

**35-523 Tree Preservation**

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**Applicability**

**(1) Generally**

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F. The regulations in this section shall apply to property on which a “change of use” has occurred on land or project exempt from the provisions of this section regarding the removal of protected trees and within the five years preceding the “change of use” one or more protected trees have been removed from the property, provided that the new use would otherwise require a Tree Permit for the removal of protected trees. If the change of use applies to only a portion of the property, this section applies only to that portion of the property for which the “change of use” occurred.

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**(4) Trees Exempt.**

This division shall not apply to:

- A. Any significant or heritage tree determined to be diseased, dying or dead by the city arborist.
- B. Any significant or heritage tree determined to be causing a danger or be in hazardous condition as a result of a natural event such as tornado, storm, flood or other act of God that endangers the public health, welfare or safety and requires immediate removal.
- C. Trees located on property on which construction of single-family, two-family or three-family residential dwelling units has been completed. This exemption shall not apply to property to which subsection 35-523(e)(10) applies.
- D. Trees located in the clear vision area, as defined in the street improvement standards.
- E. Trees preventing the opening of reasonable and necessary vehicular traffic lanes in a street or alley.

The provisions contained in this section shall control in the event and to the extent they may conflict with other provisions contained in this chapter that do not relate ~~related~~ to health and safety.

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(e) **Minimum Tree Preservation Requirements**

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**(10) Change of Use**

A. The property owner shall be required to obtain a Tree Permit and preserve and/or mitigate according to the requirements of this section when a “change of use” occurs under the following circumstances:

- (1) the property is exempt from the provisions of this section regarding the removal of protected trees; and
- (2) a change of use occurs; and
- (3) within the five years preceding the change of use, one or more protected trees have been removed from the property; and
- (4) the new use would require a Tree Permit for the removal of protected trees.

B. For purposes of Section 34-523(e) only, “a change of use” occurs when one of the following events affects property:

1. the property owner submits an application to change a zoning district boundary; or
2. the property owner receives public funding that relates to the development of the property; or
3. the property owner demolishes an existing residential dwelling(s) for new development on the property; or
4. the property owner submits a plat application to subdivide residential property for new development; or
5. the property owner applies for a Master Development Plan or application to amend a MDP/POADP that changes an agricultural property use to a residential, multi-family, commercial, or industrial use; or
6. the property owner applies for a Master Development Plan or application to amend a MDP/POADP that changes a residential property use to a multi-family, commercial, or industrial use; or
7. the property owner submits an application for a permit to develop the property, as the term permit is defined in Chapter 245 of the Texas Local Government Code.

C. No permit required by Chapter 35 shall be issued for projects of any size for five (5) years after removal of a protected tree(s) unless a mitigation plan with a completion date of not more than three (3) years is submitted and approved. A certificate of occupancy shall not be issued for projects twenty (20) acres in size or less after removal of a protected tree(s) until a mitigation plan is submitted, approved, and fully implemented. Mitigation plans shall use the shade area provided in Chapter 35, Appendix E, and require 40% shading at maturity for residential developments, 45% shading at maturity for commercial

development, and 85% preservation or mitigation of all the trees within the floodplain for all uses within a project area.

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Chapter 35, Article VII Section 35-712 is amended as follows:

**Sec. 35-712. Recognition of Rights Derived From V.T.C.A. Local Government Code Ch. 245.**

**(a) Purpose.**

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- (3) No determination claiming entitlement to statutory rights under V.T.C.A. Local Government Code, Chapter 245 shall be approved or issued while the property owner has certified to the chief appraiser that the property is an agricultural use and an agricultural appraisal has been approved by the chief appraiser in accordance with V.T.C.A., Tax Code, Subchapter D, Appraisal of Agricultural Land.