

# Municipal Regulation of Trees & Landscaping

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## **An Update of Tree Legislation from 2007-2019**

### **Some State Case Law Concerning Tree Regulations since 2007:**

- *Continental Homes of Texas, L.P. v. City of San Antonio*, 275 S.W.3d 9 (Tex. Ct. App. August 20, 2008): Court of Appeals held that developer could remove trees from his property, against city ordinance, and not pay mitigation fees because the language of the city's ordinance explicitly stated that it apply to 'private property not subject to permits.'
- *Milestone Potranco Development, LTD v. City of San Antonio*, 298 S.W.3d 242 (Tex. Ct. App. May 27, 2009): Court of Appeals held that the city's tree preservation ordinance was a rule "governing plats and subdivisions of land" that the city was authorized to adopt; that the tree ordinance governed only plats and subdivisions of land, and as a result, the tree ordinance was not overly broad; and that the city was permitted to extend its tree ordinance to plats and subdivision development in city's extraterritorial jurisdiction.

### **Some Case Law from Outside of Texas Concerning Tree Regulations since 2007:**

- *Save our Big Trees v. City of Santa Cruz*, 241 Cal.App.4<sup>th</sup> 694 (Oct 23, 2015): Court ordered city to remove amendments made to its Heritage Tree and Heritage Tree Removal ordinances which would have weakened protections for trees in both ordinances, after finding that the City had not substantially carry its burden of proving with substantial evidence that the changes fell under exceptions of the California Environmental Quality Act.
- *Wilmes v. City of St. Paul*, 2012 WL 171390 (Minn. Ct. App. Jan. 23, 2012): Minnesota Court of Appeals upheld a city's denial of a permit to a landowner wishing to remove a tree. The court reasoned that it was because the tree was in the city's right-of-way; however, it hinted that its finding might have been different otherwise.

## **Municipal Regulation of Trees & Landscaping**

Even with over 100 Texas communities restricting the removal of trees from private land for scenic and environmental reasons such as flood control, cooling, and better air quality, the theme of municipal tree regulations as undue landowner restrictions at the least, and takings of property at the most, looms in Texas. However, while the 2017 legislative session featured dueling bills sent to Governor Abbott that sought to limit tree preservation efforts, the past 2019 session saw the quiet death of a bill seeking to indirectly limit cities' tree preservation efforts.

A more thinly veiled attempt to limit municipal tree preservation efforts, House Bill 969 sought to grant political subdivisions the authority to allow, by landowners, a "noxious or invasive plant species or brush species" that could be considered detrimental to water conservation on the landowner's property. The purported intention was specifically to remove obstacles to brush clearing pursuant to the Texas Water Supply Enhancement Program (WSEP). The bill would not have allowed a city to prevent, either by prohibiting or limiting, the removal of the noxious or invasive plant if it were on a property that were a homestead, ag exempt, or if it were single-family residential. By not defining "noxious or invasive" the bill presumably would have left the determination of whether a tree counted as such up to the discretion of the property owner.

Opponents of the bill pointed out that the manner in which "noxious and invasive" was being implemented would target both non-native invasive tree species as well as native Texas invasive species, which included the Ashe juniper, Mesquite, and Huisache. For example, if enacted, the Bill would have struck the protection of old-growth Ashe juniper and large Mesquite trees from Texas city tree preservation ordinances, such as the City of San Antonio's.<sup>1</sup>

Additionally, the Bill would have affected these tree species statewide but WSEP watersheds, the protection of which was said to be the Bill's primary aim, but the only Texas city with a tree ordinance in any of the WSEP watersheds is Abilene. Abilene's tree ordinance does not limit removal of any of the trees named by the bill.<sup>2</sup> Thus, no Texas tree ordinances interfere with WSEP watersheds.

