

FILE NUMBER: DCA212-009

DATE INITIATED: April 8, 2019

TOPIC: Code amendment for management of the emerald ash borer

CITY COUNCIL DISTRICTS: All

CENSUS TRACTS: All

PROPOSAL: Consideration of amending Chapter 51A of the Dallas Development Code, with consideration given to amending Article X – the Landscape and Tree Conservation Regulations, Sections 51A-10.101, 10.103, 10.135, and 10.140 to allow for a comprehensive response to the impact of the emerald ash borer (EAB) on the City’s population of trees.

SUMMARY: The proposal includes amendments to four sections in Article X – the Landscape and Tree Conservation Regulations to address the EAB infestation issue. The proposed amendments provide the city with the tools for tree removal when appropriate, working with homeowners and property owners on the need for removal of trees, and providing a means for replacing trees lost to infestation in order to support the overall health of the urban forest.

CPC RECOMMENDATION: Approval

STAFF RECOMMENDATION: Approval

BACKGROUND:

- On June 27, 2018, the Dallas City Council approved amendments to all divisions of Article X of the Dallas City Code.
- On September 9, 2020, the Dallas City Council approved an exception to Section 51A-10.135(i), "Reforestation Fund", to allow for the purchase of trees to be planted on private property were applied under a Natural Deforestation Event following the tornado and high wind events of 2019.
- The City Forestry Task Force was established by the City Manager in January 2021 to coordinate all city forestry operations for the implementation of CECAP (the city's climate action plan adopted in 2020) and the fulfillment of the Urban Forest Management Plan.
- On May 19, 2022, the City Council was notified of the presence of the emerald ash borer in the Dallas city limits. The City Forestry Task Force began implementation of an EAB Action Plan to coordinate 'a response and to help the city and citizens to respond to the potential adverse effects of EAB'.
- On June 6, 2022, the Environment and Sustainability Committee was briefed on the EAB issue and next steps which included amendments to Article X necessary to address protected status and removals, as needed for infestation.
- Council approved funding in June 2022 for the immediate treatment and removals of ash trees. The funding for continued actions was installed into the 2022-2023 city budget currently in review.
- On August 1, 2022, the Environment and Sustainability Committee was updated by the City Forestry Quarterly Update memo, providing an overview of initiatives and action taken since the June 6th briefing. The specific code amendments needed to Article X were addressed.
- On August 30, 2022, the Zoning Ordinance Advisory Committee (ZOAC) approved the proposed staff recommendations.
- On September 15, 2022, the City Plan Commission (CPC) considered the proposed amendments and recommended approval.

GENERAL INFORMATION/STAFF ANALYSIS:

The proposed amendments to the Dallas Development Code are solely intended to aid in the management of the population of ash trees on public and private property in response to the ongoing infestation of the emerald ash borer in the city's ash tree species. The limited code amendment is a part of the overall strategy to take immediate steps toward

educating the community and effectively responding to minimize the negative impacts of the infestation to the forest canopy.

'The emerald ash borer (*Agrilus planipennis*) is a destructive, non-native, wood-boring, pest of ash trees (*Fraxinus spp.*). Native to Asia, the emerald ash borer (EAB) was unknown in North America until its discovery in southeast Michigan in 2002. All native ash species are susceptible to attack. Ash trees with low population densities of EAB often have few or no external symptoms of infestation. EAB is a significant threat to urban, suburban, and rural forests as it kills both stressed and healthy ash trees. EAB is very aggressive and ash trees may die within two or three years after they become infested.' – City Forestry Task Force

Ash trees represent nearly 5% of the DFW Metroplex, according to the Texas A&M Forest Service. As a part of the EAB Action Plan, a tree inventory is underway within the city to fully assess the ash tree populations to determine which public trees should be considered for prolonged chemical treatments based on their health and significant size, and where it is likely tree removals will occur when infestation is present or when conditions pose a risk to public safety.

The City Forestry Task Force is comprised of an inter-departmental team of forestry professionals, department officials, and representation from county, regional, and state agencies and local non-profit groups. This Task Force has directed educational information through social media and presentations to the community to assist homeowners on how to identify ash trees and the emerald ash borer, and how to contact an ISA Certified Arborist for inspections of their trees.

