

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

**AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF FORT WORTH, BEING ORDINANCE NO. 13896, AS AMENDED, CODIFIED AS APPENDIX "A" OF THE CODE OF THE CITY OF FORT WORTH BY AMENDING SUBSECTION K "PRESERVATION OF TREES" OF SECTION 6.301 "LANDSCAPING" OF ARTICLE 3, "LANDSCAPING AND BUFFERS" TO ADD REGULATIONS ON THE REMOVAL OF PROTECTED TREES EQUAL TO OR GREATER THAN SIX INCHES IN DIAMETER ON A PARCEL OF LAND GREATER THAN ONE ACRE; TO AMEND CHAPTER 9 "DEFINITIONS" TO ADD DEFINITIONS RELATED TO TREE PRESERVATION; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in order to maintain and enhance a positive image and a livable city it is important to promote site planning which furthers the preservation of mature trees and to protect trees during construction, to facilitate site design and construction which contribute to the long term viability of existing trees and to control the removal of trees when necessary

**WHEREAS**, at the November 2, and 9, 2004 City Council meetings, citizens spoke about concerns of clear cutting in their community, provided numerous pictures and testimony about actual examples of clear cutting that has happened in areas surrounding their homes and neighborhoods, and requested the City Council to put an immediate moratorium on clear cutting;

**WHEREAS**, on November 16, 2004, the City Council approved Ordinance Number 16208 (Mayor and Council Communication PZ-2556) establishing a thirty day moratorium on the removal of protected trees equal to or greater than six inches in diameter on an acre or larger parcel of land without a permit from the City Forester;

**WHEREAS**, the moratorium was enacted and continued in order to maintain the status quo while the Citizen Advisory Committee continued to the study of the adoption of a tree preservation

ordinance;

**WHEREAS**, the Government and Neighborhood Relations Committee established a committee consisting of two City Council members, a Zoning Commission member, representatives from neighborhood and builder associations, Scenic Fort Worth, the Fort Worth Garden Club, utility companies, real estate investors, urban forestry and other interested parties to study the practices in other cities and advise the Council Committee on possible regulations related to tree preservation;

**WHEREAS**, it is anticipated that the Citizen Advisory Committee will be prepared to make a recommendation on regulations related to tree preservation to the Council Committee in February 2005;

**WHEREAS**, the Citizen Advisory Committee recommended the adoption of interim regulations to regulate the removal of protected trees during the time the committee compares and analyzes other tree preservation ordinances in order to make a recommendation on regulations to the Council Committee and the full City Council;

**WHEREAS**, on December 14, 2004, the City Council approved Ordinance Number 16232 (Mayor and Council Communication G-14617) extending the moratorium until January 28, 2005 to allow time for the Zoning Commission and City Council to consider interim regulations;

**WHEREAS**, on January 18, 2005, the City Council approved Ordinance Number 16270 establishing interim regulations in order to allow the City to complete the public process for consideration of amendments to the Zoning Ordinance to provide regulations for the protection and replacement of trees as recommended by the citizen advisory committee;

**WHEREAS**, the Citizens Advisory Committee recommended to the City Council provisions that would better meet the needs of the city and those recommendations were reviewed by the public through citizen information meetings and Zoning Commission hearings;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS**

**SECTION 1.**

Subsection K “Preservation of Trees” of Section 6.301 “Landscaping” of Article 3, “Landscaping and Buffers” is hereby amended to add new language related to tree coverage, preservation, planting and maintenance to read as follows:

**K. Tree coverage, preservation, planting and maintenance**

**1. Intent**

- a. It is recognized that there is a need to establish regulations addressing the protection of healthy and significant trees and to provide for the replacement and replanting of trees that are necessarily removed during construction, development or redevelopment.
- b. It is the intent of these regulations to limit the removal of tree canopy, promote a multi aged urban forest on a parcel of land greater than one acre without a permit from the City Forester, to promote the orderly development of the City of Fort Worth, and to protect the public health, safety and general welfare of the citizens of the City of Fort Worth. It is not the intent of these regulations to deny development rights protected by law.
- c. Further, it is the intent of the City to address the removal, replacement, maintenance and replanting of trees that are necessarily removed during construction, development or redevelopment in an expeditious manner and with due regard for the legal rights of property owners in Fort Worth.
- d. The process of development with its alteration of natural topography, vegetation and creation of impervious cover can have a negative effect on the ecological balance on an area by causing increases in air temperature and accelerating the processes of runoff, erosion and sedimentation. Recognizing that the general objectives of this section are to promote and protect the health, safety and welfare of the public, it is declared that this section is adopted with the following objections:
  1. Eliminate the process of clear cutting,
  2. Promote the preservation / conservation of trees throughout the city,
  3. Recognize the benefits of trees in the urban environment,

