

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF LUFKIN, TEXAS, BEING ORDINANCE 3368, TO ADD TREE PRESERVATION TO ARTICLE XXI, SUPPLEMENTAL DEVELOPMENT REGULATIONS, PRECEEDING LANDSCAPING; CREATING NEW DEFINITIONS WITHIN "ARTICLE XXVII, DEFINITIONS"; REPEALING CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Planning and Zoning Commission of the City of Lufkin, Texas, after due notice and hearing, recommends that the Zoning Ordinance of the City of Lufkin, Texas, being Ordinance 3368 be amended; and

WHEREAS, the City Council of the City of Lufkin, Texas, after receiving such recommendation, caused a notice, stating the date, place, and time thereof, of a public hearing on such proposed zone change to be published in the Lufkin Daily News, a newspaper published within the City of Lufkin, Texas, such publication being more than fifteen (15) days prior to the date of such hearing which was held in the City Hall in the City of Lufkin, Texas, on the _____ day of _____, 2009, and

WHEREAS, at such public hearing each person present and interested in such proposed amendments was given an opportunity to be heard by the City Council; and,

WHEREAS, the City Council of the City of Lufkin, Texas, after giving due consideration to the recommendation of the City Planning and Zoning Commission and the statements made and facts brought out at such hearing on such proposed amendments to the Zoning Ordinance, and further, after giving due consideration to the orderly growth and development of the City of Lufkin, Texas, having decided that it is to the best interest of the citizens of the City such change be made.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUFKIN, TEXAS:

SECTION I. That the Zoning Ordinance of the City of Lufkin, being Ordinance 3368 of the Civil Ordinances of the City of Lufkin as heretofore amended, and as recorded in Volume 40 of the Civil Ordinances of the City of Lufkin, Texas, be, and the same hereby is amended by creating a new section in Article XXI, Supplemental Development Regulations entitled Tree Preservation to precede Landscaping, and by adding the following provisions:

Tree Preservation
Section 1 - Purpose and Intent

- A. The purpose of this Ordinance is to enhance the beautification of the City, preserve and protect the City's identity and natural environment. Further, the purpose of this Ordinance is to protect and preserve the appearance and character of the surrounding neighborhood, and therefore promote the general public safety and welfare by providing for tree preservation and tree harvest management. This Ordinance is intended to assure that reasonable provisions will be made for such matters as sound and sight buffers, preservation of scenic views and those elements of tree management which may have substantial effects on adjoining land uses.
- B. This Ordinance establishes the procedure, regulations and standards whereby tree preservation measures and tree reduction and usage plans will be reviewed by the City for compliance with this Ordinance, and specifies the submittal and content requirements for such plans.
- C. It is also the purpose of this Ordinance to:
 - 1. Prohibit the indiscriminate clearing of non-residential property.
Note: "Indiscriminate, clearing" of property is defined as any clearing that occurs with no distinction made regarding whether any trees on the site could be preserved and incorporated into future development on the site, whether such clearing will alter the storm water drainage patterns on the site in a way that could be detrimental to the City's goals for protecting private property from flood damage and runoff, or whether such clearing would be counter to the overall City policies and objectives for planting and protecting trees throughout the City.
 - 2. Further the preservation of mature trees and natural areas.
 - 3. Protect trees during construction.
 - 4. Control the removal of trees when such removal is necessary.
 - 5. Protect and increase the value of properties within the City.

Section 2 – Jurisdiction and Applicability

- A. The requirements in this Ordinance shall apply to all land within the City limits in all zoning districts, except for lands zoned as Agricultural, Residential Large Single Family Dwelling, Residential Medium Single Family Dwelling or Residential Small Single Family Dwelling Districts. The Ordinance requirements will also apply to land zoned Planned Unit Development (PUD), Restrictive Professional Office (RPO), or Adaptive Reuse Overlay (ARO) Districts. If the landscaping standards of those districts (PUD, RPO, ARO) are more restrictive, the higher standard shall apply.

