

ORDINANCE NO. G-11-08-25-8A5

AN ORDINANCE AMENDING CHAPTER 14, ENVIRONMENT, ARTICLE II TREE PROTECTION AND PRESERVATION, CODE OF ORDINANCES (2010 EDITION) TO CHANGE TERMINOLOGY FROM THE DEVELOPMENT SERVICES OFFICE TO THE ZONING ADMINISTRATOR; AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

ARTICLE 1

That Chapter 14, Article II, Section 14-20 Definitions, Development Review Committee, Forestry Manager, Protected Tree Removal Permit, Stop Work Order, Tree Protection Plan, and Tree Replacement Plan are hereby amended to read as follows:

Sec. 14-20 – Definitions.

For the purposes of this article, the following words, terms and phrases, shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning:

Forestry manager shall mean the person who oversees the urban forestry program and all aspects of public tree planting and public tree care.

Protected tree removal permit shall mean written authorization granted by the forestry manager, under the provisions of Section 14-25, for the removal or transplanting of a protected tree.

Stop work order shall mean an order issued by the forestry manager or Zoning Administrator to the owner to cease and desist with work being performed on a site.

Tree protection plan shall mean a plan submitted by the owner in a form or manner specified by the forestry manager, Zoning Administrator or planning and zoning commission, which ever is applicable providing the method of protecting trees during construction that may or may not include protection details, standards, notes, and construction plans in accordance with generally accepted methods such as those provided in the tree technical manual.

Tree replacement plan shall mean a plan submitted by the owner in a form and manner specified by the forestry manager, or Zoning Administrator or planning and zoning commission, whichever is applicable providing the method of replacement for the proposed protected trees to be removed that may or may not include a plan that identifies the location, size, and species of all new trees proposed as replacement for the protected trees being removed and fees in lieu of replacement trees.

ARTICLE 2

That Chapter 14, Article II, Section 14-21 Prohibited Activities is hereby amended to read as follows:

Sec. 14-21 - Prohibited activities.

- (a) It is unlawful for any person to remove any protected tree without first securing a tree removal permit as specified in Section 14-25.
- (b) It is unlawful for any person to damage a protected tree, such as through tree topping, over-pruning or chemical poisoning.
- (c) It is unlawful for a person to continue work or removal of trees after the forestry manager or Zoning Administrator has issued a stop work order.

ARTICLE 3

That Chapter 14, Article II, Section 14-25 Tree Removal Permitting Process, Subsection (b) Protected Tree Removal Through the Subdivision Process is hereby amended to read as follows:

Sec. 14-25 - Tree removal permitting process.

- (b) *Protected tree removal through the subdivision process.* Tree removal requests, tree surveys and tree replacement plans for all projects requiring plat approval shall be submitted in conjunction with the subdivision approval process.
 - (1) *Tree survey and tree replacement plan.*
 - a. Tree surveys and tree replacement plans will be reviewed by the DSO Zoning Administrator as part of the plat approval and subdivision construction improvement acceptance process.
 - b. A tree survey will not be required if a land surveyor certifies that there are no protected trees on the proposed site.
 - c. A partial tree survey may be permitted if the Zoning Administrator determines that the replacement and protection requirements of this article have been met.
 - d. A tree inventory in lieu of a tree survey may be accepted by the Zoning Administrator to document trees outside of the limits of construction shown on the subdivision improvement construction plans.
 - e. A request to use a tree inventory or a partial tree survey shall be made in writing to the Zoning Administrator in conjunction with the concept plan submittal. The Zoning Administrator shall provide written notification approving or disapproving the request within the concept plan review cycle.
 - (2) *Tree protection, removal and replacement.* The subdivider shall configure a subdivision in such a manner that protected trees will not be damaged during the construction of required subdivision improvements. With respect to said improvements, the following will apply:

- a. When required for subdivision improvements construction, up to 30 percent of the total diameter inches of protected trees, excluding monarch trees, located within the boundaries of the plat may be removed without replacement. The calculations for the 30 percent removal shall be calculated by the smallest protected trees being removed first. Replacement trees in accordance with Section 14-26 shall be required if any of the remaining 70 percent of the total diameter inches are removed.
- b. The tree replacement plan will be reviewed in conjunction with the preliminary plat review process and will be approved or denied by the planning and zoning commission.
- c. The critical root zone of any protected tree not being removed shall be preserved in accordance with Section 14-27 and shall be shown on the tree protection plans as generally described in the tree technical manual.
- d. During subdivision improvements construction, tree protection criteria as listed in Section 14-27 shall apply to all protected trees being preserved and shall be shown on the tree protection plans, tree replacement plans, and the subdivision construction plans as generally described in the tree technical manual.
- e. Tree protection plans and tree replacement plans shall be submitted in conjunction with any subdivision improvement construction plans.

