

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BENBROOK, TEXAS, AMENDING TITLE 16 – SUBDIVISIONS OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, BY AMENDING SECTION 16.28.010 – PRESERVATION OF TREE AND NATIVE VEGETATION OF CHAPTER 16.28 – DESIGN STANDARDS AND REQUIREMENTS; BY CLARIFYING AND IMPROVING THE OVERALL READABILITY OF SAID ORDINANCE WHILE RETAINING ALL REGULATORY STANDARDS; PROVIDING THAT THE USE OF CASH IN LIEU PAYMENTS, PREVIOUSLY LIMITED FOR THE PURCHASE AND INSTALLATION OF TREES WITHIN THE CITY, INCLUDE THE PURCHASE AND INSTALLATION OF LANDSCAPING (INCLUSIVE OF TREES, BUSHES, SHRUBS, MULCH, SOIL, DECORATIVE ROCKS OR STONES, IRRIGATION, AND NECESSARY HARDSCAPE) AT CITY PARKS, CITY TREE FARM, OR OTHER PUBLIC AREAS; AND AMENDING TITLE 1- GENERAL PROVISIONS, CHAPTER 1.12 – FEES FOR CITY SERVICES OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, AMENDING THE TREE REMOVAL AND/OR MITIGATION FEES; 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 Council has previously adopted Title 16- Subdivisions of the Benbrook Municipal Code (1985), as amended through Ordinance 1345 in October 2012, and

WHEREAS, the City Council now deems it necessary to amend those regulations to revise regulations regarding tree preservation in the City.

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

That Section 16.28.010 – Preservation of Trees and Native Vegetation of Title 16- Subdivisions of the Benbrook Municipal Code (1985), as amended, is hereby amended in its entirety to read as follows:

SECTION 1

16.28.010 – Preservation of Trees and Native Vegetation.

A. Purpose

The purpose of these regulations is to promote the preservation of trees, tree stands and existing tree canopy, to protect trees during construction, to facilitate site design and construction that contribute to the long-term viability of existing trees, to increase property values and promote environmental sustainability and to regulate the removal of trees.

B. Definitions

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

1. “Dbh” is an acronym for diameter at breast height and means four and one-half (4 ½) feet above the ground.
2. “Large quality trees” means all healthy, non-secondary trees with an eighteen-inch or greater dbh.
3. “Large secondary trees” means all healthy Mesquite, Bois d’Arc, Locust, Hackberry, Gum Bumelia, Box Elder, and/or Cottonwood trees with an eighteen-inch or greater dbh.
4. “Protected trees” means all healthy trees that have a dbh greater than six-inches.
5. “Protected tree stands” means three or more contiguous protected trees whose canopies are generally clustered together creating a contiguous drip line.
6. “Quality trees” means all healthy, non-secondary trees that have a dbh that is greater than six-inches, but is less than eighteen-inches.
7. “Quality tree stand” means three or more contiguous quality trees whose canopies are generally clustered together creating a contiguous drip line.
8. “Secondary trees” means all healthy Mesquite, Bois d’Arc, Locust, Hackberry, Gum Bumelia, Box Elder and/or Cottonwood trees that have a dbh that is greater than six-inches but less than eighteen-inches.
9. “Secondary tree stand” means three or more contiguous secondary trees whose canopies are generally clustered together creating a contiguous drip line.

C. Coordination with City Ordinances

The city's zoning and subdivision ordinances require landscaping and bufferyards (Chapter 17.98.) and street trees (Section 16.28.050 of Chapter 16.28) in certain situations. Sufficient space on each lot should be provided to accommodate these requirements.

D. Applicability

Unless exempt per Section E, these regulations shall apply to the below listed development activities.

1. Removal of any healthy tree(s) with a dbh greater than six-inches.
2. Clearing and/or grubbing of all or any portion of a property.
3. Any new construction or remodeling activities requiring a building permit that alters the existing building footprint of a property.
4. Storage and/or operation of heavy equipment on a non-developed property.
5. Subdivision of land for development purposes.
6. Development of gas well drilling sites and/or pipelines. (Chapter 8.36.)

