

ORDINANCE NO. 720

AN ORDINANCE AMENDING ARTICLE II, CHAPTER 18 OF THE CODE OF ORDINANCES OF THE CITY OF HUNTERS CREEK VILLAGE, WHICH REGULATES THE PRESERVATION AND REMOVAL OF TREES, TO REQUIRE: 1) A PERMIT FOR THE REMOVAL OF A TREE WITH A CIRCUMFERENCE OF 20” OF MORE; 2) THE REPLACEMENT OF TREES THAT ARE REMOVED; 3) THE PAYMENT OF TREE REPLACEMENT FEES WHERE IT IS NOT POSSIBLE TO PLANT AND MAINTAIN A REPLACEMENT TREE; 4) THE SUBMITTAL OF TREE SURVEYS AND TREE DISPOSITION AND PROTECTION PLANS AS A CONDITION FOR THE ISSUANCE OF PERMITS FOR CONSTRUCTION OR SITE DEVELOPMENT; AND 5) THAT CARE BE TAKEN TO PROTECT EXISTING TREES FROM DAMAGE DURING CONSTRUCTION AND SITE DEVELOPMENT ACTIVITIES; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$500; MAKING OTHER PROVISIONS RELATED TO THE SUBJECT; AND PROVIDING FOR SEVERABILITY.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTERS CREEK VILLAGE:

Section 1. Article II, Chapter 18 of the Code of Ordinance of the City of Hunters

Creek Village is amended to read as follows:

“ARTICLE II. TREE PRESERVATION

Sec. 18-19. 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:

Caliper means the diameter of a tree as measured at a point on the tree which is six inches above the ambient grade.

Circumference means the circumference of the trunk of a tree measured at a height of 4 1/2 feet above the ground using an ordinary tape measure or diameter tape. If the tree has unusual swells in the trunk at measurement height, measurement shall be taken either below or above the swell at the smallest trunk diameter as close to 4 1/2 feet as possible.

Critical root zone means the area within the drip line of a tree.

Development activity means construction or preparation for construction, and includes, grading, clearing and grubbing, and demolition of existing structures.

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

Impervious material means concrete, tar, asphalt, brick pavers or similar paving materials.

Minimum required density means, for a particular site, 7 protected trees or replacement trees plus one additional protected tree or replacement tree per 1,000 square feet of area in excess of 22,500 square feet up to maximum of 7 additional protected trees or replacement trees per site. Provided, however, that where a site contains areas that are not suitable for the location of trees because of topography or other natural features, those unsuitable areas shall not be included in calculating the number of additional protected trees required in addition to the first 7.

Professional means a person with a professional working knowledge of trees, and includes architects, engineers, landscape or tree professionals, arborists, surveyors and any city official approved by the city council.

Property owner means the owner of a lot, tract, parcel or other site, and includes the owner's authorized agents.

Protected tree means any existing tree that has a circumference of 20" or more.

Protective fence means a physical barrier that is: a) at least 4 feet in height; b) supported by metal posts spaced no wider than eight feet apart; and c) constructed of chain link fencing or similar material that is effective in preventing the passage of persons, machinery, trash, material or other items.

Replacement tree means any tree that: a) has a caliper of at least 3 inches, b) is at least ten feet in height, c) is one of the species of trees listed in section 18-25, and d) is planted under the requirements of this article.

Root pruning means a clean cut between the undisturbed and disturbed root zones within the drip line of a tree, commonly done with a rock saw or similar equipment to minimize root damage.

Serious Damage means any damage to a tree that will, in reasonable probability, cause the death of the tree or seriously impair its health. The following actions are actions that will cause serious damage to a tree: severing a 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, digging or drilling any hole or trench larger than three cubic feet within the critical root zone, covering over a substantial portion of the critical root zone with two inches or more of soil or other nonporous material or compacting a substantial part of the soil in the critical root zone (e.g., driving or parking a vehicle in the critical root zone, or otherwise placing heavy objects within the critical root zone).

Tree disposition and protection plan means a written plan prepared by a professional that shows how the protected trees and critical root zones on a the site, and the critical root zones of protected trees that are located off of the site but that have 30 percent or more of their critical root zones within the site, are to be protected, and how replacement trees are to be planted and maintained to encourage survival and sustained growth.

Tree removal permit means a permit issued by the city pursuant to the conditions and requirements of this article, granting permission and authority to remove protected trees from a site.