- B. The requirements of this ordinance shall apply to all private and institutional developments. The requirements shall not apply to property owned by other governmental entities. However, voluntary compliance is encouraged. Such requirements shall become applicable to each individual lot at such time as an owner desires to use the property for harvesting timber, begins developing the site for commercial use or makes application for a Building Permit on the lot.
1. This Ordinance does not apply to the individual homeowner.
 2. All requirements of this Ordinance shall continue after transfer of ownership of the land, after a Building Permit is issued to any owner or subsequent owner and after construction on the site of a manmade structure.
- C. The tree preservation requirements in this Ordinance shall apply to all land within the City Limits, as now and hereafter set, in all non-residential zoning districts noted above except for:
1. Public Right-of-Way and Easements: All construction and maintenance activity within public right-of-way or easements shall be exempt from the requirements for tree protection and replacement specified herein.
 2. Franchise and Other Utility Companies: All utility company projects shall be exempt from the requirements for tree protection and replacement specified herein when clearing public easements and existing right-of-way.
 3. Public Tree Care: The City shall have the right to plant, prune, and maintain trees, street trees and park trees within the lines of all streets, alley, avenues, lanes, squares, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The City may remove or cause or order to be removed, any tree or part 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, or other public improvements, or is affected with any injurious fungus, insect or other pest.
 4. Private Tree Care: An owner of private property shall have the right to plant, prune, and maintain trees as may be necessary to insure a safe environment or to preserve or enhance the symmetry and beauty of the owner's establishment. A property owner may remove or cause to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to property (such as a building) sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. Additionally, this Ordinance will not limit the removal of trees that, due to severe weather or catastrophic conditions, have become nonviable. Such tree removal shall follow the best management practices for tree care and removal.

D. The authority of the Tree Board regarding tree removal shall not be affected by this ordinance.

E. Indiscriminate clearing of land is prohibited in the City of Lufkin. An approved Clearing permit is required prior to any site development work in order to prevent indiscriminate clearing of land. Note: "Indiscriminate clearing" of property is defined as any clearing that occurs with no distinction made regarding whether any trees on the site could be preserved and incorporated into future development on the site, whether such clearing will alter the storm water drainage patterns on the site in a way that could be detrimental to the City's goals for protecting private property from flood damage and runoff, or whether such clearing would be counter to the overall City policies and objectives for planting and protecting trees throughout the City.

F. A Clearing permit is required for all site work that affects vegetation, to include clearing of the site and rough grading. Control of underbrush, in cases where no trees are impacted either above ground or in the root system, is permitted without a Clearing permit.

G. The Preservation of mature trees and natural areas is a major component of this Ordinance. To promote preservation, a Clearing permit will be denied when retention of trees for mitigation purposes would result in the retention of only the minimum number of mature trees per acre listed in Section 3,B and the removal of the majority of all other trees on the site.

The minimum tree retention requirement should, to the extent feasible, be supplemented by the preservation of existing vegetation within the setback areas. Variances of this requirement are considered by the Board of Adjustment and Appeals.

Section 3 – Requirements

A. A Clearing Permit shall contain the following information:

1. Areas of existing trees
2. Areas to be cleared
3. Proposed road right of way
4. Utility easements
5. Utility stubs
6. Building pads
7. Retention and detention ponds
8. Drainage patterns
9. The specific proposed grading and fill areas.

B. Pre-development Restrictions

A property owner, developer or contractor may begin the clearing of land with a Clearing permit after review and approval by the Planning Director or designee and issued through the Inspection Services office, under the following conditions:

1. A Clearing permit will be granted for the agricultural timbering or pre-development clearing of land with the following restrictions:
 - a. A minimum of five (5) mature trees, six inch (6") in caliper or greater, per each acre of a development are left protected and undisturbed on the property; **or**
 - b. A forty foot (40') wide undisturbed area is left in place along seventy-five percent (75%) of the rear property line, and a twenty-five foot (25') wide undisturbed area is left along seventy-five percent (75%) of the side property lines. The undisturbed area must contain a minimum of ten (10) protected and undisturbed trees, of six inch (6") caliper or greater, per acre.

In order to enhance site design these buffer areas may be located in areas other than the rear and side of a lot (i.e. interior, front or dispersed) to meet or supplement landscape requirements. The determination of whether an alternative design will enhance a site shall be made by the Planning Director after review of a proposed Clearing permit application.

Properties that have been cleared of trees and have not been reforested prior to the passage of the requirements of this Ordinance will have pre-existing, non-conforming status and shall not be required to comply with this Ordinance.

2. If the property owner, developer or contractor determines that the standards in Section 3B cannot be met, a Clearing permit may be granted for the pre-development clearing of land with the following restrictions:
 - a. A development plan, prepared and submitted by a Professional Engineer, demonstrates in writing to the satisfaction of the Planning Director that there exist reasons that the clearing of land is required for orderly use, development, or marketing of the property. Reasons for clearing of land should include one or more of the following health, safety, and welfare of the public; sight distance at intersections and driveways; sidewalk requirements; drainage requirements; Federal Emergency Management Agency (FEMA) requirements; Environmental Protection Agency (EPA) erosion control requirements; utility installations; Americans with

Disabilities Act (ADA) requirements; building foundation requirements; slope stability requirements; future requirements or restrictions that may be placed on development by government authority; **or**

- b. The property owner agrees to mitigate the impact of clearing of land by paying a Tree Removal Mitigation Fee to the City, which shall be deposited to the City of Lufkin. The fee will be based on the size of the lot and the number of trees with a six-inch (6") caliper or greater left undisturbed, per acre. Tree size and number must be calculated prior to any work starting. The goal of this requirement is to retain a minimum of five (5) trees per acre. The calculation of the fee is shown in the following table:

TREE REMOVAL MITIGATION FEE SCHEDULE	
Total Acreage	Rate per Tree Removed
Acres	\$
0-4.9	275.00
5.0 – 5.9	250.00
6.0 – 6.9	225.00
7.0 – 7.9	200.00
8.0 – 8.9	187.50
9.0 - 9.9	175.00
10.0 – 10.9	160.00
11.0 – 11.9	150.00
12.0 Acres +	150.00

FORMULA: [# of acres x 5 (total number of trees required to be saved) – total number of trees actually saved] x rate per tree removed (see chart)

In those cases where trees have been cut on a site, the trees shall be removed within three (3) months of their cutting and disposed of in accordance with City of Lufkin ordinances regarding waste and burning. Trees saved, in order to prevent a Tree Mitigation Fee, must be shown on a landscape plan which specifies the methods to be used in preserving and protecting these specific trees, both by the current owner and future owners.

3. Following review of a Clearing permit, the land may be cleared of trees if the permit is approved. In cases where a Clearing permit is denied, the owner must develop an alternate plan for consideration. Retained trees must be protected during clearing to ensure the tree's health.

Section 4 – Penalties

- A. Violation, Penalty and Enforcement
1. It shall be the duty of the Planning Department to see that this Ordinance is enforced. Appeals from the decision of the Director of Planning may be made to the Board of Adjustment and Appeals.
- B. Reports of non-compliance with the requirements of this Ordinance should be directed to the Planning Department. The Planning Department will accept complaints from the public. Upon receipt of a complaint, the Planning Director will evaluate the complaint and determine if enforcement is warranted. If enforcement may be warranted, the Director shall request in writing that the City Code Enforcement Office investigate and, if non-compliance exists, inform the owner of the property violation, giving him a reasonable amount of time in which to comply with the Ordinance.
- C. The Notice to the owner shall:
1. Be in writing;
 2. Include a statement of the reason for its issue;
 3. Allow reasonable time for the performance of the act required;
 4. Be served upon the owner, or agent responsible for property maintenance provided that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy required by the laws of this State has been placed in the United States Postal Service depository; and
 5. Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this section. At the end of such period as noted above, the Code Enforcement Officer shall re-inspect, and notify the Planning Director the results of the inspection. The Planning Director shall determine if action by the City should be instituted.
- D. Fines paid for violation of this ordinance shall be used to replace trees, as needed, in the City Parks and in appropriate areas adjacent to City right-of-way.
1. Fines shall be based on the fees which were not paid prior to clearing of the property with an additional penalty increase of fifty percent (50%) over the base fee.

SECTION II. That the Zoning Ordinance of the City of Lufkin, being Ordinance 3368 of the Civil Ordinances of the City of Lufkin as heretofore amended, and as recorded in Volume 40 of the Civil Ordinances of the City of Lufkin, Texas, be, and the same hereby is amended by creating new definitions within "Article XXVII, Definitions" by adding the following provisions:

Barricade Area for Existing Trees: A protected area extending in a radius no less than the drip line from every protected tree that prevents intrusion by construction equipment, vehicles and people.

Barrier: A device or treatment, which controls the management, circulation, separation, or direction of traffic. Such treatments include, but are not limited to, wheel stops, raised islands, dividers or barricades.

Berm: An earthen mound designed to provide visual interest, screening and/or decrease noise.

Branching Height: Diameter of a predominant tree trunk measured six inches (6") above grade for trees four inches (4") in diameter or less. For trees with a larger diameter, the caliper measurement shall be the diameter at breast height (DBH), measured four and one-half feet (4'6") above grade.

Caliper: Diameter of the trunk measured six inches (6") above grade.

Canopy Tree: Any self-supporting woody plant with one well-defined trunk and a distinct and definite formed crown, which attains a height of at least thirty feet (30').

Clearing of Land: A property owner, developer, or contractor shall be considered "clearing" land if performing one of the following actions: excavating, grading, re-grading, land filling, berming, paving, diking, removing trees, clearing, grubbing, or other earth changes.

Construction: Any activity on the property, normally following a building permit.

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.

Cut/Fill: Areas where the natural ground level has been excavated or fill brought in.

Deciduous: A plant with foliage that sheds annually.

Development: The construction, reconstruction or enlargement of any structure or property.

Diameter at Breast Height: A standard method of expressing the diameter of the trunk of a tree. The trunk is measured at a height of four and one-half feet (4'6") above grade.

Director: The Director of Planning and Zoning or designee.

Drip Line: The area beneath the canopy of a tree defined by a vertical line extending from the outermost edges of the tree branches to the ground.