A quarantine has been implemented in Dallas and other impacted surrounding counties by the Texas Department of Agriculture (TDA). The quarantine which prohibits the movement of untreated wood, wood debris, and firewood outside the area is solely enforced by the TDA, as is the sell and growth of ash trees in the area. Enforcement measures on trees and required landscaping by the City of Dallas are limited to restrictions implemented through city regulations within the Dallas Development Code. The Article X, Landscape and Tree Conservation Regulations address specific requirements for listings of protected trees, acceptable plant materials, alternative methods of compliance for tree replacement, and listed defenses to prosecution for the removal of trees. The Task Force is recommending these specific code provisions be amended for the purpose of altering the status of ash trees in the City of Dallas for current and future administration of the ordinance.

The City Forestry Task Force recommends the Arizona ash (*Fraxinus velutina*) be removed from a Class 3 rating to Unprotected Tree status (Sec. 10.101). The Arizona ash is a medium-sized tree which does not typically mature to a significant size and long-term condition that favors a prolonged injection treatment like the green ash species. As Arizona ash trees are infested, they will likely be removed. Other ash species would remain on protected status as many of the larger trees may be targeted for long-term treatments.

The City Forestry Task Force further recommends for future forest growth, all ash species be prohibited from required landscaping imposed under Article X and also be prohibited from use on any city property (Sec. 10-103). The City of Dallas will not impose restrictions on the nursery industry and private property owners who pursue steps to install, maintain and treat protected ash trees on their properties not regulated by city ordinance.

The City Forestry Task Force recommends an amendment to the Reforestation Fund method of compliance with tree replacement by amending the definition of the Natural Deforestation Event to include the 'period of infestation of an invasive species damaging threatened tree species which causes localized catastrophic tree failure and irreparable structural tree damage resulting in a loss of the urban forest canopy.' (Sec. 10.135) This would authorize the use of Reforestation Fund dollars to be used for the purchase of trees to be applied on private property. The condition of the private property would be confirmed by the Development Services director to have held an ash tree, or trees, and to be eligible for new nursery stock trees of other species to be planted on site.

The City Forestry Task Force recommends an amendment to the defenses to prosecution to include an added provision which excludes the requirement for a tree removal permit or tree replacement when removing ash trees (Sec. 10-140). If a tree is listed by the TDA as a vulnerable or threatened tree species, or is a species subject to quarantine, and is in an imminent threat of infestation, then it would not require a permit or replacement for removal. This request is to account for protected ash trees at 8-inches diameter or greater that are not yet infested by the emerald ash borer but may become considered for removal during management procedures by city departments. Once the tree has become infested and is in decline, current defenses to prosecution that concern declining trees and public safety risks take over.

The purpose of these few amendments is driven by the threat to the city's forest. The rapid pace of the spread of the emerald ash borer into and across the county requires an aggressive and timely response in order to find and protect our city's specimen ash trees, to properly remove the endangered or declining ash trees under threat, and to equally help inform the public to assist them in the identification and defense of their privately-owned ash trees. The City Forestry Task Force had worked on a defensive agenda leading up to the local spread of the borer and continues to take action to defend against a total loss of the ash species in Dallas County. It is also hoped that the leadership taken by the City of Dallas in demonstrating a quick public response to this pest will encourage additional steps to be taken by surrounding communities to also work to save what can be saved in the region. The code amendments presented here are small but vital steps that will assist the City of Dallas in managing the transition toward a significantly reduced ash tree population in the city's urban forest canopy. These few amendments will support the city's efforts to rapidly address the threat while also helping homeowners impacted by the loss to help recover the loss of important community shade trees with the supply of new replacements of other tree species through the Reforestation Fund.

SEPTEMBER 15, 2022 – DRAFT CITY PLAN COMMISSION MINUTES

Motion: It was moved to recommend **approval** of amendments to Chapter 51A of the Dallas Development Code, with consideration given to amending Sections 51A-10.101, 10.103, 10.135, and 10.140 to allow for a comprehensive response to the impact of the emerald ash borer (EAB) on the City’s population of trees.

