

**TITLE XV UNIFIED DEVELOPMENT CODE
CHAPTER 167: TREE PRESERVATION AND PROTECTION**

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CHAPTER 167: TREE PRESERVATION AND PROTECTION

167.01 Purpose

It is the purpose of this chapter to preserve and protect the health, safety, and general welfare, and preserve and enhance the natural beauty of Fayetteville by providing for regulations of the preservation, planting, maintenance, and removal of trees within the city, in order to accomplish the following objectives:

(A) *Objectives.*

- (1) To preserve existing tree canopy;
- (2) To create a healthful environment for Fayetteville residents, businesses, and industries;
- (3) To moderate the harmful effects of sun, wind, and temperature changes;
- (4) To buffer noise, air and visual pollution;
- (5) To filter pollutants from the air that assist in the generation of oxygen;
- (6) To reduce storm water runoff and the potential damage it may create;
- (7) To stabilize soil and prevent erosion, with an emphasis on maintaining tree canopy on hillsides defined as canopied slopes in Chapter 151;
- (8) To provide habitat for birds and other wildlife;
- (9) To preserve riparian banks and beds, and prevent sedimentation;
- (10) To screen incompatible land;
- (11) To promote energy conservation; and
- (12) To protect and enhance property values.

(B) *Principles.* This chapter shall be enforced according to the following principles:

- (1) Preservation shall be the first, best, and standard approach.
- (2) If preservation cannot be achieved, on-site mitigation shall next be pursued.
- (3) If on-site mitigation cannot be achieved, off-site preservation shall be pursued.
- (4) If off-site preservation cannot be achieved, off-site forestation shall be pursued.

- (5) If none of the above approaches can be achieved, payment shall be made to the tree escrow account.

(Code 1991, §162.01; Ord. No. 3699, §1 4-20-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

167.02 City Of Fayetteville Tree Preservation, Protection, And Landscape Manual

The urban forester, in cooperation with other members of city staff, shall promulgate and periodically revise forms, procedures and regulations to implement this chapter and publish this information in the *City of Fayetteville, Tree Preservation, Protection, and Landscape Manual*.

(A) Copies of the *Tree Preservation, Protection, and Landscape Manual* are to be made readily available to the public and shall include, but need not be limited to:

- (1) Specific criteria for gaining city approval of tree preservation plans;
- (2) The format and content of reports and plans the applicant must submit to the city pursuant to this chapter;
- (3) Tree protection during construction;
- (4) A glossary of important terms used in this chapter;
- (5) Size and species requirements for trees planted for on-site mitigation or off-site forestation;
- (6) Maintenance of trees (including but not limited to pruning, irrigation, and protection from disease).

(B) The Tree and Landscape Advisory Committee shall review and may recommend revisions to the *Tree Preservation, Protection, and Landscape Manual* at least every three years to reflect changes in arboricultural and horticultural practices, lists of preferred tree species, city policies, or the content of this chapter.

(Ord. No. 4340, 10-2-01)

167.03 Tree Registry And Urban Forest Analysis

(A) *Tree Registry.* Trees and groups of trees which are documented to be of historic merit, of an uncommon or endangered species, or are of extraordinary value due to their age, size, or type,

may be registered in the City of Fayetteville's tree registry. It shall be the duty of the urban forester to maintain and keep this registry on file in the urban forester's office.

- (B) *Voluntary registration.* Registration of trees shall be voluntary and may be done by the owner(s) of the property on which the tree is located. Registration shall not run with the land unless the property owner wishes to use an express trust to transfer a benefit in the tree or groups of trees to the city. Registered tree owners are entitled to consultation with the Tree and Landscape Advisory Committee and/or the urban forester concerning proper care and protection of the tree, as well as an evaluation of the tree's condition.
- (C) *Urban Forest Analysis.* The city shall initiate a tree canopy analysis and an Urban Forestry Effects Model study or their current equivalent studies within the current geographical boundaries of the city by December 31, 2012. Thereafter, the city should conduct these studies every ten (10) years.

