

**35-523 continued**

commission by filing a notice of appeal with the office of the city clerk no later than the tenth working day following the party's receipt of the written decision of the director of development services. A true and correct copy of the notice of final appeal must also be filed with the office of the director of development services who upon receipt of such notice, shall immediately transfer copies of all documents and information relevant to the appeal to the executive secretary to the planning commission. The executive secretary of the planning commission shall schedule the hearing of the appeal at the earliest available regularly scheduled meeting of the planning commission which will allow compliance with the requirements of the Texas Open Meetings Act.

- B. A decision of the planning commission that is adverse to the applicant shall be appealable by the applicant to the city council for final action by filing a notice of final appeal with the office of the city clerk no later than the tenth working day following the party's receipt of the written decision of the planning commission. The city clerk shall schedule the hearing of final appeal at the next available regularly scheduled meeting of the city council which will allow compliance with the requirements of the Texas Open Meetings Act.
- C. Where this division requires either the city or applicant to respond, or take other action, within a specific number of days, such calculation shall begin on the first working day after the date of receipt of the information that necessitated response or action.

**(n) Tree Mitigation Fund****(1) Fund Established.**

The director of finance is hereby directed to establish a dedicated account to be entitled tree mitigation fund (hereinafter the "fund").

**(2) Penalties.**

§ 35-493 of this chapter provides for sections imposing civil penalties in addition to criminal penalties. Civil penalties collected pursuant to such section shall be recorded in the fund created pursuant to this section, unless expressly prohibited by law. Likewise, all funds received from the payment of mitigation fees pursuant to subsection (f) shall be recorded in the fund.

**(3) Use of Funds.**

The funds collected from civil penalties and mitigation fees in the fund shall be utilized to pay for the planting and maintenance of trees, the funding of tree preservation and planting programs to be administered by the development services department. The development services director shall seek the advice of the open space advisory board in regard to the selection of projects to be funded. A portion of the fund may be used, on an annual basis, to fund activities directed towards educating the public on the importance of trees in the environment, ecological issues and pollution prevention.

**(4) Funds to Be Kept Separate.**

The balance within the fund shall be recorded and accounted for in a manner that distinguishes them from other general funds of the city and shall be disbursed in a manner consistent with the purposes for which this fund has been established. The balance of this fund shall not be transferred to the general fund at the end of each budget year, but rather, the balance remaining in the fund at the close of the city's fiscal year shall roll over and become the beginning balance for the next fiscal year.

**(o) Public Projects**

Municipal and utility entities shall obtain a tree permit before any vegetation is removed or new construction activity takes place. Special attention will be given to the preservation of trees in public rights-of-way that are to help satisfy the objectives of the streetscape planting standards of this Article (§ 35-512). The city arborist shall approve an application for the reasonable removal of a protected tree in connection with construction, maintenance or repair of public facilities in or above a public street, alley, rights-of-way, easement or other public land.

**(1) Generally.**

A minimum of twenty-five (25) percent of all diameter inches of protected trees within the project boundary/limits must be preserved.

**(2) Calculations of Preservation Ratios.**

All percentage relating to preservation stated within this section shall be based the initial tree survey. Any subsequent redevelopment of public property must minimally preserve the applicable percentage of the total diameter inches of protected trees as indicated in the initial tree survey.

**(3) Tree Retention Ratio.**

A minimum of ten (10) percent of the total diameter inches within the surveyed area must be retained in their original location when possible. Removal of additional trees, up to the percentage prescribed in this section, requires mitigation (see subsection (f) above).

**(4) Design, Diversity and Desirability.**

The location of all improvements shall be orientated by the applicant, to the extent the applicant determines possible, in a manner which allows for the preserving of the greatest number of trees and in doing so is encouraged to acquire rights-of-way in such a manner. Applicants are also encouraged to preserve trees to meet the landscape and streetscape standards. Also as the particular site conditions warrant, the applicant shall preserve a diversity of species.

(Ord. No. 97332 § 2, Ord. No. 97602 § 2, Ord. No. 98697 § 1, 4, & 6, Ord. No. 100126 § 4)