ARTICLE XVII

TREE PRESERVATION

Sec. 12-144 SCOPE

This Article shall be effective within the geographical limits of the City, including any areas subsequently annexed by the city.

Sec. 12-145 DEFINITIONS

Caliper: The diameter of a tree trunk measured in inches at a height of twenty-four inches (24") above natural grade. For a multi-trunk tree, the diameter shall be the total diameter of the largest trunk plus one-half (1/2) of the diameter of each additional trunk.

City Horticulturist: The Horticulturist for the City of Duncanville or his designee.

Clear-Cutting: The indiscriminant removal of protected trees from a site or tract.

Critical Root Zone: The area of native soil around a tree defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the drip line. (Figure 2)

Tree: Any self-supporting, woody perennial plant which will attain a trunk diameter of two inches (2") or more when measured at a point twenty-four inches (24") above natural ground level.

Tree, Protected: Any tree having a caliper of six inches (6") or more that is not one of the following: Mesquite, bois d'arc, thorny honey locust, hackberry, cottonwood, cedar, china-berry (common), native black willow, and native red/white mulberry.

Tree, Replacement: A tree as listed in the Approved Tree Replacement List (Figure 1) that has a minimum caliper required per Section 12-146 and a minimum height of seven feet (7'), measured at ground level, at time of planting.

Sec 12-146 **APPLICABILITY.**

(A) The terms and provisions of this Article apply to all property as follows:

(1) All vacant (without structures), undeveloped land.

(2) All property to be redeveloped, including additions and alterations but excluding interior alterations.

(3) Street rights-of-way, parks, and any other public property under the jurisdiction of the City of Duncanville shall be governed by this Article. (Easements on private property shall not be considered as rights-of-way or public property)

(4) All Duncanville Independent School District Property.

Sec 12-147 **EXEMPTIONS.**

(A) This Article, does not apply to single family, duplex and single family attached lots (including public right-of-way abutting said single family, duplex, and single family attached lots) after initial development and final inspection of the dwelling nor to any expansion, addition or alteration to any existing single family, duplex and single family-attached dwelling. This Article does not apply to the redevelopment of single family, duplex or single family attached dwellings on a lot previously used for a single family, duplex and single family-attached dwelling. However, the development of any new non-residential or multi-family structure on a lot previously used or zoned for a single family, duplex and single family-attached dwelling residential use shall not be exempt from the requirements of this Article.

(B) This Article shall not apply to protected trees within the footprint area of only the proposed main structure on the lot (residential or nonresidential).

(C) Nothing herein contained shall require any change in the plans, construction or designated use of any parcel of property, for which a permit for construction has been issued, as of the effective date of this Article or amendments hereto.

(D) During the period of an emergency, such as a tornado, storm, flood or other natural disaster, the requirements of this Article may be waived as deemed necessary by the Emergency Management Coordinator or other designee of the City Manager.

(1) In addition to rights granted by easement, utility service providers, lawfully within the right-of-way, may remove trees during the period of an emergency

that are determined by the company to be a danger to public safety and welfare by interfering with utility service.

(2) The City may clear streets and public rights-of-way of damaged or fallen trees, tree limbs, or other debris as needed as a result of a storm event.

(E) In the pursuit of installation or maintenance of its facilities, utility service providers, including the City of Duncanville, or their contractors, agents, successors and assigns shall have the right to trim or remove trees so as to prevent any part of such trees from becoming a danger to public health, safety and welfare by interfering with utility service. Where possible trimming shall be done in a manner such that the aesthetics and health of the trees are not destroyed. Existing trees already growing into utility lines shall be trimmed as necessary. The City may require boring under trees within the critical root zone area instead of trenching.

(F) In the pursuit of installation or maintenance of drainage facilities, creek channel lining, or erosion control measures, the City of Duncanville, or their contractors, agents, successors and assigns shall have the right to trim or remove trees so as to prevent any part of such trees from becoming a danger to public health, safety and welfare by interfering with said drainage improvements. The City may require boring under trees within the critical root zone area instead of trenching.

(G) A diseased or damaged tree, which is beyond the point of recovery, or in danger of falling, shall be exempt from the provisions of this Article in terms of tree replacement and tree preservation plan. A tree removal permit, however, is required. In the case of a Code Enforcement action, the notice of violation and description of the action to be taken shall serve as the permit to commence work. The removal of a diseased tree by the city or by an individual is required to reduce the chance of spreading the disease to adjacent, healthy trees.

(H) Any plant nursery, shall be exempt from the provisions of this Article only in relation to those trees planted and growing on the premises for sale, either retail or wholesale.

(I) Any property for which a design contract has been awarded by the City Council on or before the adoption of this Article shall be exempt from the provisions of this Article.

