

**THE ANNA CITY
CODE OF ORDINANCES**

PART III-F

(TREE PRESERVATION)

Current through February 12, 2013

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Section 1. Purpose

The terms and provisions of this Part of the Code are intended to accomplish the following public purposes:

- (a) to encourage preservation of existing public and private shade, ornamental, or specimen trees and/or trees of historic value through incentives and penalties.
- (b) to encourage ecological stabilization through urban forest management that contributes to the processes of air purification, oxygen regeneration, ground water recharge, storm water runoff retardation; and promote energy efficiency and water conservation through tree preservation and cultivation, thereby abating noise, heat, and glare.
- (c) to acknowledge that trees and landscaping add value to property and protect public and private investments to the general benefit of the City and its residents.
- (d) to define reasonable protective measures required to preserve the protected tree population.
- (e) to protect healthy quality trees and promote the natural ecological, environmental, and existing aesthetic qualities of the City.
- (f) to preserve and promote the appearance and rural heritage of the City.
- (g) to protect and preserve native and specimen vegetative species, their ecosystems and natural habitats, and prevent damage to and unnecessary removal of vegetation during the land development and construction processes.
- (h) to prohibit indiscriminate clear-cutting.

Section 2. Definitions

The following definitions shall apply unless the context clearly indicates or requires a different meaning.

Buildable Area means that portion of a building site on which a building pad or building improvements may be erected, including the actual structure, driveway, pool, decks, and other construction shown on a site plan approved in connection with the issuance of a building permit.

Building pad means the actual base area of a building and an area not to exceed six feet around the foundation necessary for construction and grade transitions.

Building Lot Owner means the owner of a building lot or tract of land within the corporate limits of the City or within the City's extraterritorial jurisdiction who is not in the process of subdividing land.

Caliper means the diameter measurement of a tree trunk. Caliper of the trunk shall be measured 12 inches *above* the soil line for trees up to and including four-inch caliper size and 18 inches above the ground for larger sizes.

City means the City of Anna, Texas.

Clear Cutting means the removal of 10 or more protected trees from a property within a 90 day period.

Critically Alter means uprooting or severing the main trunk of a tree, or any act which causes or may reasonably be expected to cause a tree to die. This includes, but is not limited to: damage inflicted upon the root system of a tree by machinery, storage of materials, or the compaction of soil above the root system of a tree; a change in the natural grade above the root system of a tree; an application of herbicidal chemical or the misapplication of beneficial chemicals; excessive pruning; placement of nonpermeable pavement over the root system of the tree; trenching within the primary root zone. Additionally, a tree may be considered critically altered if more than 25% of the primary root zone is altered or disturbed at natural grade, or more than 25% of the canopy is removed.

Critical Root Zone means the area within the drip line of the tree. As a practical matter, this is the acute portion of the tree's root system. See the List of Quality and Acceptable Replacement Trees for Anna, Texas, attached as Appendix A to this Part of the Code.

Cut/fill means areas where the natural ground level has been excavated (cut) or where fill material has been brought in.

Developer means any person who, in connection with the use of the land, is required to, or has, or is in the process of making application to the City for subdivision plat approval of property within the corporate limits of the City or within the City's ETJ.

Diameter at Breast Height (DBH) means the diameter at breast height is the tree trunk diameter measured in inches at a height of four feet above the soil line. If a tree splits into multiple trunks below 4 feet, the trunk is measured at its most narrow point beneath the split.

Determination of Exemption means a determination made by the Landscape Administrator or his or her designee that no tree permit or tree preservation is required for the site.

Drip Line means whichever is greater:

- (a) a vertical line running through the outermost portion of the canopy of a tree and extending to the ground, or
- (b) if the tree is damaged or deformed, a circular area with a radius equal to two feet per inch of caliper.

Erosion Hazard Setback means the area along a drainage channel designated as an erosion setback under the City's stormwater regulations.

Exemption Area means an area that is clearly exempt from all tree replacement and tree protection requirements of this Part of the Code, as approved by the Landscape Administrator.

Extraterritorial Jurisdiction or ETJ means the unincorporated area that is contiguous to the City of Anna's corporate boundaries to the extent described or permitted by the applicable provision(s) of Texas Local Government Code §42.021, et seq.

FEMA 100 Year Flood Plain means the area designated as being within the one hundred year flood plain on the Federal Emergency Management Agency flood insurance rate map (FIRM) as of the effective date of this Part of the Code. The boundary may be verified and established through field surveys based on elevation. Any changes made by FEMA to the 100 year flood plain boundary after the effective date of this Part of the Code due to filling of the flood plain, channelization, or other drainage improvements shall not reduce the area in which tree preservation, replacement, or protection requirements apply, unless-and only to the extent-that a reduction is necessary for compliance with the City Flood Prevention Ordinance, FEMA regulations or other state or federal law.