Tree survey means a survey of the protected trees on a site. A tree survey must be prepared by a professional and must include:

- (1) The location, size, and species of all existing protected trees on the site;
- (2) A designation, by species, size and location, of all protected trees proposed to be removed or destroyed;
- (3) A designation of all proposed new and/or replacement trees by species, size and location;
- (4) Outlines of all existing and proposed structures, paved surfaces, swimming pools, fences, sprinkler systems, utilities and other improvements and structural features on the site;
- (5) A scale, north arrow, name, address, phone number, and profession or occupation of the person who prepared the tree survey; and
- (6) The name of the owner of the site and/or the builder or developer of the site.

Urban forester means the professional so designated by the city council.

Sec. 18-20. Preservation and protection of trees.

(a) *Intent.* The intent of this section is to encourage site planning which furthers the preservation of trees and natural areas by these methods: to protect trees during construction; to facilitate site design and construction which contribute to the long-term viability of existing trees; to control the unnecessary removal of larger trees; and to require on-site replacement of larger trees that must be removed during development activities. It is the further intent of this article to achieve the following broader objectives:

- (1) Protect healthy trees and preserve the natural, ecological, environmental and aesthetic qualities of the city;
- (2) Protect and increase the value of properties within the city;
- (3) Prohibit the indiscriminate clearing or clear cutting of property;
- (4) Maintain and enhance a positive image toward the city;
- (5) Prevent the unnecessary removal of protected trees and to provide for remediation where removal is unavoidable.

(b) *Tree removal permit required.* It is unlawful for any person to remove or to intentionally, or with criminal negligence, cause serious damage to any protected tree within the city without having first obtained from the city a tree removal permit.

- (1) *Removal in connection with site development or construction.*
 - a. A property owner who seeks a permit to remove one or more protected trees in order to develop or construct improvements on a site, must submit to the building official a current tree survey and tree disposition and protection plan. The City shall grant a tree removal permit if the applicant

demonstrates that, for each protected tree that is to be removed, the removal is necessary in order to make a reasonable use of the site.

- b. Notwithstanding the foregoing, no permit shall be granted for removal of a protected tree that is located more than 5 feet outside of the footprint of the proposed building.
- (2) *Other removal.* A property owner who otherwise seeks a permit to remove a protected tree must file an application with the City describing the location, species, and size of the protected tree that is to be removed and explaining the reason that removal is desired. The City shall grant a removal permit if the applicant demonstrates that:
- a. The protected tree in question is severely damaged, diseased or dead;
 - b. The protected tree constitutes an unreasonable impediment to the use and enjoyment of the site because of its location or size;
 - c. The tree is of an undesirable species that has characteristics that interfere with the property owner's use and enjoyment of the site;
 - d. The removal of the tree is necessary for safety reasons including, but not limited to, a branch overhanging a structure, a severely leaning tree, or a tree with a seriously damaged root systems that poses a reasonable threat of falling.
- (3) *Emergency removal.* Where the dangerous condition of a protected tree requires its immediate removal to protect against a serious and immediate risk to health, safety or property, a property owner may remove a protected tree without first obtaining a permit. However, within seven calendar days after removing the tree, the property owner must file with the building official a written statement describing the protected tree by size, species, and location and explaining the emergency conditions that required its immediate removal.
- (c) Tree survey and tree disposition and protection plan required. Except as provided below, no permit shall be granted for any site work or construction activity in the City unless and until a current tree survey and tree disposition and protection plan for the subject site has been submitted to the City and approved by the urban forester.
- (1) *Small projects exception.* Neither a tree survey nor a tree disposition and protection plan is required for projects that meet the following requirements as determined by the building official:
 - a. The construction work or other activity contemplated by the permit is of a type and scope that presents little risk of serious damage to any protected trees on the site; and
 - b. The owner, or his authorized agent, has certified to the City in writing that no protected trees will be removed or seriously damaged during the contraction work or other activity.
- (d) *Utility right-of-way maintenance.* An employee of a public utility, or an authorized contractor working in a dedicated public right-of-way, drainage or utility easement, may

in the course of business, prune that portion of a tree that 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 any pruning shall be in accordance with specifications set forth by the National Association of Arborists. No tree permit, tree survey or tree disposition and protection plan is required for work performed under these circumstances.

