed for any purpose must meet the minimum tree canopy requirements of this section. Where the canopy of protected trees in preservation zones on non-residential property is insufficient to meet the required minimum, then additional canopy shall be provided by new tree planting or the voluntary preservation of protected trees in the interior of the property.

(b) The minimum required tree canopy for non-residential 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 non-residential purposes.

(c) The minimum required tree canopy for residential property development is 30% of the gross area of each section of a subdivision developed for residential purposes. Not less than one-third of the required canopy must be provided through preservation of existing trees.

### **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.

### **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 should 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) No development may 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. The applicant must preserve protected trees within the tree preservation zones and is encouraged to consider the voluntary preservation of trees in other spaces visible from abutting streets and public spaces.

(b) Based on the applicant's proposed site plan a tree survey will be performed by a city registered urban forest professional to document the tree canopy area resulting from preservation of protected trees in preservation zones and other areas that are not disturbed by the applicant's plan of development. 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. Tree survey requirements.**

(a) Each tree survey shall be performed by a city registered urban forest professional and the results submitted on a scaled diagram of the property. The diagram shall be at a scale of not less than one inch to one hundred feet and may be an engineered drawing, survey, aerial photograph or other accurate illustration of the existing conditions which includes the following information:

- (1) an area map locating the property within the community;
- (2) the boundaries of the property and its calculated area;
- (3) the location of all existing streets, drainage and utility easements that are on or adjacent to the property;
- (4) the location of the required tree preservation zones on non-residential property and the approximate location and identification number of any healthy protected trees located within such zones;
- (5) the approximate location and identification number of each healthy protected tree that is to be preserved under the applicant's plan of development; and

(6) where the preservation of woodland tree stands as defined by this article is proposed, the boundary and total area of woodland tree stand.

(b) Each protected tree that is individually located by the survey will be tagged with a blue sequentially numbered aluminum tag and flagged with blue plastic flagging. The tree survey submittals must include a table cross referenced to the diagram with the identification number, species, DBH and canopy area of each such tree. The table must note each protected tree for which heritage credits will be claimed. Only healthy trees will receive canopy credits.

(c) The tree survey must be accompanied by a reasonably current aerial photograph reflecting the pre-development condition of the property.

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

(a) Tree stand delineation is the required method of canopy measurement for trees within a woodland tree stand. The canopy area of a woodland tree stand is the area within a 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. The city registered urban forest professional that performs the tree survey must verify the character of the tree stand through an on the ground inspection.

(b) Individual protected trees not located within a woodland tree stand are classified by trunk size (DBH) and receive the canopy area credit applicable to their 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, may receive preservation credits.

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

DIAMETER AT BREAST HEIGHT	CANOPY CREDIT
At least 6", but less than 12" DBH	600 square feet
At least 12", but less than 18" DBH	800 square feet
At least 18" DBH	1200 square feet
Heritage Tree	1800 square feet

**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	evergreen	600 square feet
	Slash Pine *	fast	evergreen	
	Water Oak *	fast	deciduous	
	Live Oak*#	slow	evergreen	
	Cedar Elm	medium	deciduous	
	Green Ash *	fast	deciduous	
	Shumard Oak *	fast	deciduous	
	Southern Red Oak	medium	deciduous	
	Sweetgum	fast	deciduous	
	River Birch	fast	deciduous	
	American Elm	fast	deciduous	
Red Maple *	fast	deciduous		
Medium 25' to 40' tall				400 square feet
	Winged Elm	medium	deciduous	
	Chinese Pistache	fast	deciduous	
	Lacebark Elm *	fast	deciduous	
Small Less than 25'	<b>Carolina Laurelcherry*</b>	medium/fast	evergreen	150 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) Only small trees may be planted under or near overhead power lines. Large species trees may not be planted within thirty (30) feet of overhead power lines. Medium species trees may not be planted within twenty (20) feet of overhead power lines.

**Section 102-18. Understory credits.**

(a) Woodland tree stand areas with preserved understory shall be entitled to a canopy credit for understory preservation that is equal to one-half of the understory area.

(b) For purposes of achieving the required minimum coverage, the canopy attributable to woodland tree stands and preserved trees shall be determined first, then adjusted based on any credits



applicable under this article. New planting shall be used to supplement the preserved canopy to achieve the required minimum. Trees preserved or planted to meet the parking lot requirement of section 102-12 will be fully credited towards the required canopy.

