



## City of La Porte Planning and Zoning Commission Agenda

Notice is hereby given of a **Regular Meeting** of the La Porte Planning and Zoning Commission to be held on **Thursday, September 17, 2015 at 6:00 p.m.** at City Hall Council Chambers, 604 West Fairmont Parkway, La Porte, Texas, regarding the items of business according to the agenda listed below:

1. Call to order.
2. Roll call of members.
3. Open public hearing to receive input on possible modifications and/or repealing of Section 106-801 (Tree Preservation), Section 106-802 (Tree Replacement), and Section 106-803 (Tree Fund), of the City of La Porte's Code of Ordinances.
  - a. Staff Presentation
  - b. Public Comments (for, against, or questions)
  - c. Question and Answer
4. Close public hearing.
5. Consider recommendation to City Council on amendments and/or repealing various provisions of Chapter 106 "Zoning" concerning tree preservation, tree replacement and the tree fund.
6. Administrative reports.
7. Commission comments on matters appearing on the agenda or inquiry of staff regarding specific factual information or existing policy.
8. Adjourn.

A quorum of City Council members may be present and participate in discussions during this meeting; however, no action will be taken by the Council.

In compliance with the Americans with Disabilities Act, The City of La Porte will provide for reasonable accommodations for persons attending public meetings. To better serve attendees, requests should be received 24 hours prior to the meetings. Please contact Patrice Fogarty, City Secretary, at 281-470-5019.

### CERTIFICATION

I certify that a copy of the Thursday, September 17, 2015, agenda of items to be considered by the Planning and Zoning Commission was posted on the City Hall bulletin board on the \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_

Title: \_\_\_\_\_

**City of La Porte, Texas  
Planning and Zoning Commission**



**September 17, 2015**

## **AGENDA ITEM 3**

Discussion on possible modifications and/or repealing of  
Section 106-801 (Tree Preservation), Section 106-802 (Tree Replacement),  
and Section 106-803 (Tree Fund) of the city's Code of Ordinances.

*Eric J. Ensey, City Planner*  
*Planning and Development Department*  
*City of La Porte, Texas*

## Planning and Development Department Staff Report

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### DISCUSSION

As a means of background on this item, the Planning and Zoning Commission reviewed various modifications to Chapter 106 (Zoning) in early 2015 and recommended to the City Council some modifications at the June 18, 2015 meeting. One of those modifications was to the city's tree preservation regulations (Section 106-801) by providing an exclusion for individual single family detached residential from being required to mitigate the removal of trees on residential lots.

The P&Z's recommendation was forwarded to the City Council and the item heard at their July 13, 2015 meeting. The Council requested that the issue of tree preservation be returned to the P&Z for further discussion. City Council's action was based on concern for the impact that these requirements would have on development. There was discussion to request the P&Z consider further modifications or even repealing the provisions altogether.

To facilitate the Commission's discussion on this item, staff developed three different options for consideration. The options include highlights and strike-thru's identifying the various modifications proposed. Following this discussion, staff would forward the Commission's recommendation to the City Council in ordinance form.

***OPTION #1** – This is the language previously recommended to the City Council as part of amendments to Chapter 106 in June. This option includes an exclusion from these regulations for tree removal on individual single family lots.*

#### **Sec. 106-801. Tree preservation.**

- (a) It is the intent of this section to encourage the preservation of existing trees within the city and to prohibit their unwarranted destruction. The city encourages site planning which furthers the preservation of trees and natural areas by the following methods: To protect trees during construction; to facilitate site design and construction which contributes to the long term viability of existing trees; and to control premature removal of trees; require on-site replacement of trees that must be removed and require off-site replacement of trees that cannot be replaced on-site, either by direct planting **as outlined in section 106-803 (Tree replacement)** or through a contribution to the tree fund established in [section 106-803](#) (Tree fund) of this chapter. It is the further intent of this section to achieve the following objectives:
- (1) Protect healthy trees and preserve the natural, environmental, and aesthetic qualities of the city to the degree possible.

- (2) Protect and increase the value of residential and commercial properties within the city.
- (3) Discourage premature clear-cutting of property.
- (4) Maintain and enhance a positive image for the attraction of new developments to the city.
- (b) It shall be unlawful for any person to cause or permit the destruction of any healthy native tree within the city if such tree has a trunk which exceeds six inches in diameter (or 18.84-inch circumference) at a point 18 inches above the natural ground level. Provided, however, it shall not be a violation of this provision if a tree is removed and/or destroyed if the tree is obviously diseased or determined to be diseased by an arborist or in the opinion of the planning director or his designated representative, said tree constitutes a hazard to pedestrian and/or vehicular traffic along any such right-of-way.
- (c) No person, firm or corporation desirous of developing or improving any parcel of property, shall remove or cause the removal of any tree from said property without first obtaining a clearing permit which would allow clearing of buildable areas only.
- (d) The provisions of this section are not required on individual single family lots.

