

ORDINANCE NO. 2018-882

AN ORDINANCE OF THE CITY OF HUNTERS CREEK VILLAGE, TEXAS AMENDING ARTICLE II, "TREE PRESERVATION," OF CHAPTER 18, "ENVIRONMENT," OF THE CITY CODE OF ORDINANCES TO UPDATE THE TREE PRESERVATION REGULATIONS TO COMPLY WITH RECENTLY ENACTED SECTION 212.905 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$500; AND MAKING OTHER PROVISIONS RELATED TO THE SUBJECT.

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

Section 1. Section 18-20 of the Code of Ordinances, "Preservation and protection of trees", is amended by adding a new subsection (a-1), between subsection (a) and subsection (b), to read as follows:

"(a-1) *Replacement.* Given the conduciveness of the city's topography and natural conditions to arboreal viability, and in light of the minimum lot size requirements applicable to each lot in the city, it is the further intent of this article to achieve the foregoing objectives by requiring the replacement of trees as specified in this article solely through enforcing specific performance and not by imposing any tree mitigation fee or similar monetary charge."

Section 2. Section 18-20 (e) of the Code of Ordinances is amended to read as follows:

"e) Tree replacement.

(1) *Generally.* ~~Except as otherwise provided, a~~ A property owner must maintain the minimum required density of protected and replacement trees on the owner's lot at all times and, if the lot falls below the minimum required density because of the loss or removal of a tree or trees, regardless of cause, the property owner shall plant and maintain a sufficient number of replacement trees to meet the minimum required density. If a lot fall below the minimum required density because of the loss of one or more protected or replacement trees, the property owner shall, within 30 days after the removal or loss, plant a sufficient number of replacement trees to restore 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 subsection (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 within 30 days after the loss or removal of the tree it is to replace, except in the case of new construction. Provided however, that the building official may grant a written extension if the property owner:

- a. Applies for the extension in writing, and within 30 days after the loss or removal; and
- b. Demonstrates that replacement within 30 days is not practical because of ongoing construction or weather conditions.

In the case of new construction, the replacement tree must be planted before a certificate of occupancy is issued.

(5) *Exceptions to replacement requirements.* No replacement tree shall be required if because of the topography or natural conditions of the lot, or the location of permitted structures and other improvements to the lot, 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 the applicable tree replacement fee.~~ The city council shall be the final authority to determine whether planting a replacement tree is reasonably possible.

(6) Replacement of trees that die within five years after construction activity. A property owner shall plant replacement trees for any protected trees that die within five years after the date of completion of any outside construction activity on the property, regardless of whether the lot would have the minimum required density without the replacement. Provided however, that no replacement shall be required if the property owner can demonstrate that the death of the tree or trees was not related to the construction activity.”

Section 3. Section 18-21 of the Code of Ordinances is amended to read as follows:

“Sec. 18-21. - *Tree replacement.*

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

- ~~(1) — Monies in the tree replacement fund may only be used for the following purposes:~~
 - ~~a. — To purchase and plant trees within the city on public property and rights-of-way, or other property under the control of the city;~~

b. ~~To water, feed, or otherwise maintain trees planted or maintained by the city; or~~

c. ~~To promote the planting and conservation of trees within the city.~~

(21) A property owner who removes a protected tree pursuant to a valid permit, or in an emergency situation, shall ~~but who is excused from the obligation to provide a replacement tree, as and to the extent required 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.~~

(32) A property owner who removes a protected tree in violation of this chapter shall provide a replacement tree of the same caliper size and species as the tree that was illegally removed. If it is not feasible to provide a replacement tree of the same caliper size as, ~~the property owner shall pay a tree replacement fee equal to \$500.00 per inch of diameter of the protected tree that was removed, the property owner shall provide a replacement tree of the same species as the protected tree and having the largest caliper size (not less than three inches) that is feasible.~~ 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 of any particular caliper size is feasible.”

Section 4. Section 18-24 of the Code of Ordinances is amended to read as follows:

“Sec. 18-24. - 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, or refuse to issue a certificate of occupancy, if any condition or requirement of this article or such permit is not fulfilled.”

Section 5. Penalty. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500. Each day of violation shall constitute a separate offense.

Section 6. Effective Date and Publication. This ordinance shall be effective immediately upon adoption and publication of this ordinance or a caption that

summarizes the purpose of this ordinance and the penalty for violating this ordinance in every issue of the official newspaper for two days, or one issue of the newspaper if the official newspaper is a weekly paper, in accordance with Section 52.011 of the Texas Local Government Code.

Section 7. **Repeal.** This ordinance is intended to be cumulative and shall not repeal any provision of a previous ordinance or City Code except to the extent that a provision is inconsistent and cannot be reconciled with this ordinance.

Section 8. **Severability.** In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it is the intention of the City Council that the invalidity or unconstitutionality of the one or more parts shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision other than the part declared to be invalid or unconstitutional; and the City Council of the City of Hunters Creek Village, Texas, 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.

PASSED, APPROVED and ADOPTED this, the 23rd day of January, 2018.

Jimmy Pappas
Mayor

ATTEST:

Crystal Dozier, TRMC
City Secretary