(Ord. No. 4340, 10-02-01; Ord. 5427, 8-2-11)

167.04 Tree Preservation And Protection During Development

(A) *Applicability.* The provisions of this section shall apply to proposed subdivisions, and large scale developments required by other chapters of the Unified Development Code to go through the city's permitting process. Persons seeking to build one single-family dwelling unit, or duplex, are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply. Planned Zoning Districts should meet the percent minimum tree canopy based upon their primary use, but may be allowed a lesser tree canopy requirement as part of the overall Master Plan approved by the City Council.

- (1) *Subdivisions and large scale developments.* Applicants seeking approval of proposed subdivisions and large scale developments shall submit a site analysis plan, analysis report, and tree preservation plan with the preliminary plat or site plan. There shall be no land disturbance, grading, or tree removal until a tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
- (2) *Grading permit.* An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for grading permits on projects

that are not required to go through subdivision or large scale development process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

- (3) *Building permits.* Tree preservation requirements apply to all permit applications for nonresidential construction, and the construction of multi-family residential buildings composed of three or more dwelling units. An abbreviated tree preservation plan, as set forth in § 167.04 (H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision or large scale development process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
- (4) *Parking lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five or more spaces. An abbreviated tree preservation plan, as set forth in §167.04 (H)(3), shall be submitted with the application for permits on projects that are required to go through the subdivision or large scale development process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
- (5) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a site analysis plan, analysis report, and tree preservation plan with the preliminary plat or site plan. Single and two family residential development shall submit an abbreviated tree preservation and site plan at the time of obtaining a building permit. Structural changes to buildings located in the Hillside/Hilltop Overlay District that do not result in an enlargement of the building footprint or roof dripline shall not require an abbreviated tree preservation plan. There shall be no land disturbance, grading, or tree removal until a tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

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(B) *Tree preservation criteria.* The urban forester shall consider the following factors, and any other relevant information, when evaluating tree preservation plans:

- (1) The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
- (2) Whether the design incorporates the required tree preservation priorities.
- (3) The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
- (4) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
- (5) Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
- (6) Whether the size or shape of the lot reduces the flexibility of the design.
- (7) The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
- (8) The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
- (9) The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
- (10) Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
- (11) Construction requirements of on-site and off-site drainage.
- (12) The effects of proposed on-site mitigation or off-site alternatives.
- (13) The effect other chapters of the UDC, or city policies have on the development design.
- (14) The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
- (15) The impact a substantial modification or rejection of the application would have on the applicant.

***Note--**The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

(C) *Canopy area.* In all new Subdivisions, Large Scale Developments, Industrial and Commercial Developments, and all other improvements listed above, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the Applicant has been approved for On-Site Mitigation or Off-Site Alternatives as set forth in subsections I. & J. below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the Applicant is seeking approval, less the right-of-way and park land dedications. An Applicant shall not be required to plant trees in order to reach the Percent Minimum Canopy requirement on land where less than the minimum exists prior to development, unless trees have been removed.

**Table 1
Minimum Canopy Requirements**

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
R-A, Residential - Agricultural (nonagricultural uses)	25%
RSF-.5, Single-family Residential – One Half Unit per Acre	25%
RSF-1, Single-family Residential – One Unit per Acre	25%
RSF-2, Single-family Residential – Two Units per Acre	20%
RSF-4, Single-family Residential – Four Units per Acre	25%
RSF-7, Single-family Residential – Seven Units per Acre	20%
RSF-8, Single-family Residential – Eight Units per Acre	20%
R-O, Residential –Office	20%
RT-12, Two and Three-family Residential	20%
RMF-6, Multi-family Residential – Six Units per Acre	20%
RMF-12, Multi-family Residential – Twelve Units per Acre	20%
RMF-18, Multi-family Residential – Eighteen Units per Acre	20%
RMF-24, Multi-family Residential – Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential – Forty Units per Acre	20%
NS, Neighborhood Services	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%

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DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning District (HHOD)	25% (30%)

All residential zoning districts and C-1 districts within the Hillside/Hilltop Overlay District shall have their percent minimum canopy requirements increased by 5% to a total requirement of either 30% or 25%.

(D) *Prior tree removal.*

(1) If trees have been removed below the required minimum within the five (5) years preceding application for development approval, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional ten percent (10%) of the total area of the property for which the Applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the Base Density for High Priority trees.

