

ORDINANCE 17-D

AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, ADDING A NEW ARTICLE IX., "TREE PRESERVATION", TO CHAPTER 15 OFFENSES AND MISCELLANEOUS PROVISIONS OF THE CITY OF ALVIN CODE OF ORDINANCES, RELATING TO THE PRESERVATION OF TREES WITHIN THE TERRITORIAL LIMITS OF THE CITY; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE, AND RELATED MATTERS.

WHEREAS, the City Council of the City of Alvin, Texas, ("City") desires to preserve trees as an important public resource enhancing the quality of life and the general welfare of the city and enhancing its unique character and physical, historical and aesthetic environment; and

WHEREAS, the City Council has adopted a Comprehensive Plan, the City of Alvin 2035 Comprehensive Plan Update identifies and prioritizes environmental resources to be protected in conjunction with proposed development in the city

WHEREAS, the City Council desires to encourage the preservation of trees for the enjoyment of future generations, and

WHEREAS, the City Council desires to encourage the preservation of trees to provide environmental elements by adding value to property, and reduction of energy costs through passive solar design utilizing trees; and

WHEREAS, the City Council desires to encourage the preservation of trees to provide environmental elements necessary to reduce the amount of pollutants entering waterways and to provide elements crucial to the establishment of the local ecosystem, and

WHEREAS, the City Council desires to promote and protect the health, safety, and welfare of the public by creating an urban environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life.

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

Section 1 All of the facts and recitations found in the preamble of this Ordinance are hereby found to be true and correct and incorporated herein for all purposes.

Section 2 A new Article IX., entitled "Tree Preservation", Chapter 15, Offenses and Miscellaneous Provisions, is hereby added to the City of Alvin Code of Ordinances to read as follows.

Sec. 15-106. Intent. The terms and provisions of this Ordinance are intended to accomplish the following public purposes.

- (1) Establish rules and regulations governing the protection and preservation of native or established trees within the city

- (2) Encourage the protection of healthy and desirable trees and provide for the replacement or replanting of trees that are necessarily removed during construction, development or redevelopment.
- (3) Provide for the preservation and protection of larger native or established trees which provide a valuable amenity to the urban environment.
- (4) Provide for shade, windbreaks and the cooling of air
- (5) Provide for open space and more efficient drainage of land, thereby reducing the effects of soil erosion and the need for additional drainage facilities.
- (6) Provide for the reduction of noise and glare and the visual impact of industrial and commercial uses near residential areas.

Sec. 15-107. Purpose and applicability

The following regulations are created for the purpose of preserving trees to enhance the quality of life and the general welfare of the city. The provisions herein shall apply to all new residential subdivisions and commercial lots requiring a building permit or site plan. These regulations are enacted on the effective date of this ordinance for property within the corporate limits of the city.

Sec. 15-108. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Circumference means the circumference of a tree trunk measured three (3) feet above the ground using an ordinary tape measure. Measurement height shall be taken just above or just below any unusual swells in the trunk as close as possible to the three (3) foot level. For multiple tree trunks the circumference is equal to the circumference of the larger trunk plus one-half (1/2) the circumference of other trunks.

Code Officer means the person designated by the City Manager to administer and enforce the provisions of this article.

Commercial lot means any land or portion of land utilized for commercial purposes.

Critical root zone means the area of a tree within a circle centered on the trunk location, the diameter of such circle being one-half the sum of the longest and shortest dripline diameters.

Damage means any action to a tree which would reasonably be expected to result in a tree's death, either immediately or after a reasonable period of time. Without limiting this definition, some examples of damage are severing the main trunk or large branches or large roots, girdling, poisoning, carving, mutilating, touching with live wires, piercing with nails or spikes, crushing or exposing the roots, covering a substantial part of the critical root zone, or compacting a substantial part of the soil in the critical root zone.

Dripline means an imaginary circle drawn around a tree extending to the outer tips of the largest branches.

Located means within a subject site if any part of the subject tree is within the subject site at ground level.

Person means any individual, entity, corporation, organization, unincorporated organization, partnership, or any other form of entity

Residential subdivision means an area to be divided into three (3) or more lots for building residential homes.

Subject site means.

- (1) Any lot, tract, or parcel of land,
- (2) Any portion of an adjoining lot, tract, or parcel of land under common ownership with the first lot, tract, or parcel of land, and which is not part of another subject site; and
- (3) Any area out to the centerline of a street abutting a lot, tract, or parcel of land.

Tree means a woody plant, having one well-defined stem or trunk and a defined crown, and which is either (i) grown to at least one-third (1/3) of its projected mature height, or (ii) has a circumference of nineteen (19) inches or more.

Tree List means a list of trees who meet the definition of a tree in the aforementioned section limited to the following:

Common Name
Baldecypress
Chinese Pistache
Elm
Hickory
Magnolia
Maple
Mexican Plum
Oak
Pecan
Pine
River Birch
Redbud
Savannah Holly
Sycamore
Texas Persimmon

Tree disposition plan means a plan which specifies how trees and critical root zones will be protected from a proposed development. The tree disposition plan shall specify trees to be relocated, removed or replaced. The tree disposition plan shall include a tree survey showing the location of all trees, circumference of each, type of each, and crown area (dripline) of each. The tree survey shall be reviewed by the city manager or their designee.