Grubbing means excavating or removing a significant part of the root system.

Historic Tree means a tree which has been found by the City to be of notable historic interest because of its age, type, size, or historic association.

Landscape Administrator means the individual or company appointed by the City Manager to administer City ordinances related to tree preservation.

Municipal and Public Domain Property means property in which title is held in the name of a governmental entity. Examples include but are not limited to City buildings, county property, public parks, Corps of Engineers property, state right of way, libraries, fire stations, water tower sites, or similar other properties.

NRCS means the National Resource Conservation Service.

NRCS Lake Tree Preservation Zone means the area within an elevation two feet above the emergency spillway elevation of any NRCS lake.

Nondisturbance Area- An area in which no development activity or vehicular traffic associated with the construction or development of land occurs.

Owner means any person with an interest in land, or a lessee, agent, employee, or other person acting on behalf of the owner.

Pruning means the removal of dead, injured, or diseased limbs or roots to maintain plant health or the removal of limbs or roots to control or direct vegetative growth.

Protected Tree means a quality tree with a trunk six inches or greater in caliper at four feet six inches above the ground. The caliper of a multi-trunk protected tree shall be determined by adding the total caliper of the largest trunk to one-half the caliper of each additional trunk.

Protective Fencing means chain link fencing, orange vinyl construction fence or other fencing at least four feet high and supported at a maximum of 10 foot intervals by approved methods sufficient to keep the fence upright and in place. The fencing shall be of highly visible material.

Quality Tree means a tree species which typically has significant positive characteristics worthy of preservation, as listed in this Part (see Appendix A attached to this Part of the Code).

Root Zone, Primary- The area of undisturbed natural soil around a tree defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the dripline (see Appendix A attached to this Part).

Specimen tree- A tree which has been determined by the City to be of high value because of its type, size, or other specific criteria. Generally, specimen trees are trees having 24" trunk caliper at a point 4 feet above ground level but other criteria may also be utilized.

Tree means any self-supporting woody plant which will attain a trunk caliper of two inches or more when measured at a point 4 feet above ground level and normally an overall height of at least 15 feet with a canopy of at least 15 feet in caliper at maturity. A tree may have one main stem or trunk or several stems or trunks.

Tree Board means a board appointed by the City Council to carry out the duties and responsibilities set forth in this Part. The City's Planning and Zoning Commission shall constitute the Tree Board unless the City Council appoints a separate Tree Board.

Tree Protection Sign means a sign describing prohibited conduct detrimental to trees and meeting specifications of the City's Landscape Administrator to be posted on the site upon approval of a tree permit.

Tree Survey means a plan drawing that identifies the location of protected trees and contains the information required to be set forth within this Part of the Code. The tree survey shall be prepared by an arborist, a licensed surveyor, a licensed landscape architect, or other qualified person approved by the Landscape Administrator. For projects of limited scope, the Landscape Administrator may approve a tree survey prepared by a non-professional if complete and accurate information is provided.

Tree Topping means the severe cutting back of limbs to stubs larger than 3 inches in caliper within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Utility company, franchise utility, or public utility means a company or entity, or agent for a company or entity that provides a utility service, such as the provision of gas, electric, cable, or telephone service within the City.

Section 3. Permits

A tree permit shall be obtained from the Landscape Administrator before critically altering any protected tree, except under any of the following circumstances:

- (a) the protected tree endangers the public health, welfare or safety and immediate alteration is required;
- (b) the tree has disrupted a public utility service due to a tornado, storm, flood or other act of God. Critical alteration shall be limited to the portion of the tree reasonably necessary to reestablish or maintain reliable utility service;
- (c) the tree is located on the property of a licensed plant or tree nursery which has trees planted and growing on the premises for the sale or intended sale to the general public in the ordinary course of the nursery's business;
- (d) the tree is located on a lot of record on which a single-family or duplex residence legally exists as the primary use, except those areas of such lots within a FEMA one-hundred year flood plain, erosion hazard setback zone; protected trees of 27-inch caliper or greater in size shall not be exempt;
- (e) the tree is part of an orchard;
- (f) the tree is dead, unless the tree was required under a landscape plan or was a required replacement tree.