Maker: Blair
Second: Rubin
Result: Carried: 11 to 0

For: 11 - Popken, Anderson, Shidid, Carpenter, Vann*,
Blair, Jung, Housewright, Stanard, Kingston,
Rubin

Against: 0
Absent: 2 - Hampton, Haqq
Vacancy: 2 - District 3, District 11

*out of the room, shown voting in favor

Speakers: None

CPC RECOMMENDED AMENDMENTS

SEC. 51A-10.101 DEFINITIONS

(11) CLASS 3 TREE means ~~Arizona ash~~, black willow, cottonwood, hackberry, honeylocust, mesquite, mimosa, mulberry, ornamentals, pinus spp., Siberian elm, silver maple, sugarberry, or a small tree.

(64) UNPROTECTED TREE means the following:

- (A) Callery pear (all cultivars)
- (B) Chinaberry.
- (C) Chinese tallow.
- (D) Ilex species (except for yaupon holly and Possumhaw holly.)
- (E) Palm (all plants in Palmae).
- (F) Tree-of-heaven or Ailanthus.
- (G) Arizona ash

~~(G)~~(H) Other trees listed as invasive plants.

~~(H)~~ (I) Trees with a diameter of less than 10 inches at the point on the trunk 4.5 feet above the ground, located on a lot with an existing single family or duplex use that is occupied at the time of removal.

SEC. 10.103 ACCEPTABLE PLANT MATERIALS

() All nursery stock and transplanted ash tree species are prohibited in required landscaping or on city property.

SEC. 10.135 ALTERNATIVE METHODS OF COMPLIANCE WITH TREE REPLACEMENT REQUIREMENTS

(i) Reforestation Fund.

(2) (B) Exception for natural deforestation events.

(i) Definition. In this paragraph NATURAL DEFORESTATION EVENT means a recorded weather event or a period of infestation of an invasive species damaging threatened tree species which causes localized catastrophic tree failure and irreparable structural tree damage resulting in a loss of the urban forest canopy.

(ii) Applicability. This paragraph only applies to lots with an existing single-family or duplex use in a residential district.

(iii) Qualification. Private properties affected by a natural deforestation event may qualify for reforestation if they are:

(aa) Located within a declared federal, state, or local disaster area; or

(bb) Declared eligible for reforestation by the city council, or

(cc) Confirmed by the director to have contained a vulnerable or threatened tree species on the property, as specified by the Texas Department of Agriculture, and was in imminent threat of infestation.

(iv) Additional requirements. A minimum of one of the following must be provided in determining whether an area has been affected by a natural deforestation event.

(aa) A tree survey or forest stand delineation must be provided that meets minimum requirements established by the director.

(bb) Physical evidence must be presented by the owners of individual lots documenting individual tree loss.

(v) Reforestation.

(aa) Parkway trees and trees located in alleys adjacent to residential lots may be replaced at the discretion of the director.

(bb) All reforestation tree planting projects on private property must be conducted between November and March.

(cc) The owner of a reforestation property is responsible for providing any necessary proof of the loss of a large or medium established tree to a natural deforestation event on their property. Photo documentation, Google Street View, and aerial imagery may qualify as confirmation.

(dd) Property owners are not required to participate in a neighborhood reforestation project to replace damaged or destroyed trees. The city will not replace a parkway tree if the adjacent property owner chooses not to receive a tree for a location the property owner must maintain.

(ee) Replacement trees must be planted on the same property that sustained the tree loss.

(ff) The caliper size of replacement trees will be between one and three inches.

(gg) Boundary tree replacements must be placed on a single property. Two adjoining properties may each qualify for a tree.

(hh) All replacement trees must be planted in accordance with the requirements of this chapter.

- (ii) An approved planting plan may be required by the director.
- (vi) Prohibition on reforestation funds being used to plant trees on private property.
 - (aa) Reforestation fund expenditures are limited to the purchase and provision of trees. Reforestation Funds may not be expended on installation or maintenance.
 - (bb) Reforestation fund replacement trees may not be used as required landscaping on lots permitted for new construction.

SEC. 10.140(b) DEFENSES TO PROSECUTION.

A tree removal application or tree replacement is not required if the tree:

() was specifically listed as a vulnerable or threatened tree species, or species subject to quarantine, as determined by the Texas Department of Agriculture, and was in imminent threat of infestation.