E. Exemptions

The following activities are exempt from the regulations of this Chapter:

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. Property of less than one acre on which a single-family residential dwelling exists.
4. Trees located within the visibility triangle as defined on a plat of record or under Section 16.28.020(C) of the subdivision ordinance.
5. 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.
6. 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.
 7. 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.
 8. 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.
 9. 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.
 10. 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.
 11. Capital improvement projects.
 12. Trees located within the right-of-way and the adjacent utility easements.
 13. Trees located within drainage facilities (easements and detention ponds) as defined on a plat of record.
 14. Exemptions made as a result of an appeal or an application for relief as specified in Section K of this Chapter.
- F. Preservation and Protection Standards
- The following requirements for tree preservation and protection shall apply unless an application for relief has been submitted by the applicant and approved by the Planning and Zoning Commission in accordance with Section L of this Chapter.
1. To the extent possible, the natural landscape shall be preserved in its natural state.
 2. Structures, driveways, and parking areas shall be designed and located to fit harmoniously with the natural environment and to minimize the necessity for removing trees, native vegetation, and soil, or the addition of fill.
 3. Site clearing shall not be permitted beyond what is necessary to provide locations for structures, driveways, parking, or small yard areas not visible from the street.
 4. Any tree designated as a protected tree shall be preserved unless mitigation is provided in accordance with Section H or Section I of this Chapter.

5. The minimum percentage of protected tree(s)/protected tree stand(s) required to be preserved on a lot shall not be less the minimum percentages shown in Table 16-A1. Any request to preserve less than the minimum percentages listed on said table must be approved by the Planning and Zoning Commission.
6. All percentages relating to preservation stated within this Chapter shall be based on the initial tree inventory plan. Any subsequent redevelopment of property must minimally preserve the applicable percentage of the total dbh of quality trees by the initial tree survey.
7. A notation shall be placed on the site plan or final plat referencing the tree preservation and mitigation plan on file with the City Planning Department. The notation shall limit any future unauthorized land disturbing activity or construction that would negatively affect and/or damage the tree(s) to be preserved or protected.
8. To preserve the required mandatory areas of natural vegetation landscape from inadvertent damage during construction, a physical barrier shall be erected around the perimeter of these inviolate areas. The barriers will be in place and approved by the Building Official or designee before any heavy equipment is set on site or before any site clearance can commence. The barrier may consist of a temporary chain link fence, wooden stake (snow) fence, plastic safety/construction fence or other devices as approved by the Building Official or designee. Minimum height of all types of barriers is four feet. Barriers shall remain in place until the final building and landscape site inspections are satisfactorily completed for the issuance of the certificate of occupancy. Only after this time can the barriers be removed.
9. The city prohibits the use of heavy equipment for tree removal or site clearing under the drip line of any protected tree(s)/protected tree stand(s).
10. Replacement of any preserved tree(s) or tree stand(s), which dies within two (2) years due to construction or development activities, will be the responsibility of the developer on a one to one (1:1) caliper inch basis.

G. Alternative Tree Preservation Plan

An applicant may propose an alternative tree preservation plan that meets or exceeds the goals and objectives of this Chapter but does not meet the standards of this Chapter. The alternative tree preservation plan provides the option to address the criteria through a flexible process that must be reviewed and approved by the Planning and Zoning Commission.

1. Criteria for Approval
The goals and objectives that must be met, and by which the proposal will be judged are:
 - i. The proposed alternative tree preservation plan adequately achieves, or is an improvement on, the intent of the requirements of this Chapter;

- ii. It assures quality development that fits in with the character of Benbrook; and
- iii. It clearly states the intended preservation objectives.

2. Tree Credits

- i. All quality trees and quality tree stands that are preserved beyond the minimum requirements identified in Table 16-A1 shall be credited towards the landscape canopy tree requirements identified in the zoning ordinance at a ratio of one to one (1:1) caliper inches.
- ii. All quality tree stands with existing understory trees that are preserved beyond the minimum requirements identified in Table 16-A1, shall be credited towards landscape requirements at a ratio of one to two (1:2) caliper inches.
- iii. Unless trees preserved are an integral part of the parking lot design, they will not be credited towards parking lot landscaping requirements.
- iv. Unless trees preserved are an integral part of a required buffer design, they will not be credited towards bufferyard landscaping requirements. Refer to Chapter 17.98 of the Zoning Ordinance.

Table 16-A1 - Minimum Tree Preservation Requirements for All Lots

Lot Size	Large Quality Trees	Quality Tree and Quality Tree Stands*	Large Secondary Trees	Secondary Trees and Secondary Tree Stands
Less than ½ acre	None	None	None	None
½ acre to 1 acre	50 %	5 %	5 %	None
1 acre to 2.5 acres	60 %	10 %	10 %	None
Greater than 2.5 acres	70 %	20 %	20 %	None

* The minimum percentage required to be preserved may be met in a single quality tree stand.