Visibility triangle means the area at a street corner lying within a triangle beginning at the precise intersection point of the curbs of each of the two (2) streets forming the corner and extending twenty-five (25) feet along each curb line away from the curb intersection point, with the third side being determined by drawing a straight line connecting the ends of such twenty-five foot extensions. If there is no curb on such a street, the twenty-five feet shall follow the central flow line of the ditch paralleling the uncurbed street. The visibility triangle may include both public and private property

Sec. 15-109 Tree Destruction Permit required. Exceptions.

(a) It shall be unlawful for any person to remove, or to intentionally or with criminal negligence, damage any tree or trees listed on the Tree List within the city without having first obtained from the city a tree destruction permit, unless otherwise exempted under this chapter

(b) *Exceptions* No tree destruction permit shall be required in the following situations.

1 The removal of the tree is necessary for safety reasons, including but not limited to branches overhanging a structure, severely leaning trees or trees with a seriously damaged root system which pose a reasonable threat of falling.

2. An employee of a public utility or authorized contractor working in a dedicated right-of-way drainage or utility easement may in the course of business prune that portion of a tree which prohibits the safe construction, operation, repair or maintenance of a service line or facility. Trees must be pruned no more than is reasonably necessary for the construction, operation, repair or maintenance of the service line or facility, and shall be in accordance with specifications set forth by the National Association of Arborists.

3 Any person may remove all or a portion of a tree that has disrupted a public utility service due to tornado, storm, flood or other act of God, but only that portion of the tree which is necessary to safely restore normal utility service.

4 All persons involved in the planting or transplanting of trees shall be exempt for the terms and provisions of this section only in relation to those trees planted and grown for the sale or intended sale to the general public or being actively used for agricultural purposes.

(c) It shall be an affirmative defense to prosecution under this chapter that immediate action to remove, damage or kill the tree in question was necessary to prevent harm to persons or property

Sec. 15-110. Criteria for issuance of tree destruction permit.

(a) An application for a tree destruction permit must be made by the owner or owner's agent of the subject site on which an affected tree is located.

(b) A tree destruction permit shall be issued without cost or conditions if the tree in question is diseased, severely damaged, or dead.

(c) A tree destruction permit shall be issued if the tree in question constitutes an unreasonable impediment to the use and enjoyment of the subject site

(d) Except for trees which constitute an unreasonable impediment to the use and enjoyment of the subject site, a tree destruction permit shall not be issued for the removal of or damage to a tree with a circumference larger than seventy-two (72) inches unless the tree is severely damaged, diseased, or dead.

(e) A tree destruction permit may be issued if the code officer determines the tree in question is too close to other trees causing competition for the same water, soil nutrients, and sunlight.

(f) A tree destruction permit may be issued if the destruction of the tree in question is necessary due to construction of a subdivision improvement, for which applicable permits or other approvals have been obtained.

Sec. 15-111 Tree destruction permit conditions.

A condition for the issuance of each tree destruction permit under this article shall be the planting and maintenance of a replacement tree. Notwithstanding the foregoing, no replacement tree shall be required to be planted nearer than thirty (30) feet from the trunk of another tree existing on the subject site, within the critical root zone of another tree existing on the subject site, or within areas covered by buildings, enclosed structures, or swimming pools. If there is no point or location on a subject site outside the above-described excepted areas, no replacement tree shall be required. Provided further, the tree for which a tree destruction permit is requested shall not be deemed to be another tree existing on the subject site.

Sec. 15-112. Tree disposition plan.

No tree destruction permit shall be issued, for the construction, alteration, remodeling, or destruction of any building or structure, or any subdivision improvement, unless the applicant therefor has submitted to the code officer, and received approval therefor in accordance with this article, a tree disposition plan, tree survey, together with a plan for the protection and preservation of each tree impacted by any such activity. Tree loss protective measures shall be taken for all trees on the Tree List subject to danger unless removal thereof is required because of the proposed location of the building, structure, or improvement. Under a tree disposition plan, a tree on the Tree List with a circumference of more than seventy-two (72) inches shall not be removed or damaged unless the tree is diseased, severely damaged, or dead. The city manager, or designee, shall promulgate administrative guidelines for tree disposition plans. No tree disposition plan shall be approved except in conformance with such guidelines. Tree disposition plans accepted in connection with a building permit, subdivision plan or site plan shall be valid only for the period of the building permit or site plan validity.

Sec. 15-113. Replacement trees.

(a) If a tree on the Tree List is required to be removed, it shall be replaced by a tree of equal or greater size, both as to height and circumference. Such replacement tree(s) shall be required to have a minimum circumference of nine (9") inches and have a minimum height of twelve (12) feet. Larger trees may be replaced by up to five (5) trees, provided that the replacement trees equal the circumference of the tree that was removed. Provisions shall be made for maintenance of all

replacement trees so as to reasonably assure survival and normal growth for a period of one (1) year after planting. Fiscal security shall be posted in the amount equal to the prevailing rate for installed trees with a one-year guarantee. A one year maintenance bond valued at 50% of the cost of the planting value of the trees valid for one year. No replacement tree shall be approved unless it complies with the minimum standards contained in this article, and is of a variety appearing on the list of approved replacement trees in subsection (b) of this section.