4. Encourage planting and preservation of quality trees that are suitable to an area,
5. Promote a safe environment that include trees
6. Aid in stabilizing the environment's ecological balance by contributing to the processes of air purification, oxygen regeneration, ground-water recharge and storm water runoff retardation, while at the same time aiding in noise, glare, wind and heat abatement,
7. To provide visual buffering within and between land uses of differing character to alleviate the harshness of urban life,
8. Enhance the beautification of the city,
9. To safeguard and enhance property values and to protect public and private investment,
10. To conserve energy,
11. To provide habitat for wildlife,
12. To encourage the preservation of large trees which, once removed, can be replaced only after generations

## **2. Tree coverage**

**a.** The municipal urban forestry strategy is to achieve tree canopy coverage of 30%. To achieve the 30% coverage goal, tree regulations are directed toward preservation, planting and maintenance. In particular the citywide 30% coverage goal will be achieved through residential land uses having 40% coverage, commercial land uses having 30% coverage and industrial land uses having 20% coverage. The 40% canopy coverage for one and two family developments will be reduced to 25% if one tree per residential lot is placed on all lots up to 5000 square feet in area and one additional tree for each additional 5000 square feet or fraction thereof up to a maximum of nine (9) trees per residential lot. The remaining 25% canopy coverage to be provided in public right of ways, parks, Homeowner Association lots or boundary street parkways. For residential uses and mixed used areas, 50% of the required open space will have canopy coverage through planting or preservation.

**b.** To achieve the 30% citywide canopy coverage goal, all parking areas shall have an existing or tree planting plan to achieve 40% coverage.

## **3. Tree preservation / retention of existing canopy**

**a.** On all tracts of land greater than one acre, a minimum retention of existing canopy shall be 25%. The existing canopy can be determined via recent air photo, on the ground survey or other approved method by the City Forester.

**b.** Areas of a tract of land that are located in floodplains or located in areas that will be dedicated to public spaces will be counted toward the required 25% minimum retention.

c. Calculation of all canopy coverage and retention areas will not include utility right of ways or easements covered under the rules and regulation of the Public Utility Commission

d. To remove more than the minimum retention will require a waiver from the Urban Forestry Board.

#### **4. Tree preservation / significant or large specific trees**

a. Significant or large specific trees (24 inches in diameter or 75.5 inches in circumference) can only be removed by permit of the City Forester.

b. Criteria for granting the permit will be one of the following conditions;

1. Removal will be granted if an area 1 ½ times the area of the specific tree's canopy is retained on the same site. The 1 ½ retention of existing trees shall be in excess of the required tree coverage on the site/tract, or
2. Removal will be granted if planting of new trees at five (5) times greater in canopy area than the removed specific tree canopy. The additional planting of 5 to 1 will be in excess of the required tree coverage on the site, or
3. Payment into the tree fund based upon the total diameter of the specific tree times \$125 per diameter inch, or
4. Urban Forestry Board approved plan that mitigates the removal of the large tree

#### **5. Tree Planting to achieve the goal of canopy coverage**

a. Tree planting to provide canopy coverage shall be a minimum of 3 inches in diameter and will be credited its canopy coverage at normal grow out. These credits are as follows:

1. Large canopy trees with typical crown width of 50 feet in diameter – 2000 square feet (minimum spacing of 40 feet on center)
2. Medium canopy tree with typical crown width of 30 feet in diameter – 700 square feet (minimum spacing of 24 feet on center)
3. Small canopy tree with typical crown width of 10 feet in diameter – 100 square feet (minimum spacing of 8 feet on center)