H. Mitigation

If preservation cannot be reasonably achieved, then the following mitigation standards shall apply:

1. Protected trees may be removed, not to exceed the minimum tree preservation requirements for all lots as shown on Table 16-A1, if mitigated as required on Table 16-A2.
2. Protected trees may be removed in excess of the minimum preservation requirement as shown on Table 16-A1 provided the Planning and Zoning Commission, in accordance with Section L of this Chapter, approve the excess removal.

3. Mitigation is only required to be calculated for secondary trees equal to or greater than twelve-inches dbh.
 4. Each replacement tree shall be a minimum of two-inch caliper and at least five feet in height when planted.
 5. Mitigation shall be calculated for the entire development, as applicable. Trees required for mitigation may be planted at the time of development or when an individual lot is developed. A note shall be placed on the face of the final plat referencing the tree preservation and mitigation plan on file with the City Planning Department and noting the calculations for preservation and mitigation for the entire development and for each phase and lot. A mitigation plan and an irrigation plan will be required with the application for each building permit.
 6. With the approval of the Assistant City Manager or designee, fifty percent of the trees required to be planted as mitigation may be planted off-site at city parks, the city tree farm, or other public areas.
 7. If trees are planted as mitigation under this Section, the developer shall post a two-year maintenance surety bond or cash bond meeting the requirements under Section 16.24.010 of Chapter 16.24 for the cost to replace the trees. Upon completion of the two-year landscape establishment period for replacement trees, the city shall inspect the trees and determine whether ninety percent of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the city shall release the currency or bond. In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees. If the applicant does not take remedial steps to bring the property into compliance, the city shall make demand for payment on the cash bond, surety bond, or letter of credit. The city may use all legal remedies to enforce this Chapter in addition to making demand on the security provided herein.
- I. Payment In Lieu of Mitigation
1. A land owner/developer responsible for tree mitigation under this Section may elect to meet the requirements, in whole or in part, by a cash payment in lieu of tree replacement. The payment shall be on a caliper inch unit cost as established by the City Council in Chapter 1.12 of the Benbrook Municipal Code. Cash payment shall be deposited in the tree fund and be used to purchase and install landscaping (inclusive of trees, bushes, shrubs, mulch, soil, decorative rocks or stones, irrigation, and necessary hardscape) at city parks, city tree farm, or other public areas.
 - i. Payment in lieu of tree mitigation for greater than fifty percent of the required mitigation (greater than fifty percent of total dbh provided as mitigation) shall be subject to approval by the Planning and Zoning Commission.
 - ii. Payment in lieu of tree mitigation for less than or equal to fifty percent of mitigation requirement (less than or equal to fifty percent of total dbh provided as mitigation) may be approved by the Assistant City Manager or designee.

2. The applicant shall pay the fees for tree removal established by City Council in Chapter 1.12 of the Benbrook Municipal Code. The fee shall be based on the fair market value of materials and labor at the time of planting and the reasonable estimated cost for maintenance and irrigation for a period of two years.
3. Fees contributed to the tree fund shall be paid prior to the issuance of a grading permit on all commercial, industrial, or multi-family residential developments, prior to final approval of a gas well drilling permit and prior to filing a final plat in the Tarrant County clerk's office for all single-family residential subdivisions.

Table 16-A2 - Mitigation Requirements for All Lots

Ratios indicate number of caliper inches removed to caliper inches replaced.

Lot Size	Large Quality Trees	Quality Tree and Quality Tree Stands	Large Secondary Trees	Secondary Trees*
Less than ½ acre	1:0.25 ratio	1:0.25 ratio	1:0.25 ratio	None
½ acre to 1 acre	1:0.5 ratio	1:0.5 ratio	1:0.25 ratio	None
1 acre to 2.5 acres	1:0.75 ratio	1:0.75 ratio	1:0.5 ratio	1:0.25 ratio
Greater than 2.5 acres	1:1 ratio	1:1 ratio	1:0.75 ratio	1:0.5 ratio

*Mitigation is only required to be calculated for Secondary Trees equal to or greater than twelve dbh.

J. Permit Required

1. No person, directly or indirectly, shall intentionally cut down, destroy, remove or move, or intentionally destroy or damage any protected tree(s) without first obtaining a tree removal permit and complying with the requirements of this section.
2. No clearing or grubbing shall take place on any property containing protected tree(s) subject to this section without first obtaining a tree removal permit or demonstrating that a tree removal permit is not required.
3. No grading or excavation permit shall be issued and no grading shall take place on any property containing protected tree(s) subject to this section without first obtaining a tree removal permit or demonstrating that a tree removal permit is not required.
4. No heavy equipment shall be moved onto a site prior to all applicable permits being issued.
5. Trees less than six-inches dbh may be removed without a permit. Site clearing may not be completed with heavy equipment under the drip line of protected

tree(s)/protected tree stand(s) to be preserved that are protected in accordance with Section 16.28.010.E.9 of this Chapter.