(b) A replacement tree shall be either of the same type as the tree which was removed, or one of the following preferred trees including, but are not specifically restricted to the list below:

Common Name

Bur Oak
Live Oak
Shumard Oak
Southern Red Oak
Texas Oak
Water Oak
White Oak
American Elm
Cedar Elm
Chinese Elm
Chinese Pistache
American Sycamore
Baldcypress
Loblolly Pine
Red Maple
River Birch
Southern Magnolia
Savannah Holly

(c) Replacement trees shall be planted prior to the issuance of the certificate of occupancy or project release.

(d) Visibility triangle. It shall be unlawful for any person to plant, grow or maintain any plant material except a tree, within a visibility triangle, if the plant has, or probably will have, a height greater than three (3) feet above the street. It shall be unlawful for any person to plant, grow or maintain a tree which has branches or foliage within or above the visibility triangle at a height lower than twelve (12) feet above the street. It is presumed that a person who owns or controls real property within the city maintains all trees and plants on that property. The city may enter a visibility triangle and remove growths prohibited by this section, and there shall be no liability to others for taking or not taking such action.

(e) Replacement trees should be planted on the site or easement from which the existing trees are to be removed. If this is not feasible, a fee in lieu may be paid to the established tree fund equal to the replacement cost of the required replacement trees as set out in Sec 15-115

(f) If an owner has been issued a tree disposition permit which requires planting of replacement tree(s), liability for planting replacement tree(s) shall transfer to any or all subsequent owners of the subject site.

Sec. 15-114 Tree protection. Prohibited activities during construction.

The following activities shall be prohibited within the limits of the dripline of any tree subject to this Ordinance

(a) Material storage. No materials intended for use in construction or waste materials accumulated due to excavation or demolition shall be placed within the limits of the dripline of any tree.

(b) Equipment cleaning or liquid disposal. No equipment may be cleaned or other liquids deposited within the limits of the dripline of any tree. This would include, but is not limited to, paint, oil, solvents, asphalt, concrete, mortar or other materials.

(c) Tree attachments. No signs, wires or other attachments, other than those of a protective nature shall be attached to any tree.

(d) Vehicular traffic No vehicle, construction equipment or parking is allowed within the limits of the dripline of any tree.

Sec. 15-115. Tree fund.

There is hereby established a tree fund, which shall be administered by the city manager or designee All revenues 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 and trees to improve public property but may not be used in any manner that will profit the grantee. Tree replacement fees shall be calculated at the rate of \$250 00 per tree. The amount paid to the tree fund shall be applied at a maximum of \$2,500 00 per acre (or fraction thereof) with a maximum total payment of \$100,000 00 per development.

Sec. 15-116. Penalty.

Whenever in this code or in any other ordinance of the city, any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of such provision of this code or any city ordinance shall be a violation where no specific penalty is provided therefor

(a) Fine. A violation of any provision of this chapter, a permit issued under this chapter or any condition of a permit issued under this chapter shall be a violation and punishable by a fine as set forth in Chapter 1-5

The removal of a tree in violation of this chapter, in violation of a permit or any condition of a permit issued under this chapter shall be a separate offense for each tree Failure to comply with the provisions of this chapter or a permit or any condition of a permit issued under this chapter shall be a separate offense each day the failure to comply continues.

(b) Administrative Fee In addition to any fine, the court may impose an administrative fee as restitution for the enforcement costs incurred by the City This fee may be imposed upon any person who violates any provision of this chapter or who violates any permit or condition of any issued under this chapter

Sec. 15-117 Appeals.

Any person aggrieved by a decision of the code officer under this article may appeal such decision to the Planning Commission by written notice to the city secretary thereof, not less than twenty (20) days following entry of the decision appealed. Upon any such appeal the code officer shall forthwith submit all applicable records and findings to the Planning Commission as part of the record of such appeal. If the Planning Commission determines that an error has been made in the application of any provision hereof, it shall reverse or modify the decision of the code officer and issue such orders as it deems necessary and appropriate.

The decision of the Planning Commission is final and binding upon the aggrieved person.

Section 3. Penalty Any person, firm or corporation violating a provision of this chapter shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine in accordance with Section 1-5 of this chapter of the Code of Ordinances.

Section 4. Severability Should any section or part of this ordinance be held unconstitutional, illegal, invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 5. Publication. The City Clerk of the City of Alvin is hereby directed to publish this ordinance, or its caption and penalty clause, in one issue of the official City newspaper as required by the Charter of the City of Alvin, Texas.

Section 6. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of *Chapt. 52, Tex. Loc. Gov't. Code and the City of Alvin Charter*


Section 7. Open Meetings Act. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't Code*

PASSED on first and final reading on the 2 day of MARCH, 2016

ATTEST

CITY OF ALVIN, TEXAS

By 
Dixie Roberts, City Clerk

By 
Paul A. Horn, Mayor