(J) Any paved surface within the critical root zone of a protected tree, which is in existence on or before the effective date of this Article, may be replaced or maintained.

Sec 12-148 **TREE PRESERVATION AND PROTECTION.**

(A) No person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree, regardless of whether the protected tree is on private property or the abutting public right-of-way, unless covered by Section 12-147 – Exemptions.

(B) No clear-cutting of land is allowed. Prior to the removal of any protected tree on a site, regardless of construction or development schedule, a tree preservation plan must be approved by the city.

(C) Prior to construction or development on a site that contains one (1) or more trees, a tree preservation plan must be approved by the city. If the site does not contain any protected trees, a letter, prepared by a registered surveyor, engineer, architect or landscape architect, shall be submitted to the city, which verifies that protected trees are not on the subject site.

(D) The tree preservation plan submittal shall be accompanied by a site plan that includes, but is not limited to the following:

(1) Delineation of site boundaries;

(2) Location of all existing or proposed structures; improvements such as streets, alleys and easements;

(3) A survey depicting the location and caliper of all protected trees to be preserved.

(E) Protected trees, which are not required to be removed or have been identified on the tree preservation plan to be preserved, must be protected under the following conditions:

(1) No materials intended for the use in construction or waste materials accumulated due to excavations or demolition shall be placed within the limits of the critical root zone.

(2) No equipment shall be cleaned or other foreign materials deposited or allowed to flow overland within the critical root zone of a protected tree. This includes without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.

(3) No signs, wires or other objects, other than those of a protective nature shall be attached to any protected tree. However, lighting of a decorative nature may be attached to a protected tree. The lighting shall be attached in a manner as not to damage the protected tree.

(4) No vehicular and or construction traffic or parking shall take place within the limits of the critical root zone of any protected tree other than on an existing paved surface. This restriction does not apply to access within the

critical root zone for purposes of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance or emergency restoration of utility service or routine mowing operations.

(5) Grade changes shall be allowed within the limits of the critical root zone of any protected tree only upon approval by the city.

(6) No paving with concrete or other approved impervious materials shall be placed within the critical root zone of a protected tree. However, paving may encroach up to five feet (5') from the trunk upon approval by the city.

(7) In those situations where a protected tree is within fifty feet (50') of a construction area, a protective fence, minimum of four feet (4') in height, shall be erected and maintained outside of the critical root zone of each protected tree or tree group. The protective fencing shall be only required on the subject site, if the critical root zone extends onto adjacent property. It is not the intent of this provision to prohibit the development of a site in accordance with the above-referenced paragraph 6.

(8) No person, directly or indirectly, shall prune, cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree on city-owned property unless otherwise permitted by this Article.

(F) The city shall have the right to plant, prune, and maintain any tree located on public park land or any other municipally-owned property as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public properties. The city may remove or cause or order to be removed any tree or part of thereof, which is in an unsafe condition, or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, drainage improvements, regulatory signs, or other public improvements.

Sec 12-149 TREE REMOVAL PERMIT.

(A) No person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree without first obtaining a tree removal permit unless otherwise specified in this Article. Tree removal permits are required, whether development, redevelopment, or construction is pending or not. The application for a tree removal permit shall be submitted on a form provided by the city.

(B) Tree removal permits may be issued with proper verification that the protected tree(s) is damaged or diseased.

(C) Tree removal permit applications may be submitted in conjunction with a tree preservation plan.

(D) An application for a tree removal permit shall be submitted in conjunction with the following:

(1) An application for a final plat or replat including the development of new internal streets, or

(2) If the property is platted, an application for a tree removal permit shall be submitted in advance of or in conjunction with a permit application for new construction.

(E) The application for a tree removal permit shall be accompanied by a site plan that includes, but is not limited to the following:

(1) Delineation of site boundaries;

(2) Location of all existing or proposed structures in conjunction with a building permit application, or improvements or facilities such as streets, alleys and easements in conjunction with a plat application;

(3) A survey depicting the location, species and caliper of all protected trees to be removed; and

(4) The reason for the proposed tree removal shall be summarized on legend form on the plan. The same summary shall also be submitted on a legible 8.5" x 11" document.

(F) Upon receipt of a valid application for a tree removal permit, the city Horticulturist shall be responsible for the review and approval of all requests submitted in accordance with the requirements specified herein.

(G) Any decision of the city Horticulturist may be appealed to the Park and Recreation Advisory Board which shall provide a recommendation to the City Council. Action by the City Council shall be final.