Section 4. Permit Types

4.01 Limited Purpose Tree Permit

A limited purpose tree permit shall be approved prior to the critical alteration of one or more trees on any site where the removal of trees is not related to a construction project which requires issuance of a building permit or development permit. This shall not include alteration of trees for agricultural purposes. A limited purpose tree permit shall become void 180 days after the issuance date and does not require a fee paid to the City.

4.02 Construction Tree Permit

A construction tree permit shall be approved:

- (a) prior to any building, paving, grading, or construction of a subdivision or public improvement. An application for a construction tree permit shall be submitted concurrent with a preliminary or short form/combination plat. A development permit shall not be issued prior to issuance of a construction tree permit. A construction tree permit shall not be required prior to construction of a subdivision or public improvements if an application for a preliminary plat or preliminary-final plat has been filed prior to the effective date of this Part.
- (b) prior to any paving, grading, or construction of a building other than a single-family or duplex residence. An application for a construction tree permit shall be submitted concurrent with a detailed site plan. A building permit shall not be issued prior to issuance of a construction tree permit. A construction tree permit shall not be required prior to construction of such a building if an application for a site plan has been filed prior to the effective date of this Part of the Code.
- (c) prior to any paving, grading, or construction of a single-family or duplex residence on any lot containing a FEMA 100-year flood plain, NRCS lake tree preservation zone, or erosion hazard setback zone. An application for a construction tree permit shall be submitted concurrent with the application for a building permit. A development permit shall not be issued prior to issuance of a construction tree permit. A construction tree permit shall not be required prior to construction of a single-family or duplex residence if an application for a building permit has been filed prior to the effective date of this Part.
- (d) authorization to critically alter trees on a site for which a construction tree permit is required shall be limited to those trees identified and approved for critical alteration as shown on documentation submitted for the construction tree permit.

4.03 Permit Period/Nature of Permit

A construction tree permit shall be valid for the period of the site plan, development permit, or building permit's validity, or a maximum of two years, whichever is less. Upon and after expiration of a construction tree permit, such expired permit may not be deemed to be a "permit" in connection with Texas Local Government Code §245.001, et seq. or any other statute or law conferring vested rights for development. Any permit issued under this Part does not create a property right in the permittee.

Section 5. Applicability

The provisions of this Part of the Code shall apply to all new and existing real property within the City and its ETJ to extent stated herein. The following shall be exempt from tree preservation and replacement requirements:

- (a) major drainage structures, including detention and retention basins, and including transitional slopes at the maximum slope allowed by the City's stormwater regulations;
- (b) golf courses;
- (c) hike/bike/equestrian trails;
- (d) sports fields open for public use, such as soccer, baseball, and football fields;
- (e) equestrian centers;
- (f) critical alteration of any protected tree by a utility company in order to maintain appropriate existing utility services;
- (g) construction of utilities or public infrastructure; and
- (h) area within an area zoned for Downtown Redevelopment.

Section 6. Conflicts with other Ordinances

All applicable provisions of the comprehensive Zoning Ordinance, subdivision ordinance, stormwater regulations, building codes and other ordinances, as they exist or as amended, shall apply. The provisions of this Part of the Code are not intended to modify or amend the site plan requirements of the comprehensive Zoning Ordinance with regard to the placement of building pads, roadways, easements, utilities, pedestrian ways or other buildable areas; such placement of any application shall be left to the sole discretion of the applicant so long as the same conform to the applicable requirements of the comprehensive Zoning Ordinance.

Notwithstanding the foregoing, nothing herein shall confer any vested rights on the property subject to this Part. Where the provisions of other ordinances conflict with this Part, this Part shall control.

Section 7. Administrative Official

Provisions of this Part shall be administered by the Landscape Administrator or designee.

Section 8. Tree Preservation Permit Submittal and Review

The Landscape Administrator shall establish administrative procedures necessary to implement and enforce this Part.

An application for a tree permit shall include these required documents:

- (a) completed application form
- (b) a tree survey at the same scale as site plan or preliminary plat with building pad, pavement areas, and other construction features that will disturb the land indicated. The tree survey shall include the following information:
 - (c) name and phone number of person who prepared the survey;
 - (d) property lines with dimensions;
 - (e) engineering scale (same scale as the preliminary plat);
 - (f) location of all rights-of-way and easements (existing and proposed);
 - (g) location of all buildings, structures, pools, parking and vehicular maneuvering area, utilities, sidewalks, and other improvements (existing and proposed);
 - (h) location of FEMA 100-year floodplain, NRCS lake tree preservation zone, or erosion hazard setback easement;
 - (i) any proposed non-disturbance area;
 - (j) caliper size of all trees six inches or greater, measured at a point 4 feet above the soil line; and
 - (k) location of all trees not included in a non-disturbance area that are to be preserved.

