

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AMENDING SUBSECTIONS 35.23 AND 35.13 OF THE DENTON DEVELOPMENT CODE, PERTAINING TO TREE PRESERVATION AND LANDSCAPE REQUIREMENTS AND RELATED DEFINITIONS; PROVIDING FOR A PENALTY CLAUSE WITH A MAXIMUM AMOUNT OF \$500.00 FOR VIOLATIONS THEREOF; PROVIDING A SEVERABILITY DATE AND AN EFFECTIVE DATE.**

WHEREAS, pursuant to Ordinance No. 2002-040, the City Council of the City of Denton, Texas adopted the Denton Development Code (the “Development Code”); and

WHEREAS, Section 35.13.7.A of the Development Code provides for requirements for the preservation of Trees in the City of Denton, and the City desires to amend this section within Subchapter 35.13 in order to make a more understandable and efficient tree preservation code for the citizens of the City of Denton (the “amendment”); and

WHEREAS, Subchapter 35.23 of the Development Code provides definitions for use in the Development Code, and the amendment contemplates a change in some of the pre-existing definitions which will remain in Section 35.23.2, as well as new definitions which will be added to Section 35.13.7.A; and

WHEREAS, after providing notice and after conducting a public hearing as required by law, the Planning and Zoning Commission recommended approval of changes to Subchapters 35.23 and 35.13 of the Development Code as described herein; and

WHEREAS, after providing notice and after conducting a public hearing as required by law, the City Council finds that the subject changes to the Development Code are consistent with the Denton Plan; and

WHEREAS, the City Council has determined that the proposed amendment to the requirements for the preservation of trees in the City of Denton is in the best interest of the health, safety, morals, and general welfare of the City of Denton, and accordingly is of the opinion and finds that said amendment is in the public interest and should be granted as set forth herein; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference as true.

SECTION 2. Subchapter 35.23, Section 35.23.2 of the Denton Development Code is amended as underlined, to read as follows:

**Section 35.23.2:**

**Clearing:** An intentional act to cut down or to damage a tree and/or understory vegetation, to the extent that the tree and/or understory vegetation will decline or die. Clearing includes, but is not limited to: the use of herbicide or similar chemical treatment to destroy trees and/or understory vegetation; physical removal; damage from soil compaction; or damage due to grading.

**Critical Root Zone (CRZ):** The area of undisturbed natural 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 but not less than one (1) foot radius for each one (1) inch dbh. The area of soil around a tree where the minimum amount of roots considered critical to the structural stability or health of the tree are located, as identified in the Tree Preservation Plan.

**Diameter Breast Height (DBH):** The outside diameter of the trunk of a tree, measured four and one half (4½) feet above ground level. If a tree splits into multiple trunks below the four and one half (4½) feet level, DBH will be defined as the sum of each individual trunk measured at four and one half (4½) feet above ground level, or the single trunk at its most narrow dimension, whichever is greater. The tree trunk diameter measured in inches at a height of 4.5 feet above ground level. For multi-trunk trees, combine the diameter of the largest stem or trunk with one-half (0.5) of the diameter of each additional stem or trunk, all measured at four and one-half 4.5 feet above ground level.

**Grubbing:** The mechanical or physical act of removing stumps, underbrush, and rocks, prior to clearing and grading. Grubbing does not allow for any grade changes, only vegetation removal down to bare soil. A Tree Removal Permit is required for all trees with a three (3) inch or greater diameter, measured at four and a half (4.5) feet above natural grade.

**Landscape Area:** See "Landscaping." Refers to the pervious portion of a site that contains plantings.

**Public Utilities:** For the purposes of tree preservation provisions of the Denton Development Code, the term Public Utilities means:

- A. Entities franchised by the City to use public rights of way for the conduct of their business;
- B. Entities that are "public utilities" under pertinent provisions of the Texas Utilities Code or Texas Water Code but are specifically exempted by state law from the requirement that they receive a franchise from the City for the use of public rights-of-way;
- C. Public sanitary sewers;
- D. Public water mains;
- E. Public streets;
- F. Public storm sewers;
- G. Public detention ponds;
- H. Municipally owned electric utilities; and

