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Ordinance: 6442

File Number: 2021-0358

AMEND CHAPTER 167 TREE PRESERVATION AND PROTECTION, CHAPTER 177 LANDSCAPE REGULATIONS AND CHAPTER 151 DEFINITIONS:

AN ORDINANCE TO AMEND CHAPTER 167 **TREE PRESERVATION AND PROTECTION,** CHAPTER 177 **LANDSCAPE REGULATIONS,** AND CHAPTER 151 **DEFINITIONS** OF THE *UNIFIED DEVELOPMENT CODE* TO OFFER CLARIFICATION, EFFICIENCIES, AND ADDITIONAL OPTIONS TO BOTH TREE PRESERVATION AND LANDSCAPING CODES

WHEREAS, to streamline portions of the Tree Preservation and Landscape Codes, staff proposes amendments to Chapters 167 and 177 to offer clarity, efficiency, and options to developers and staff; and

WHEREAS, both the City Staff and the Planning Commission recommend approval of the changes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends §167.04(E), §167.04(F)(2), and §167.04(I)(4) regarding tree preservation priorities as shown in Exhibit A1 attached to the Urban Forester's agenda memo.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §167.04(F)(2)(a) and §167.04(L)(1) regarding tree preservation easements as shown in Exhibit B attached to the Urban Forester's agenda memo.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends §167.07

regarding the regulation of commercial tree services as shown in Exhibit C1 attached to the Urban Forester's agenda memo.

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby amends § 177.08 by adding the following sentences to the end of the paragraph as shown in Exhibit D attached to the Urban Forester's agenda memo:

"Tree planting may be delayed for optimal planting times with approval from the Urban Forester. A deadline for delayed planting will be set and must be agreed upon with the Urban Forester."

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby amends §167.04(J)(2) and § 167.04(J)(3)(a) regarding off-site preservation alternatives as shown in Exhibit E attached to the Urban Forester's agenda memo.

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby amends §167.01(B), § 167.04(J)(4), and §167.10(A) and enacts a new §167.04(I)(9) regarding mitigation alternatives as shown in Exhibit F attached to the Urban Forester's agenda memo.

Section 7: That the City Council of the City of Fayetteville, Arkansas hereby amends §151.01 **Definitions** by enacting the following new definitions as shown in Exhibit G attached to the Urban Forester's agenda memo:

"*Mitigation Alternatives*. Mitigation alternatives are plantings that are not trees but still offer environmental benefits. Intensive Green Roofs, Extensive Green Roofs, and Green Facades are mitigation alternatives.

Intensive Green Roof. A green roof with 6 inches or greater soil medium that can sustain plant species with deeper root systems.

Extensive Green Roof. A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.

Green Façade. A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12" by 12" trellis system connected to the building.

Felling. The process of safely cutting a tree down and bringing the tree to the ground."

PASSED and APPROVED on 6/1/2021

Approved:

Lioneld Jordan, Mayor

Attest:

Kara Paxton, City Clerk Treasurer

CITY CLERK / TREASURER
CITY OF
FAYETTEVILLE
ARKANSAS
WASHINGTON COUNTY

Exhibit A1

Code Change to § 167.04

(E) *Tree Preservation Priorities.*

(1) *Percent minimum canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement and such utilities shall be routed, wherever possible, to avoid existing canopy.

(2) *Existing Natural Features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.

(3) *Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an eight-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a four-inch diameter. Low priority trees are invasive species or unhealthy as determined by a tree care professional pursuant to 167.07. Low priority trees are less than an eight-inch diameter at breast height for larger and medium species and less than a four-inch diameter at breast height for smaller trees species.

(F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*

(1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.

(2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of high priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.

(I) *Request for On-Site Mitigation.*

(1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.

(2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees on-site. It shall also include a chart clearly stating the following information:

(a) The number of trees requested for removal;

(b) The percentage below the percent minimum canopy requirement they represent; and,

(c) The species and number of trees to be planted based on the forestation requirements below.

(3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape plan as set forth in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual* .

(4) *Forestation Requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:

(a) *High Priority Canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of two hundred (200), 2-inch caliper trees per acre removed.