ARTICLE 4

That Chapter 14, Article II, Section 14-25 Tree Removal Permitting Process, Subsection (c) Protected Tree Removal Through the Site Plan Process is hereby amended to read as follows:

Sec. 14-25 - Tree removal permitting process.

- (c) *Protected tree removal through the site plan process.* Tree removal requests, tree surveys, tree protection plans and tree replacement plans for all projects requiring site plan approval, shall be submitted to the Zoning Administrator, as part of the site plan application approval process.
 - (1) *Tree survey and tree replacement plan.*
 - a. A tree survey, tree protection plan, and tree replacement plan shall accompany all site plans submitted in accordance with Chapter 46 of this Code and will be reviewed by the Zoning Administrator.
 - b. A tree survey will not be required if a land surveyor certifies that there are no protected trees on the proposed site.
 - c. A partial tree survey may be permitted if the Zoning Administrator determines that the replacement and protection requirements of this article have been met.
 - d. A tree inventory in lieu of a tree survey may be accepted by the Zoning Administrator to document trees outside the limits of construction.

- e. A request to use a tree inventory or a partial tree survey shall be made in writing to the Zoning Administrator in conjunction with the preliminary site plan submittal. The Zoning Administrator shall provide written notification approving or disapproving the request within the preliminary site plan review cycle.
- (2) *Tree protection, removal and replacement.* The applicant shall configure a site in such a manner that protected trees will not be removed or damaged due to the building layout and construction within the site. With respect to said building layout and construction, the following will apply:
- a. When required for the construction of the primary building and site improvements for the development, up to 30 percent of the total diameter inches of protected trees, excluding monarch trees, located within the boundaries of the lot may be removed without replacement. The calculations for the 30 percent removal shall be calculated by the smallest protected trees being removed first. Replacement trees in accordance with section 14-26 shall be required if any of the remaining 70 percent of the total diameter inches are removed.
 - b. A Tree replacement plan and tree protection plan shall accompany the site development permit application to the Zoning Administrator. The tree replacement plan and tree protection plan will be reviewed in conjunction with the site development permit application and will be approved or denied by the Zoning Administrator.
 - c. When replacement trees are required, replacement shall be in accordance with either section 14-26, which may be credited toward the requirements in section 46-195 of this Code.
 - d. The critical root zone of any protected tree not being removed shall be preserved in accordance with section 14-27 and shall be shown on the tree protection plans as generally described in the tree technical manual.
 - e. During site construction, tree protection measures as listed in section 14-27 shall apply to all protected trees being preserved.

ARTICLE 5

That Chapter 14, Article II, Section 14-26 Tree Replacement, Subsection (a) Requirements and regulations, Paragraph (5) is hereby amended to read as follows:

Sec. 14-26 - Tree replacement.

(a) *Requirements and regulations.*

- (5) Each replacement tree shall be planted on the same subdivision or development site from which the tree was removed. In the event that there is not a suitable location for the replacement tree(s) on the same site, as determined and certified by a landscape architect and approved by the Zoning Administrator, or if the Zoning Administrator determines that replacement trees are unable to survive on the site based on information submitted by the landscape architect, the owner of the site will be allowed to do one of the following:

- a. Make a cash payment into the tree fund in accordance with the tree replacement schedule provided in subsection (a)(7) below, which shall be used to fund tree plantings or tree replacement on public property; or
- b. Plant trees on public property according to the tree replacement schedule provided in subsection (a)(7) below, as approved by the Zoning Administrator.

ARTICLE 6

That Chapter 14, Article II, Section 14-26 Tree Replacement, Subsection (b) Tree Replacement Fee, Paragraph (3) is hereby amended to read as follows:

Sec. 14-26 - Tree replacement.

(b) *Tree replacement fee.*

- (3) The cashier's check or other form of payment acceptable by the city shall be submitted to the Zoning Administrator at the time of site plan approval; prior to subdivision construction plan acceptance; prior to plat recordation; or upon the tree removal permit approval, depending on the applicable review process.

ARTICLE 7

That Chapter 14, Article II, Section 14-26 Tree Replacement, Subsection (c) Tree Credits, Paragraph (5) is hereby amended to read as follows:

Sec. 14-26 - Tree replacement.

(c) *Tree credits.*

- (5) The forestry manager or Zoning Administrator, as appropriate, will review the trees proposed for tree credits provided in the tree survey and tree replacement plan and will approve or deny the use of the recommended trees as credits toward the replacement trees required. The review of the forestry manager or the Zoning Administrator, as appropriate, shall be based on the assessed health, structure, habit, disease, or decline of the tree.

ARTICLE 8

That Chapter 14, Article II, Section 14-27 Tree Protection Measures, Subsection (c) Hazardous Activities is hereby amended to read as follows:

Sec. 14-27 - Tree protection measures.

