

Section 66. Historic Preservation.

Section 66-69 Tree Preservation and Protection within Designated Historic Districts and Historic Landmarks

Section 66-69.1 Purpose

The purpose of this section is to encourage the protection of existing heritage and historic trees located within the boundaries of designated local historic districts and local historic landmarks. Trees contribute to the character of historic districts and properties, and cannot be viewed as independent entities, separate from the built environment, but as part of the collection of assets that define and characterize historic districts and historic landmarks.

Section 66-69.2 Jurisdiction

The terms and provisions of this article shall apply to all properties within designated local historic districts and designated local historic landmarks within the city limits of the City of New Braunfels.

Section 66-69.3 Definitions

For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Diameter at breast height or DBH means the diameter in inches of a tree as measured through the main trunk at four and a half feet above the ground level.

Heritage Tree means any tree that is unique to the individual historic district or landmark because of its size, age, or historic association as determined by the City Horticulturist/Arborist/Forester, Historic Preservation Officer and/or Historic Landmark Commission

Historic Tree means any tree which has reached a DBH of 35 inches or is 75 years of age or older.

Protected Tree means any tree which is found within Appendix A Approved Plant List of Section 144-5.3 Landscaping, tree preservation, public trees and screening.

Unprotected or Undesirable Tree means any tree that is found in Appendix B of Chapter 144-5.3-1 Landscaping, Tree Preservation, Public Trees, Screening, Fences, Buffering and Lighting.

Section 66-69.4 General Provisions

- (1) It shall be unlawful for any person or corporation to recklessly remove, or cause the removal of any protected or heritage tree without first submitting the appropriate application for a permit and securing approval in the form and manner specified by this chapter.
- (2) A tree removal permit is not needed if:
 - a. The heritage, protected, or historic tree(s) is diseased or sustained damage, which was not recklessly inflicted by the owner, his agents or employees, in the form of a broken trunk, broken limbs or uprooting, which creates a hazard to life or property.
 - b. The tree to be removed is an unprotected or undesirable tree as found in Appendix B of Section 144-5.3 Landscaping, tree preservation, public trees and screening

Section 66-69.5 Tree Removal Permit Approval Authority and Appeal

- (1) The Historic Landmark Commission shall have the authority to approve a tree removal permit as it pertains to this ordinance.
- (2) If a request to remove a heritage, protected, or historic tree(s) is denied by the Historic Landmark Commission, the applicant may appeal the denial to the Zoning Board of Adjustment, by filing written notice of such appeal, along with a nonrefundable fee of \$75.00, with the Planning and Development Services Department, within 60 days of the notice of denial. Hearings shall be conducted in compliance with the Texas Open Meetings Act.
- (3) The Historic Landmark Commission and the Zoning Board of Adjustment may seek the testimony of a qualified arborist. If such expert testimony is requested by the Commission, it shall be provided by the City.

Section 66-69.6 Application and Process for Tree Removal Permit

- (1) Prior to the commencement of any work that requires the removal of a heritage, protected, or historic tree, the owner/applicant shall file an application for tree removal with the Historic Preservation Office.
- (2) An application for tree removal permit must provide the following information:
 - a. The location of the tree
 - b. The diameter of the tree as measured at DBH
 - c. The approximate drip-line area of the tree
 - d. The species/common name of the tree
 - e. The reason for removal
 - f. A certified arborist report is highly recommended

In the case of a Historic Tree, a hardship must be proven for removal. Evidence of a hardship must be provided by the applicant based on the following factors:

- i. Whether there is a unique physical circumstance that requires the removal of the Historic Tree.
 - ii. Whether the preservation or mitigation of a Historic Tree unduly burdens the property.
 - iii. Whether the removal of a Historic Tree is necessary to preserve a historic dwelling, building, or other historic asset of the property or district in question.
- (3) Where practical, an application for the removal of a heritage, historic, or protected tree shall be combined with any other applications applicable to review by Chapter 66.
- (4) Upon receipt of an application to remove a heritage, protected, or historic tree the Historic Landmark Commission shall review the application at a regularly scheduled meeting within 45 days from the date the completed application is received. An application cannot be considered until it has been deemed complete by the Historic Preservation Office. The Commission has the authority to approve, deny, or approve with modifications the application, after a public hearing and testimony from the applicant and the public on the request. In the event the commission does not move to consider the application within 90 days of its receipt, the application shall be granted.
- (5) All decisions of the Commission shall be in writing and a copy shall be sent to the applicant.

Section 66-69.7 Heritage and Historic Tree Replacement

Removal of any heritage, protected, or historic tree(s) will require a tree removal permit and replacing or replanting of tree(s) on site, or within a Historic District or Historic Landmark.

- (1) As much as is feasible, replanting shall be made to restore the natural landscape of the area.
- a. Removed Protected Trees shall be replanted at a replacement ratio of one inch DBH for each one inch DBH of the removed tree.
 - b. Removed Heritage Trees shall be replanted at a replacement ratio of two inches DBH for each one inch DBH of the removed tree. Heritage trees must be of the same species or another tree species predominant in the district.
 - c. Historic Trees shall be preserved and cannot be removed unless a hardship as defined in Section 66-69.6-f is applied for and the tree removal permit is approved by the Historic Landmark Commission. In

the case of removal, Historic Trees shall be replanted at a ratio of two inches DBH for each one inch DBH of the removed tree.

- (2) Protected, heritage, or historic trees can be replanted on the subject site, within a designated historic district, or at a historic landmark as a condition of the tree removal permit approval.
- (3) Tree replacement must occur within 6 months of the removal of a protected, heritage, or historic tree. The Historic Preservation Officer may grant extensions up to 6 months at a time upon request of the property owner, for issues such as construction delays.
- (4) Replacement trees that do not survive for a period of at least 24 months shall be replaced by the original applicant for removal until they survive a 24-month period.
- (5) Tree Replacement Mitigation Fund. In the event that a heritage, protected, or historic tree cannot be replanted, a payment in lieu of replacement can be reviewed and approved by the Historic Landmark Commission. The funds shall be used for the purchasing, planting, and maintenance of trees on site, within a historic district, or within an approved location such as open space or a city park.
 - a. The amount of payment required shall be determined by the per caliper inch of tree being removed and the average cost of planting the tree as determined by the City Arborist or City Forester. A payment schedule of fees shall be published by the Parks and Recreation department every 3 years with the update of the Parks Ordinance.
 - b. Tree replacement mitigation fees shall be paid prior to the issuance of a tree removal permit.

Section 66-69.8 Penalties. The violation of any provision of this Section shall be a misdemeanor and shall be punishable, upon conviction, by a fine of not more than \$2,000.