(2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

(E) *Tree preservation priorities.*

(1) *Percent minimum canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in utility easements shall not be counted toward the percent minimum canopy requirement, and such utilities shall be routed, wherever possible, to avoid existing canopy.

(2) *Existing natural features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.

(3) *Preservation priorities.* The list of preservation priorities (See: Table 2) shall guide the review of each development's design. The submittal of designs which do

not incorporate preservation priorities for the trees on the site shall result in the denial of the tree preservation plan.

(4) *High priority trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. The preservation and protection of lower priority trees shall not be substituted for that of high priority trees, except:

- (a) When the justification for such a substitution is set forth in the analysis report; and
- (b) The substitution is approved by the urban forester.

Table 2
Preservation Priorities

High Priority	Mid-level Priority	Low Priority
Canopied slopes	Contiguous woodlands	Invasive species
Floodways and riparian buffers	Non-native woodlands	Relic orchards
Native woodlands	Use buffers	Less desirable species
Significant trees		

***Note--**Each of the above is listed alphabetically beneath its respective category. They are not presented in any particular order of importance within that category.

(F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Subdivisions.*

(1) *Residential subdivisions.* The Percent Minimum Canopy in residential subdivisions shall be located in areas that have the least possibility of impact as utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential Subdivisions requesting tree removal below the Percent Minimum Canopy requirement may choose either Residential On-Site Mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04 J.4.a. Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed to avoid existing canopy.

(2) *Nonresidential subdivisions.* Two options are available for establishing a tree preservation plan for the development of nonresidential subdivisions. The urban forester shall recommend to the Planning

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Commission the option that will potentially preserve the largest amount of priority canopy based upon the tree preservation criteria set forth in § 167.04 (B) above.

(a) *Preservation plan for entire subdivision.*

The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04 (L) below. Should the entire percent minimum canopy requirement for the site be so protected, the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.

(b) *Preservation plan for infrastructure only.*

The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from this defined area by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall required separate Tree Preservation Plans.

(3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit an abbreviated tree preservation plan as set forth in § 167.04 (H)(3) indicating the location of the structure and the preservation of the minimum tree canopy requirement.

(a) Developers shall have the option of doing cluster development, such as a

PZD, which would encourage more open space and tree preservation areas. In this pattern of development, the tree preservation zone on each lot can be transferred to a larger open space instead of being required on the individual lots. The open space set aside during cluster development shall be placed in a permanent easement or land trust with all future development rights removed from the property.

(G) *Initial review.*

(1) *Meeting with the urban forester.* It is strongly recommended that prospective applicants meet with the urban forester for an initial review of the proposed tree preservation plan for the site prior to submitting a preliminary plat, large scale development, or site plan to the city. During the initial review, the urban forester shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be nonbinding. However, applicants proceed at the risk of higher costs due to changes required by a noncompliant submittal should they choose not to have the initial review or to disregard the recommendations of the urban forester.

(2) *Letter of confirmation.* The urban forester shall document whether the applicant participated in the initial review meeting in a letter of confirmation to the applicant. If the applicant chose to attend an initial review meeting, the letter shall also document any recommendations made. The urban forester shall ensure that a copy of the letter becomes part of the permanent file for the project.

(H) *Submittal of plans.* Applicants should bear in mind that all plans will be evaluated according to the tree preservation criteria and percent minimum canopy requirements as set forth under §167.04 (B) and (C).

(1) *Site analysis plan.* On sites with existing tree canopy, the applicant shall conduct a site analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a site analysis plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The site analysis plan shall also specifically depict the applicable preservation priority level for each tree or group of trees on the site. The plan should include, but not be limited to, delineation of

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the following features as they exist on the site:

