

**ORDINANCE NO. 23-S-27**

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS TO AMEND PART III, SCHERTZ CODE OF ORDINANCES, THE UNIFIED DEVELOPMENT CODE (UDC) ARTICLE 4 SUBSECTION 21.4.12 VARIANCES & ARTICLE 9 SUBSECTION 21.9.7 LANDSCAPING & SUBSECTION 21.9.9 TREE MITIGATION.**

**WHEREAS**, pursuant to Ordinance No. 10-S-06, the City of Schertz (the “City”) adopted and Amended and Restated Unified Development Code on April 13, 2010, as further amended (the “Current UDC”); and

**WHEREAS**, City Staff has reviewed the Current UDC and have recommended certain revision and updates to, and reorganization of, the Current UDC;

**WHEREAS**, on September 13, 2023, the Planning and Zoning Commission conducted public hearings and, thereafter recommended approval; and

**WHEREAS**, on October 10, 2023, the City Council conducted a public hearing and after considering the Criteria and recommendation by the Planning and Zoning Commission, determined that the proposed amendments are appropriate and in the interest of the public safety, health, and welfare.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS: THAT:**

Section 1. The current UDC is hereby amended as set forth on Exhibit A and Exhibit B hereto.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 3. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this

Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 7. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

PASSED ON FIRST READING, the \_\_\_\_ day of \_\_\_\_\_ 2023.

PASSED, APPROVED and ADOPTED ON SECOND READING, the \_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF SCHERTZ, TEXAS

\_\_\_\_\_  
Ralph Gutierrez, Mayor

ATTEST:

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Sheila Edmondson, City Secretary

(city seal)

Exhibit "A"

Unified Development Code (UDC) Amendments

Article 4 Section 21.4.12 – Variances

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## Sec. 21.4.12. Variances.

### A. *Applicability.*

1. The BOA shall have the ability to authorize, in specific cases, a variance from the zoning regulations of this UDC if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of this UDC would result in unnecessary hardship, so that the spirit of this UDC is observed and substantial justice is done. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this UDC to other parcels of land in the district.
2. Approval of a variance authorizes a property owner to submit subsequent development applications consistent with the approved variance.

### B. *Application Requirements.* Any request for a variance shall be accompanied by an application prepared in accordance with the Development Manual.

### C. *Processing of Application and Decision.*

1. *Submittal.* An application for a variance shall be submitted to the City Manager or his/her designee. The City Manager or his/her designee shall review the application for completeness in accordance with section 21.4.2. The City Manager or his/her designee may, at its option, request a recommendation from any other appropriate City department or consultant. The City Manager or his/her designee shall notify the applicant of items requiring correction or attention before providing a recommendation on the application. After appropriate review, the City Manager or his/her designee shall forward a written recommendation to the BOA for consideration.
2. *Notification requirements.* An application for a variance requires the following notification in accordance with section 21.4.3:
  - a. Written notice; and
  - b. Published notice.
3. *Decision by the BOA.*
  - a. The BOA shall receive the recommendation of the City Manager or his/her designee and shall hold a public hearing in accordance with section 21.4.4. The Board may vote to approve, approve with conditions, or deny the variance.
  - b. The Board may, on its own motion or by request of the property owner, postpone consideration of the variance to a certain date that is not more than thirty (30) calendar days after the date of the current consideration in order to review additional information or modifications which may have a direct bearing on the final decision.
  - c. The approval shall be effective for a period of 180 days after the date of such approval. If no application for building permit is submitted within that time, the variance shall become null and void.
  - d. The disapproval of a variance shall require compliance by the applicant, if applicable, within fifteen (15) days after the date of disapproval and upon written notification by staff.

### D. *Criteria for approval.* In order to make a finding of hardship and grant a variance from the zoning regulations of this UDC, the Board must determine the following:

1. The requested variance does not violate the intent of this UDC or its amendments;

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2. Special conditions of restricted area, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district;
  3. The hardship is in no way the result of the applicant's own actions; and
  4. The interpretation of the provisions in this UDC or any amendments thereto would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.
  5. In considering a variance as applied to a structure, the Board may consider the following as grounds to determine whether an unnecessary hardship would result from compliance with the ordinance:
    - a. The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;
    - b. Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
    - c. Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
    - d. Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
    - e. The municipality considers the structure to be a nonconforming structure.
- E. *Appeals of BOA Decisions.* Any person or persons aggrieved by any decision of the BOA, or any taxpayer or any officer, department, board of the City may appeal a decision of the BOA regarding any variance request in accordance with section 21.3.4 of this UDC.
- F. *Finding of fact.* The board shall complete a finding of fact for Variance or appeal to support its conclusion for each variance or appeal presented to it.

(Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018)

Exhibit "B"

Unified Development Code (UDC) Amendments

Article 9 Section 21.9.7. – Landscaping

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Article 9 Section 21.9.9 – Tree Mitigation

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### **Sec. 21.9.7. Landscaping.**

- A. *Purpose.* The purpose of this section is to establish landscaping requirements to enhance the community's ecological, environmental, and beautification efforts as well as its aesthetic qualities. It is the intent of this section to reduce the negative effects of glare, noise, erosion, and sedimentation caused by expanses of impervious and un-vegetated surfaces within the urban environment. It is the intent of this section to preserve and improve the natural and urban environment by recognizing that the use of landscaping elements can contribute to the processes of air purification, oxygen, regeneration, groundwater recharge, noise abatement, glare and heat, provision of habitats for wildlife, and enhance the overall beauty of the City.
- B. *Enforcement.* If at any time after the issuance of a Certificate of Occupancy, the approved landscaping is found to be in nonconformance with standards and criteria of this section, notice by the City may be issued to the owner, citing the violation and describing what action is required to comply with this section. The owner, tenant or agent shall have forty-five (45) days after the date of said notice to restore landscaping as required. The City may extend the time of compliance based on weather conditions. If the landscaping is not restored within the allotted time, such person shall be in violation of this UDC.
- C. *Single Family and Duplex Residential*  
*Installation and Maintenance.*
1. Prior to issuance of a Certificate of Occupancy sod shall be in place in full front and rear yards, except for landscape beds and gardens. On property containing a minimum of one-half (½) acre or greater, sod in front and rear yards shall be planted adjacent to the slab for a distance of fifty feet (50') and for a distance of twenty feet (20') in side yards.
  2. All landscaped areas shall be irrigated with an approved automatic underground irrigation system unless the landscaped area has been designed utilizing xeriscaping methods. All irrigation systems shall be designed and sealed in accordance with the Texas Commission on Environmental Quality (TCEQ) and shall be professionally installed. No irrigation shall be required for undisturbed natural areas or undisturbed existing trees.
  3. Vegetation other than grasses or ground cover under six inches (6") in height is prohibited in any City right-of-way unless specifically authorized in writing by the City Manager or his/her designee.
  4. Landscape planting shall not be erected or installed in such a manner as to interfere with traffic view or impose a safety hazard.
  5. New landscaped areas shall be prepared so as to achieve a soil depth of at least two inches (2").
  6. Every single family residential lot shall provide a minimum of two (2) shade trees having a DBH (diameter at breast height) measured four and one half feet (4.5') above existing ground level which are a minimum of two inches (2") caliper at the time of planting.
- D. *Nonresidential and Multi-Family.* The provisions of this section apply to new construction except public water and wastewater facilities for which only subsections 14 and 16 below apply.

Existing developments where all structures are not being demolished, do not have to comply with all of these requirements. Rather they cannot decrease compliance with an individual requirement to the point that they no longer comply with that individual requirement.

*Installation and Maintenance.*

1. Prior to issuance of a Certificate of Occupancy for any building or structure, all screening and landscaping shall be in place in accordance with the landscape plan approved as part of the Site Plan.