In specific situations, tree survey requirements may be reduced as follows:

(a) non-disturbance areas- The Landscape Administrator may approve a non-disturbance area to be designated on the tree survey. The non-disturbance area is an area in which no construction will occur. Trees within the non-disturbance area are not required to be individually identified on the tree survey unless they will be used as credits.

(b) proposed exemption area- The Landscape Administrator may approve a proposed exemption area to be designated on the tree survey. The proposed exemption area corresponds to areas of the site specifically exempted from tree replacement and protection requirements of this Part of the Code. Trees within the proposed exemption area are not required to be individually identified on the tree survey unless they will be used as credits.

(c) aerial photograph- For property containing large, heavily wooded areas, the Landscape Administrator may, in lieu of a tree survey, authorize the submittal of an aerial photograph accompanied by a transparent plan of the development at the same scale as the photograph, showing all non-disturbance areas and proposed exemption areas where no trees will be critically altered, provided that a tree survey of all other areas is submitted to the Landscape Administrator prior to any grading or construction. The Landscape Administrator may approve the submission of photographs in phases for a multi-phased project.

(d) affidavit of no protected trees- If a property contains no protected tree species, the applicant may submit an affidavit of no protected trees in lieu of a tree survey. This affidavit shall act in lieu of a tree survey upon a determination by the Landscape Administrator that no protected trees exist on the site. After the expiration of 10 business days after the submittal, the affidavit shall satisfy the requirements of this Part, unless within said ten business days the affidavit is denied by the Landscape Administrator due to a determination that the property contains protected trees or the trees on the site cannot be affirmatively identified as non-protected trees by the Landscape Administrator.

A tree preservation plan shall be submitted showing existing protected trees to remain, existing protected trees to be removed, and replacement trees with type, location, number and size of replacement trees indicated. The tree preservation plan information may be included on the tree survey if all information can be clearly delineated.

Section 9. Fees

At the time a tree permit application is submitted, an applicant shall pay a fee to the City in the amount specified by the City Council in a fee schedule. The following shall be exempt from payment of the tree permit fees:

(a) City of Anna- When critically altering any protected tree not exempt from tree permit requirements, the City is exempt from the tree permit fee, but must obtain a tree permit and comply with all tree placement and tree protection

procedures as listed in this Part. Protected trees proposed to be critically altered must be shown on construction plans approved by the Landscape Administrator.

(b) damaged or dangerous tree- An applicant is exempt from the tree permit fee if critically altering a damaged or dangerous tree is allowed under permit exemption status.

Section 10. Review of Application

10.01 Tree permit applications

The Landscape Administrator shall grant a tree permit provided the requirements of this Part of the Code are met. Limited purpose tree permits shall be approved within three business days after complete permit information is provided by the applicant.

10.02 Grievances

An applicant aggrieved by a decision of the Landscape Administrator may appeal the decision to the Board of Adjustment for an interpretation.

10.03 Waivers

An application for a waiver to the terms of the tree preservation section may be made. The application for a waiver shall be reviewed by the Tree Board, and a recommendation for approval or denial shall be forwarded to the City Council. The decision of the City Council shall be final. No public hearing shall be required. The Tree Board and City Council shall consider the following factors in determining whether a waiver should be granted:

- (a) the literal enforcement cannot be accomplished;
- (b) the extent to which the application meets other standards of this Part;
- (c) the positive and negative impact of the proposed project on surrounding properties; and
- (d) the extent to which the waiver would be mitigated by other proposed or existing landscaping.

10.04 Non-substantive changes

The Landscape Administrator shall be authorized to work with owners, developers, and builders to make non-substantive changes, within the scope of this Part, to plans, permits and other requirements after approval by staff, City Council or the Tree Board, as appropriate. These changes are intended to provide the greatest reasonable protection toward achieving the purposes of this Part.

Section 11. Standards

11.01 Clear Cutting

Clear cutting is prohibited unless specifically authorized by a limited purpose tree permit or a construction tree permit.