I. ~~Any contractor hired by these entities.~~

***Qualified Professional:*** ~~For the purposes of tree preservation provisions of the Denton Development Code, a qualified professional is a person with a minimum of a Bachelor of Science Degree in any of the following disciplines: Forestry, Horticulture, Botany and/or Plant/Soil Science or, an Arborist that has been certified by the International Society for Arboriculture, a Texas Certified Nursery Professional, a Texas Master Certified Nursery Professional certified by the Texas Nursery and Landscape Association or a Licensed Landscape Architect.~~

***Tree Topping:*** ~~The severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree that removal of the top canopy disfigures and invites probable disease or death to the tree. Tree topping is prohibited. An inappropriate pruning technique that damages the health of the Tree, to reduce tree size that involves cutting a tree to a predetermined crown limit, often at internodes.~~

***Tree Protection, Permanent.*** ~~Structural measures, such as retaining walls/wells or aeration devices, that are designed to protect the tree and its root systems throughout its lifetime.~~

***Tree Protection Barrier, Temporary:*** ~~Physical barriers installed prior to any clearing and grading activity and/or construction for the purpose of preventing damage to existing trees and understory vegetation. These barriers are that is set outside of the critical root zone of such vegetation during site for the life of the development and construction.~~

***Tree Protection Sign:*** ~~A sign furnished by the developer upon approval of a tree survey or Tree Permit Tree Preservation Plan that describes prohibited conduct detrimental to trees on site.~~

SECTION 3. Subchapter 35.13, Section 35.13.7.A of the Denton Development Code is amended by removing and replacing the entire language as follows:

### **35.13.7. - Tree Preservation and Landscape Requirements.**

#### **A. Tree Preservation.**

##### **1. Definitions.**

***Cross Timbers Forest:*** An ecosystem that consists of a swath of trees and prairie stretching from Kansas to Central Texas that is rich with an understory of shrubs, vines, brambles, prairie grasses, and wildflowers.

***Developer.*** A person who owns property subject to this Section or a representative of the owner.

***Exempt Trees:*** Any Trees on the City's Exempt Tree List, as set forth in the Site Design Criteria Manual.

***Heritage Trees:*** All healthy trees with a dbh of 18 inches or greater.

***International Society of Arboriculture (ISA):*** A non-profit organization that through research, technology, and education promotes the professional practice of arboriculture and fosters a greater worldwide awareness of the benefits of trees.

***ISA Certified Arborist:*** An individual who has achieved a level of knowledge in the art and science of tree care through experience and by passing a comprehensive examination developed by some of the nation's leading experts on tree care. Certified Arborists must also continue their education to maintain their certification and adhere to a Code of Ethics.

***Protected Trees:*** All healthy trees with a dbh less than 18 inches.

***Pruning:*** Removing branches or occasionally roots from a tree or other vegetation using approved practices, to achieve a specified objective, such as reducing the risk of failure, providing clearance, or maintaining the health of the tree.

***Structural Value, Urban Forest:*** A value based on the tree itself that includes compensatory value and carbon storage value.

***Tree:*** A woody perennial usually having one dominant trunk and a mature height greater than 16 feet.

***Tree Canopy:*** Refers to the collective branches and foliage of a tree crown or a group of tree crowns.

***Tree Preservation Plan:*** A submission made by the developer of land to the City, which lists the retention, protection, management, and mitigation of trees on a construction or development site.

***Tree Protection Zone:*** An area defined by the City's Urban Forester within which certain activities are prohibited or restricted to prevent or minimize potential injury to designated trees, especially during construction or development, based on features unique to each individual site.

***Tree Survey:*** A map or plan that includes a list and description of trees located within all or a portion of the project area and/or adjacent areas. The tree survey is based on criteria, such as location, species, or tree size, defined in the Site Design Criteria Manual.

***Urban Forester.*** An individual who is trained in or is practicing urban forestry and whose qualifications are acceptable to the City's Urban Forester. Such qualifications shall be based on a combination of college degree, licensure and experience.