K. Permit Review and Approval Process

1. A request for a tree removal permit shall be submitted and approved prior to the removal of any protected tree(s) in the city. Permits shall not be unreasonably withheld by the city.
2. A complete application shall be submitted along with the application fee, if required. The fees shall be established by the City Council and published in Chapter 1.12 of the Benbrook Municipal Code. A complete application includes:
 - i. Tree Inventory and Tables. The applicant shall prepare and submit a drawing showing the location and species of each tree with a trunk six-inches or greater dbh. In areas of dense vegetation or a tree stand that are proposed to be undisturbed, an outline of the vegetation may be shown. A registered landscape architect, urban forester, botanist, arborist, or professional land surveyor that has documented completion of at least eight hours of training in Texas tree identification shall prepare the plan. Tables shall accompany the inventory to identify the tree by the number on the plan and list the tree species, tree designation, and size (dbh). Tree stands or dense vegetation shall be inventoried by the number on the plan and shall specify the area of the continuous drip line. The tree inventory plan shall be in substantial conformity with the plan submitted with the Preliminary Plat application.
 - ii. Tree Preservation and Mitigation Plan. The Tree Preservation and Mitigation Plan shall be submitted prior to, or along with the civil plans, grading permit, or building permit application.
3. Tree Inventory Plan and Tree Replacement/Mitigation Plan Required. The applicant shall prepare and submit a drawing showing the location and species of each tree with a trunk greater than six-inches in diameter measured at dbh. In areas of dense vegetation that are proposed to be undisturbed, an outline of the vegetation may be shown. A registered landscape architect, urban forester, botanist, arborist, or professional land surveyor that has documented completion of at least eight hours of training in Texas tree identification shall prepare the plan. The tree survey shall be submitted prior to, or along with the preliminary plat application, grading permit, or building permit application.
4. Tree removal permits shall be valid for a period of one hundred eighty days.
5. Upon request of the applicant, the Assistant City Manager or designee shall be authorized to work with the owners, developers, and builders to make non-substantive changes, within the scope of this section, to plans, permits, and other requirements throughout the development and construction processes that will provide the greatest reasonable tree survival. The decision of the Assistant City Manager or designee may be appealed by the applicant to the Planning and Zoning Commission.

L. Appeals

The applicant may file an application for relief from the tree preservation/mitigation requirements to the Planning and Zoning Commission. An application for relief shall include the following items:

1. Letter detailing the specific relief requested and rationale;
2. Tree inventory and/or aerial;
3. Site Plan showing topography and other site specific features; and
4. Alternative tree preservation/mitigation plan.

M. Enforcement

1. The Building Official or designee of the city shall have the authority to place a stop work order on any activity involving the removal of protected tree(s)/protected tree stand(s), or that may otherwise endanger trees contrary to the provisions of this Chapter. The Building Official or designee may deny all permits and certificates of occupancy for any site that does not comply with this Chapter.
2. A person may be held criminally responsible for a violation of this Chapter if the person intentionally removes, assists in the removal or causes the removal of protected tree(s)/protected tree stand(s) without complying with the requirements of this Chapter or owns part or all of the land where the violation occurs.
3. Each tree removed in violation of this Chapter shall constitute a distinct and separate offense.
4. Each tree preserved or planted under this Chapter that is removed, destroyed or dies within two years of approval shall constitute a distinct and separate offense.
5. It shall be an affirmative defense that trees are injured or destroyed by natural causes, natural disasters, including but not limited to tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent unauthorized actions of third parties.
6. In addition to the penalties provided in Section II-Penalty Clause of the Subdivision Ordinance (Ordinance 1203, as amended), the city may also seek damages equivalent to the replacement costs of the trees that were removed or destroyed without authorization.

SECTION 2

That Chapter 1.12 – FEES FOR CITY SERVICES of Title 1 – GENERAL PROVISIONS of the Benbrook Municipal Code, as amended, is hereby revised by amending SUBSECTION F – Other Related Fees of SECTION 1.12.090 – Zoning, Subdivision and Development to include the following fee change:

(2) Secondary trees	(2) 50.00 <u>25.00</u> /caliper inch dbh
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The rest of 1.12.090 shall remain the same.

SECTION 3 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.

SECTION 4 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 5 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 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 ____ day of _____, 2017.

Jerry B. Dittrich Mayor

ATTEST:

Joanna King, City Secretary

ADOPTED: _____

EFFECTIVE: _____