

ORDINANCE NO. 2021-29

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRIENDSWOOD, TEXAS, AMENDING APPENDIX C, "ZONING," "SECTION 8.I.F. PRESERVING TREES; HISTORICAL SIGNIFICANCE" TO AMEND THE TREE MITIGATION REQUIREMENTS.

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WHEREAS, the City Council of the City of Friendswood is continually reviewing the provisions of the City Code of Ordinances, specifically including Appendix C of the Friendswood City Code, ("Zoning") relating to land use and other circumstances; and

WHEREAS, City Council finds it necessary to increase the tree mitigation requirements to promote preservation of existing trees; and

WHEREAS, City Council finds it necessary to establish a fee for payment in lieu of planting replacement trees; and

WHEREAS, the Planning and Zoning Commission of the City of Friendswood has conducted a public hearing, received input from staff and has issued its final report recommending the amendments referenced hereafter; and

WHEREAS, the Planning and Zoning Commission and the City Council have conducted public hearings in the time and manner required by law; and

WHEREAS, City Council has determined that all public notices have been posted and published, all required hearings on this matter have been held, and that this Ordinance complies with the applicable provisions of the City Charter, City Code and all other applicable laws; and

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRIENDSWOOD, TEXAS:

Section 1. That the facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. That the City of Friendswood Code of Ordinances, Appendix C, "Zoning", "Section 8.I.f. Preserving Trees; Historical Significance" is hereby amended as indicated below.

Section 8. - Supplementary district regulations.

I. *Landscaping and screening requirements.*

2. *Perimeter landscaping and screening.*

f. Preserving trees; historical significance.

- (1) Findings. The founders of the city chose to locate the community in its present location because of the inspiring, tranquil beauty of the huge oaks which occupied the creek banks and surrounding terrain. The name given the new town, Friendswood, was chosen because of its apt description of the settlers members of the Friends Church, and the topographical character of the land, and the woods found in abundance along the four creeks. **Over the years, the huge oaks have intertwined to create dense tree canopies throughout the city.** The city council hereby finds and determines that the preservation of the naturally wooded topography is of historical significance to the city.
- (2) Purpose. It is the intent of this subsection to encourage the preservation of existing trees within the city, and the historical significance thereof, and to prohibit their unwarranted destruction.
- (3) Tree survey required.
 - (a) A tree survey ~~showing thereon the location of all living trees that have a caliper of 12 inches or greater, measured at a point 4½ feet above the natural ground level,~~ shall be required for:
 - (i) All proposed development on land located in districts zoned as neighborhood commercial (NC), community shopping center (CSC), downtown district (DD), local neighborhood commercial (LNC), office park district (OPD), light industrial (LI), industrial (I), agricultural (A-I), business park (BP), planned unit development—mixed use (PUD-Mixed Use), or multifamily residential, low density (MFR-L), multifamily residential, medium density (MFR-M), and multifamily residential, high density (MFR-H);
 - (ii) All proposed development on land for which a specific use permit is required by sections 7.P and 9.G; and
 - (iii) For residential developments on land located in districts zoned as single-family residential (SFR), planned unit development-~~cluster home (PUDC—Cluster Home)~~, or multifamily residential-garden home district (MFR-GHD), provided, however, the tree survey required by this subsection shall be required only for the common areas located within those developments, such as community parks, where residents of the developments would have common access.

(b) The tree survey certified by a licensed surveyor, a certified arborist, or registered landscape architect, that:

(i) Identifies:

- 1. The protected trees sought to be subjected to tree removal at the site, according to location, type and size;**
- 2. Location and total caliper inches of invasive species to be removed, if seeking credit for elimination of invasive species;**
- 3. Areas of construction or other activities to be performed within the critical root zone of a protected tree, including site plans documenting measures to be taken for protection of each impacted critical root zone;**

(ii) Includes tables summarizing the total caliper inches of protected trees to be removed in size categories as follows:

- 1. 12-inch to 24-inch caliper;**
- 2. Greater than 24-inch to 36-inch caliper; and**
- 3. Greater than 36-inch caliper.**

(iii) States the total number of caliper inches to be replaced, calculated using the tree replacement calculation set forth below, and how replacement will be achieved, whether by on-site replacement or off-site replacement, or payment in lieu of replacement; and

(iv) Includes the proposed plan for tree replacement by location, type and size, if applicable.