***Urban Forestry:*** The management of naturally occurring and planted trees and associated plants in urban areas.

## **2. Purpose and Intent.**

The City's Comprehensive Plan identifies the importance of environmental management, while allowing reasonable and responsible development of land within the City. Towards this end, the purpose of these regulations is to promote the preservation and expansion of tree canopy, facilitate site design and construction that contributes to the long term viability of existing trees, and to establish a process to manage the removal of tree canopy. Further, it is the purpose of this Subchapter to achieve the following broader objectives:

- a. Protect trees and promote the ecological, environmental and aesthetic values of the City;
- b. Maintain and enhance a positive image of the City through the preservation, mitigation and planting of trees;
- c. Promote the preservation of the remnants of the Cross Timbers Forest;
- d. Prevent the untimely and indiscriminate removal or destruction of trees;
- e. Provide for a permitting and enforcement procedure; and
- f. Preserve the public health, safety, and general welfare of citizens.

## **3. Applicability**

- a. This Subchapter shall apply to all of the following property:
  - i. Non-governmental property that is located within the City limits unless it is considered an agricultural operation under Tex. Agric. Code Sec. 251.002(1), as amended, and has continued agricultural operations for a period of one year or more prior to development and has not been actively marketed for a nonagricultural use within two years prior to development;
  - ii. Governmental property that is located within the City limits unless the property is as follows:
    - a. City Airport;
    - b. Municipal Solid Waste Facilities;
    - c. Any development or Capital Improvement Project awarded prior to November 2004; or
    - d. Public utilities and infrastructure constructed during new development but not reconstruction must comply with street tree requirements only.
- b. Exempt Trees are not subject to these requirements.

- c. To the extent that there is a conflict between this Subchapter and any other City Code of Ordinances or approved plans or regulations, the more restrictive requirement shall apply that preserves the largest square footage of tree canopy.

#### **4. Preservation Requirements and Incentives**

##### **a. Preservation Requirements.**

- i. A developer must preserve a minimum of thirty percent (30%) of the square footage of the pre-development tree canopy on all property regulated by this Subchapter. This square footage shall be the “preserved tree canopy.”
- ii. A developer must preserve a minimum of twenty percent (20%) of the square footage of the pre-development tree canopy on all property used for new agricultural activity. This square footage shall be the “preserved tree canopy” for that limited purpose.
- iii. On property currently used for agricultural activity but has an application for development filed, the tree canopy amount will be determined by using aerial images from the last twenty-four (24) months prior to the application.
- iv. A developer must submit a Tree Survey and a Tree Preservation Plan to the City prior to development of a lot or parcel regulated by this Subchapter. The percentage relating to preservation stated within this section must be based on the initial Tree Survey. Any subsequent redevelopment of property must preserve the minimum percentage of square footage of the predevelopment tree canopy as indicated by the initial tree survey.
- v. A notation must be placed on the Final Plat, Site Plan and Building Permit identifying the square footage of the predevelopment tree canopy and the minimum square footage of tree canopy to preserve based on the percentage stated within this section. The notation shall limit any future unauthorized land disturbing activity or construction that would impact and/or damage the tree(s) to be preserved.

##### **b. Preservation Incentives:**

###### **i. Credit for Preserved Tree Canopy.**

The preserved tree canopy may be counted towards the total landscape canopy requirement outlined in Sec. 35.13.7.B. A developer may receive credits for preserved Tree Canopy. For Heritage Trees, two square feet of credits will be given for every square foot of Tree Canopy preserved (1:2). For Protected Trees, one square foot of credit will be given for every square foot of Tree Canopy preserved (1:1).

###### **ii. Parking Lot Design.**

The Director of Development Services or designee may allow parking lot design and parking lot landscaping requirements to vary from adopted design standards to preserve existing trees.

## 5. Mitigation.

If preservation cannot be reasonably achieved, then mitigation may be provided through replanting or payment into the Tree Fund. The following mitigation standards shall apply:

- i. Up to ten percent (10%) of the pre-development Tree Canopy square footage of Heritage or Protected trees required to be preserved may be removed if the removal is mitigated by the replanting of new trees at a 1:6 ratio or by payment into the Tree Fund. The ratio will require six new Trees to be planted for every one Tree's worth of canopy removed at a square footage rate, determined by the City's Site Design Criteria Manual. The required Tree Fund payment shall be based on the square footage of canopy removed.
- ii. Mitigation of Tree Canopy square footage may be counted towards the total landscape canopy requirement at a 1:1 ratio.
- iii. Each mitigation tree must be a minimum of 3 caliper inches measured 6 inches above grade and meet the standards of the City's Tree Care criteria as set forth in the Site Design Criteria Manual. Any Tree that does not meet these standards may be rejected by the City's Urban Forester.
- iv. Exception: Removal of trees to facilitate installation of gas wells (including roads, pad sites, and gathering lines), gas transmission lines, or to facilitate installation of communications infrastructure or utilities which do not otherwise meet this code's definition of a Public Utility, the following mitigation standard shall apply instead, without regard to tree designation. The applicant shall mitigate the removal by paying the established tree mitigation fee for thirty-five percent (35%) of the total square footage of canopy removed. Fees must be paid prior to Tree removal, pursuant to the procedures established by Subsection 35.13.7.A.6.c.v.
- v. Tree Fund.
  - a. The City shall administer the Tree Fund. Funds shall be used to purchase, plant, and maintain trees; to preserve wooded property remaining in a naturalistic state in perpetuity; to perform and maintain a City-wide tree inventory; and to educate citizens and developers on the preservation, care, maintenance, benefits and value of trees within the City of Denton. The Tree Fund may also be used to support programs for the public purpose of increasing the tree canopy within the City of Denton as approved by City Council.
  - b. Proceeds from the Tree Fund shall not be used to meet any requirements for preservation, mitigation, landscaping,

- buffering, street-scaping, or similar requirements in the Denton Development Code and the Denton Code of Ordinances.
- c. The applicant shall pay the fees established by City Council and published in the Development Review Fee Schedule in the Application Criteria Manual, which may from time to time be amended.
  - d. The applicant must pay the fees contributed to the Tree Fund prior to the issuance of a Gas Well Development Plat or Gas Well Site Plan or the filing of a Final Plat in the Denton County Clerk's Office for all single-family residential subdivisions. Clearing and Grading permit, Clearing and Grubbing permit or Building permit on all commercial, industrial, or Multi-Family residential developments will not be issued prior to this payment..
  - e. Voluntary contributions for tree planting may be placed in the Tree Fund.

## **6. Removal of Trees.**

### **a. Tree Removal Permit Required**

- i. Any person must obtain a Tree Removal Permit from the City prior to the removal of any Tree in the City.
- ii. A Tree Removal Permit is not required for Trees less than five (5) inches DBH, that are located on lots or parcels 2 acres or less where an occupied single-family or two-family dwelling exists.

### **b. Tree Removal Permit Review and Approval Process.**

- i. A developer must submit a complete application along with the applicable fees as determined by the most recent fee ordinance.
- ii. A developer must submit a Tree Survey and Tree Preservation Plan, if required as stated herein, with the Tree Removal Permit application, and the Tree Survey or Tree Preservation Plan must be prepared or certified by an ISA Certified Arborist.
- iii. A Tree Removal Permit is valid for one hundred eighty (180) days, or for the duration of a Building Permit, Site Plan, Clearing and Grading Permit, Clear and Grubbing Permit, or Gas Well Development Plat or Gas Well Site Plan issued in conjunction with the Tree Removal Permit, whichever is longer.
- iv. After the Tree Removal Permit is issued, the developer must post Tree Protection Signage, at any location, on the lot or parcel subject to this Subchapter, which is designated in the Tree Removal Permit. The sign shall be in the form approved by the City's Urban Forester and as described in the Site Design Criteria Manual.

**c. Administrative Remedy**

- i. Any person who removes or intentionally destroys a Tree preserved or planted under Subchapter 35.13.7., while the Tree is alive, shall mitigate each Tree at two (2) times the rate stated in Subchapter 35.13.7. Each replacement Tree shall meet the standards as stated in this Section and as approved by the City's Urban Forester.
- ii. Each tree preserved under Subchapter 35.13.7 that dies within three (3) years of approval shall be mitigated by the property owner as stated in Subchapter 35.13.7.
- iii. Each tree planted under Subchapter 35.13.7 that dies shall be replanted with an approved tree in the appropriate planting season by the property owner.
- iv. These mitigation remedies are in addition to the enforcement provisions of Sec. 9 of this Subchapter.
- v. Each replacement Tree must be a minimum of 3 caliper inches measured 6 inches above grade and meet the standards as set forth in the Site Design Criteria Manual. Any Tree that does not meet these standards may be rejected by the City's Urban Forester or designee.

