

Ordinance No. 722

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: 1) TO REDUCE THE MINIMUM CIRCUMFERENCE OF REGULATED TREES FROM 20” TO 18”; 2) TO ADD ADDITIONAL RESTRICTIONS ON REMOVING PROTECTED TREES TO CONSTRUCT IMPROVEMENTS; 3) TO ADD ADDITIONAL TREE REPLACEMENT REQUIREMENTS WHEN TREES ARE REMOVED TO ENLARGE OR RELOCATE CERTAIN DRIVEWAYS; AND 4) TO PROVIDE A RIGHT TO APPEAL THE DENIAL OF A PERMIT TO THE CITY COUNCIL; 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.** Section 18-19 of Article II, Chapter 18 of the Code of Ordinances of the City of Hunters Creek Village is amended by revising the definition of a “protected tree” to read as follows:

“*Protected tree* means any existing tree that has a circumference of 18” or more.”

**Section 2.** Section 18-20 (b) (1) of Article II, Chapter 18 of the Code of Ordinances of the City of Hunters Creek Village is amended to read as follows:

- “(1) *Removal in connection with site development or construction.*
- a. *Generally.* 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, and that all alternatives to removal, including redesign of the proposed improvements, have been considered.
  - b. *Restrictions on additional removals.*

- (i) Where a permit is granted to remove protected trees in order to develop or construct a particular improvement on a site, and the subject trees are actually removed, no permit shall be granted for the removal of additional protected trees from the site for the construction of a similar improvement for a period of five years following the date the first permit was issued.
- (ii) For example, if a permit is granted for the removal of trees for the construction of a proposed new residence and the property owner, or his successor in title, elects not to build that proposed residence, any new proposed residence on the site must be designed to fit within the area from which protected trees have been removed and cannot require the removal of additional protected trees.
- (iii) The purpose of this provision is to prevent the unnecessary removal of protected trees based on speculative construction or development plans and to encourage property owners to seek removal of trees only when the proposed improvements will actually be constructed.
- (iv) For the purposes of this Article, the filing of an application for removal of protected trees for the construction of a particular improvement is deemed to be an admission, by the applicant, that a reasonable improvement of the type desired can be constructed on the site without removing any additional protected trees.”

**Section 3.** Section 18-20 (e) of Article II, Chapter 18 of the Code of

Ordinances of the City of Hunters Creek Village is amended to read as follows:

“(e) *Tree replacement.*

- (1) *Generally.* 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 trees necessary to bring the total number back up to the minimum required density.
- (2) *Special rule for removals related to driveway construction.* Where protected trees are removed from a front yard in order to relocate or expand a pre-existing driveway, the property owner must plant one replacement tree in the front yard for every protected tree that is removed from the front yard. Tree replacement is required under this provision regardless of whether replacement would have been required under (e) (1), above.

- (3) *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.
- (4) *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.
- (5) *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.
- (6) *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."

**Section 4.** Sections 18-23 thru 18-25 of Article II, Chapter 18 of the Code of Ordinances of the City of Hunters Creek Village are renumbered, in the same order, as sections 18-24 thru 18-26.

**Section 5.** A new section 18-23 is added to Article II, Chapter 18 of the Code of Ordinances of the City of Hunters Creek Village to read as follows:

**“Sec. 18-23. Appeal of permit denials.**

- (a) An applicant whose request for a tree removal permit has been denied by the building official may appeal that decision to the City Council by filing a written notice of appeal with the City Secretary.
- (b) The City Council shall schedule a hearing on the appeal for a date within 45 days after the date the notice of appeal is received in the office of the

City Secretary. The hearing may be held at any regular meeting of the City Council.

- (c) At the hearing, the City Council shall provide the applicant an opportunity to present evidence and arguments demonstrating that the applicant is entitled to a permit under the terms of this Article and that the building official erred in denying the permit.
- (d) The City Council may hear and consider any other evidence relevant to the issue of whether the applicant is entitled to a permit.
- (e) If, at the conclusion of the hearing, a majority of the City Council determines that the applicant has met the requirements of this Article and is entitled to a permit, it shall order the building official to issue a permit. Otherwise, the decision of the building official to deny the permit shall be affirmed.”

**Section 6.** 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 7.** 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 8.** 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 15<sup>th</sup> day of July, 2008.

/s/

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J. Robert Dodson III  
Mayor

ATTEST:

/s/

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Deborah L. Loesch, TRMC  
City Secretary