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2. In any case in which a Certificate of Occupancy is sought at a season of the year in which the City determines that it would be impractical to plant trees, shrubs or grass, or to lay turf, a Temporary Certificate of Occupancy may be issued for up to four (4) months.
  3. All landscaped areas shall be irrigated with an approved automatic underground irrigation system unless the landscaped area has been designed utilizing xeriscaping methods. All irrigation systems shall be designed and sealed in accordance with the Texas Commission on Environmental Quality (TCEQ) and shall be professionally installed. No irrigation shall be required for undisturbed natural areas or undisturbed existing trees.
  4. Vegetation other than approved grasses or ground cover under six inches (6") in height is prohibited in any City right-of-way unless specifically authorized in writing by the City Manager or his/her designee, after consultation with the Director of Public Works or his/her designee.
  5. Trees planted having a DBH (diameter at breast height) measured four and one half feet (4.5') above existing ground level shall be a minimum of two inches (2") caliper at the time of planting. All trees planted to meet the minimum landscaping, requirements of this section shall be planted so as to provide for no impervious material within the drip line of the tree. For the purposes of determining the drip line to meet the requirements of this section, the drip line radius shall be measured as being ten (10) times the caliper of the tree. For example, a two inch (2") tree will have a twenty inch (20") radius or forty inch (40") diameter. Tree wells or tree grates may be utilized to meet the requirements of this section. The City may, at its option, require certification by a registered arborist that adequate space has been provided for pervious cover beneath the drip line of a tree.
  6. New landscaped areas shall be prepared so as to achieve a soil depth of at least two inches (2").
  7. The use of architectural planters in nonresidential districts may be permitted in fulfillment of landscape requirements subject to approval of the Planning and Zoning Commission at the time of Site Plan approval.
  8. Landscape planting shall not be erected or installed in such a manner as to interfere with traffic view or impose a safety hazard.
  9. A minimum twenty foot (20') wide landscape buffer shall be provided adjacent to any public right-of-way. Trees shall be planted at an average density of one (1) tree per twenty linear feet (20') of street frontage except for public schools. The landscape buffer shall require an irrigation system and shall be maintained by the property owner. The requirements of this section are not applicable to properties zoned Main Street Mixed-Use - New Development (MSMU-ND).
  10. A minimum of twenty percent (20%) of the total land area of any proposed multifamily or nonresidential development shall be landscaped and shall be comprised of trees, shrubs, sod or other ground cover. In the event of the construction of a phased development, the minimum twenty percent (20%) requirement shall apply to each phase as it is developed.
  11. All commercial and multi-family properties shall provide shade trees at a ratio of nine (9) trees per acre. Industrial property shall provide shade trees at a ratio of six (6) trees per acre. Public schools shall provide shade trees at a ratio of at least four (4) trees per acre. Existing trees may be counted toward meeting the requirements of this section.
  12. Interior Landscaping. A minimum of ten percent (10%) of the gross parking areas shall be devoted to living landscaping which includes grass, ground covers, plants, shrubs and trees. Gross parking area is to be measured from the edge of the parking and/or driveway and sidewalks. Interior landscaping requirements do not apply to public water and wastewater facilities if an eight feet (8') masonry fence is provide[d] at or near the property boundary.

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13. Interior areas of parking lots shall contain planting islands located so as to best relieve the expanse of paving. Planter islands must be located no further apart than every twenty (20) parking spaces and at the terminus of all rows of parking. Such islands shall be a minimum of 162 square feet or nine feet by eighteen feet (9' x 18') in size. Planter islands shall contain a combination of trees, shrubs, lawn, ground cover and other appropriate materials provided such landscaping does not cause visual interference within the parking area. This subsection does not apply to public schools.
  14. Perimeter Landscape Area - Where a nonresidential or multifamily use adjacent to a nonresidential or multifamily use that is zoned for nonresidential or multifamily uses shall provide a minimum five-foot (5') landscape buffer adjacent to those uses except where the building extends into that five foot (5') landscape buffer. A minimum of one (1) shade tree shall be planted for each one-hundred linear feet (100') of landscape buffer except where the entire five-foot (5') wide landscape buffer is encumbered by an easement that does not allow the planting of trees. A nonresidential or multifamily use adjacent to a single family or duplex residential use or single family or duplex residentially zoned property shall provide a minimum twenty-foot (20') landscape buffer adjacent to the proper line of the residential use or residentially zoned property. A minimum of one (1) shade tree [s]hall be planted for each thirty (30) linear feet of landscape buffer. The landscape buffer shall be covered with grass or another solid vegetative cover. The landscape buffer shall include a masonry wall which shall be eight feet (8') in height. The requirement of this subsection doe[s] not apply to public water and wastewater facilities if an eight foot (8') masonry wall is provided at or near the property boundary.
- F. *Landscape Plan Required.* A landscape plan shall be submitted to the City for approval. The landscape plan may be submitted as a part of the Site Plan. The landscape plan shall contain the following information:
1. location of all existing trees with indication as to those to be preserved;
  2. location of all plants and landscaping material to be used including paving, benches, screens, fountains, statues, or other landscaping features;
  3. species of all plant material to be used;
  4. size of all plant material to be used;
  5. spacing of plant material where appropriate;
  6. type of watering system and location of watering source, irrigation, sprinkler, or water system, including placement of water sources;
  7. description of maintenance provisions of the landscaping plan; and
  8. persons responsible for the preparation of the landscape plan.