- (a) The existing topography of the site highlighting slopes of 15% or greater, and indicating the natural drainage patterns;
 - (b) The property line boundaries of the site;
 - (c) Soils identified according to the Unified Soil Classification System;
 - (d) Any significant trees existing on the site, and the location of trunks, spread of the canopy, species, diameter at breast height (DBH), and the overall health of each significant tree;
 - (e) Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, diameter at breast height (DBH), and general health of the trees.
 - (f) All existing utilities and utility easements;
 - (g) All perennial and intermittent streams and creeks that exist on the site or within 100 feet of the site;
 - (h) Floodplains and floodways on the site;
 - (i) All existing rights-of-way within and surrounding the project site, including any designated trails or bike paths; and,
 - (j) Any other factors that may impact the design of the site.
- (2) *Tree preservation plan.* The applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to, fencing, limits of root pruning, as well as restrictions on traffic and material storage. The plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off-site, as well as the proposed location of utilities. The applicant should consult the *City of Fayetteville Tree Preservation, Protection and Landscape Manual* for details, examples and specific checklists.
- (3) *Abbreviated tree preservation plan.* Applicants requesting approval of development projects that require building, grading, or parking lot permits, but that do

not fall under the requirements for large scale developments or subdivisions, shall prepare and submit an abbreviated tree preservation plan. The information for this plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the urban forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual* for details, examples and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit either a site analysis plan or analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.

- (4) *Analysis report.* The applicant shall submit an analysis report detailing the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed on-site mitigation options or off-site alternatives, as detailed below.
- (5) *Grading and utility plans.* All subsequent grading and utility plans shall depict the tree preservation areas on the site, to include the preserved trees and the physical limits of all protective measures required during construction.
- (6) *Submittal requirements.* The applicant shall submit two (2) copies of a site analysis plan and analysis report to the urban forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit either a site analysis plan or analysis report.
- (7) *Conservation requirements.* The city shall encourage the use of conservation easements for the added protection of trees preserved or planted to meet percent minimum canopy requirements in those

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instances where such would be of mutual benefit to the applicant and the city.

density of 150, two inch (2") caliper trees per acre removed.

(l) *Request for on-site mitigation*

(1) *Timing of request for on-site mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.

(2) *Plan requirements.* The tree preservation plan must graphically represent the species and location for all trees to be planted on-site. It shall also include a chart clearly stating the following information:

(a) The number of trees requested for removal;

(b) The percentage below the percent minimum canopy requirement they represent; and,

(c) Tree removal due to the grading work done to create tie backs for roads in the Hillside/Hilltop Overlay District shall be mitigated by reforesting a minimum of 25% of the tie backs pursuant to the landscape manual.

(d) Planting trees in non-canopy areas in order to reach the minimum percent canopy requirements for the site is not allowed in the Hillside/Hilltop Overlay District.

(e) The species and number of trees to be planted based on the forestation requirements below.

(3) *Planting details and notes.* Planting details and notes shall be included on the tree preservation plan as set forth in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*.

(4) *Forestation requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:

(a) *High priority canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of 200, two inch (2") caliper trees per acre removed.

(b) *Mid-level priority canopy.* When removing mid-level priority canopy required, the canopy square footage removed shall be forested at a base

(c) *Low priority canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of 100, two inch (2") caliper trees per acre removed.

(5) *Base Density.* Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The base density formula used above is based on two inch caliper trees. However, the urban forester may approve the use of trees with less than two inch (2") caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the species density table to be found in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*, along with examples for using the base density formula.

(6) *Preferred species.* All trees to be planted shall be species native to the region, when available, and selected from the list of preferred tree species set forth in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the urban forester.

(7) *Placement of trees.* The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.

(8) *On-site mitigation incentive.* If all the required trees can be located on-site, the Urban forester may approve up to a twenty percent (20%) reduction in the number of trees to be planted. Any incentive reductions allowed shall be based upon the following factors:

(a) The species of the mitigation trees; and,

(b) The space needed for the healthy growth of trees.