(b) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.

Exhibit B

Code Change to § 167.04

(F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*

(1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.

(2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of priority canopy based upon the tree preservation criteria set forth in §167.04(B) above.

(a) *Preservation Plan for Entire Development.* The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04(L) below. Should the entire percent minimum canopy requirement for the site be so protected, the preserved canopy shall be placed in a tree preservation easement and the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.

(b) *Preservation Plan for Infrastructure Only.* The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Proposed lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from defined individual lots by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall require separate tree preservation plans.

(L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*

(1) Large scale developments, large scale site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with The Urban Forester. In order to ensure that an

applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of approved tree preservation easements which shall be clearly depicted and noted on the easement plats for large scale developments, large scale site improvements, commercial final plats, and any plats with a tree preservation easement. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Urban Forester. If it is impractical to include the actual depiction of the canopy in a tree preservation easement on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

(2) The geographic extent and location of tree preservation easements, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.

(3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation easement shall seek prior approval from the Urban Forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

Exhibit C1

Code Change to § 167.07

167.07 - Commercial Tree Pruner/Service; Certificate And Insurance Required

(A) *Certificate Required.* Before cutting, pruning, felling, or trimming any tree within the City of Fayetteville, the owner and supervisory personnel of each business performing commercial and residential tree work shall obtain a professional certificate for tree care. Felling a tree is the process of safely cutting down trees. Removal of trees on the ground and tree debris already on the ground does not require certification. Machine operators on sites with approved grading plans are not required to be certified for land clearing or land grubbing on approved projects. A person working on cutting, pruning, felling, or trimming trees that are not currently certified shall be seeking certification and under the direct supervision of a person certified. Current and in good standing certification proof shall be required at all job sites. Property owners are responsible for confirming certification. The City of Fayetteville recognizes:

i International Society of Arboriculture: Certified Arborists, Municipal Arborist, Master Arborist, Tree Worker (Climber & Lift Specialist)

ii Tree Care Industry Association Accredited Company

(B) *Liability Insurance.* Each business performing commercial tree work, to include tree surgery, within the City of Fayetteville, shall be required to carry liability insurance in the following minimum amounts:

(1) General aggregate: $100,000.00

(2) Personal & advertising: $100,000.00

(3) Each occurrence: $100,000.00

Proof of coverage shall include the name of the insurance company issuing the policy, the name of the insured, the policy number, effective and expiration dates, and the signature of an authorized representative of the insurance company.

(C) *Worker's Compensation.* Those individuals performing commercial tree work on public grounds shall comply with all worker's compensation requirements as set forth under Arkansas law.

(D) *Licensure.* Those individuals performing tree surgery shall comply with licensure requirements as set forth under Arkansas law.

Exhibit D

Code Changes to § 177.08 - Timing Of Installation

Required landscaping shall be installed prior to the issuance of a final certificate of occupancy or filing of the final plat, whichever development procedure is most applicable. A ninety (90) day temporary certificate of occupancy may be issued or a final plat may be filed once the owner deposits, with the City, U.S. currency or an irrevocable letter of credit in an amount equal to 150% of the estimated cost of the uninstalled plant material. The letter of credit must be from a bank or banking institution doing business within the State of Arkansas which is a member of the Federal Deposit Insurance Corporation. Tree planting may be delayed for optimal planting times with approval from the Urban Forester. A deadline for delayed planting will be set and must be agreed upon with the Urban Forester.

Exhibit E

Code Change to § 167.04

(J) *Request for Off-Site Alternatives.*

(1) *Timing of Request for Off-Site Alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.

(2) *Off-Site Preservation* . The applicant may seek approval of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits.

(3) *Off-Site Forestation.*

(a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the City to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.