As with previous bills, HB 969 would primarily have helped developers clear the tree species while developing lots, even if its purported aim was to aid water quality and agricultural pursuits. Many city tree ordinances already exempt ranches and other agricultural operations. Few agricultural sites or ranches are within city limits, and those that are have usually been grandfathered out of municipal tree preservation ordinances. Ranches and farms located in the ETJ have always been exempt under the State Agriculture Code.<sup>3</sup> Further, there are no studies that show clearing trees for land development aids in water conservation. It has instead been

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<sup>1</sup> "Bill Would Enable Clear-Cutting by Developers", <https://www.sierraclub.org/texas/blog/2019/04/bill-would-enable-clear-cutting-developers> (April 4, 2019)

<sup>2</sup> *Id.*

<sup>3</sup> Tex. Ag. Code §251.005(c)

shown that certain of the tree species that were targeted by the bill, such as mature Ashe junipers, would consume far less water on a lot than implemented, developed landscaping would.<sup>4</sup>

That House Bill 969 did not make it past the House after mid-April is a stark contrast to 2017 when the special legislative session was called and the only environmental issue included by Governor Abbott was the possible total elimination of local tree protection ordinances in Texas cities.<sup>5</sup>

The Governor rallied for the ban of the ordinances, calling municipal tree protection “socialistic.” The label came as a shock to many as, ever since 1983 when the City of Austin was the first municipality in Texas to adopt a tree preservation ordinance, around 110 Texas cities have followed suit—the majority of which are not traditionally considered politically liberal.<sup>6</sup> As phrased in an opinion editorial by Mary Ann Graves, president of the Texas Historic Tree Coalition:

“The freedom of a person to do what they want with their land is being pitted against the need for the preservation of one of our most valuable assets.”<sup>7</sup>

2017 saw Governor Abbott veto S.B. 744, a bill that would have drastically infringed upon cities’ tree preservation efforts. It proposed, among other things, a \$400 limit to tree mitigation fees regardless of the tree’s size, age or value, as well as a ban on cities’ regulation of trees in their ETJs, the undeveloped land that is the prime target for developers.<sup>8</sup> According to the Governor’s veto message:

“Cities telling landowners what they can and cannot do with the trees in their own backyard is an assault on private property rights. Senate Bill 744 appears to be a compromise bill that imposes a very minor restriction on some municipal tree ordinances. But in doing so, it gives the imprimatur of state law to the municipal micromanagement of private property, which should be abolished altogether. This bill was well-intentioned, but by the end of the legislative process it actually ended up doing more to protect cities than it did to protect the rights of property owners. I applaud the bill authors for their efforts, but I believe we can do better for private property owners in the upcoming special session.”

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<sup>4</sup> *Id.* “Bill Would Enable Clear-Cutting by Developers”

<sup>5</sup> Robin Schneider, “A victory for Texas trees—and for local control”, <https://www.tribtalk.org/2017/08/30/a-victory-for-texas-trees-and-for-local-control/> (Aug. 30, 2017)

<sup>6</sup> *Id.*

<sup>7</sup> Mary Ann Graves, “Op Ed: Tree lovers should oppose SB 14 and HB 70”, <https://www.greensourcedfw.org/articles/op-ed-tree-lovers-oppose-sb-14-and-hb-70> (July 24, 2017)

<sup>8</sup> Julie Ryan, “Public outcry stops Texas Legislature’s hack on local tree protections.” <https://www.greensourcedfw.org/articles/public-outcry-stops-texas-legislatures-hack-local-tree-protection> (Aug. 22, 2017)

Governor Abbott's remarks were a far cry from his words almost 20 years ago as a Justice on the Texas Supreme Court, when he upheld a tree ordinance in *Quick v. City of Austin* in 1998 by concluding that the ordinance was rationally related to the governmental interest of protecting water quality. The then Texas Supreme Court Justice wrote, "Because the City has the right to significantly limit development in watershed areas in furtherance of this interest."<sup>9</sup> This too makes it especially curious that in 2019 the elimination of tree protections was not just being purported to protect landowners' property rights, but cutting down the trees in question was also now being presented to be in the interest of improving water quality.