11.02 Residential Development

- (a) Construction of a single-family or duplex residential subdivision.
 - (1) Protected trees located in a FEMA 100-year flood plain, NRCS lake tree preservation zone, or erosion hazard setback zone shall be subject to all tree replacement and tree protection requirements of this Part
 - (2) In cases other than listed immediately above (11.02.(a)(1)), all protected trees 18 inches in caliper or greater shall be subject to tree replacement and tree protection requirements except where protected trees must be critically altered to:
 - i) install and maintain any utility lines
 - ii) construct public improvements at the minimum required width only
 - iii) construct streets at the minimum required width only
 - iv) provide any required easement up to the minimum width needed to accommodate the required service.
 - v) construct any hike/bike/equestrian trails
 - vi) construct any portions of a golf course, park playing field, equestrian center, or school playing field but not including buildings, additional parking, club houses, or ancillary buildings, or:
 - vii) achieve cut and fill drainage as designed in master drainage construction plans, including detention or retention ponds. Transitional slopes to the original grade that are less steep than the original grade and that are less steep than the maximum allowed slope shall not be exempt.
- (b) Construction of a single-family or duplex residence on a single (not part of a larger subdivision).
 - (1) Protected trees located in a FEMA one-hundred year flood plain, NRCS lake tree preservation zone, or erosion hazard setback zone shall be subject to all tree replacement and tree protection requirements of this

Part.

- (2) In cases other than listed immediately above (11.02.(a)(1)), all protected trees 18 inches in caliper or greater shall be subject to tree replacement and tree protection requirements except where protected trees must be critically altered for a:
 - i) building pad site
 - ii) driveway
 - iii) sidewalk at the minimum required width only
 - iv) patio
 - v) septic tank or lateral line
 - vi) pool and associated deck area
 - vii) fence, or:
 - viii) ancillary feature normally associated with residential construction.
 - (3) All other areas of the lot shall be exempt from tree protection and tree replacement requirements of this Part.
- (c) Construction of a multifamily development
- (1) Protected trees located in a FEMA one-hundred year flood plain, NRCS lake tree preservation zone, or erosion hazard setback zone shall be subject to all tree replacement and tree protection requirements of this Part.
 - (2) In cases other than listed immediately above (11.02(c)(1)), all protected trees 18 inches in caliper or greater shall be subject to tree replacement and tree protection requirements except where protected trees must be critically altered to:
 - i) install and maintain any utility lines
 - ii) dedicate public right-of-way
 - iii) construct any public or private streets at the minimum required width only
 - iv) provide any required easement up to the minimum width needed to accommodate the required service

- v) construct any fire lanes at the minimum required width only
 - vi) construct any sidewalks
 - vii) construct swimming pools
 - viii) construct any hike/bike/equestrian trails
 - ix) construct any portions of a golf course, park playing field, equestrian center, or school playing field but not including buildings, additional parking, club houses, or ancillary buildings, or:
 - x) achieve cut and fill drainage as designed in master drainage construction plan, including required retention or detention ponds. Transitional slopes to the original grade that are less steep than the maximum allowed slope shall not be exempt.
- (3) All other areas of the lot shall be exempt from tree protection and tree replacement requirements of this Part.

11.03 Non-Residential Development

(a) Protected trees located in a FEMA one-hundred year flood plain, NRCS lake tree preservation zone, or erosion hazard setback zone shall be subject to all tree replacement and tree protection requirements of this Part.

- (1) In cases other than listed immediately above (11.03(a)), all protected trees 18 inches in caliper or greater shall be subject to tree replacement and tree protection requirements except where protected trees must be critically altered for a:
 - (2) install and maintain any utility lines
 - (3) dedicate public right-of-way
 - (4) construct any public or private streets at the minimum required width only
 - (5) provide any required easement up to the minimum width needed to accommodate the required service
 - (6) construct any fire lanes at the minimum required width only
 - (7) construct any sidewalks at the minimum required width only
 - (8) construct swimming pools
 - (9) construct any hike/bike/equestrian trails

- (10) construct any portions of a golf course, park playing field, equestrian center, or school playing field but not including buildings, additional parking, club houses, or ancillary buildings, or:
 - (11) achieve cut and fill drainage as designed in master drainage construction plan, including required retention or detention ponds. Transitional slopes to the original grade that are less steep than the maximum allowed slope shall not be exempt.
- (b) All other areas of the development shall be subject to both tree replacement and tree protection requirements, and all other provisions of this Part, except that tree replacement in areas reclaimed from the flood plain and used for non-residential development shall be limited to one three inch caliper tree for each protected tree removed.

11.04 Existing Single Family or Duplex Residential Development

All trees 18 inches in caliper or greater shall be subject to tree preservation requirements regardless of location.

11.05 All Other Existing Development

Tree preservation and replacement requirements shall apply, except that additions or redevelopment shall be allowed the same exemptions as for new non-residential or multifamily development, as applicable.

11.06 Demolition

The Landscape Administrator may issue a limited purpose tree permit to allow critical alteration of a protected tree if such critical alteration is necessary to allow demolition of a structure. The protected tree covered by the permit shall be exempt from the tree replacement and tree protection requirements of this Part.

