

ORDINANCE NO. 2007-009

AN ORDINANCE OF THE TOWN OF TALTY, TEXAS, ADOPTING TREE PRESERVATION AND CONSERVATION REGULATIONS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF TALTY, TEXAS:

SECTION 1. That the Town hereby adopts the Tree Preservation and Conservation regulations as set forth herein-below:

Sec. 1 Purpose

a) The purposes of this Ordinance are to establish rules and regulations governing the protection of trees and vegetation cover within the Town of Talty, to encourage the protection of healthy trees and vegetation, and to provide for replacement and replanting of trees that are necessarily removed during construction, development or redevelopment.

b) The provisions of this ordinance allow trees located within necessary public rights-of-way and easements to be removed prior to issuance of a building permit. Trees within the buildable area of a property may also be removed. All other tree removal is subject to the permit requirements of Section 3.00 hereof.

c) In compliance with the spirit and intent of this Ordinance, residential property owners are encouraged to assist in the identification and preservation of historic and specimen trees that may exist on their property.

Sec. 2 Definitions

The following definitions shall apply to this Ordinance.

“Buildable area” means that portion of a lot or building site, exclusive of the required yard area, on which a structure or building improvements may be erected, and includes the primary and accessory buildings, driveway, parking lot, pool and other structures as shown on the site plan. The buildable area shall include sufficient adjacent area to allow the normal operation of construction equipment.

“Drip line” means a vertical line run through the outermost portion of the crown of a tree and extending to the ground.

“Historic tree” means a tree which has been found by the Town to be of notable historic interest because of its age, type, size or historic association and which has been so designated as part of the official records of the Town.

“Person” means any individual, corporation, partnership, association or other artificial entity, or any agent or employee of the foregoing.

“Specimen tree” means a tree which has been determined by the Town to be of high value because of its type, size or other professional criteria, and which has been so designated as part of the official records of the Town.

“Tree” means any self-supporting woody perennial plant which has a trunk diameter of three inches or more when measured at a point of four and one-half feet above ground level (at average grade) and which normally attains an overall height of at least twenty feet at maturity, usually with one main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of oak.

“Yard area” means the front, side and rear yard areas as required under the comprehensive zoning ordinances and the zoning district requirements applicable thereto.

Sec. 3 Applicability of Provisions

- a) The terms and provisions of this Ordinance shall apply to real property as follows:
 - 1) all real property upon which any designated specimen or historic tree is located;
 - 2) all vacant and undeveloped property; and,
 - 3) all property to be redeveloped, including additions and alterations.

b) This Ordinance shall not apply to trees located in the yard area of developed and owner-occupied residential property, except historic or specimen trees as defined herein, and those parts of trees and branches which overhang and extend laterally into the space over public roadways as set forth in Section 4, “Tree Trimming/Pruning-Public Roadways,” of this Ordinance.

Sec. 4 Tree Trimming/Pruning on Public Roadway

a) All property owners of real property on which there are trees in the yard area with branches that extend into or over the space of any street, alley or public roadway shall periodically inspect such trees to determine the extent of overhang or lateral protrusion into or over such streets, alleys, or public roadways.

b) To prevent scratch damage to motor vehicles, improve driver visibility, and promote public safety, overhanging branches of trees shall not extend lower than 12 feet above the surface of any street, alley or public roadway. Tree branches below 12 feet that extend laterally toward the roadway are to be trimmed or pruned back to a distance of not less than 5 feet from the edge of the paved surface of the street, alley, or public roadway or flush with the trunk of the tree if the tree is closer than 5 feet to the edge of the paved portion of the street.

c) Property owners shall pay particular attention to those conditions where tree branches or foliage may restrict the view of motor vehicle drivers at public road junctions and intersections. Additionally, trees and tree branches that are dead, diseased or otherwise weakened, and extend out and over the public roadways and are above the 10-foot height space requirement, shall be considered to be hazardous trees in accordance with the terms of this Ordinance and shall be cut at the trunk or, where appropriate, pruned, and removed.