The Bill ultimately signed by the Governor in 2017, HB 7, still stands. It allows individuals who remove trees on their own residential property in cities that regulate tree removal to apply for a tree planting credit to offset the tree mitigation fee. It also mandates that municipalities can't charge homeowners fees for removing trees that are under 10 inches in diameter. This last provision may be seen as an unusual one, since it appears there is only one Texas community with an ordinance protecting trees of that size.

The current state regulations also specifically outline how much a property owner may offset fees with planting. Individual homeowners can eliminate fees entirely by planting new trees. Nonresident developers and commercial developers may offset the fees in the same way by at least 50 percent and 40 percent, respectively. The regulations manage to still offer protections from commercial builders and developers, the biggest threat most city tree ordinances face, even with its looser residential requirements. In other words, they strike a tenuous compromise.

Both the bill that has passed and the aforementioned bills that have not remain the echo of other recent threats to municipal tree protections, most notably HB 1377 in 2013 which aimed to establish any prohibition of tree removal as a "taking" of each tree to which it applied. This would have meant that cities would either have to pay an owner the value of each tree protected by the ordinance, or else waive regulation of the ordinance altogether.

Those who believe the ordinances restrict private property owners' rights to too great a degree say that the tree regulations restrict what should be basic private property rights. Their beliefs might best be summed up in the words of Senator Donna Campbell of New Braunfels in her letter to the Attorney General:

"City tree ordinances are some of the most egregious examples of property rights violations in our state, affecting millions of property owners in Texas. We must ensure that city bureaucrats and central planners are not infringing on local citizens' liberty."<sup>10</sup>

Senator Campbell argued in a much-publicized letter to the Governor that tree ordinances appear to violate the takings clause of the Texas Constitution, Article I, Section 17, which provides: "No

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<sup>9</sup> *Quick v. City of Austin*, 7 S.W.3d 109, 116 (Tex. 1998)

<sup>10</sup> Donna Campbell, "Sen. Donna Campbell Requests Attorney General Opinion on the Constitutionality of Municipal Tree Ordinances," <https://senate.texas.gov/members/d25/press/en/p20170612a.pdf> (June 12, 2017)

person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made..." Texas courts often turn to a similar provision in the United States Constitution when analyzing whether an ordinance or other regulation constitutes a taking.

"The Takings logic behind these bills persists even though, for constitutional 'regulatory takings' purposes, requiring a city to compensate a landowner, as it would when exercising the power of eminent domain, if a regulation were to make a property valueless, is *flawed*. Trees are a factor that can be used to determine the value of land, but value is decided based on the total market value of the land. A tree preservation ordinance that prohibits a person from cutting down one or even several trees will not usually rise to the level of a regulatory taking that requires compensation, because it doesn't render property valueless or unreasonably interfere with the use of property."<sup>11</sup>

While around 50 cities such as Austin do restrict the removal of trees from private property<sup>12</sup>, tree defenders have been quick to point out that many cities' ordinances do not. The effort to paint all tree ordinances as suspect for local government effort to control an individual's rights to manage their own property is thus overblown.

In fact, Matt Grubisich, a Dallas urban forester who is also the operations chief for Texas Trees Foundation, a veteran Dallas nonprofit that produces high tech analyses of North Texas urban forests and crafts innovative and collaborative plans to protect them, has pointed out that very few local ordinances seek to limit homeowner's rights to manage trees on their own property:

"The Governor keeps throwing private property rights out there...when in actuality, no ordinance that I know of and none in the DFW area, restricts anyone from cutting down trees on personal property. (All have a minimum two-acre exemption allowing you to remove any tree on property.) The issue comes when you want to sell that land and change the zoning to develop the property. Tree conservation ordinances take effect in an effort to protect the ecological balance between the gray and green infrastructure."<sup>13</sup>

Grubish further sees uncontrolled tree removal not only as damaging to the well-being of cities and their residents and finances but also as a kind of "insane calculus:"

"Developers don't bear the cost of tree preservation, they pass it on...eventually to the cost of the property. Vice versa, if we allow them to go in and cut down all the trees and pave everything over, we're going to have more stormwater, health related issues, higher

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<sup>11</sup> TML: "Tree Preservation Ordinances Part II: H.B. 1377 and Pay or Waive,"