11.07 Diseased Trees

Upon issuance of a limited purpose tree permit, a diseased protected tree may be critically altered to reduce the chances of spreading the disease to adjacent healthy trees. If the Landscape Administrator issues a limited purpose tree permit for this use, the protected trees covered by the permit shall be exempt from the tree replacement and protection requirements of this Part.

11.08 Ground Level Cuts

Tree trunks must be cut at ground level where removal of a tree may damage root systems of an adjacent tree. Stump grinding in such situations is allowed with the approval of the Landscape Administrator.

11.09 Removal of Underbrush

Removal of underbrush, not including grubbing under drip lines, shall not require a tree permit.

11.10 Grubbing Under Drip Lines

The Landscape Administrator may issue a limited purpose tree permit allowing the clearing and grubbing of brush located within or under the drip lines of protected trees.

11.11 Trees Along Property Lines

Trees along property lines, even if not on the protected or quality tree list, may be considered as protected trees when the Landscape Administrator makes a determination, in writing, that such trees promote the purposes of this Part.

11.12 Tree Replacement

- (a) Unless specifically exempted, the following tree replacement procedures shall apply to any person who critically alters a protected tree for which a permit is required.
- (b) In the event that it is necessary to remove trees three caliper inches or greater subject to this Part, the developer or lot owner, as a condition to issuance of a tree removal permit, may be required to replace the tree(s) being removed with replacement trees comparable to other trees within the site.
- (c) Tree replacement will be considered only after all design alternatives which could save more existing trees have been evaluated. Replacement trees shall be in addition to trees required under other landscape requirements of the City.
- (d) Replacement trees shall be a minimum of 3 inches in diameter when measured at breast height (DBH). Examples include:

- (1) a total of 18 inches diameter to be removed shall be replaced with six 3-

inch diameter trees.

- (2) a total of 19 inches diameter to be removed shall be replaced with seven 3-inch trees, or five 3-inch trees and one 4-inch tree
- (3) all replacement trees shall be guaranteed for one year from the date of the final inspection and acceptance of the project. The responsibility to replace trees shall apply to both the person altering a protected tree, and the owner of the property. If a replacement tree dies, the owner of the property is responsible for replacing that tree.

Section 12. Tree Requirements for Commercial Properties

- (a) Trees: All commercial properties shall provide trees at a ratio of 10 trees per acre (43,560 sq ft) or one tree per 4,356 sq ft of the gross lot area.
- (b) All trees planted to satisfy the tree standards must be a minimum of three inches in diameter at breast height (DBH).
- (c) At the discretion of the City, and at the request of the property owner, the ten trees per acre may be satisfied by planting trees elsewhere in the City of Anna at the direction of the Landscape Administrator.
- (d) See Appendix A for a suggested species list that may be used to meet the requirements of this Part. No trees with a maximum mature height of 25 feet or greater may be planted within 25 feet (measured horizontally) from the nearest overhead utility line.

Section 13. Tree Credits

- (a) When any quality tree of 3 inches or more in caliper is preserved that would otherwise have been exempt, credits toward the total inches of caliper of replacement trees required for the development site will be given as per the following formula:
 - (1) if the caliper of the preserved exempt tree is 3"-16", the credit applied will be equal to the caliper of the preserved trees.
 - (2) if the caliper of the preserved exempt tree is greater than 16", the credit applied will be equal to twice the caliper of the preserved tree.
- (b) Tree credits may not be earned for preservation of existing trees located on land required to be dedicated for public right-of-way or easement purposes, unless the property owner can demonstrate the ability to protect the credited trees by way of restrictive covenant or other legal instruments considered satisfactory by the City Council.

- (c) Tree credits will not be permitted unless temporary tree protection devices are installed at least to the limit of the critical root zone or the drip line, whichever is greater, during construction activity.

Section 14. Maintenance

The property owner or his/her agent shall be responsible for the maintenance, repair, and replacement of all preserved vegetation and landscaping plants and materials as may be required by the provisions of this Part.

Section 15. Enforcement

The City shall not approve a development agreement unless it provides that all construction activities shall meet the requirements of this Part.

- (a) No building permit or development permit shall be issued unless:
 - (1) a construction tree permit has been approved, or:
 - (2) an affidavit of no protected trees has been submitted and approved, or:
 - (3) a determination of exemption has been made by the Landscape Administrator or designee.
- (b) No building permit or development permit shall be issued unless the applicant signs an application or permit request which says that all construction activities meet the requirements of this Part.
- (c) No certificate of occupancy (C.O.) shall be issued until any and all penalties for violations of this Part have been paid to the City. No C.O. shall be issued until all required replacement trees have been planted.