#### **Sec. 106-802. Tree replacement**

A tree disposition plan or tree survey must be submitted and approved prior to the removal or destruction of any qualifying protected tree. In the event that it is necessary to remove a protected tree, as a condition of a building permit issuance, applicant shall be required to replace the tree(s) being removed with replacement trees as follows:

- (a) *Number of replacement trees.* Tree disposition conditions and tree permit authorizing removal of or damage to large trees or protected trees shall normally require replacement by one or more newly planted trees on the same subject site. If this is not feasible, the owner or developer must plant and maintain off-site replacement trees in reasonable proximity to the subject site.
- (b) *Minimum size.* Replacement trees must normally have a trunk caliper of at least two inches measured six inches from the ground. The enforcement officer may prescribe a proportionally smaller trunk caliper for certain species of trees, i.e. Crepe Myrtle.
- (c) *Qualified trees.* To be a "qualified tree", a tree must comply with the recommended tree list "native or protected" of the city.
- (d) *Standard of review.* The enforcement officer shall use reasonable best efforts to determine the type and number of replacement trees required in an attempt to minimize undue burden resulting from this section.
- (e) *Trees in street area.* Before authorizing establishment or maintenance of tree or decorative landscaping, such as lighting or a watering system in a street area, the building official must be satisfied that Tex. Trans. Code, Chapter 316 has been complied with and also confirms there would be no violation of the provisions relating to visibility triangles and future overhead obstruction.

A sufficient number and diameter of replacement trees shall be planted on the subject site in order to equal the total diameter inches, as determined above. If this is not feasible, the applicant may, upon approval by the director, plant and maintain off-site replacement trees in accordance with this section.

**Sec. 106-803. Tree fund.**

There is hereby established a tree fund, which shall be administered by the director of parks and recreation or his/her designee. All revenues, mitigation fees, and penalties received pursuant to this section, or for the enforcement thereof, and any donations or grant monies received to achieve the purpose of tree preservation or replacement, shall be deposited into the tree fund. Monies in the tree fund may be used to purchase trees required for replacement but may not be used in any manner that will profit the grantee. Tree replacement fee shall be calculated at the rate of \$50.00 per caliper inch of tree otherwise required or shall be periodically adjusted as the market value of replacement trees warrants. The amount paid to the tree fund shall be applied at a maximum of \$5,000 per acre (or fraction thereof) with a maximum total payment of \$100,000 per development.

The owner or developer of any lot or tract of land required to replace trees in accordance with this chapter may, as an alternative, and upon approval by the city, pay a prescribed fee/amount into the tree fund in accordance with the following conditions:

- (1) *Residential and non-residential site plans/plats.* Payment to the tree fund must be received by the city prior to the submission of the development site plan and/or final plat approval by the planning and zoning commission.
- (2) *Building permits not requiring site plans/plats.* Payment to the tree fund must be received by the city prior to the issuance of a building permit.

**OPTION #2** – *This option maintains the single family residential exclusion. In addition, the quantity of replacement trees has been modified from replacing trees based on a per-caliper inch basis to a one-for-one replacement. This would mean that if one tree is removed from a property, then that tree is replaced with another one on the site. Recommendation is also to modify the tree replacement fee, should the applicant desire to make payment into the tree fund as opposed to planting on site. The replacement cost per tree would be \$250 to cover the planting of a replacement tree elsewhere in the community, up to a maximum of \$2,500 per acre or \$100,000 for the overall project area. This modification would still maintain some requirement for mitigation of removed trees, especially if the city desired to participate in Tree City USA in the future. One requirement of participation of Tree City USA is a tree preservation ordinance.*

**Sec. 106-801. Tree preservation.**

(a) It is the intent of this section to encourage the preservation of existing trees within the city and to prohibit their unwarranted destruction. The city encourages site planning which furthers the preservation of trees and natural areas by the following methods: To protect trees during construction; to facilitate site design and construction which contributes to the long term viability of existing trees; and to control premature removal of trees; require on-site replacement of trees that must be removed and require off-site replacement of trees that cannot be replaced on-site, either by direct planting **as outlined in section 106-803 (Tree replacement)** or through a contribution to the tree fund established in [section 106-803](#) (Tree fund) of this chapter. It is the further intent of this section to achieve the following objectives:

- (1) Protect healthy trees and preserve the natural, environmental, and aesthetic qualities of the city to the degree possible.
- (2) Protect and increase the value of residential and commercial properties within the city.