[https://www.tml.org/legis\\_updates/legis\\_update041213b\\_Tree\\_Preservation\\_PartII](https://www.tml.org/legis_updates/legis_update041213b_Tree_Preservation_PartII) (April 12, 2013)

<sup>12</sup> Chuck Lindell, "GOP senator seeks AG opinion on tree ordinances," <https://www.mystatesman.com/news/gop-senator-seeks-opinion-tree-ordinances/NIPv11rHQxzNW3INlgtPL/> (June 9, 2017)

<sup>13</sup> Julie Ryan, "Texas legislators raise an axe against local tree ordinances,"

<https://www.greensourcedfw.org/articles/Texas-legislators-raise-axe-against-local-tree-ordinances> (July 24, 2017)

temperatures... We are going to have to put in more infrastructure... those costs are passed on to the city, not to mention the long term consequences to healthcare.”<sup>14</sup>

Forcing cities to pay citizens for the “taking” of trees would establish an expense the average city could not dream of taking on, even in the name of protecting the many measurable benefits trees have been found to have on cities and their residents. It’s the “green infrastructure” that makes the manmade infrastructure of municipalities “livable and more lasting” while having true scientific and health benefits.<sup>15</sup> As David Foster, Texas director of Clean Water Fund, adds:

“Trees affect the environment, cool your property and the neighbors’, reduce energy costs, clean the air. They take up and hold water, release it into the air and increase rainfall. They reduce stormwater runoff, hold soil and mitigate erosion, which reduces flooding. They capture carbon, combating heat-creating atmospheric CO<sub>2</sub>. I don’t know if the authors of those bills understand what they’ve done.”<sup>16</sup>

According to a study in the journal *Environmental Pollution* that used hourly weather and pollution data together with tree cover data to estimate pollution removal for each county, in 2010 America’s trees saved 850 lives and prevented around 670,000 cases of severe respiratory problems. The study also used census data and a model from the Environmental Protection Agency to estimate the combined health-effect value in removing four pollutants: nitrogen dioxide, ozone, sulfur dioxide, and particulate matter smaller than 2.5 microns. In 2010, trees absorbed between 9 and 23.2 million tons of pollution, with an estimated health value of between \$1.5 and \$13 billion. Even though the majority of pollution reduction was outside cities due to the fact that most trees can be found in rural areas, it was cities that saw the biggest benefit, with \$4.7 billion in health value savings in comparison to \$2.2 billion for the countryside. Encouragingly, Texas was also among the three states that saw the greatest pollution removal amounts by volume.

The preservation of trees in cities should also be valued in the face of climate change concerns. It has also been shown that the right amount of tree cover is able to lower summer daytime temperatures by as much as 10 degrees Fahrenheit and combat what is known as the “urban heat island” effect. According to the study in the Proceedings of the National Academy of Sciences, the effect of tree cover is so noticeable as to clearly impact the weather from “neighborhood to neighborhood, even down to the scale of a single city block.”<sup>17</sup> To get the maximum benefit of tree covers’ cooling effects, the study found that the tree canopy cover of an area must exceed 40 percent. For illustrative purposes, an aerial view of a city block with that coverage would need to be “nearly half-way covered by a leafy green network of branches and leaves.”<sup>18</sup> The right

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Adam Hinterthuer, “Study suggests trees are crucial to the future of our cities,” <https://phys.org/news/2019-03-trees-crucial-future-cities.html> (March 25, 2019)

<sup>18</sup> *Id.*

percentage of tree cover is what allows the canopy cover to cool the air down more than the pavement is able to heat it up. In addition to keeping cities cool, studies have also shown there are several mental and emotional restorative effects for their citizens. Research shows that a person's level of stress, blood pressure, muscle tension, asthma rates, and heart rate all decrease in the presence of trees.