(H) Consideration for the approval of a tree removal permit shall be based upon the following guidelines:

(1) Whether the removal of the protected tree is permitted by Section 12-143 (Exemptions) ;

(2) Whether or not a reasonable accommodation or alternative solution can be made to accomplish the desired activity without the removal of the protected tree;

(3) The effect of the removal of the protected tree on erosion, soil moisture, retention, flow of surface waters, and drainage systems;

(4) The need for buffering of residential areas from the noise, glare, and the visual effects of nonresidential uses;

(5) Whether the removal of the protected tree affects the public health, safety or welfare of the city; and

(6) Whether the application demonstrates the attempt to preserve existing trees on the site.

(I) An approved Tree Removal Permit shall expire within twelve (12) months of final action of the city if the permits or plats are not approved as identified in Section 12-145 (D).

Sec 12-150 **TREE REPLACEMENT REQUIREMENTS.**

(A) Replacement trees shall be required under the following conditions:

(1) To remove a protected tree as specified in Section 12-145;

(2) To replace a tree that was identified on a tree preservation and replacement plan but dies within one (1) year of the date it was planted.

(B) Replacement trees shall be planted in accordance with the provisions of this Article per the following rates:

For each Protected Tree to be Removed (" Caliper)	**Required Size and Number of New Replacement Trees**
6" to 12" caliper	Minimum 3" caliper, equivalent to 100% of caliper removed
Greater than 12" to 30" caliper	Minimum 4" caliper, equivalent to 100% of caliper removed
Greater than 30" caliper	Minimum 6" caliper, equivalent to 100% of caliper removed

(C) No more than 34% of the number of replacement trees shall be of the same species when twelve (12) or more trees are required.

(D) Acceptable types of replacement trees are designated in the Approved Tree Replacement List, Figure 1.

(E) The replacement trees shall be located on the subject site whenever possible. However, if there is not a suitable location for the replacement trees on the subject site, payment of a fee into the Tree Restoration Fund in the amount in accordance with a fee schedule provided by the city shall be required. The fee schedule shall be based on the current Texas A & M Extension Service Fact Sheet for Evaluation of Texas Shade Trees. The funds shall be used for the purpose of purchasing, installing and maintaining trees on public rights-of-way, public park land or any other municipally-owned property.

Sec 12-151 **MISCELLANEOUS PROVISIONS.**

(A) Trees identified on a tree protection and preservation plan or trees identified to be replaced shall be eligible to meet the requirements and credits of Appendix A, Article XIV-E (Landscape Ordinance) of the Comprehensive Zoning Ordinance for areas of the site, except within the Landscape Buffer. The minimum landscape requirements of the Landscape Buffer shall be met in addition to this Article when applicable.

(B) No protected tree shall be pruned in a manner, which significantly disfigures the tree, or in a manner, which would reasonably lead to the death of the tree. This section is not intended to require a tree removal permit for reasonable pruning performed or contracted to be performed by the owner of the tree.

(C) Trees required to be planted by this Article shall be planted in accordance with the intersection visibility triangles as specified Appendix A, Article XIV-E, Section 9 of the Duncanville Landscape Ordinance.

(D) The filling and reclamation of property and mitigation as delineated on a Section 404 Permit, issued by the U.S. Army Corps of Engineers, shall be permitted in lieu of the requirements of this Article. The removal of any protected tree on the subject property shall be in accordance with a filling, reclamation, and mitigation plan approved and/or ordered by the Corps of Engineers incident to the filling and reclamation of wetlands and flood lands on such property. As soon as the reclamation and mitigation prescribed by the Corps of Engineers has been completed, and the property is no longer under the supervision and authority of the Corps of Engineers, this Article shall immediately apply to such property thereafter.

Sec 12-152 **VARIANCES.**

(A) The City Council, after conducting a Public Hearing, shall hear appeals from decisions of the city staff and may approve a tree removal permit and approve a variance to all or a portion of the requirements to provide for replacement trees for the following:

(1) A public or recreational use or structure but not including rights-of-way or easements,

(2) A private use that usually requires large areas of open space (impervious surface),

(3) Development of heavily forested sites where the strict compliance of the requirements of this Article, will unreasonably burden the use of the property.

(4) Amount of payment to the Tree Restoration Fund.