- (3) Discourage premature clear-cutting of property.
- (4) Maintain and enhance a positive image for the attraction of new developments to the city.
- (b) It shall be unlawful for any person to cause or permit the destruction of any healthy native tree within the city if such tree has a trunk which exceeds six inches in diameter (or 18.84-inch circumference) at a point 18 inches above the natural ground level. Provided, however, it shall not be a violation of this provision if a tree is removed and/or destroyed if the tree is obviously diseased or determined to be diseased by an arborist or in the opinion of the planning director or his designated representative, said tree constitutes a hazard to pedestrian and/or vehicular traffic along any such right-of-way.
- (c) No person, firm or corporation desirous of developing or improving any parcel of property, shall remove or cause the removal of any tree from said property without first obtaining a clearing permit which would allow clearing of buildable areas only.
- (d) The provisions of this section are not required on individual single family lots.

**Sec. 106-802. Tree replacement**

A tree disposition plan or tree survey must be submitted and approved prior to the removal or destruction of any qualifying protected tree. In the event that it is necessary to remove a protected tree, as a condition of a building permit issuance, applicant shall be required to replace the tree(s) being removed with replacement trees as follows:

- (a) *Number of replacement trees.* Tree disposition conditions and tree permit authorizing removal of or damage to large trees or protected trees shall normally require replacement by one or more newly planted trees on the same subject site. If this is not feasible, the owner or developer must plant and maintain off-site replacement trees in reasonable proximity to the subject site.
- (b) *Minimum size.* Replacement trees must normally have a trunk caliper of at least two inches measured six inches from the ground. The enforcement officer may prescribe a proportionally smaller trunk caliper for certain species of trees, i.e. Crepe Myrtle.
- (c) *Qualified trees.* To be a "qualified tree", a tree must comply with the recommended tree list "native or protected" of the city.
- (d) *Standard of review.* The enforcement officer shall use reasonable best efforts to determine the type and number of replacement trees required in an attempt to minimize undue burden resulting from this section.
- (e) *Trees in street area.* Before authorizing establishment or maintenance of tree or decorative landscaping, such as lighting or a watering system in a street area, the building official must be satisfied that Tex. Trans. Code, Chapter 316 has been complied with and also confirms there would be no violation of the provisions relating to visibility triangles and future overhead obstruction.

For each qualifying protected tree removed from the site, one replacement tree must be planted on the subject site. A sufficient number and diameter of replacement trees shall be planted on the subject site in order to equal the total diameter inches, as determined above. If this is not feasible, the applicant may, upon approval by the director, plant and maintain off-site replacement trees in accordance with this section or contribute to the city's tree fund.

**Sec. 106-803. Tree fund.**

There is hereby established a tree fund, which shall be administered by the director of parks and recreation or his/her designee. All revenues, mitigation fees, and penalties received pursuant to this section, or for the enforcement thereof, and any donations or grant monies received to achieve the purpose of tree preservation or replacement, shall be deposited into the tree fund. Monies in the tree fund may be used to purchase trees required for replacement but may not be used in any manner that will profit the grantee. Tree replacement fee shall be calculated at the rate of ~~\$50.00 per caliper inch of tree otherwise required or shall be periodically adjusted as the market value of replacement trees warrants.~~ **\$250 per tree**. The amount paid to the tree fund shall be applied at a maximum of **\$2,500** ~~\$5,000~~ per acre (or fraction thereof) with a maximum total payment of \$100,000 per development.

The owner or developer of any lot or tract of land required to replace trees in accordance with this chapter may, as an alternative, and upon approval by the city, pay a prescribed fee/amount into the tree fund in accordance with the following conditions:

- (1) *Residential and non-residential site plans/plats.* Payment to the tree fund must be received by the city prior to the ~~submission~~ **approval** of the development site plan and/or final plat approval by the planning and zoning commission.
- (2) *Building permits not requiring site plans/plats.* Payment to the tree fund must be received by the city prior to the issuance of a building permit.

**OPTION #3** – *The third option would strike the entire tree preservation and associated sections of Chapter 106 (Sections 106-801 through 106-803). This option is being presented for consideration at the request of a couple members of City Council. This option would eliminate the need or encouragement for any development in the community to preserve quality trees on a site. The idea here is that the city would rely on applicable landscaping requirements in Section 106-800 of the Code of Ordinances.*

~~**Sec. 106-801. Tree preservation.**~~

~~(a) It is the intent of this section to encourage the preservation of existing trees within the city and to prohibit their unwarranted destruction. The city encourages site planning which furthers the preservation of trees and natural areas by the following methods: To protect trees during construction; to facilitate site design and construction which contributes to the long term viability of existing trees; and to control premature removal of trees; require on-site replacement of trees that must be removed and require off-site replacement of trees that cannot be replaced on-site, either by direct planting or through a contribution to the tree fund established in [section 106-803](#) (Tree fund) of this chapter. It is the further intent of this section to achieve the following objectives:~~

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~~or determined to be diseased by an arborist or in the opinion of the planning director or his designated representative, said tree constitutes a hazard to pedestrian and/or vehicular traffic along any such right-of-way.~~

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Planning and Zoning Commission Regular Meeting  
September 17, 2015  
Discussion on Modifications to Sections 106-801, 106-802, and 106-803

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