In other words, trees do more than make an area attractive. They trap pollution, absorb auto emissions, and cool sizzling pavement. In Baltimore, Maryland for example, the city's cumulative 14,000 acres of canopy ensnares in excess of 550,000 tons of carbon per year—offsetting 54 days' worth of emissions from the city's more than 600,000 residents.<sup>19</sup>

Further, using a resource like the i-Tree program ([www.itreetools.org](http://www.itreetools.org)) a software service from the USDA Forest Service further enables cities to map and value trees, potentially making the case for “greening” cities with the actual dollar values for trees all the more accessible. With the emergence of these new studies and resources, it stands to be shown that protecting trees is not simply about keeping a city pretty, and that the urge to make cities pay to keep each of their trees to stop residents from cutting healthy ones down is only a gross underestimation of their true worth.

In 2014, Texas Trees Foundation computed the dollar values of Dallas trees alone, based on research from eight organization and found that the annual value for stormwater savings, energy savings, air pollution removal, and carbon removal by Dallas' almost 15 million trees totaled \$36.1 billion. These savings were found in both direct costs to homeowners and tax-funded costs.<sup>20</sup>

In 2016, the U.S. Forest Service and Texas A&M Forest Service researchers found that the “compensatory value” of the roughly 33.8 million trees found in just the city of Austin was around \$16 billion, or \$480 per tree.<sup>21</sup> The compensatory value of a tree is based on trunk size, species, condition, and location. For over 30 years Austin has required owners of public and private land to get city permission to cut down trees with trunk diameters of 19 inches or more, regardless the type of tree, stating that owners must plant new trees or pay into a tree-planting fund. In 2010 the city added the protection of heritage trees to their ordinance, barring their removal entirely unless they are proven to be diseased, a safety risk, or preventing reasonable use of the land.<sup>22</sup> While the protections have not always been popular, they now have been shown to have paid off.

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<sup>19</sup> Andrew Zaleski, “Urban forests are dying. Baltimore shows us how to bring them back.” (June 5, 2019)

<sup>20</sup> *Id.* Julie Ryan, “Tree legislators raise an axe against local tree ordinances”

<sup>21</sup> Asher Price, “Austin's trees worth more than \$16 billion, researchers say,” <https://www.mystatesman.com/news/local/austin-trees-worth-more-than-billion-researchers-say/rexrpDivv1UfrC2CJj13iL/> (Mar. 21, 2016)

<sup>22</sup> *Id.*

Even before a deeper understanding of the scientific and economic benefits of trees was known, tree preservation has long made progress as an objective outside the spectrum of partisan politics. Since the Eighteenth century when the Pennsylvania Shade Tree Law, the earliest American landscape ordinance, was adopted, communities have felt tied to their trees.

The State of Texas itself has many trees it takes pride in for their historical significance and often easy appeal to a sense of state pride trivia. The Big Tree on Goose Island State Park, at over 1,000 years old, in Aransas Bay has long been celebrated as one of the oldest live oak trees in the United States. In 2013 it got a new cedar fence constructed around it similar to the one built around it by the Civilian Conservation Corps during the Great Depression, in an effort to offer the tree some protection in the region's harsher seasonal storms.

Further, the "Baptist Oak" in Goliad County has long been associated with that community's pride in their quest for religious freedom. It was planted on the site of the first Baptist church established west of the Guadalupe River, and the church's reverend, John Freeman Hillyer had also come from Galveston to the area to establish a college for women. In Bexar County, Texans enjoy the legend of Colonel Benjamin R. Milam, who had escaped imprisonment in Mexico in October 1835, being shot by a Mexican sniper under the command of General Martin Perfecto de Cos from a baldcypress tree still standing on the River Walk.

Yet another example, the Jumbo Hollis Pecan in San Saba County, once yielded the largest pecans in the world and was cited by Robert L. Ripley in "Believe it or Not." At the time, it was said to yield 33 pecans weighing a pound, when other native pecans averaged only 70-80 nuts per pound. As a treat for any tree lover, Texan, or trivia buff, Texas A&M University keeps an active website that details the species, age, location, and stories behind numerous famous Texas trees, including the ones sadly lost.<sup>23</sup>

Trees absorb pollution, help with temperature control and water quality, improve people's health and moods, and adds value to real property and neighborhoods. They also connect communities to sources of pride in themselves, a sense of their past, their progress, what they've fought for—figuratively and even sometimes literally. Put simply, trees have been proven to make communities better places to live. They have been proven to help make communities, *communities*. In the words of Eillie Anzilotti, "These leafy streets cannot afford to be seen as a luxury."<sup>24</sup> The present and future sense of community and well-being trees provide are reason enough to fight to conserve them.