Evergreen: A plant with foliage that remains green year-round.

Existing Tree: Any self-supporting woody plant with one well-defined trunk which exists on the lot prior to development.

Grass: Any of numerous grass species that will attain a thick green cover of turf over the available soil area.

Ground Cover: Any woody or herbaceous plant that effectively shades out sod and will not generally reach a height of over two feet (2').

Hardscape Screening: Non-living screening materials such as walls, fences and baffles.

Landscaped Area: An area within the boundary of a property which is devoted to and consists of plant material, trees, water forms, planters, brick, stone, aggregate and other features used primarily for landscaping purposes, but not including the use of smooth concrete or asphalt.

Landscape Plan: The Landscape Site Plan or landscape plan information required to be submitted and approved in accordance with this Ordinance.

Landscaping: Changing, rearranging or adding to the original vegetation or scenery of a piece of land. It may include reshaping the land by moving the earth, as well as preserving the original vegetation or adding vegetation.

Municipal/Government Property: Examples of this would include City Hall, public parks, Corps of Engineers Property, State of Texas R.O.W., library, fire stations, water tower sites or similar properties.

Non-Canopy Tree: Any self-supporting woody plant with one or more trunks, which attains a height of at least fifteen feet (15').

Non-Conforming Development: A development which was lawful prior to the adoption of this Ordinance but fails by reason of such adoption to comply with this Ordinance.

Ornamental Tree: A tree planted primarily for its decorative value or for screening purposes; tends to be smaller at maturity than a canopy tree.

Plant Materials: Living trees, shrubs, vines, grass, ground covers and flowering annuals, biennials and perennials.

Pre-Development Clearing of Land: The clearing of land before the issuance of a building permit.

Property: The real property included within the boundaries of any lot approved and recorded in the plat records of Angelina County or an unplatted tract or parcel of land as described and recorded in the Real Property Records of Angelina County, Texas.

Protected Tree: A tree that has a barrier constructed in such a way that the tree is protected from damage due to construction or from normal vehicular movement.

Protective Fencing: Snow fencing, chain link fence, orange vinyl construction fencing or other similar fencing with a minimum height of four feet (4').

Removal: Uprooting, severing the main trunk of a tree, or any act, which causes or may reasonably be expected to cause a tree to die, including without limitation damage inflicted upon the root system by machinery, storage or materials, or soil compaction.

Saved Tree: An existing tree, which is maintained in a living and growing condition.

Screening: A method of visual shielding or obscuring one abutting or nearby structure or use from another by fencing, walls and berms or densely planted vegetation.

Shrub: A woody perennial plant distinguished from a perennial herb by its persistent, woody stem and from a tree by a mature height of less than fifteen feet (15') and having no distinctive elevated crown of foliage.

Street Yard: The area of a lot which lies between the street right-of-way line and the front, side, and/or rear wall building line.

Tree: Any self-supporting woody perennial plant which will attain a trunk diameter of three inches (3") or more when measured at a point four and one-half feet (4'6") above ground level and normally an overall height of at least twelve feet (12') at maturity, usually with one (1) main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of oaks.

Undisturbed Area: The area of a lot, which maintains the original natural

vegetation including trees, shrubs, grasses, groundcover, and plant materials as approved by the Planning Director.

Unprotected Tree: A tree that has no specially constructed protection barriers to prevent damage due to construction or normal vehicular movement.

Vegetated Area: Ground area of a site that is covered by plants, including trees, undergrowth and grasses.

Vegetation: Any type or kind of growing plant material.

Wall Building Line: A line extending along the façade of the building(s), parallel to the property line(s) abutting a street right-of-way line. Such line shall be used to determine the overall area, depth and shape of the street yard.

Weeds or Grasses: Weeds and/or grasses or other uncultivated plants on any premises or right-of-way, which grow in such rank profusion as to harbor reptiles or rodents, or create a fire hazard; and weeds and/or grasses, excluding ornamental grasses, or other cultivated plants on any premises which are permitted to, or do attain a height greater than twelve inches (12").

SECTION III. The effective date of this Ordinance shall be the approval date of the Second and Final Reading.

PASSED AND APPROVED on First Reading by the City Council of the City of Lufkin, Texas, at its regular meeting this the _____ day of _____, 2009.

Jack Gorden, Mayor
City of Lufkin

ATTEST:

Renee Thompson, City Secretary
City of Lufkin

PASSED AND APPROVED on Second and Final Reading by the City Council of the City of Lufkin, Texas, at its regular meeting this the ____ day of _____, 2009.

Jack Gorden, Mayor
City of Lufkin

ATTEST:

Renee Thompson, City Secretary
City of Lufkin

APPROVED:

Robert L. Flournoy, City Attorney
City of Lufkin