Section 16. Offenses and Penalties

- (a) A person commits an offense if the person critically alters a protected tree not meeting an exception listed in this Part of the Code without first obtaining a tree permit from the City.
- (b) A person commits an offense if the person critically alters a tree in violation of a tree permit.
- (c) Any person, firm, corporation, agent, or employee thereof who violates this Part of the Code by critically altering a protected tree without first obtaining a tree permit from the City, or by critically altering a protected tree in violation of the permit, or by failing to follow the tree replacement procedures, shall be guilty of a misdemeanor, and upon conviction shall be fined \$100 per caliper inch of the

tree critically altered, not to exceed \$500 per critical alteration. The unlawful critical alteration of each protected tree shall be considered a separate incident, and each incident shall subject the violator to the maximum penalty set forth herein for each tree critically altered.

(d) Any person, firm, corporation, agent, or employee thereof who violates any provision of this Part other than those listed above shall be guilty of a misdemeanor and upon conviction hereof shall be fined not to exceed \$500 for each incident. Each and every day said violation is continued shall constitute a separate offense.

(e) Allegation and evidence of a culpable mental state is not required for proof of an offence defined by this Part. Ignorance of the terms of this Part is not an excuse for any violation.

Section 17. Savings/Repealing Clause

All provisions of any ordinance in conflict with this Part of the Code are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect. This repealing provision does not apply to this Part or any part of it once declared or adjudged unconstitutional or invalid by a court of competent jurisdiction; any ordinance or part of any ordinance initially deemed repealed under this subsection is deemed not repealed to the extent it conflicts with any part of this Part declared or adjudged unconstitutional or invalid by a court of competent jurisdiction.

Section 18. Severability

Should any section, subsection, sentence, clause, phrase, definition or part of a definition in this Part be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Part of the Code shall remain in full force and effect. The City of Anna City Council declares that it would have passed this section, and each section, subsection, clause, phrase or word in it irrespective of the fact that anyone or more sections, subsections, sentences, clauses, phrases, definitions or parts of definitions may be declared unconstitutional or invalid.

(Ord. No. 220-2005, adopted 7/28/2005)

APPENDIX A

List of Quality and Acceptable Replacement Trees for Anna, Texas

"*" indicates Texas Native plants; information on "*" trees may be found at:
<http://aggie-horticulture.tamu.edu/ornamentals/natives/indexcommon.htm>

The list below is inclusive of all improved varieties of the listed trees. In addition, trees not listed may be approved for use at the discretion of the Landscape Administrator or designee.

Austrian Pine	Pinus nigra (up to 40 ft)
Afghan (eldarica) pine	Pinus eldarica (up to 40 ft)
"Bitternut Hickory	Carya Cordiformis (over 40 ft)
*Black Hickory	Carya Buehl (over 40 ft)
*Bald Cypress	Taxodium distichum (over 40 ft)
*Bur Oak	Quercus macrocarpa (over 40 ft)
*Blackjack Oak	Quercus marilandica (over 40 ft)
"Bigelow Oak	Quercus durandii var breviloba (up to 40 ft)
"Common Persimmon.....	Diospyros virginiana (30-40 ft)
"Chinquapin Oak	Quercus muhlenbergii (50-90 ft)
*Chittamwood	Sideroxylon lanuginose (to 25 ft)
*Cedar Elm	Ulmus crassifolia (up to 90 ft)
Chinese Pistachio	Pistacia chinensis (30-40 ft)
Chaste Tree	Vitex agnus-castus (15 ft)
Crepe Myrtle	Multiple varieties (various heights)
*Desert Willow	Chilopsis linearis (20 ft)
*Dolan Falls White Oak	Quercus polymorpha
"Eastern Red Cedar	Juniperus virginiana (to 70 ft)
*Eve's Necklace	Sophora affinis (15-35 ft)
*Gregg's Ash	Fraxinus greggii (20 ft)
Goldenrain Tree	Koelreuteria paniculata(30-40 ft)
Japanese Maple	Acer palmatum (6 to 25 ft)
*Little Gem Magnolia	Magnolia grandiflora (15-30 ft)
"Leland Cypress	Cupressocyparis Leylandii(30-40 ft)
*Lacey Oak	Quercus glaucoides (35 ft)
*Live Oak	Quercus virginiana (20-50 ft)
Mary Nell Holly	Ilex x 'Mary Nell' (10-15 ft)
"Mexican Redbud	Cercis Canadensis var. mexicana (10-15 ft)
Mexican Plum	Prunus mexicana (up to 25 ft)
"Mohr Oak	Quercus Mohriana (20 ft)
"Nogalito	Juglans microcarpa (20-30 ft)
Nellie R. Stevens Holly	Ilex x 'Nellie R. Stevens' (20-30 ft)
"Post Oak	Quercus stallata (to 80 ft)
"Possum Haw Holly	Hex decidua (8-12 ft)
"Pecan	Carya illinoensis (to 90 ft)