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<sup>23</sup> Texas A&M Forest Service, Famous Texas Trees, <http://texasforestservice.tamu.edu/websites/FamousTreesOfTexas/>

<sup>24</sup> Eillie Anzilotti, "Cities Should Think About Trees as Public Health Infrastructure," <https://www.fastcompany.com/40474204/cities-should-think-about-trees-as-public-health-infrastructure> (Oct. 2, 2017)

## The City's Role: Best Practices

- **Don't make your City an easy target for a Takings accusation.** How may cities avoid being accused of a regulatory taking when drafting their tree regulations? Some factors to consider are:
  - Whether any lost profits that could be caused by the regulation are speculative or not;
  - Whether development of the land to be regulated has already occurred;
  - Whether the regulation is purposefully focused on one landowner. Cities should be especially mindful of tree regulations that would close down an existing business if the business is not a public nuisance.
  
- **Check your ordinance language.** Draft your ordinance from the start as will best serve your community and your intentions. As seen in the summary of the 2008 Texas Court of Appeals case *Continental Homes of Texas, L.P. v. City of San Antonio*, 275 S.W.3d 9 (Tex. Ct. App. August 20, 2008), if your City's intention is to regulate the removal of trees in business development areas as well as residential areas, the ordinance must be drafted to reflect that. A specific regulation should not and will not be construed by a court to be broader than its language. Another example is that the City of San Antonio's Tree Preservation Ordinance applies only to new development, and not existing residences.
  
- **Check for inadvertent conflicts with other city policies.** How does the city already address invasive tree species? Is there a plan in place for the treatment of dead or dying trees? What are the exceptions, if any, for cutting down diseased or dying trees?
  
- **Always include enforcement.** A city wants its citizens to love and care for the city's trees on their own, but the city needs actual consequences in place for when they don't. Set a legal fine with possibilities for fines to incur from inaction. When a citizen needs an incentive to not violate a tree ordinance they often need further incentive to not simply continue to violate it.
  
- **Solicit input for and from citizens.** Public hearings are not only often necessary, but valuable. Encourage the citizens of your city to see the city's trees and how they are maintained as part of the story you tell about your community and the picture you present of it to yourselves and the outside world.

## **Appendix A: Sample tree regulations:**

### **The City of Dripping Springs**

Dripping Springs, a city with a sizeable ETJ, has taken many precautions to protect trees from possible damage during construction, including both a replacement as well as cash-in-lieu plan for trees to be removed, while also anticipating exceptions such as diseased trees.