- (e) *Tree replacement.* Except as otherwise provided, a property owner or other person who removes protected trees from a site such that the total number of protected trees on the site is reduced below the minimum required density, must plant and maintain the number of replacement tree or trees necessary to bring the total number back up to the minimum required density.
 - (1) *Location requirements for new home construction.* Where a new home is to be constructed on a site, the tree disposition and protection plan must include provisions for preserving or planting and maintaining at least three protected or replacement trees in the front yard.
 - (2) *Timing of planting.* Any replacement tree required under this article shall be planted no later than 30 days after the issuance by the city of a certificate of occupancy. Provided however that, if the season or weather are such that a successful planting is unlikely the planting may be delayed until the following January. In the instance that planting is postponed, the property owner shall post with the City a refundable deposit to ensure that the planting is accomplished as required by this article.
 - (3) *Replacement requirements.* A one year replacement guarantee is required for all Replacement Trees that are planted. If a newly-planted tree dies within a one year period from the earlier of the date the tree was planted the date of the Owner's occupancy, the owner must plant and maintain a second replacement tree. If that tree dies no further replacement is required.
 - (4) *Exceptions to replacement requirements.* No replacement tree shall be required if because of the topography or natural conditions of the site, or the location of permitted structures and other improvements to the site, it is not reasonably possible to plant and maintain an otherwise required replacement tree. A property owner who is excused from providing a replacement tree shall instead pay to the City's the applicable tree replacement fee.
- (f) *Protection of trees during site preparation or construction activity.* Protected trees must be protected from serious damage during site preparation and construction activity in accordance with the following requirements. Provided however that the urban forester may allow modification of the requirements upon a determination that unique circumstances exist and that strict application of the requirements would result in undue hardship to the owner of the site.
 - (1) *Prohibited activities.* The following activities are prohibited within the drip line of any protected tree:

- a. *Material storage.* No materials intended for use in construction accumulated due to excavation or demolition shall be placed within the limits of the drip line of any protected tree;
 - b. *Equipment cleaning, liquid disposal.* No equipment shall be cleaned, and no liquids other than clean water shall be deposited, within the limits of the drip line of any protected tree. Prohibited liquids include but are 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 and that have been approved in the tree disposition and protection plan, shall be attached to any protected tree;
 - d. *Vehicular traffic.* No vehicle, construction equipment or other parking shall be allowed within the limits of the drip line of any protected tree; and
 - e. *Trespassing; trash.* Trespassing or throwing trash into a protective fence area is prohibited.
- (2) *Required procedures.* The following procedures shall be followed prior to and during any development activity on a site until a certificate of occupancy has been issued by the city:
- a. *Protective fencing; root protection.* Unless otherwise approved in the tree disposition plan, the critical root zone of each tree or group of trees to be preserved must be enclosed by a protective fence during all development activity and until a certificate of occupancy has been issued by the city. Each protective fence shall be marked with signs stating "OFF LIMITS" and "NO TRASH" (or equivalent) in both English and Spanish..
 - b. *Mulch.* If development activity is to take place within the critical root zone of any tree, the protective fence shall cover the area on which no development activity is to take place, and the balance of the critical root zone for such tree or group of trees must be covered with at least six inches of organic or wood chip mulch and covered with three-fourths inch plywood or road boards in order to protect the roots from soil compaction.
 - c. *Fence, mulch removal.* It shall be unlawful for any person to remove any portion of any protective fence or mulch and road boards for any period of time during any development activity, unless otherwise specified in the tree disposition plan.
 - d. *Tree flagging.* All trees to be removed from the site shall be flagged with orange vinyl tape (flagging) wrapped around the main trunk at a height of four feet or more. After receipt of the tree removal permit, the owner of the site or his agent shall paint with orange paint an "X" on the tree approved for removal at a height of four feet or more so that the paint is visible to workers on foot or operating heavy equipment.
 - e. *Trunk protection.* In situations where a tree remains in the immediate area of intended development activity, the tree shall be protected by enclosing

the entire circumference of the tree's trunk with lumber, at least eight feet high, banded by wire or other means that does not damage the tree.