(Ord. No. 16-S-27 , §§ 3, 4, 8-30-2016; Ord. No. 18-S-04 , § 1(Exh. A), 1-23-2018; Ord. No. 18-S-24 , § 1(Exh. A), 8-7-2018; Ord. No. 21-S-26 , § 1(Exh. A), 7-6-2021; Ord. No. 23-S-07 , § 1(Exh. A), 3-14-2023)

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## Sec. 21.9.9. Tree Preservation and Mitigation.

### A. *Purpose and Intent.*

1. The purpose of this section is to conserve, protect and enhance existing healthy trees and natural landscape. It is recognized that the preservation of existing trees contributes to the overall quality and environment of the City. Trees can and do contribute to the processes of purification, oxygenation, regeneration, groundwater recharge, reduction of pollution and contaminants in aquifers, erosion and dust control, abatement of noise, provision of wildlife habitat and enhancement property values. Indiscriminate clearing or stripping of natural vegetation on any parcel is prohibited.
2. It is hereby declared the intent of the City to encourage the preservation of all trees within the City limits. While the layout of a property with respect to the placement of buildings, parking facilities and other site requirements is at the discretion of the developer of the property, it is the policy of the City to promote site layout and design in a manner which preserves the maximum amount of Protected Class and Heritage Class trees possible.

### B. *Applicability and Exemptions.*

1. The provisions of this section are applicable to the following:
  - a. all new residential and nonresidential development within the City except public schools;
  - b. redevelopment of any residential or nonresidential property within the City that results in an increase in the building footprint or the total destruction and reconstruction except public schools;
  - c. any grading, filling or clearing of land in the City limits; and
  - d. any selective or individual removal of any Protected Class or Heritage Class Tree in the City limits.
2. The following definitions shall be applicable to the provisions of this section:
  - a. *Protected Class Trees.* Trees having a DBH (diameter at breast height measured four and one half feet above existing ground level) between eight inches (8") and less than twenty-four inches (24") are designated as "Protected Class Trees".
  - b. *Heritage Class Trees.* Trees having a DBH greater than or equal to twenty-four inches (24") are designated as "Heritage Class Trees".
  - c. *Damage.* Damage shall be considered any injury to a tree including, but not limited to:
    - i. uprooting;
    - ii. severance of the root system or main trunk;
    - iii. storage of topsoil, construction materials, debris or chemicals within the drip line area;
    - iv. compaction of soil within the drip line area;
    - v. a substantial change in the natural grade above a root system or within the drip line area;
    - vi. pruning or removal of more than twenty-five percent (25%) of the living tissue; or
    - vii. Paving with concrete, asphalt or other impervious material within the drip line area. Tree grates or tree wells may be provided to preserve pervious surface within the drip line area.
3. The following are exempt from the preservation, mitigation and permitting requirements of this section:

- a. Protected Class Trees located within the area of a proposed on-site sewage facility (OSSF) (A waiver to mitigation for Heritage Class trees may be requested) ;
- b. Protected Class and Heritage Class Trees located within a right-of-way to be dedicated to and maintained by the City and shown on the City's Master Thoroughfare Plan;
- c. Protected Class Trees located within any utility easement, Heritage Class Trees located within any utility easement are exempt from preservation requirements only (A waiver to mitigation for Heritage Class trees may be requested);
- d. Protected Class and Heritage Class trees damaged or destroyed by floods, fire, wind or other natural causes;
- e. Dangerous, diseased, damaged, dead or dying Protected Class or Heritage Class trees as determined by a tree survey and a letter from a certified Texas Arborist; provided, notwithstanding the title of this section; and
- f. Protected Class trees from the Undesirable Trees list in UDC Table 21.9.7F. (A waiver to mitigation for Heritage Class trees may be requested)
- g. Protected Class and Heritage Class trees located on property that has an existing one family or two-family dwelling that is occupied.
- h. Protected Class and Heritage Class trees of the following exempted tree species:

Table 21.9.9 Exempted Trees	
Common Name	Scientific Name
Hackberry	Celtis occidentalis
Eastern Red Cedar	Juniperus virginiana
Common Ashe Juniper	Juniperis ashei
Chinaberry	Melia azedarach
Mesquite	Prosopis spp.
Ligustrum	Ligustrum spp.