Sec. 5 Permit Required

No person shall, directly or indirectly, cause, suffer, permit or allow the cutting down, destruction, removal, or damaging, of any tree, specimen tree or historic tree situated on property described in this Ordinance without first obtaining a tree permit, unless the conditions of Section 8 hereof apply.

Sec. 6 Permit Application

a) Permits for removal or replacement of trees covered in this Ordinance shall be obtained by making application on a form prescribed by the Town to the Town's building official. The application shall be accompanied by a written document indicating the reasons for removal or replacement of trees, and two copies of a plat or plan identifying the location, size (trunk diameter and height) and common names of each tree to be removed. The foregoing plat or plan shall be in addition to, and not in lieu of, any other plans, plats, or drawings which may be required by other ordinances or regulations, and shall be drawn to the largest practicable scale indicating:

- 1) the location of all existing or proposed structures, improvements and site uses, property dimensions and references to property lines, setback and yard requirements and special relationships;
- 2) the existing and proposed site elevations, grades and major contours;
- 3) the location of existing or proposed utility easements; and
- 4) the location of the trees on the site to be removed or replaced.

b) Tree information required above shall be summarized in legend form on the plan and shall include the reason for the proposed removal or replacement.

c) An application involving developed property may be based on drawings showing only that portion of the site directly involved, adjacent structures, and landscaping or natural growth incidental thereto.

d) Aerial photographs, at an appropriate scale, may be substituted at the discretion of the building official for a site plan if adequate site information is supplied on the aerial photographs.

Sec. 7 Permit; Application Review

Where an application is submitted in conjunction with development applications for new subdivisions, preliminary plans, and plat applications, the Planning and Zoning Commission shall review the application as part of the plan or plat review process, subject to review and approval by the Town Council. The building official shall review applications for previously approved or platted lots. Such reviews may include a field inspection of the site and the application may be referred to such departments as deemed appropriate for review and recommendations. If the application is made in conjunction with a site plan submitted for approval, the application will be considered as part of the site plan; and no permit shall be issued without site plan approval. Following review and inspection, the permit applications will be approved, disapproved or approved with conditions by the Planning and Zoning Commission or building official, as appropriate, in accordance with the provisions of this Ordinance.

Sec. 8 Tree Removal

a) No tree or trees shall be removed prior to issuance of a building permit unless one of the following conditions exists:

- 1) the tree is located in a utility easement, public street, right-of-way, or drainage easement;
- 2) the tree is not living, or so diseased or damaged as to be in danger of falling;
- 3) the tree interferes with utility service or creates unsafe visibility clearance;
- 4) the tree conflicts with other ordinances or regulations; or
- 5) the trees are willows, mesquites or thorn trees.

b) In the event that a tree located outside of a utility easement, public street, right-of-way, or drainage easement is requested to be removed to allow the operation of equipment, the applicant shall submit a plat and site plan which indicates the exact operational area needed. The building official may approve selected removal under this condition.

c) Except for the above, under no circumstances shall clear-cutting of trees on any property prior to issuance of a building permit be allowed.

d) Upon issuance of a building or other permit authorizing commencement of construction, no person, including but not limited to builders or developers, shall be allowed to remove trees located on the property except within the buildable area of the property or as otherwise permitted herein. Trees located in required yard areas, buffers and open space areas shall not be removed unless expressly authorized under the terms and provisions of this ordinance.

Sec. 9 Tree Replacement

a) In the event that an applicant seeks to remove a tree which is located outside the buildable area, as a condition to issuance of a tree removal permit, the building official may require replacement of the tree(s) with comparable trees somewhere within the site.

b) A sufficient number of trees shall be planted to equal in diameter the tree removed. Such replacement trees shall be a minimum of three inches in diameter and seven feet in height when planted, and shall be selected from the list of approved replacement trees maintained by the building official as approved by the Planning and Zoning Commission from the recommendations of the County Extension Service, if any.

c) At the time of application review, the building official or the Planning and Zoning Commission, where appropriate, shall determine the person responsible for replacement, the time of replacement, and the location of the replacement trees.

d) As a condition to new construction and subdivision development, at least two trees of at least 2 inches in diameter measured at a point of four and one-half feet above ground level (at average grade) and which normally attains an overall height of at least twenty feet at maturity, usually with one main stem or trunk and many branches, shall be planted on each platted lot prior to the issuance of a building permit.