#### **6. Tree Protections and Maintenance**

- a. All trees being preserved for its canopy coverage or a significant tree will be protected during any development activities. Development activities will include vegetation removal, grading, installation of utilities and/or construction of structures and site amenities.
- b. Protective measures must occur on all trees located within 50 feet of development activities
- c. Protective measures are required at the critical root zone (the critical root zone radius is defined as one (1) foot per inch diameter measured at breast height (four and ½ feet) of the tree.
- d. Prohibited activities within the critical root zone:
  - 1. No material intended for use in construction or waste material accumulated due to excavation or demolition shall be place within the limits of the root zone of any preserved tree.
  - 2. No equipment shall be cleaned or other liquids deposited or allowed to flow overland with the limits of the critical root zone of a preserved tree. This includes, without limitations, paint, oil, solvents, asphalt, concrete, mortar or similar materials.
  - 3. No signs, wires or other attachments, other than those of a protective nature, shall be attached to any preserved tree.
  - 4. No vehicular and/or construction equipment traffic or parking shall take place within the limits of the critical root zone of any protected tree other than on existing street pavement. This restriction does not apply to single incidents access within the critical root zone for purpose of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance, emergency restoration of utility service or routine mowing operations.
  - 5. No heavy equipment, including but not limited to trucks, tractors, trailers, bulldozers, bobcat tractors, trenchers, compressors and hoists shall be allow inside the drip line (area underneath the crown of the tree) of any preserved tree on any construction site without the specific approval of the City Forester.
- e. Procedures required prior to development activities
  - 1. Protective fencing: Prior to development activities, the contractor or subcontractor shall construct and maintain, for each preserved tree or tree cluster on a tract, a protective fence which encircles the outer limits of the critical root

zone of the tree to protect it from development activities. All protective fencing shall be in place prior to commencement of any site work and remain in place until all exterior work has been completed.

2. Bark Protection: In situation where a preserved tree remains in immediate area of intended construction and the City Forester determines the tree bark to be in danger of damage by development activities, the contractor or subcontractor shall protect the tree by enclosing the entire circumference of the tree with 2" x 4" lumber encircled with wire or other means that does not damage the tree. The intent is to protect the bark of the tree against incidental contact by large construction equipment.

f. Construction methods

1. Boring: Boring of utilities under preserved trees shall be required in those circumstances where it is not possible to trench around the critical root zone of the preserved tree. When required, the length of the bore shall be the width of the critical root zone at a minimum and shall be a minimum depth of 48 inches.

2. Grade Change: In situation in which the City Forester approves a grade change within the critical root zone of a preserved tree, procedures and special conditions shall be approved by the City Forester in advance of any work.

3. Trenching: All trenching shall be designed to avoid trenching across the critical root zone of any preserved tree, unless otherwise approved by the City Forester. Trenching within the critical root zone requires advance approval by the City Forester. The placement of underground utility lines such as electric, phone, gas, etc., is encouraged to be located outside the critical root zone of preserved trees. Trenching for an irrigation system shall be placed outside the critical root zone, except into the critical root zone perpendicular to the tree trunk and in the manner that has the least possible encroachment into the critical root zone.

4. Root Pruning; All roots two inches or larger in diameter which are exposed as a result of trenching or other excavation shall be cut off square with a sharp medium tooth saw and covered with pruning compound within two hours of initial exposure.

5. Underground utilities: All onsite underground utilities with backfill other than onsite material shall have a clay dam every 200 feet for the entire length of the utility placement.

g. Warranty / Replacement

1. Any preserved tree that dies or becomes hazardous within 3 years following the completion of the development activities shall be replaced following the criteria outlined above for tree preservation and significant tree replacement.

**7. Approval of Urban Forestry Plan / Permits**

a. Except as otherwise provided herein, no tree removal will be allowed within the City of Fort Worth without the approval of an Urban Forestry Plan by the City Forester on and after the effective date of this ordinance.

b. An approved Urban Forestry Plan / Permit will run with the land and can only be amended by the Urban Forestry Board.

c. Credit for preserved or planted trees shall be given for trees located outside the tract within the parkway of adjacent streets or on property designated for public use in the immediate area.

e. Submittal requirements: Prior to any development, disruptive activities or tree removal the following information must be submitted to the City Forester:

1. A scaled diagram of the subject tract in which development, disruption or tree removal is proposed. The scaled diagram may be an engineered drawing, survey, air photo or other City Forester approved illustration. The first sheet will reflect the existing condition by including the following information:

- i. Boundaries of the tract and its calculated area i.e. acres, square feet
- ii. Location map showing the proximity of the tract to the nearest streets
- iii. Outline of the existing tree canopy area on the tract and the calculated area (square feet or acres) of existing canopy coverage
- iv. Scaled existing or proposed utilities regulated by the Public Utility Commission. Indicate the calculated area (square footage or acres) for these rights of ways or easements.
- v. Location of each tree greater than 24 inches in diameter, its type and canopy area.
- vi. The following tables:

	Square Feet	Acres
Gross area of tract		
Utility Right of Ways or Easements regulated by the Public Utility Commission	-	-
Net Urban Forestry Area		

<b>Required Tree Canopy Area</b>	Square feet	Acres
Net Urban Forestry Area		
Land Use / Canopy Coverage ratio	x	
One or two family (40% coverage) One or two family with trees planted on individual lots (25% coverage) Commercial (30% coverage) Industrial (20% coverage)		
Required canopy coverage		

<b>Preservation / Retention of Existing Canopy</b>	Square feet	Acres
Existing tree canopy area		
Preservation requirement	X 0.25	X 0.25
Minimum retention		

The second sheet will overlay the proposed improvements and removals/preservations/plantings. The sheet should include the following information:

- i. Scaled depiction locating the proposed structures, parking areas, drives and amenities.
- ii. Outline the canopy areas that are desired to be removed
- iii. Depiction of trees (large, medium or small canopy crown) that will be planted.
- iv. Provide the following charts:

	Square feet	Acres
Area of existing tree canopy retained		
Planting — large canopy trees @ 2000 square feet per tree — medium canopy trees @ 700 square feet per tree — small canopy		

trees @ 100 square feet per tree		
Total preservation and planting		

<b>Parking Areas for Commercial or Industrial Uses</b>	Square feet	Acres
Area of parking and drives		
Required canopy coverage of parking areas	X 0.4	X 0.4
Required canopy coverage		
Area of canopy coverage being provided		

## 8. Tree Planting Requirements

a. The following list of trees is considered desirable and adapted trees for the Fort Worth area. Planting of trees for this list is acceptable. Other trees will be considered by the City Forester and granted on a case-by-case basis. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Common Name	Scientific Name	Canopy Size
Redbud	<i>Cercis Canadensis</i>	Small
Mexican plum	<i>Prunus mexicana</i>	Small
Cherry laurel	<i>Prunus caroliniana</i>	Medium
Eve's necklace	<i>Sophora affinis</i>	Medium
Crab apple	<i>Malus angustifolia</i>	Medium
Bradford pear	<i>Pyrus calleryana var. Bradford</i>	Medium
Golden Raintree	<i>Koelrueteria paniculata</i>	Medium
Cado Maple	<i>Acer saccharum</i>	Large
Red Maple	<i>Acer rubrum</i>	Large
Bigtooth maple	<i>Acer grandidentatum</i>	Large
Bur oak	<i>Quercus macrocarpa</i>	Large
Chinquapin oak	<i>Quercus muhlenbergii</i>	Large
Live oak	<i>Quercus virginiana</i>	Large
Shumard red oak	<i>Quercus shumardii</i>	Large
Texas red oak	<i>Quercus texana</i>	Large
Post oak	<i>Quercus stallata</i>	Large
Blackjack oak	<i>Quercus marilandica</i>	Large
Pecan	<i>Carya Illinoensis</i>	Large
Lacebark elm	<i>Ulmas parvifolia</i>	Large
Cedar elm	<i>Ulmas crassifolia</i>	Large
American elm	<i>Ulmas americana</i>	Large
Bald cypress	<i>Taxodium distichum</i>	Large
Black walnut	<i>Carya nigra</i>	Large
Green ash	<i>Fraxinus pennsylvanica</i>	Large
Texas ash	<i>Fraxinus</i>	Large
Southern magnolia	<i>Magnolia grandiflora</i>	Large

- b. The minimum size of tree planted will be 3 inches in diameter measured one foot above ground level. If the tree is multi trunk, the main stem will be given full credit for its diameter and all other stems will receive ½ credit. The total of all must be 3 inches or greater.
- c. All trees that die within two years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same two-year replacement requirement. The requirement to replace the trees shall run with the land.