(bc) If the property contains no trees fitting the description in subsection **(ba)** of this section, no tree survey shall be required if a signed statement verifying that no such trees exist is filed with the community development office of the city (hereinafter "community development").

(ed) The developer or owner of the property to be developed shall sign the tree survey certifying that it is, to the best of their knowledge, true and correct.

(de) The tree survey shall be submitted to community development concurrently with or as a part of the site plan, development permit or plat. Community development shall be authorized to review the data on-site for verification. The tree survey shall be accepted by community development or community development shall provide a notice, in writing, of its reasons for any action other than an acceptance thereof.

(4) Site plan to include trees.

(a) Every site plan submitted shall include all living trees identified on the tree survey as required by subsection I.f(3) of this section. Each such tree identified on the site plan shall bear a notation indicating the tree's status as either "protected" or "to be removed." A tree identified as "protected" indicates a tree that is not scheduled for removal during construction. A tree identified as "to be removed" indicates a tree that is scheduled for removal during construction.

Each tree removed during construction shall be mitigated as required in subsection I.f(6) of this section.

- (b) **"Protected" Class 1 or Class 2 trees, 12 inches in diameter or greater, measured at a point 4½ feet above the natural ground level, shall be counted, on a one-for-one basis, toward the minimum number of trees required by this subsection I.**
- (c) Trees identified with the notation "protected" shall also be physically marked at the development site so as to be readily distinguishable from trees that are identified on the site plan as "to be removed."
- (d) **The commission may consider alternate landscape plans to promote the protection of existing Class 1 or Class 2 trees.**
- (5) Review and acceptance of site plan. Community development shall review the tree survey portion of site plans to ensure compliance with the provisions of this subsection.
- (6) Mitigation and incentives.
 - (a) ~~Every development requiring the issuance of a development permit or the approval of a site plan or plat shall maintain a minimum of one tree from the qualified tree list for each 30 linear feet of street frontage, with such trees having a minimum caliper of two inches measured at a point 18 inches above the natural ground level.~~
 - (b) ~~Class 1 or Class 2 trees, 12 inches in diameter or greater, measured at a point 4½ feet above the natural ground level, shall be counted, on a one-for-one basis, toward the minimum number of trees required by this subsection I. Trees located within a buffer zone shall not be counted unless identified as "protected."~~
 - (a)(e) ~~Mitigation shall be required, on a one-for-one basis, for every tree~~ **Class 1 and Class 2 trees** with a caliper of 12 inches or greater, measured at a point 4½ feet above the natural ground level, that is removed from the development site. For each such tree removed, mitigation shall be accomplished by planting ~~one~~ **one Class 1 or Class 2 tree** from the qualified tree list **located in the city design criteria manual.**
 - (bd) ~~New trees used for mitigation purposes or for landscaping shall have a caliper of at least three inches~~ **be calculated in accordance with Table XX,** measured at a point 18 inches above the natural ground level.

Table XX. Caliper Inch Replacement of a Protected Tree

	<u>On Site Replacement</u>	<u>Off Site Replacement</u>	<u>Minimum Caliper Per Tree in Inches</u>
<u>12" – 24"</u>	<u>100 percent</u>	<u>120 percent</u>	<u>4-inch</u>
<u>24.1" – 36"</u>	<u>150 percent</u>	<u>170 percent</u>	<u>6-inch</u>

<u>Greater than 200 percent</u>	<u>220 percent</u>	<u>8-inch</u>
<u>36"</u>		

- (ce) The landscaping plan shall clearly indicate which trees are being planted to replace trees identified as "to be removed" during development.
- (d) **Invasive tree species harm the native tree canopy; therefore incentives are available for elimination of species shown to be invasive on the qualified tree list. The city shall have the discretion to reduce tree replacement requirements based on the removal of invasive trees on-site. Reduction of caliper inch replacement, if granted, shall be calculated in accordance with Table XY.**

Table XY. Reduction of Caliper Inch Replacement for Removal of Invasive Trees

<u>Caliper Inches of Invasive Trees Removed</u>	<u>Percent Reduction in Total Caliper Inches</u>
<u>50" to 150"</u>	<u>5 percent</u>
<u>150.1" to 300"</u>	<u>10 percent</u>
<u>300.1" to 500"</u>	<u>15 percent</u>
<u>Greater than 500"</u>	<u>20 percent</u>