Sec. 10 Tree Protection

a) During any construction or land development, the property owner, builder or developer shall clearly mark all trees to be maintained and may be required to erect and maintain protective barriers around all such trees or group of trees. No person shall cause, suffer, permit or allow the storage or placement of equipment, materials, debris or fill to be placed within the drip line of any tree, nor shall any person cause, suffer, permit or allow the movement of equipment within the drip line unless such movement within the drip line is within the operational area of construction and is necessary to preserve the tree.

b) During any construction or development, no person, including but not limited to property owners, builders and developers, shall cause, suffer, permit or allow the cleaning of equipment or material under the canopy or within the drip line of any tree or group of trees. No person shall cause, suffer, permit or allow the disposal of any debris, construction materials, paper, lumber, wood, brick, or other waste material such as, but not limited to, paint, oil, solvents, asphalt, concrete, mortar, etc., under the canopy or drip line of any tree or groups of trees.

c) No attachment or wires of any kind, other than those of a protective nature, shall be attached to any tree.

Sec. 11 Hazardous Trees

a) In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and which is required to be immediately removed without delay, authorization may be given by the building official and the tree may then be removed without obtaining a permit as herein required.

b) During the period of an emergency such as a tornado, storm, flood or other act of God, the requirements of this Ordinance may be waived as may be deemed necessary or appropriate by resolution or ordinance of the Town Council.

c) All licensed plant or tree nurseries shall be exempt from the requirements of this Ordinance only for those trees planted and growing on the premises of such licensee which are so planted and growing for the purposes of sale or intended sale in the ordinary course of the licensee's business.

d) Utility companies franchised by the Town may remove trees or parts thereof which endanger the public health, safety or welfare or which interfere with utility service. Where such trees are on owner-occupied properties developed for single-family use, disposal of such trees shall be at the option of the property owner.

Sec. 12 Enforcement; Penalties

a) Any person, firm or corporation who violates any provision of this Ordinance, or who fails to comply therewith or with any of the requirements hereof, or who commences construction or development of any real property in violation of any plan submitted or approved under this Ordinance, or who fails to obtain a permit where required herein, or who erects, occupies or alters any structure or building, or commences to erect, occupy, or alter any structure or building in violation of any plan submitted or approved under this Ordinance, shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined in a sum not to exceed Five Hundred (\$500.00) Dollars. Each and every day such violation exists or is permitted to exist shall constitute a separate offense. The owner of the building, structure, property or premises, or part thereof, where such violation exists, and any architect, builder, contractor or agent employed in connection therewith who may have assisted in the commission of any such violation shall each be deemed guilty of a separate offense and, upon conviction, shall be subject to the penalties herein provided. Upon conviction, the judge may order the defendant to replace the tree or trees with other trees equal to or greater in height, diameter and type of that which was unlawfully removed.

b) In addition to the penalties hereinabove provided, the Town may, at its option, pursue compliance with the terms and provisions of the Ordinance by injunctive relief in the appropriate courts of Kaufman County, Texas.

SECTION 2. That any provisions of the ordinances of the Town of Talty in conflict with the provisions of this ordinance be and the same are hereby repealed and any provisions not so in conflict shall remain in force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall, upon conviction, be punished by a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 5. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY PASSED by the Board of Aldermen of the Town of Talty, Texas, on the _____ day of _____, 2007.

APPROVED:

MAYOR

ATTEST:

TOWN SECRETARY

APPROVED AS TO FORM:

TOWN ATTORNEY

ORDINANCE NO. _____

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