**9. Exceptions to the tree coverage, preservation, planting and maintenance provisions**

- a. Any residential lot one acre or less in size is exempted for these regulations. All other uses e.g. commercial, institutional, industrial must comply with these regulations regardless of lot size.
- b. The removal of any tree in the case of an emergency, such as due to storm damage or utilities, shall not be subject to these regulations or require an Urban Forestry Plan / Permit.
- c. Any tree that is deemed to be in unsafe condition, or is injurious to common good, or to electrical, gas or water utilities, or sewer pipes, pavement or improvements, or is infested and dangerous to other trees or conflicts with other ordinances or regulations
- d. Tracts of land that were platted prior to Feb. 5, 2006 and are determined to be an active project for a period of 5 years (*Section to have further review by the Legal Staff*)
- e. Agriculture development will require documentation of the existing canopy coverage and detailed tree survey of the property. The tree survey will include the location, size and type of tree. At the time of development a payment of \$125 per diameter inch will be required for 25% of the removed trees. The documented canopy coverage and total diameter inch total will run with the land.
- f. Areas within mixed used zoning districts or within the boundaries of the Downtown Urban Design District are exempted from the preservation / retention provisions. Mixed used zoned properties must provide through either preservation or planting a 50% coverage of required open space. Downtown Urban Design District projects only require the 40% provision of canopy coverage for surface parking lots. This requirement is in addition to any other landscaping regulations required under the adopted Downtown Design Standards.

**10. Appeals.**

- a. If the City Forester, or other city official refuses to accept or issue an Urban Forestry Plan / Permit, or the applicant disagrees with the decision of the City Forester, the applicant may appeal the decision to the Urban Forestry Board. The appeal shall be in writing and shall be transmitted to the Executive Secretary of the Urban Forestry Board within ten days after receipt of notification that the City Forester will not accept the Urban Forestry plan / permit.
- b. The Urban Forestry Board shall consider the appeal within 30 days after the appeal is received by the Board's Executive Secretary, unless the applicant requests a later hearing. The Urban Forestry Board shall not release the applicant from the requirements of this ordinance, unless the applicant first presents credible evidence from which the Board can reasonably conclude application of this ordinance to the applicant would be likely to deprive the applicant of rights protected by law
- c. The Board may take the following actions on an appeal:
  - 1. Deny the appeal, in which case the Urban Forestry Plan / Permit shall not be accepted or granted; or
  - 2. Grant the appeal, and direct the City Forester to accept and approve the Urban Forestry Plan / Permit.
  - 3. Grant the appeal subject to such provisions, conditions, or limitations as deemed appropriate by the Board.
- d. In no event shall acceptance of an application guarantee that the City will issue the Urban Forestry Plan / Permit, unless the permit application is in compliance with all applicable codes, laws and regulations.
- e. Appeals of the Urban Forestry Board will be handled by the City's Appeal Board  
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**11. Penalty**

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be assessed a penalty of One Hundred Seventy Five Dollars (\$175.00) per diameter inch of the protected trees removed or damaged without a valid Urban Forestry Plan / Permit and be guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars (\$500.00) for each offense.

**SECTION 2.**

Ordinance No. 13896, the zoning ordinance of the City of Fort Worth, Section 9.101, "Defined Terms," is hereby amended by adding new definitions related to tree preservation as

follows:

- (1) **CITY FORESTER:** For the purpose of tree preservation, that person or persons designated by the Parks and Community Services Director to provide administrative review of Urban Forestry Plans / Permits.
- (2) **DIAMETER OF AN EXISTING TREE:** That measurement of the size/diameter of a tree as determined by measuring at four and one-half feet (4.5') above ground. For a multi-trunk tree, the diameter shall be the total diameter of the largest trunk plus half (1/2) the diameter of each additional trunk.
- (3) **URBAN FORESTRY PLAN:** A plan showing the location all the protected trees by size and species that are six inches (6") or greater on the site, the location of all easements, the location of all proposed buildings, a grading plan, if applicable; the trees desired to be removed, the trees that shall remain on the site, and an accompanying document indicating the reason for the proposed removal of any tree, and if applicable, a description on how the existing healthy trees proposed to be retained will be protected from damage from construction.
- (4) **TREE REMOVAL:** The cutting, destroying, removing, moving, poisoning, banding, marking, or effectively destroying through damaging, any tree 6 inches or greater in diameter situated on property regulated by the Zoning Ordinance without first obtaining a Urban Forestry Plan / Permit from the City Forester.

### **SECTION 3.**

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

### **SECTION 4.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree

of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

#### **SECTION 5.**

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be assessed a penalty of One Hundred Seventy Five Dollars (\$175.00) per diameter inch of the protected trees removed or damaged without a valid Tree Removal Permit and be guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars (\$500.00) for each offense.

#### **SECTION 6.**

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of Ordinance No. 13896 which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

#### **SECTION 7.**

The City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption, penalty clause and effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 52.013, Texas Local Government Code.

#### **SECTION 8.**

This ordinance shall take effect upon adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Assistant City Attorney

ADOPTED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_