(9) *Residential On-Site Mitigation.* Applicants requesting On-Site Mitigation for Residential Subdivisions shall comply with all the

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provisions of §167.04 I. 1-7, as well as the following:

- (a) The Applicant's Mitigation Plan shall meet or exceed the required number of Mitigation Trees based on the Forestation Requirements as set forth at §167.04 I. 4.
 - (b) All Plans requesting Residential On-Site Mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the Applicant responsible for the health of all planted trees.
 - (i) Approval of a Plan requesting Residential On-Site Mitigation shall be contingent upon the Applicant depositing with the City an irrevocable Letter of Credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable Letter of Credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban forester for approval.
 - (ii) Upon completion of the three year landscape establishment period, the Urban forester shall inspect the site and determine whether ninety percent (90%) of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City shall release the Letter of Credit.
 - (iii) In the absence of such a finding, the Applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban forester. If the Applicant does not take remedial steps to bring the property into compliance, the City shall use the necessary moneys from the Landscape Establishment Guarantee to do so.
 - (iv) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
 - (c) The Applicant shall establish a bona fide Property Owners Association with a Bill of Assurance and Protective Covenants sufficient to ensure the continued health and vitality of the mitigation trees within the subdivision. The Bill of Assurance and Protective Covenants shall be filed of record with the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, and file-marked copies thereof shall be provided to the Urban forester prior to Final Plat approval.
 - (d) Developers requesting mitigation trees be planted along the street right of way of a Subdivision shall submit a street tree planting plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the Approved Street Tree Species List, or be otherwise specifically approved by the Urban forester.
 - (i) The Applicant's Mitigation Plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of Mitigation Trees are planted.
 - (ii) The applicant shall submit an annual schedule of the initial structural pruning for all Mitigation Trees planted along street right of ways with the name and contact information of the International Society of Arboriculture (ISA) Certified Arborist or pruning service performing the work.
- (J) *Request for off-site alternatives.*
- (1) *Timing of request for off-site alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.
 - (2) *Off-site preservation.* The applicant may seek approval of the urban forester to preserve an equal or greater amount of canopy cover at a site within the city limits or, with the express approval of the City Council by its resolution, within one-quarter mile of the Fayetteville city limits.

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- (3) *Off-site forestation.* If off-site preservation cannot be achieved, the applicant may seek approval from the urban forester to plant the required number of trees on another site owned by the applicant and located within the city limits or, with the express approval of the City Council by its resolution, within one-quarter mile of the Fayetteville city limits. A tree conservation easement must be conveyed by the applicant to the city to protect any off-site preservation or forestation.
- (4) *Tree escrow account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation and off-site forestation to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four years to ensure it remains the fair market costs for tree planting and maintenance for three years.
- (a) Residential Subdivisions which cannot achieve the Base Density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The City shall use the money paid into the Tree Escrow Account to plant trees within the subdivision along rights-of-ways, detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the subdivision is built out or as approved by the urban forester.
- (b) Money contributed in lieu of On-Site Mitigation or Off-Site Forestation shall be paid prior to issuance of a Building Permit on all Commercial, Industrial, or Multi-Family Residential buildings and prior to Final Plat acceptance for all Residential and Non-Residential Subdivisions.
- (c) Money contributed under this section:
- (i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either City Staff or contract labor;
- (ii) Shall not revert to the general fund for ongoing operations.
- (d) If it is not possible to plant trees within the subdivision, planting locations will be sought in appropriate sites within a one (1) mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to J (2) and (3). Data extracted from the Urban Forest Analysis should be consulted when identifying appropriate locations to plant escrow funded trees.
- (e) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a four percent (4%) annual rate.
- (f) Refunds shall be paid to the Applicant who made the original contribution.
- (g) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the Applicant no later than thirty (30) days after the date which the refund becomes due. The sending by regular mail of the notices to the Applicant shall be sufficient to satisfy the requirement of notice.
- (h) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
- (i) At the time of the contribution to the Tree Escrow Account, the Urban forester shall provide the Applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this Ordinance.