FIGURE 1

CITY OF DUNCANVILLE

APPROVED REPLACEMENT TREE LIST

Large Trees

* Afgan Pine
Bald Cypress
Big Tooth Maple
* Black Hickory
Black Walnut
* Bur Oak
Caddo Maple
* Cedar Elm
* Chinese Pistachio
* Chinquapin Oak
Deodor Cedar
* Honey Locust (Thornless)
* Lacebark Elm
Pecan
* Plateau Live Oak
* Shumard Red Oak
* Southern Live Oak
Southern Magnolia
* Sugarberry
Sweetgum
Sycamore
* Texas Ash
* Texas Red Oak
* Western Soapberry
White Ash

Ornamental Flowering Trees

Aristocrat Pear
Bradford Pear
Crepe Myrtle
Flowering Crabapple
Japanese Maple
* Mexican Plum
* Mountain Laurel
Purple Plum
* Smoke Tree
* Yaupon Holly

Small Trees

* Ashe Juniper
* Carolina Buckthorn
* Desert Willow
* Eastern Redbud
* Forest Pansy Redbud
Golden Raintree
Japanese Black Pine
Little Gem Magnolia
* Oklahoma Redbud
* Possumhaw
* Texas Persimmon
* Yaupon Holly

Notes:

* Plants preferred due to their lower water demand and high pest resistance.
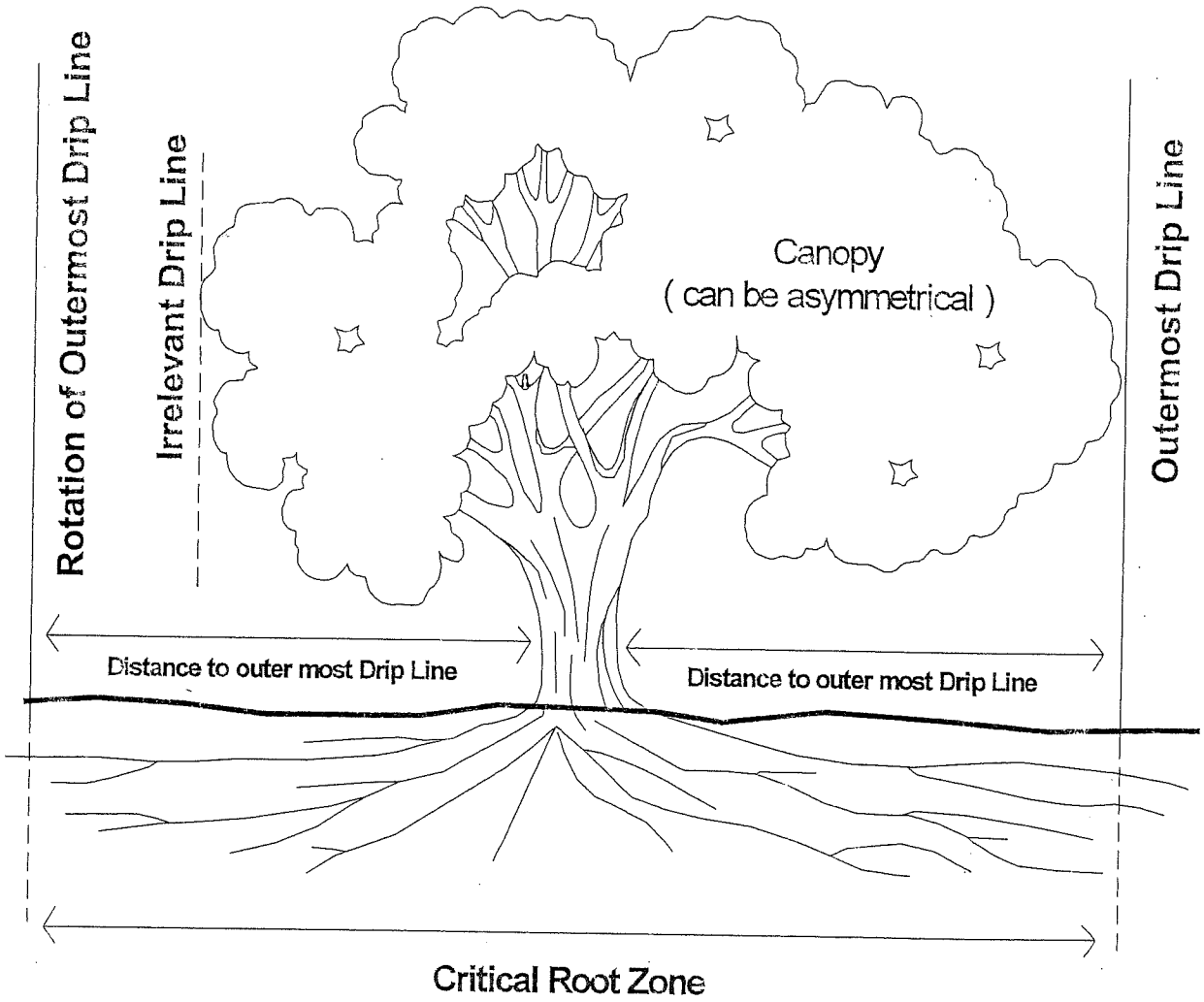
FIGURE 2
TREE EXHIBIT