

ORDINANCE NO. 1464

AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS, AMENDING SECTION 16.28.010.E – EXEMPTIONS, SECTION 16.28.010 - PRESERVATION OF TREES AND NATIVE VEGETATION, CHAPTER 16.28 - DESIGN STANDARDS AND REQUIREMENTS, TITLE 16 - SUBDIVISIONS OF THE BENBROOK MUNICIPAL CODE, BY EXEMPTING CITY APPROVED INCENTIVIZED DEVELOPMENT ACTIVITIES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Benbrook (the “City”) is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, Chapter 212 of the Local Government Code authorizes municipalities to regulate the subdivision and development of land within its corporate limits and extraterritorial jurisdiction for the purpose of promoting health, safety and welfare of the community and the provisions of adequate public facilities; and

WHEREAS, the City seeks to grant the Benbrook Economic Development Corporation, as economic development incentive tool, the authority to waive tree preservation & mitigation requirements; and

WHEREAS, the City Council will retain final authority to approve, deny or amend as deemed appropriate any Benbrook Economic Development Corporation approved incentive; and

WHEREAS, the City Council now deems it necessary to amend Section 16.28.010.E – Exemptions, Section 16.28.010 – Preservation of Trees and Native Vegetation, Chapter 16.28 – Design Standards and Requirement, Title 16 – Subdivisions of the Benbrook Municipal Code by adding “incentivized development activities” to the list of exempt activities included in Section 16.28.010.E of the Benbrook Municipal Code.

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

SECTION 1

That Section 16.28.010.E – Exemptions, Section 16.28.010 – Preservation of Trees and Native Vegetation, Chapter 16.28 – Design Standards and Requirement, Title 16 – Subdivisions of the Benbrook Municipal Code (1985), as amended, is hereby amended in its entirety¹ as follows:

E. Exemptions. The following activities are exempt from the regulations of this chapter.

¹ *inclusions underlined and deletions crossed out; however, no language was deleted by this ordinance*

1. Developments that have a completed application on file for a preliminary or final plat or building permit, whichever is applicable, as of the effective date of the ordinance codified in this section.
2. Any development for which construction has begun on infrastructure improvements pursuant to a city-approved development agreement as of the effective date of the ordinance codified in this section.
3. Removal of any tree located on a property of less than one acre on which a one-family or two-family dwelling exists.
4. Removal of a tree that is less than ten-inch dbh and located on a property of one acre or more on which a one-family or two-family dwelling exists.
5. Removal of a tree located within the visibility triangle as defined on a plat of record or under Section 16.28.020(C) of the subdivision ordinance.
6. Public utilities may be exempted from these requirements upon filing a route plan prior to the removal of trees or initiation of construction that satisfactorily demonstrates that the proposed installation lies within an existing easement recorded prior to the effective date of the ordinance codified in this section.
7. Public utilities have the right to trim, cut and/or remove any trees that:
 - a. Interfere with or encroach upon the operations of existing public utilities; or
 - b. Create a safety issue for utility crews; or
 - c. Create a safety issue for the public.
8. Nursery trees that are planted and growing on the premises of a wholesale nursery that are intended for sale in the ordinary course of business.
9. Any tree determined by a qualified professional (certified arborist, registered landscape architect, or qualified botanist) to be diseased, dying, dead, creating a public nuisance or damaging a foundation.
10. Any tree determined to be causing a danger or be in a hazardous condition as a result of a natural event such as a tornado, storm, or flood that endangers the public health, welfare or safety and requires immediate removal.
11. Clearing of understory trees and brush necessary to perform soil borings, boundary surveying of real property or to conduct tree surveys and inventories as long as the clearing for surveying shall not exceed a width of two feet for a general survey (i.e., of easement boundary, etc.) and eight feet for a survey of property boundary lines. No tree having a ten-inch dbh or greater shall be removed under this exemption.
12. Capital improvement projects.
13. Removal of any trees located within the right-of-way and the adjacent utility easements.
14. Removal of any trees located within drainage facilities (easements and detention ponds) as defined on a plat of record.

15. Exemptions made as a result of an appeal or an application for relief as specified in subsection K of this section.
16. Incentivized development activities pursuant to a Benbrook Economic Development Corporation and City Council approved development agreement.

SECTION 2

That all other provisions of Section 16.28.010 – Preservation of Trees and Native Vegetation, Chapter 16.28 – Design Standards and Requirement, Title 16 – Subdivisions of the Benbrook Municipal Code (1985), not included in this amendment, shall remain in full force and effect, save an except for necessary modifications to the “Table of Contents” affecting page numbering, and for necessary modifications to related terminology or phrases that have been modified by this amendment that will affect a similar modification to interrelated terminology and phrases cross-referenced in other Chapters in the Benbrook Municipal Code.

SECTION 3 CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Benbrook, Texas (1985), 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 the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 4 SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and Sections 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 PENALTY CLAUSE

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 fined not more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety, or public health and sanitation, including dumping of refuse, and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense. Nothing herein shall affect any minimum fine prescribed by any ordinance of the city and any such minimum fine shall remain unchanged.

**SECTION 6
SAVINGS CLAUSE**

All rights and remedies of the City of Benbrook are expressly saved as to any and all violations of the provisions of the Benbrook Municipal Code (1985), as amended, or any ordinances regulating platting or Zoning 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
PUBLICATION IN PAMPHLET FORM**

The City Secretary of the City of Benbrook is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof, as provided in Section 3.10 of the Charter of the City of Benbrook.

**SECTION 8
ENGROSSMENT AND ENROLLMENT**

The City Secretary of the City of Benbrook is hereby directed to engross and enroll the Ordinance by copying the caption, penalty clause, and effective date clause of this ordinance in the minutes of the City Council and by filing the Ordinance in the Ordinance records of the City.

**SECTION 9
PUBLICATION IN OFFICIAL NEWSPAPER**

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

**SECTION 10
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law.

PASSED AND APPROVED this 4th day of February 2021.

Jerry B. Dittrich Mayor

ATTEST:

Joanna King, City Secretary

ADOPTED: _____

EFFECTIVE: _____