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- (5) *Maintenance agreement and landscape establishment guarantee.* All plans requesting on-site mitigation or off-site forestation shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
- (a) Approval of a plan requesting on-site mitigation or off-site forestation shall be contingent upon the applicant depositing with the city either currency, bond irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor of trees at the time of planting. The bond, irrevocable letter of credit, or other surety must cover the entire three year maintenance and monitoring period. The applicant shall submit cost estimates to the urban forester.
 - (b) Upon completion of the three year landscape establishment period, the urban forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the city shall release the currency, bond, or letter of credit.
 - (c) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the urban forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary monies from the landscape establishment guarantee to do so.
 - (d) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
- (K) *Tree preservation plan review form.* The urban forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.
- (1) The form shall clearly indicate whether the urban forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.
 - (2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.
 - (3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.
 - (4) The urban forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.
- (L) *Continuing preservation and protection under approved tree preservation plans.*
- (1) In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of an approved tree preservation plan, tree preservation areas shall be clearly depicted on the easement plats for large scale developments and the final plats for nonresidential subdivisions. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the urban forester. Lots in residential subdivisions are expressly exempt from these requirements. If it is impractical to include the actual depiction of the canopy to be preserved on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.
 - (2) The geographic extent and location of tree preservation areas, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the city clerk to place it on the agenda of the next regularly scheduled City Council meeting.
 - (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation area shall seek prior approval from the urban forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the urban forester determines that natural replacements of

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sufficient health and vigor are already present in the tree preservation area.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. 4855, 4-18-06; Ord. 4930, 10-03-06; Ord. 5308, 3-16-10; Ord. 5312, 4-20-10; Ord. 5427; 8-2-11; Ord. 5513, 7-17-12)

167.05 Tree Protection Measures And Construction

- (A) *Site inspection.* A preliminary site inspection followed by periodic inspections will be conducted by the urban forester to ensure compliance with the tree preservation plan.
- (B) *Tree protection.* Tree preservation areas shall be protected from construction activity to prevent impingement by or the storage of construction vehicles, materials, debris, spoils or equipment in tree preservation areas. No filling, excavating or other land disturbance shall take place in tree preservation areas. Before commencing any construction activity, the applicant shall construct tree protection barriers on the site along the tree dripline or 10 feet from the trunk, whichever is greater. The applicant shall also post signs at each tree preservation area in accordance with the standards, specifications and guidelines provided in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*. The urban forester may require other protective measures based upon the individual characteristics of the site and the proposed construction methods. Tree protection measures shall also protect any off-site trees the roots of which extend onto the site of the proposed construction. Any applicant damaging or destroying an off-site tree shall be required to mitigate such damage or destruction as prescribed by the urban forester. If the required barriers surrounding the tree preservation areas are not adequately maintained during construction, the urban forester shall prescribe remedial measures, and may issue a stop work order in accordance with § 153.07(C). All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting final plat approval or issuing a certificate of occupancy.

(Code 1991, §162.11; Ord. No. 3699, §11, 4-20-93; Ord. No. 3925, §8, 10-3-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §7, 4-16-96; Ord. No. 4008, §1, 12-17-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

167.06 Tree Planting, Maintenance And Removal On Street Rights-Of-Way And Other Public Grounds

- (A) *Follow the Tree Preservation, Protection, and Landscape Manual.* All tree planting, maintenance or removal on public grounds shall follow the standards, specifications and guidelines provided in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*.
- (B) *Tree planting.* Trees may be planted within street rights-of-way or on other public grounds only after notification to the urban forester; and provided the selection and location of said trees are in accordance with the requirements.
- (C) *Tree removal.* Trees shall not be removed from a street right-of-way or other public grounds unless approval is received from the urban forester, with the exception that city employees may remove trees when necessary to accomplish emergency repairs to sewer or water systems, or in order to alleviate flooding.
- (D) *Damage to trees.* It shall be a violation of this chapter to damage, destroy or mutilate any tree in a public right-of-way or on other public grounds, or attach or place any rope or wire (other than one to support a young or broken tree or limb), sign, poster, handbill or any other thing to any such tree.
- (E) *Top or cutback to stubs.* It shall be unlawful for any person to top or cutback to stubs the crown of any tree in street rights-of-way or on other public grounds.
- (F) *Reserved rights.* The city reserves the right to plant, preserve, prune, maintain or remove any tree within the street rights-of-way, alleys, squares, and all public grounds when such interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign, or as may be necessary to preserve or enhance the symmetry and beauty of such public grounds.
- (G) *Line of sight.* Trees shall not be planted to conceal a fire hydrant from the street or impede the line of sight on any street.
- (H) *Storm damage.* Trees severely damaged by storms, or other accidental causes, where required pruning practices are impractical are exempt from this chapter..
- (I) *City employees.* Before cutting, pruning, removing or trimming any tree, city employees performing tree work on public grounds shall attend an educational workshop on basic tree pruning. A certificate will be issued when an individual has successfully completed the workshop.