- (ef) If, due to the nature of a proposed development and unique characteristics of land, trees cannot be planted in a sufficient number to meet the requirements hereof, a developer may elect to provide for a compensating tree to be planted elsewhere within the city. ~~Compensating~~ **Off site replacement** trees shall be placed **within the city limits** on public property, **private commercial property, educational, or institutional property** ~~as near as reasonably practicable to the development site,~~ **approved by the city planner** and may be accomplished by donating a tree in kind, or by payment ~~to the city of such amounts as may be established from time to time by city council, based on the city's actual costs of acquisition~~ **in lieu at a rate as established in Appendix D, Schedule of Fees, Rates, Charges, Deposits, Bond and Insurance Amounts.** ~~Compensating~~ **Off site replacement** trees shall be planted **by the applicant** within the time periods required for replacement trees.
- (fg) To encourage maintenance of the suburban wooded character of the community, the city council may from time to time establish incentives to developments which retain more Class 1 or Class 2 category trees than is required by this subsection.
- (7) Tree protection. Property owners shall be required to ensure that each of the **replacement trees and** trees identified as "protected" on the site plan survives. If **a replacement tree or a** tree identified as "protected" fails to survive **a minimum of five years from the issuance of a certificate of occupancy at least,** the property owner shall replace such tree, at its sole cost and expense, within 120 days

from the date of notification by the city, with a Class 1 or Class 2 **the same tree type** from the qualified tree list, which has a minimum caliper of three inches, measured 18 inches above natural ground level, **as prescribed in section 1.2.f.(6)(b) of this appendix.**

- g. One tree required for each lot developed for single-family residential use. Each lot developed for single-family residential use shall have one of the qualified trees located in the required front yard, before a certificate of occupancy may be issued. An exception may be made by the building official for substantially wooded lots, in instances where the building official determines there is not sufficient space in the front yard for proper growth, or where the planting of the tree would constitute a hazard to persons or property.
- h. Exception for lots used for single-family residential dwelling purposes. Notwithstanding any other provision of this subsection I to the contrary, nothing contained herein shall be deemed to prohibit the owner or occupant of a single-family residential dwelling from trimming, pruning, or removing any tree located on a lot owned or occupied by such person as a private residence, provided that at least one tree is retained in the front yard, per section 8.I.g.

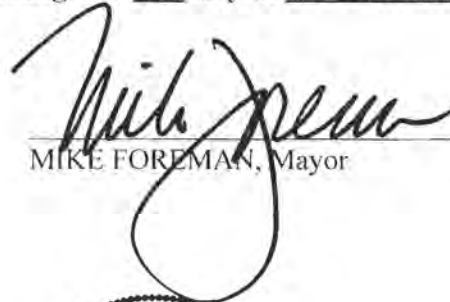
Section 3. That this Ordinance is hereby incorporated and made a part of the Friendswood City Code of Ordinances. Violation of this Ordinance is subject to the penalty provisions contained in such Code under Section 1-14 “General penalty for violations of Code; continuing violations”, and as otherwise provided by law. Any person who shall willfully, intentionally, or with criminal negligence violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense.

Section 4. That all ordinances or parts of ordinances in conflict or inconsistent with this Ordinance are hereby expressly repealed.

Section 5. That in the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances 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 of the City of Friendswood, 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.

Section 6. That the City Secretary shall give notice of the enactment of this Ordinance by promptly publishing it or its descriptive caption and penalty after final passage in the official newspaper of the City; the Ordinance to take effect upon publication.

PASSED AND APPROVED on first reading this 4th day of OCTOBER, 2021.



MIKE FOREMAN, Mayor

ATTEST:


LETICIA BRYSCH, City Secretary



APPROVED AS TO FORM:


MARY KAY FISCHER, City Attorney

PASSED, APPROVED AND ADOPTED on second and final reading this 1st day of NOVEMBER, 2021.


MIKE FOREMAN, Mayor

ATTEST:


LETICIA BRYSCH, City Secretary



APPROVED AS TO FORM:


MARY KAY FISCHER, City Attorney