#### **Sec. 28.06.059 Tree preservation**

- (a) A grading and tree survey shall be submitted with the site plan.
- (b) The tree survey shall include all existing, live, healthy trees with an eight-inch DBH in diameter and larger. The survey shall indicate the size (DBH) and species of tree. Trees observed to be distressed will be indicated with an asterisk on the tree list. Trees shall be represented by circles using the formula of one (1) foot of radius for every one inch of trunk diameter. Unbroken circles indicate trees that are to remain. Dashed circles indicate trees that are to be removed (including trees identified to be distressed).
- (c) Healthy designated class I and II trees (as defined by the City of Austin Environmental Criteria Manual) that require removal to accommodate the development shall be replaced at a ratio of 1:1, or cash-in-lieu may be paid to the city, the amount equal to the cost of nursery stock required to replace the caliper amounts lost and the cost of installation on a per-unit basis, not to exceed one hundred dollars (\$100.00) per caliper inch or six thousand dollars (\$6,000.00) per acre (prorated for sites of more or less than one acre) for the entire site. Trees identified as distressed shall not be included in tree preservation requirements evaluation.
- (d) Pre- and post-construction fertilization is required for existing trees that will be or have been disturbed by construction activities, including disturbance of the critical root zone. Fertilizers must be phosphate-free.
- (e) The planting, preserving, and maintaining of trees which are contagiously diseased trees, or the storage of cut oak unless first determined by a certified arborist to be devoid of oak wilt or properly treated, shall be deemed a public nuisance and is prohibited.
- (f) During construction, take measures to protect trees, including rigid fencing, shielding, and signage, as necessary. Rigid fencing shall be placed with a radius of at least ten (10) feet from the trunk or at the critical root zone, whichever is greater, unless property lines or other features prohibit a complete radius. Rigid fencing shall consist of wood, chainlink, or other solid material approved by the city administrator. Stakes shall be no more than six (6) feet apart and at least one and one-half (1-1/2) deep into the ground. Rigid fencing shall be at least three (3) feet in height.
- (g) The city administrator or designee shall inspect and approve installed tree protection before issuance of any permit to commence with any construction activity.
- (h) Tree protection shall remain in place until final landscaping installation as approved by the city administrator or designee.
- (i) Parking or storing of vehicles, equipment or materials allowed within the critical root zone is prohibited.

## **The City of Melissa**

Melissa combines tree regulations within its general “Landscape Buffer requirements” in its Code of Ordinances. Below is a sample of its landscaping requirements regarding trees in its Commercial Corridor Overlay Districts:

**18.4b. Landscaping Materials:** Landscaping buffers shall include a combination of landscaping elements including, among other things, grass, ground cover, shrubs, flowers, seasonal planting and trees. All landscaping materials shall be from the list of approved trees and shrubs set forth in CZO Section 27-A of the zoning ordinance, as amended, and be a native or adapted, heat and drought tolerant species with a low water demand. Trees and shrubs shall be of the sizes required by CZO Section 27-A of the zoning ordinance, as amended. Landscape designs with low water demand are encouraged. Landscape designs and hardscape elements including, without limitation, plazas, planters, benches, fountains, art, boulders, tables and similar features may be permitted as part of an overall landscaping plan if the hardscape elements are consistent with the overall design of the development, do not conflict with visibility requirements or easements and do not create any potential safety hazard.

**Trees Required in Landscaped Buffers:** Within the landscape buffers established in the CZO Subsection 18(D)(4)(b)(1), one (1) tree shall be planted for each four hundred fifty (450) square feet of landscape buffer area. Trees may be staggered, clustered and otherwise arranged in landscaped areas in order to appear more natural and to enhance the visibility of the buildings rather than being spaced evenly across the frontage of the property as part of the overall landscape design.

## **The City of Matthews**

### **§ 30:182.**

**Section 1. Forester Office created.** There is hereby created the office of city forester, who shall be appointed by the mayor, by and with the advise and consent of the council.

**Section 2. Duties—powers.** It shall be the duty of the city forester to see that all statutes and ordinances for the planting and protection of trees are strictly enforced; to direct the time and method of trimming all trees in the streets and public places of the city, except when this duty is specifically assigned elsewhere and except in public parks under the control of the [name of park district] park district, to consult with the city council, the forestry commission and property owners regarding the kind of trees and method of planting deemed desirable on particular streets; to report to the forestry commission whenever trees have died or need attention, in order that the commission may care for such trees or cause the same to be replaced, and to perform such other duties relating to his or her office as may be prescribed from time to time by the forestry commission, or by the city council. Such forester shall possess the powers of a patrolman in making arrests and serving processes and shall be subject to removal by the mayor at any time.

**Section 3. Records.** The city forester shall keep a record of all of the transactions of his or her office and shall make an annual report to the mayor and forestry commission concerning said transactions and shall make such further reports as may be requested by the mayor or said commission or the city council. The forester shall give a bond in the sum of the dollar amount of bond] for the faithful performance of his or her duties.

**Section 4. Pruning trees.** All cutting, trimming and pruning of trees shall be under the supervision of the city forester.