(J) *Public utilities.* Nothing in this section shall be construed to prohibit public utilities from pruning or removing trees that encroach upon electric, telephone, or cable television transmission lines, or gas, sewer or water pipes.

(Code No. 1991, §162.07; Ord. No. 3699, §6, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §5, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01).

167.07 Commercial Tree Pruner/Service; Certificate And Insurance Required

(A) *Certificate required.* Before cutting, pruning, removing, or trimming any tree within the City of Fayetteville, the owner and supervisory personnel of each business performing commercial tree work shall obtain a city issued commercial tree pruner/service certificate.

(B) *Liability insurance.* Each business performing commercial tree work, to include tree surgery, within the City of Fayetteville, shall be required to carry liability insurance in the following minimum amounts:

- (1) General aggregate: \$100,000.00
- (2) Personal & advertising: \$100,000.00
- (3) Each occurrence: \$100,000.00

Proof of coverage shall include the name of the insurance company issuing the policy, the name of the insured, the policy number, effective and expiration dates, and the signature of an authorized representative of the insurance company.

(C) *Workshop.* Owners and supervisory personnel shall attend an educational workshop on basic tree science and the proper techniques of tree pruning; or shall demonstrate sufficient knowledge of basic tree science and the proper techniques of tree pruning by scoring 75% or higher on a test provided by the International Society of Arboriculture (I.S.A.).

(D) *Certificate issuance.* A certificate shall be issued when an individual has successfully completed the workshop or scored adequately on the test.

(E) *Job site.* It shall be the responsibility of the business owner to ensure that a copy of the certificate is maintained at each job site.

(F) *Supervision.* All persons engaged in the business of trimming trees shall be under the supervision of a certified tree pruner/service.

(G) *Worker's compensation.* Those individuals performing commercial tree work on public

grounds shall comply with all worker's compensation requirements as set forth under Arkansas law and shall hold a city issued commercial tree pruner/service certificate.

(H) *Licensure.* Those individuals performing tree surgery shall comply with licensure requirements as set forth under Arkansas law.

(Code 1991, §162.13; Ord. No. 3699, §14, 4-20-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 102-01)

167.08 Hazardous Trees

(A) *Pruning.* Every owner of any tree overhanging a street or sidewalk within the city is responsible for pruning the branches so that such branches shall not obstruct vehicles or pedestrians.

(B) *Order or removal.* The mayor, or his/her duly authorized representative, is hereby authorized to order the owner of any real property within the city to cause the removal of any dead or diseased trees on their property, and further, to order compliance, when such trees constitute a hazard of life and property, or harbor insects which constitute a potential threat to other trees. Whenever any such condition is found to exist, the mayor, or his/her duly authorized representative, shall send written notice via first class mail to the property owner ordering the performance of such acts within 20 days. If the property owner's identity or whereabouts are unknown, a copy of the written notice shall be posted upon the premises.

(C) *Noncompliance.* It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

(D) *Removal by city.* If the conditions described in a notice given, as set forth above, are not removed or corrected within 20 days after such notice given, the mayor, or his/her duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property and the city shall have a lien against such property for the costs. Enforcement of the lien shall be set forth in §95.03 of the *Fayetteville Code of Ordinances*. Such action shall not be taken if the owner has evidenced a willingness to comply by hiring a qualified tree service before the expiration of the 20 day period.

(Code 1991, §162.06; Ord. No. 3699, §6, 4-20-93; Ord. No. 3963, §4, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

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167.09 Local Disaster Emergency

If it becomes necessary for the mayor to declare a local disaster emergency pursuant to A.C.A. §12-75-108(b)(2), the provisions of this chapter may be suspended for up to 30 days, if strict compliance with its provisions would prevent, hinder, or delay actions necessary to cope with the disaster emergency.

(Ord. No. 4316, 6-5-01; Ord. No. 4340; 10-2-01)

167.10-167.99 Reserved