Exhibit F

Code Change to § 167.01 - Purpose

It is the purpose of this chapter to preserve and protect the health, safety, and general welfare, and enhance the natural beauty of Fayetteville by providing for regulations of the preservation, planting, maintenance, and removal of trees within the City, in order to accomplish the following objectives:

(A) *Objectives.*

(1) To preserve existing tree canopy;

(2) To create a healthful environment for Fayetteville residents, businesses, and industries;

(3) To moderate the harmful effects of sun, wind, and temperature changes;

(4) To buffer noise, air and visual pollution;

(5) To filter pollutants from the air that assist in the generation of oxygen;

(6) To reduce storm water runoff and the potential damage it may create;

(7) To stabilize soil and prevent erosion, with an emphasis on maintaining tree canopy on hillsides defined as canopied slopes in Chapter 151;

(8) To provide habitat for birds and other wildlife;

(9) To preserve riparian banks and beds, and prevent sedimentation;

(10) To screen incompatible land;

(11) To promote energy conservation; and

(12) To protect and enhance property values

B) *Principles.* This chapter shall be enforced according to the following principles:

(1) Preservation shall be the first, best, and standard approach.

(2) If preservation cannot be achieved, on-site mitigation (trees) shall next be pursued.

(3) If on-site mitigation (trees) cannot be achieved, off-site preservation shall be pursued.

(4) If off-site preservation cannot be achieved, off-site forestation shall be pursued.

(5) If off-site forestation cannot be achieved, on-site mitigation alternatives (green roofs and or green facades) shall be pursued.

(6) If none of the above approaches can be achieved, payment shall be made to the tree escrow account.

Code Change – Enact new § 167.04(I)(9)

(9) Request for On-Site Mitigation Alternatives (Green Roofs or Green Facades).

(a) *Intent.* The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.

(b) *Applicability.* On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.

(c) *Timing of Request for On-Site Mitigation Alternatives.* Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.

(d) Intensive Green Roof- A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.

(e) Extensive Green Roof- A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.

(f) Green Façade- A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12" by 12" trellis system connected to the building.

(g) *Mitigation Alternative Calculations.* The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.

(i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.

(ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.

(iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

Code Change to § 167.04(J)(4)

(4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, off-site forestation, and on-site mitigation alternatives to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account $250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund $425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.

Code Change to § 167.10(A)

(A) *Maintenance Agreement and Landscape Establishment Guarantee.* All plans requesting on-site mitigation or off-site forestation shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.

(1) Approval of a plan requesting on-site mitigation, on-site mitigation alternatives, or off-site forestation shall be contingent upon the applicant depositing with the City either currency, bond irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor of trees at the time of planting. The bond, irrevocable letter of credit, or other surety must cover the entire three (3) year maintenance and monitoring period. The amount shall be equal to that provided in §167.04(J)(4).

(2) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the City shall release the currency, bond, or letter of credit.

(3) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the City shall use the necessary monies from the landscape establishment guarantee to do so.

(4) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.

(5) However, in lieu of cash surety, letter of credit, or bond, the monitoring and maintenance requirement may also be met through proof of a three year tree maintenance contract with a landscape contractor approved by the Urban Forester. The contract shall name the City of Fayetteville as a third party beneficiary. This fully executed contract shall contain:

(a) Itemized proof of payment or charge for three (3) years of watering and maintenance for each required tree and maintenance for on-site mitigation alternatives.

(b) A clause that requires that if the approved contract is breached, the developer shall either immediately supply an acceptable replacement maintenance contract or shall deposit into the City's Tree Escrow Account the amount set forth in §167.04(J)(4).

(c) After inspection by the Urban Forester at the end of the three year period, if the Urban Forester determines that less than 90% of the trees or 90% of the on-site mitigation alternatives are found healthy and with a reasonable chance of surviving to maturity, the trees shall be replaced by the developer within sixty (60) days of notice from the Urban Forester. If the developer fails to comply, the City would recover losses as outlined in the contract.

Exhibit G

Code Change to § 151.01 to enact the following definitions

Mitigation Alternatives- Mitigation alternatives are plantings that are not trees but still offer environmental benefits. Intensive Green Roofs, Extensive Green Roofs, and Green Facades are mitigation alternatives.

Intensive Green Roof- A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.

Extensive Green Roof- A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.

Green Façade- A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12" by 12" trellis system connected to the building.

Felling – The process of safely cutting a tree down and bringing the tree to the ground.