- f. *Construction pruning.* If a tree has a low canopy, or limbs that may be broken during the course of construction, and if specified and approved by the urban forester in the tree disposition plan, the obtrusive limbs may be cut. Pruning should be done according to the National Association of Arborists Standards.
 - g. *Supplemental feeding, watering.* Protected trees should receive supplemental water during times of drought or low rainfall. Plans for feeding and watering must be prepared by a professional, who is retained by the owner or his agent and must be included in the tree disposition and protection plan.
- (3) *Design constraints.* Design constraints may dictate that in certain circumstances some protected trees will have some encroachment of their critical root zone. The following is the minimum design criteria allowed within the critical root zone of a protected tree:
- a. *Change of grade.* In the event that grade changes must be made around a protected tree, the following procedures shall be followed unless otherwise approved in the tree disposition plan:
 - 1. No cut or fill of the ambient grade greater than two inches shall be located close to the trunk of a protected tree if the cut or fill covers more than one-half of the radius of the critical root zone. If these provisions cannot be complied with, the following provisions shall apply:
 - i. Increase in grade. The owner shall construct tree wells around the drip line of a tree which shall be of a design that provides for proper aeration and drainage of the critical root zone; or
 - ii. Decrease in grade. The owner shall construct retaining walls around the drip line of a tree to mitigate cuts.
 - 2. If development activity causes standing water or wet soil conditions which are detrimental to a species of tree on a site or adjacent property, adequate drainage shall be provided in the tree disposition and protection plan in order to prevent suffocation and/or root rot of the affected tree.
 - b. *Underground utilities.* Boring for the installation of underground utilities is permitted under protected trees in certain circumstances. The minimum depth of the bore shall be 30 inches. In special circumstances approved by the urban forester, trenching for underground utilities may be permitted with respect to all such protected trees. If utility trenching is approved, the following procedures must be adhered to:

1. Root pruning shall take place at least two weeks prior to any trenching;
 2. Root pruning shall be supervised by a professional;
 3. The utility trench must be backfilled less than 24 hours after it is dug; and
 4. A root remediation schedule must be addressed in the tree disposition plan.
- c. *Irrigation systems.* Irrigation systems shall be designed to avoid trenching across the critical root zone of any protected tree.
- d. *Paving and impervious material.* A maximum of 25 percent of the critical root zone of a protected tree may be covered with impenetrable material, such as concrete, tar or asphalt.
- e. *Procedures when using impervious materials.* If the design plans for the site call for any impervious material over any part of the critical root zone of a protected tree, the following procedures shall be adhered to:
1. Root pruning shall be done six inches to one foot behind the proposed curb line and shall take place at least two weeks prior to any fill or cut;
 2. Root pruning and necessary limb pruning shall be supervised by a professional;
 3. A plastic vapor barrier of construction grade shall be installed between the roots of a protected tree and the impervious material so as to inhibit leaching of lime into the soil; and
 4. A root remediation schedule must be addressed in the tree disposition plan.

Sec. 18-21 Tree replacement payments and fund.

The City shall establish and maintain a separate tree replacement fund and shall deposit all tree replacement fees into that fund.

- (a) Monies in the tree replacement fund may only be used for the following purposes:
 - (1) To purchase and plant trees within the City on public property and rights-of-way, or other property under the control of the City;
 - (2) To water, feed, or otherwise maintain trees planted or maintained by the City; or
 - (3) To promote the planting and conservation of trees within the City.
- (b) A property owner who removes a protected tree pursuant to a valid permit, or in an emergency situation, but who is excused from the obligation to provide a replacement tree under section 18-20 (e) (4), shall pay to the City a tree replacement fee in the amount \$500.00 which the City has determined to be the average cost of providing, planting, and maintaining a replacement tree.

- (c) A property owner who removes a protected tree in violation of this chapter shall provide a replacement tree of the same size and species as the tree that was illegally removed. If it is not feasible to provide a replacement tree, the property owner shall pay a tree replacement fee equal to \$500 per inch of diameter of the protected tree that was removed. The measurement of diameter shall be made at a point on the trunk of the tree that was six inches above the ambient grade immediately before the protected tree was removed. The City Council shall be the final authority to determine whether planting a replacement tree is feasible.

Sec. 18-22. Urban forester.

- (a) *Appointment.* The city council has the authority to hire a professional as the urban forester for the city. The professional designated as the urban forester must hold at least a bachelor's degree from an accredited college or university in urban forestry or horticulture or must have equivalent arboricultural skills and experience.
- (b) *Duties.* The permit secretary or the building official of the city shall deliver to the urban forester all tree disposition and protection plans, tree surveys, applications for tree removal permits and other documents reasonably requested in connection with any or all of the requirements of this article. The urban forester shall work with each owner and/or builder on the site, and appropriate officials of the city in order to administer and enforce the provisions of this article, as the same may be amended from time to time. The urban forester shall establish categories of simple and routine or low-risk development activity, the applications for which may be handled summarily without submission to the urban forester.