- C. *Tree Preservation.* The existing natural landscape character, especially native oaks, elms, and pecan trees, shall be preserved to the maximum extent reasonable and feasible. Except as otherwise exempted in section 21.9.9.B.3. above, a tree removal permit is required for the removal of any tree with a DBH greater than eight inches.
  - 1. *Protected Trees.* Any Protected Trees not exempt from preservation in section B.3. above may be removed upon approval of a Tree Removal Permit by the Director of Parks, Recreation and Community Services Any decision of the Director of Parks, Recreation and Community Services regarding a tree removal permit may be appealed to the Planning and Zoning Commission in accordance with section 21.4.14 of this UDC.
  - 2. *Heritage Trees.* Any Heritage Trees to be removed may be removed upon approval of a Tree Removal Permit by the Director of Parks, Recreation and Community Services. Any decision by the Director of Parks, Recreation and Community Services regarding a tree removal permit may be appealed to the Planning and Zoning Commission in accordance with section 21.4.14 of this UDC. All Heritage Trees shall be required to meet the mitigation requirements of this section.
  - 3. *Minimum Preservation.* In the development of any site, at least twenty-five percent (25%) of all mitigatable Protected Class and Heritage Class trees must be preserved. (A waiver to the 25% preservation requirement may be requested)

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D. *Tree Mitigation.* Any trees that are removed or damaged as a result of the approval of a Tree Removal Permit shall be mitigated for on the same site as the proposed development. The species of trees planted for mitigation purposes may not include those listed as exempt in subsection 21.9.9.B.3. above nor any of the undesirable trees identified in table 21.9.7F. All trees planted for mitigation purposes must be a species of shade tree identified in table 21.9.7.A. In the event that mitigation is not feasible on the same site as the proposed development, an applicant may request to donate trees, meeting the mitigation requirements of this section, to be planted at public parks, schools, or other approved public facilities throughout the City or provide a fee-in-lieu of payment which will be used to place trees at public parks, schools, or other approved public facilities throughout the City. Tree mitigation funds may also be utilized to install irrigation, to repair or remove damaged or destroyed trees, to preserve and protect existing Protected Class and Heritage Class trees and to purchase equipment for the preservation or protection of existing trees. Mitigation requirements are:

1. *Protected Class Trees.* Protected trees shall be mitigated at a one-to-one (1:1) DBH inch ratio for every tree removed. Replacement trees shall have a minimum DBH of two inches (2").
2. *Heritage Class Trees.* Heritage Class trees shall be mitigated at a three-to-one (3:1) DBH inch ratio for every tree removed. Replacement trees shall have a minimum DBH of two inches (2").
3. *Damaged Trees.* Any trees that are designated for preservation and are damaged during the construction process or that die within two (2) years of issuance of a certificate of occupancy shall be mitigated for in accordance with subsection 21.9.9.D.1. and D.2. above.
4. *Mitigated Trees.* Trees planted and counted towards the necessary mitigation requirements that are damaged after planting or that die within two (2) years of issuance of a certificate of occupancy shall be mitigated for at a one-to-one (1:1) DBH inch ratio for every tree damaged or that dies.
5. The amount of tree mitigation per acre is capped at 100 inches per acre. For properties where the trees are generally clustered, staff has the discretion to define the acreage of the property as an area extending 20' beyond the tree canopy of the cluster in determining the acreage.

