

---

## 167.04 Tree Preservation And Protection During Development

- (A) *Applicability.* The provisions of this section shall apply to proposed developments as defined by the Unified Development Code as follows:
- (1) *Large Scale Developments.*
  - (2) *Large Site Improvement Plan.*
  - (3) *Small Site Improvement Plan.*
  - (4) *Preliminary Plat.*
  - (5) *Final Plat.*
  - (6) *Concurrent Plat.*
  - (7) *Planned Zoning Districts.*
  - (8) *Parking Lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) 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.
  - (9) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a tree preservation plan with the preliminary plat or site plan. Single and two (2) family residential development shall submit an abbreviated tree preservation and site plan at the time of applying for a building permit.
  - (10) *Grading Permit.* A tree preservation plan or 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 the development process.
  - (11) *Building Permits.* Tree preservation requirements apply to all permit applications for developments of greater than 1,200 square feet of impervious area. 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, large scale development, or site improvement plan 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.
  - (12) *Exemptions.* Projects not listed above or not impacting tree canopy are not required to submit a tree preservation plan or review from Urban Forestry.
    - (a) Person seeking to construct 1,200 square feet or less of impervious area 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.
    - (b) 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.
- (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 proposed roads and proposed 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 Unified Development Code, 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 proposed developments that are required to submit a tree preservation plan or abbreviated tree preservation plan, 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 §167.04(I) and (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.

<b>Table 1 Minimum Canopy Requirements</b>	
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%
RSF-18, Single-family Residential — Eighteen Units per Acre	20%
R-O, Residential — Office	20%
RI-12, Residential Intermediate — Twelve Units Per Acre	20%
RI-U, Residential Intermediate — Urban	15%
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-L, Neighborhood Services — Limited	20%
NS-G, Neighborhood Services — General	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UN, Urban Neighborhood	15%
UC, Urban Corridor	20%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%
DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
CCR, Conservation, Cultural, and Recreation	80%
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 percent minimum canopy within the five (5) years preceding application for a development, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional 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 existing and not to be vacated 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) *Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an 8-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a 4-inch diameter. Low priority trees are invasive species or unhealthy as determined by a tree care professional pursuant to §167.07. Low priority trees are less than an 8-inch diameter at breast height for larger and medium species and less than a 4-inch diameter at breast height for smaller trees species.
- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed 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 developments 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 existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
  - (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of high priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.
    - (a) *Preservation Plan for Entire Development.* 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 preserved canopy shall be placed in a tree preservation easement and 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. Proposed 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 defined individual lots 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 require separate tree preservation plans.

- 
- (3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit a tree preservation plan or 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.
- (4) Developers have the option of creating cluster development, such as a Planned Zoning District, which would encourage more open space and tree preservation. In this pattern of development, the trees preserved or open space on each lot can be transferred to a larger Tree Preservation Easement instead of individual lots required to meet minimum percent requirements. The Tree Preservation Easements shall be clearly depicted on easement plats or final plats.
- (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 proposed development 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 and longer approval times 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) *Confirmation.* The Urban Forester shall document whether the applicant participated in the initial review meeting in the Tree Preservation and Protection staff report given to applicants going through the development review process. If the applicant chooses to attend an initial review meeting, the staff report shall also document any recommendations made. The Urban Forester shall ensure that a copy of the report or email 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) *Tree Preservation Plan.* On sites with existing tree canopy, the applicant shall conduct a tree preservation analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a tree preservation plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The tree preservation 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 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, as defined in the City of Fayetteville's Tree Preservation, Protection and Landscape Manual, 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 features, including trees, buildings, perennial and intermittent streams and creeks that exist on the site or within 100 feet of the limits of disturbance;

- 
- (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) *Additional Tree Preservation Plan Content.* 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. Examples can be provided upon request to the Urban Forester.
- (3) *Abbreviated Tree Preservation Plan.* Applicants requesting approval of development projects for between 1,201 to 10,000 square feet of impervious area that require building permits, grading, or parking lot permits, but that do not fall under the requirements for developments required to go through the development review process of Technical Plat Review Committee, and/or Planning Commission, shall prepare and submit an abbreviated tree preservation plan. The information for an abbreviated tree preservation 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, and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit an 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 when minimum percent canopy is not met. The report shall detail 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 Tree Preservation Areas, preserved trees, and the physical limits of all protective measures on site required during construction.
- (6) *Submittal Requirements.* The applicant shall submit a tree preservation plan. Development plans with removal of tree canopy below percent minimum canopy shall submit an analysis report to the Urban Forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit analysis report.
- (7) *Tree Preservation Easements.* The City of Fayetteville shall encourage the use of Tree Preservation Easements for the added protection of trees preserved to meet percent minimum canopy requirements or trees planted, in those instances where such would be of mutual benefit to the applicant and the City of Fayetteville.
- (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 existing trees 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) 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 or landscape 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 two hundred (200), 2-inch caliper trees per acre removed.
    - (b) *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 one hundred (100), 2-inch 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 2-inch caliper trees. However, the urban forester may approve the use of trees with less than 2-inch 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 table to be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.
  - (6) *Preferred Species.* All trees to be planted shall be species native to the Ozark region or native cultivars, when available, or 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) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), 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 (3) 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 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) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape 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. 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.
- (9) *Request for On-Site Mitigation Alternatives (Green Roofs or Green Façades).*
- (a) *Intent.* The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
  - (b) *Applicability.* On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.
  - (c) *Timing of Request for On-Site Mitigation Alternatives.* Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
  - (d) *Intensive Green Roof.* A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
  - (e) *Extensive Green Roof.* A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
  - (f) *Green Façade.* A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12-inch by 12-inch trellis system connected to the building.
  - (g) *Mitigation Alternative Calculations.* The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
    - (i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.