Sec. 18-23. Violations.

- (a) It shall be unlawful for any person to fail or refuse to comply with the requirements of this article or any permit issued pursuant hereto.
- (b) The city's building official or urban forester may withhold or withdraw (red flag) any permit issued or to be issued pursuant to this article if any condition or requirement of this article or such permit is not fulfilled.

Sec. 18-24. Penalty.

Any person who violates any provision of this article shall be deemed guilty of a misdemeanor. The owner of a site where any violation of this article shall occur, and any agent, contractor, builder, architect or other person who shall assist in the commission of such offense, shall be guilty of a separate offense.

Sec. 18-24. Affirmative defenses.

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

Sec. 18-25. Species of trees approved for use as replacement trees.

The following species of trees are approved for use as replacement trees. The urban forester may approve the use of species that are not on this list if the urban forester determines that the species is suited to the local climate, likely to grow into a protected tree, and not likely to create nuisance conditions.

Approved Tree List for Hunters Creek Village

Common Name	Species	Family Name
Chalk maple	<i>Acer leucoderme</i>	Aceraceae
Drummond red maple	<i>Acer rubrum</i> var. <i>drummondii</i>	Aceraceae
American hornbeam	<i>Carpinus caroliniana</i>	Betulaceae
American beech	<i>Fagus grandifolia</i>	Fagaceae
White oak	<i>Quercus alba</i>	Fagaceae
Swamp white oak	<i>Quercus bicolor</i>	Fagaceae
Southern red oak	<i>Quercus falcata</i>	Fagaceae
Sand live oak	<i>Quercus geminata</i>	Fagaceae
Laurel oak	<i>Quercus hemisphaerica</i>	Fagaceae
Swamp laurel oak	<i>Quercus laurifolia</i>	Fagaceae
Overcup oak	<i>Quercus lyrata</i>	Fagaceae
Bur oak	<i>Quercus macrocarpa</i>	Fagaceae
Sand post oak	<i>Quercus margaretta</i>	Fagaceae
Swamp chestnut oak	<i>Quercus michauxii</i>	Fagaceae
Chinkapin oak	<i>Quercus muhlenbergii</i>	Fagaceae
Water oak	<i>Quercus nigra</i>	Fagaceae
Nuttall oak	<i>Quercus nuttallii</i>	Fagaceae
Willow oak	<i>Quercus phellos</i>	Fagaceae
Shumard oak	<i>Quercus shumardii</i>	Fagaceae
Post oak	<i>Quercus stellata</i>	Fagaceae

Black oak	Quercus velutina	Fagaceae
Live oak	Quercus virginiana	Fagaceae
Sweetgum	Liquidambar stryrciflua	Hamamelidaceae
Pecan	Carya illino	Juglandaceae
Black hickory	Carya texana	Juglandaceae
Sassafras	Sassafras albidum	Lauraceae
Southern magnolia	Magnolia grandiflora	Magnoliaceae
Sweet bay magnolia	Magnolia ludiviciiana	Magnoliaceae
Black gum	Nyssa sylvatica	Nyssaceae
Shortleaf pine	Pinus echinata	Pinaceae
Longleaf pine	Pinus palustris	Pinaceae
Loblolly pine	Pinus taeda	Pinaceae
Weeping willow	Salix babylonica	Salicaceae
Bald-cypress	Taxodium distichum	Taxodiaceae
Montezuma cypress	Taxodium mucronatum	Taxodiaceae
Winged elm	Ulmus alata	Ulmaceae
Scan elm	Ulmus Americana	Ulmaceae
Cedar elm	Ulmus crassifolia	Ulmaceae

Section 2. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction shall be fined an amount not to exceed \$500.00. Each day of violation shall constitute a separate offense.

Section 3. In the event any clause, phrase, provision, sentence, or part of this Ordinance, or its application to any person or circumstance, shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate

this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 4. The City Secretary shall cause a caption of this Ordinance that summarizes its purpose and the penalty for violations, to be published in the City's official newspaper. This Ordinance shall become effective when the publication requirement is satisfied.

PASSED, APPROVED, AND ADOPTED this 20th day of May, 2008.

J. Robert Dodson III
Mayor

ATTEST:

Deborah L. Loesch, TRMC
City Secretary