**7. Tree Preservation Plan and Amendments.**

**a. The Tree Preservation Plan Criteria.**

- i. The Tree Preservation Plan shall consist of a tree survey and such information required by the items on the Tree Preservation Plan Checklist, as maintained for inspection in the Department of Development Services during regular business hours.
- ii. The City's Urban Forester, under the direction of the Director of Development Services, must review the Tree Preservation Plan or any amendments thereto in order to determine whether it complies with the standards of this Subchapter, the Denton Development Code, and other applicable laws.

**b. Administrative Modification.**

The City's Urban Forester, with approval of the Director of Development Services, has the authority to approve amendments to a Tree Preservation Plan so long as it meets the purpose and intent of this Ordinance and applicant has made a good faith effort to comply with this Ordinance.

**c. Appeal.**

The approval or denial of a Tree Preservation Plan by the City's Urban Forester, under the Director of Development Services, is an official determination that may be appealed by the applicant to the Zoning Board of Adjustment pursuant to Subsection 35.3.6 of the Denton Development Code as contemplated by Sec. 211.009 of the Texas Local Government Code, or subsequent amendments thereto.

## **8. Tree Protection Requirements during Construction.**

- i. A Tree Protection Plan must be submitted with the Preliminary Plat, Final Plat, Site Plan or Building Permit application, and must be prepared or certified by an ISA Certified Arborist.
- ii. Tree protection standards shall be in accordance with the standards in the City's Tree Care Criteria Manual, as amended from time to time and as required by the City's Urban Forester and with the Site Design Criteria Manual.
- iii. The developer must place a Tree Protection Barrier around the entire Tree Protection Zone (TPZ) as stated in the Site Design Criteria Manual and as approved by the City's Urban Forester.
- iv. The developer must not engage in construction activities until the City's Urban Forester verifies the installation of a Tree Protection Barrier around the Tree Protection Zone (TPZ) for all trees designated for preservation.

## **9. Enforcement**

- i. The City's Urban Forester and the Building Official shall have the authority to place a stop work order on any activity involving the removal of any Heritage or Protected Tree, or on any activity that may otherwise endanger any Tree contrary to the provisions of Subchapter 35.13.7 and applicable criteria manuals. The Building Official may deny all permits and Certificates of Occupancy for any site which is not in compliance with Subchapter 35.13.7 and applicable Criteria Manuals. For the purposes of enforcement, Section 35.1.10 of the Denton Development Code is incorporated by reference herein, and as amended in the future.
- ii. If a person removes, cuts down, tops, destroys or moves, or assists in the removal, cutting down, topping, destroying or moving, or causes the removal, cutting down, topping, destroying, or moving of a Tree without complying with the requirements of this subsection, or owns part or all of the land where the violation occurs, this person shall be guilty, upon conviction, of a misdemeanor.
- iii. If a person performs grading on, or moves any heavy-duty vehicles specially designed for executing construction tasks on, any undeveloped property that contains Trees subject to this Subchapter without first obtaining a Tree Removal Permit, this person shall be guilty, upon conviction, of a misdemeanor.

- iv. If a person causes the death of a Tree that is preserved or planted in compliance with this Subchapter through neglect of the Tree, this person shall be guilty, upon conviction, of a misdemeanor.
- v. The City's Urban Forester and the Building Official may go on any property subject to this Section, with or without notice to the owner, for the purposes of verifying compliance with this Section or with any open building permit.
- vi. Each tree damaged, removed, cut down, topped, destroyed, or moved in violation of Subchapter 35.13.7 shall constitute a distinct and separate offense.
- vii. It shall be an affirmative defense to prosecution under this Section that the injury or destruction of a Tree was caused by natural disasters or other acts of God, including but not limited to tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes.
- viii. It shall be an affirmative defense to prosecution under this Section that the injury or destruction of a Tree was caused by the independent unauthorized actions of third parties who are not a developer of the property subject to this Section.

**SECTION 3.** Any person, firm, partnership or corporation violating any provision of this ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by a fine in a sum not exceeding \$500.00 for each offense. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

**SECTION 4.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by any court, such invalidity shall not affect the validity of other provisions or applications, and to this end the provisions of this ordinance are severable.

**SECTION 5.** In compliance with Section 2.09(c) of the Denton Charter, this ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, a daily newspaper published in the City of Denton, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: \_\_\_\_\_

DRAFT