- 
- (ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.
  - (iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

(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.
- (3) *Off-Site Forestation.*
  - (a) 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. A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the city to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.
  - (b) An applicant may plant and maintain mitigation trees needed for the applicant's development as to fulfill the obligation set forth in Chapter 167, Tree Preservation and Protection, in a nearby city park or public right-of-way if expressly approved by City Council resolution. The City Council shall seek advice from the Urban Forester, Parks and Recreation Department staff and citizens about the advisability of forestation of the nearby city park and may apply express conditions including requiring irrigation to be installed and regular maintenance to be performed by the applicant.
- (4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, off-site forestation, and on-site mitigation alternatives 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 (3) 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 (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.
  - (a) Developments proposed as building permits under Level 2 as outlined in §166.02 (E)(2) are eligible for contribution to the tree escrow account as an option.
  - (b) Residential developments 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 development along rights-of-way 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 development is built out or as approved by the Urban Forester.
  - (c) 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.
  - (d) 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.
  - (e) If it is not possible to plant trees within the development, planting locations will be sought in appropriate sites within a 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 §167.04(J)(2) and (3). Data extracted from the urban forest analysis should be consulted when identifying appropriate locations to plant escrow funded trees.
  - (f) 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 4% annual rate.
  - (g) Refunds shall be paid to the present owner of the property that was the subject of new development and against which the fee was assessed and collected.
  - (h) 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.
  - (i) 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.
  - (j) 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.
- (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 and Tree Preservation Easements.*
- (1) Large scale developments, large site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing trees are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. 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 approved tree preservation easements which shall be clearly depicted and noted on the easement

---

plats for large scale developments, large and small site improvements, commercial final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing the nature of the protection afforded and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

- (2) The geographical extent and location of a tree preservation easement, once recorded, may only be vacated in whole or in part with the express approval of the City Council. Applicants requesting such vacation of an existing tree preservation easement shall bear the burden of proving to the City Council's satisfaction that such vacation is in the best interests of the City of Fayetteville and its residents and businesses. The application for vacation of a tree preservation easement shall be submitted to the Urban Forester who should present the request and the Urban Forester's recommendations to the Urban Forestry Advisory Board for its review and recommendations prior to placing the vacation request on the City Council Agenda. The City Council may require that vacation of some or all of a tree preservation easement shall be offset by the establishment of a new tree preservation easement of greater size and/or improved canopy health and ecological benefit to our community. The city may require that a proposed new tree preservation easement be improved by the owner by substantial removal of invasive species, planting of trees approved by the Urban Forester to improve the canopy within the proposed new tree preservation easement, and/or other mitigation measures.
- (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement 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 sufficient health and vigor are already present in the tree preservation easement.

(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. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No. 5818, 10-20-15; Ord. No. 5824, §3, 11-17-15; Ord. No. 5945, §17, 1-17-17; Ord. No. 5986, §§4(Exh. A), 5—35, 7-6-17; Ord. No. 6442, §§1(Exh. A1), 2(Exh. B), 5(Exh. E), 6(Exh. F), 6-1-21; Ord. No. 6446, §9(Exh. D), 6-15-21; Ord. No. 6786, §§ 2—6, 8-20-24; Ord. No. 6793, § 5, 9-17-24; Ord. No. 6830, §4, 1-7-25; Ord. No. 6833, §7, 1-21-25; Ord. No. 6884, §4, 6-17-25; Ord. No. 6896, §1, 7-15-25)

### **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.* Trees illustrated as preserved on tree preservation plans shall be protected from construction activity to prevent impingement by or the storage of construction vehicles, materials, debris, spoils or equipment in areas with preserved trees. No filling, excavating or other land disturbance shall take place in areas with preserved trees. 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] areas with preserved trees in accordance with the details, 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, and 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 areas with preserved trees 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; Ord. No. 5986, §36, 7-6-17)

### **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 details, 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. Workshop attendance shall be recorded by the Urban Forester. Employees are encouraged to seek recognized tree maintenance certifications listed in §167.07.
- (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; Ord. No. 5986, §37, 7-6-17)