### **Section 102-19. Tree preservation and landscape plan.**

(a) The tree preservation and landscape plan shall be a scaled diagram overlaying the approved tree survey 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 necessary calculations, specifications and details necessary for preservations of existing trees during construction and for the installation of any new trees or other required landscape improvements required by this article. The landscape plan must be prepared, signed, and sealed by a licensed landscape architect. The tree preservation and landscape plan must show the following:

- (1) the location and identification number of each protected tree to be removed from a preservation zone to accommodate utility improvements, sidewalks, driveways or signs;
- (2) the proposed location of all new utility easements necessary to serve the property;
- (3) the footprint of all proposed buildings, parking lots and detention ponds;
- (4) the outline of each woodland tree stand to be preserved;
- (5) the location of each additional protected tree that will be preserved; and
- (6) the location of each tree to be planted to achieve the required minimum canopy.

(b) The landscape and tree preservation plan must include or be accompanied by an irrigation plan designed and sealed by an irrigator licensed by the State of Texas. No irrigation shall be required for undisturbed natural areas or for existing trees to be preserved.

(c) Where supplemental tree planting is required priority shall be given to planting within preservation zones adjacent to streets and other areas visible from public places. 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.

(d) A tree preservation and landscape plan may only be approved in conjunction with the approval or issuance of a subdivision plat, building permit or other form of development permit. Compliance with the tree preservation and landscape plan is a condition of the 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.

### **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 may 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) Not more than 30% of the area within the critical root zone of a protected tree may 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 which encircles the critical root zone area to be preserved around each protected tree or tree stand. Protective fencing must at a minimum consist of four (4) feet high 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) The zone shall be maintained at natural grade and no cutting, filling, trenching or other disturbance of the soil is permitted unless otherwise authorized by this article;
- (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) Utility installation through a critical root zone may be accomplished by boring where it is not possible to trench around the critical root zone of a protected tree. When necessary the bore shall be at a minimum depth of forty-eight (48) inches 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 thirty-six (36) months 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) Understory preserved for canopy credits may not be removed during the maintenance period unless the removal is mitigated by planting new trees with an equivalent canopy area. Understory removal must be accomplished in a manner that avoids damage to protected trees. Acceptable techniques for understory removal include the use of hand tools, hydro axe or hydro chippers.

### **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 such tree must be located in the front yard of the dwelling and must have a minimum caliper of four inches. The two remaining trees must have a minimum caliper of three inches and may 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 1800 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 1800 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 102-30. Urban forest professionals.**

(a) Urban forest professionals wishing to perform tree surveys in accordance with this article must register with the City of Conroe. The director shall review the applicant's credentials and either approve or deny the registration.

(b) Each applicant must complete a registration application. The application shall be submitted to the director for review, accompanied by the fee as set forth in appendix A. Each applicant must successfully show proof of the following:

- (1) Applicant has a Bachelor of Science degree in Urban Forestry, Landscape Architecture, Horticulture or a closely related field;
- (2) Applicant has a minimum of one year of experience in tree surveys and evaluations;
- (3) Applicant has a working knowledge of trees in the southeast Texas region and is able to perform tree surveys and evaluations in accordance with the provisions of this article;
- (4) Applicant has the ability to create a computer aided tree survey/evaluation;
- (5) Applicant must carry a minimum of \$500,000 general liability insurance;
- (6) Applicant must provide three professional references to attest to the applicant's ability and character; and
- (7) Applicant agrees and authorizes a criminal background history of the applicant.

(c) Within thirty (30) working days of receipt of a completed registration application, the director shall either approve or deny the registration. An approved registration shall be valid for an indefinite term unless suspended or revoked by the director. A registration shall automatically be suspended if the registrant fails to maintain the minimum liability insurance required by this section. A registration may be revoked if the registrant commits and is convicted of a felony offense; the registrant is found to have falsified any information that was submitted to the city for review; the registrant is found to be incapable of performing/creating the tree survey required by this article. A minimum of fifteen (15) working days prior to revocation of a registration, the director shall inform the registrant in writing stating the reason for the revocation. Any appeal to the director's decision shall be made to planning commission.

### **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. No variance may 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 may 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 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 who 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.