E. *Tree Protection Standards.*

1. All trees to be preserved on site shall be protected from damage caused by site excavation or construction in accordance with the following:
  - a. All trees shall be protected by a fence, frame or box constructed around the drip line of the preserved tree. Protection measures may not be removed until construction is complete.
  - b. A minimum of three inches (3") of mulch or compost shall be spread beneath the drip line of the preserved tree.
  - c. No person shall excavate any ditches, tunnels, or trenches, place any paving material or place any drive or parking area within the drip line of any Protected Class or Heritage Class Tree without prior written approval of the City Manager or his/her designee at the time of Site Plan approval.
  - d. No person shall attach any rope, wire, nails, advertising posters or other contrivance to any Protected Class or Heritage Class Tree.
2. It is the intent of the City to control and prevent the spread of Oak Wilt.
  - a. If any oak tree is wounded by intentional damage or pruning or as a result of natural causes, the damaged area shall be immediately treated with tree wound dressing.
  - b. All necessary and reasonable efforts shall be given during the permitted removal of any trees to utilize best known practices to prevent the spread of Oak Wilt disease to any other surrounding trees.

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- F. *Tree Preservation Credits—Nonresidential and Multifamily Developments.* To encourage the preservation of existing Protected Class or Heritage Class Trees contained within a proposed development, tree preservation credits may be requested to reduce the amount of new trees required on nonresidential and multifamily sites. Tree preservation credits can be issued for landscape buffer requirements when the tree being preserved is located within the buffer. Tree preservation credits can be issued to satisfy total trees per acre requirements of UDC Sec.21.9.7.E.2. The following minimum tree preservation credits may be requested:
1. Protected Class Trees shall receive a credit against the minimum required landscaping or mitigation standards at a one-to-one (1:1) caliper inch ratio;
  2. Heritage Class Trees shall receive a credit against the minimum required landscaping or mitigation standards at a three-to-one (3:1) caliper inch ratio;
- G. *Tree Survey Required.* Every application for a final plat for residential development or Site Plan for nonresidential and multifamily development shall be accompanied by a tree survey that includes the following information:
1. total number of DBH caliper inches of Protected Class and Heritage Class on the site;
  2. total number of DBH caliper inches of Protected Class and Heritage Class to be removed; and
  3. total number of DBH caliper inches of Protected Class and Heritage Class to be preserved.
- H. *Tree Removal Permit.* A tree removal permit is required for the removal of any Protected Class or Heritage Class trees not exempt in section 21.9.9.B.2. above. The permit must be accompanied by an appropriate application and shall contain a tree preservation plan showing the following:
1. existing/proposed topography;
  2. location of property lines, easement, rights-of-ways, setbacks, parking areas and sidewalks;
  3. location, species and size (in DBH) of each Protected Class and Heritage Class Tree, except those trees exempted by section 21.9.9.B.2.f. above;
  4. a tree inventory that summarizes the following:
    - a. total number of DBH caliper inches on the site;
    - b. total number of DBH caliper inches to be removed;
    - c. total number of DBH caliper inches to be preserved;
    - d. location of any proposed tree mitigation;
    - e. any proposed tree preservation credits; and
  5. a summary of the tree protection methods to be utilized.
- I. *Waiver.*
1. *General.* The City Manager or his/her designee may authorize waivers from the provisions of this Article when, in their opinion, undue hardship will result from requiring strict compliance. Waivers may be granted only to items specifically stated in this section. Waivers must meet one of the following eligibility requirements:
    - a. The tree is proposed for removal in order for the property to achieve compliance with other applicable City requirements and standards (i.e. site design or storm water management); or
    - b. The tree is proposed for removal because it is within a future public utility location.
  2. *Criteria for approval.* Waivers shall be evaluated using the following criteria:

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- a. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees or windbreaks;
  - b. The requested waiver does not violate the intent of this section or the UDC;
  - c. Strict interpretation of the provisions of the section would deprive the applicant of rights commonly enjoyed by other nearby properties in the same zoning district or with the same land use that would comply with the same provisions;
  - d. A reasonable effort to preserve the tree has been made and reasonable alternatives have been evaluated and determined to not be feasible.
3. Any decision of the City Manager or his/her designee regarding waivers to the provisions of this section may be appealed to the Planning and Zoning Commission. When considering an appeal, the Planning and Zoning Commission shall consider the same standards as the City Manager or his/her designee as outlined above.

(Ord. No. 16-S-27 , § 6, 8-30-2016; Ord. No. 17-S-40 , § 1(Exh. A), 10-24-2017; Ord. No. 18-S-08 , § 1(Exh. A), 2-27-2018; Ord. No. 18-S-24 , § 1(Exh. A), 8-7-2018; Ord. No. 22-S-18 , § 1(Exh. A), 4-26-2022)