- *Redbud Cercis Canadensis (15-20 ft)
- "Shumard Red Oak Quercus shumardii (to 120 ft)
- *Sawtooth OakQuercus acutissima (50-60 ft)
- Shangtung MapleAcer truncatum(25-30 ft)
- "Southern MagnoliaMagnolia grandiflora (to 40 ft)
- *Texas MadroneArbutus xalapensis (to 40 ft)
- "Texas RedbudCercis Canadensis var. texensis (to 20 ft)
- "Texas PersimmonDiospyros texana (to 20 ft)
- *Texas AshFraxinus texensis (to 50 ft)
- *Texas Red OakQuercus Texana (to 75 ft)
- *Western SoapberrySapindus drummondii (to 30 ft)
- *Youpon HollyIlex vomitoria (not dwarf form) (8-12 ft)

**APPENDIX B
APPROVED PLANT LIST**

RECOMMENDED SPECIES FOR NEW PLANTINGS

The following is a list of recommended high quality, long-living trees and shrubs which are considered suitable for local soil conditions and climate. Other species may be acceptable with approval from the City Manager or his designee.

OVERSTORY {SHADE} TREES: HEIGHT RANGE - 30' - 60'

Bald Cypress *Taxodium distichum*
Cedar Elm *Ulmus crassifolia*
Lacebark (Drake) Elm *Ulmus parvifolia* 'Drake'
Pecan *Carya illinoensis*
Chinese Pistache *Pistacia chinensis*
Bur Oak *Quercus macrocarpa*
Shumard or Texas Red Oak *Quercus shumardii* or *texana*
Sweet Gum *Liquidambar styraciflua*
Green Ash *Fraxinus pennsylvanica*
Live Oak *Quercus virginiana*
Western Soapberry *Sapindus drummondii*
Eastern Red Cedar *Juniperus virginiana*
Chinquapin Oak *Quercus muhlenbergii*
American Elm *Ulmus Americana*

The listed Overstory Trees are acceptable Replacement Trees.

ACCENT (ORNAMENTAL) TREES: HEIGHT RANGE - 10' - 20'

The following ornamental trees, with staff approval, may be substituted for the required shade trees. These ornamental trees shall have a minimum caliper of three inches.

Japanese Black Pine *Pinus thunbergii*
Afghan (Eldarica) Pine *Pinus eldarica*
Redbud *Cercis canadensis*
Crape Myrtle *Lagerstremia indica*
Yaupon Holly *Ilex vomitoria*
Bradford Pear *Pyrus calleryana*
Eve's Necklace *Sophora affinis*
Texas Sophora *Sophora secundiflora*
Mexican Plum *Prunus Mexicana*
Purple-leaf Plum *Prunus cerasifera*
Crabapple *Malus augustifolia*
Deciduous Holly *Ilex decidua*
Chaste Tree *Vitex Agnus-castus*

Mexican Buckeye *Ungnadia speciosa*
Desert Willow *Chilopsis linearis*

EVERGREEN SHRUBS

Drought and freeze-resistant shrubs include, but are not limited to
Red Tip Photinia
Burford Holly
Chinese Holly
Yaupon Holly
Juniper (several varieties)
Wax Myrtles
Eleagnus

Other plants may be used with approval of the City Manager or his designee.

GROUND COVER

Asian Jasmine
Liriope
English Ivy
Virginia Creeper
Boston Ivy
Vinca
Honeysuckle
Monkey Grass
Purple Wintercreeper

UNPROTECTED TREES

Arizona Ash *Fraxinus velutina*
Boys D'Arc (Native) *Maclura pomifera*
Chinese Tallow *Sapium sebiferum*
Cottonwood (Native) *Populus deltoides*
Honey Locust (Native) *Gleditsia triacanthos*
Lombardy Poplar *Populus nigra italica*
Mulberry *Morus alba*
Siberian Elm *Ulmus pumila*
Silver Maple *Acer saccharinum*
Weeping Willow *Salix babylonica*

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