- (c) *Hazardous Activities.* Activities hazardous to the health of any Protected Tree being preserved are prohibited including but not limited to the following and as generally described in the Tree Technical Manual:

- (1) *Physical damage.* Any physical damage, including tree topping and/or pruning.
- (2) *Equipment cleaning and liquid disposal.* Cleaning equipment, depositing or allowing harmful liquids to flow overland within the limits of the critical root zone. This includes paint, oil, solvents, asphalt, concrete, mortar, tar or similar materials.
- (3) *Grade changes.* Grade changes (cut or fill) within the limits of the critical root zone unless adequate construction methods are approved by the forestry manager Zoning Administrator, as appropriate.
- (4) *Impervious paving.* Paving with asphalt, concrete or other impervious materials within the limits of the critical root zone in a manner which may reasonably be expected to kill a tree.
- (5) *Material storage.* Storing materials intended for use in construction or allowing waste materials due to excavation or demolition to accumulate within the limits of the critical root zone.
- (6) *Tree attachments.* Attaching to a tree any signs, wires, or other items, other than those of a protective nature.
- (7) *Vehicular traffic.* Vehicular and/or construction equipment traffic, parking, or storage within the limits of the critical root zone, other than on pre-existing or approved pavement. This restriction does not apply to single incident access within the critical root zone for purposes of clearing underbrush, vehicular access necessary for emergency services, routine utility maintenance, emergency restoration of utility service, or routine mowing operations.
- (8) *Utility encroachment.* Installation of utilities and appurtenances within the critical root zone or crown except as otherwise approved by the forestry manager Zoning Administrator, as appropriate.
- (9) *Excavation and trenching.* Excavation and trenching within the limits of the critical root zone, except as otherwise approved by the forestry manager or Zoning Administrator, as appropriate.

ARTICLE 9

That Chapter 14, Article II, Section 14-28 Fiscal Security for Trees is hereby amended to read as follows:

Sec. 14-28 - Fiscal security for trees.

- (a) *Posting of Fiscal at Subdivision.* The owner must post fiscal security with the city prior to a request for recordation of the final plat or prior to subdivision construction plan acceptance, whichever comes first, if the replacement trees required under the approved tree replacement plan have not been installed and accepted by Zoning Administrator.

- (b) *Amount.* The amount of fiscal security posted by the owner shall equal the estimated cost plus ten percent to complete the approved tree replacement plan. The owner's landscape architect shall provide the Zoning Administrator with a sealed opinion of the probable cost for his approval. The fiscal shall be posted for a two-year time period, with commencement of the time period to begin upon the subdivision improvement construction acceptance or the issuance of the certificate of occupancy.
- (c) *Administrative Fee.* The owner shall pay an administrative fee equal to five percent of the amount to be posted for all fiscal posting.
- (d) *Types.* In a form approved by the city attorney, an owner may post as fiscal security:
 - (1) A performance bond; or
 - (2) A letter of credit.
- (e) *Expenditure of Fiscal Security.* The city may draw on the fiscal security and pay the cost of completing the tree replacement plan approved if it determines that the owner has breached the obligations secured by the fiscal security or the two-year time period for the installation of the replacement trees has expired. The city shall refund the balance of the fiscal security, if any, to the owner. The owner shall be liable for the cost that exceeds the amount of fiscal security, if any, including any costs incurred by the city to draw on the fiscal security.
- (f) *Return of Fiscal Security.* The city shall return the fiscal security to the owner when final inspection approval is provided by the Zoning Administrator.

ARTICLE 10

That Chapter 14, Article II, Section 14-29 Administration and Enforcement is hereby amended to read as follows:

Sec. 14-29 - Administration and enforcement.

This article will be administered and enforced by the forestry manager and the Zoning Administrator.

- (1) *Administration.*
 - a. The role of the forestry manager is to:
 - 1. Provide technical advice to the Zoning Administrator regarding forestry management.
 - 2. Provide technical advice regarding protected trees and tree replacement plans to the planning and zoning commission through the plat review process;
 - 3. Approve or disapprove of the removal of protected trees unrelated to the site plan or subdivision processes; and

4. Review and recommend updates to this tree protection and preservation ordinance and the tree technical manual.
- b. The role of the Zoning Administrator is to approve or disapprove protected trees to be preserved, removed, or replaced as part of the site plan and subdivision process.
- c. The role of the planning and zoning commission is to approve or disapprove protected trees to be preserved, removed, or replaced as part of the subdivision process.

(2) *Enforcement.*

- a. *Inspections.* The forestry manager and Zoning Administrator are hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this article.
- b. *Powers and Duties.* The forestry manager and Zoning Administrator shall have the following powers:
 1. To enforce the provisions of this article, file complaints in municipal court against persons who violate any of its provisions.
 2. To enter any premise for the purpose of inspecting the trees provided for in the tree surveys and tree replacement plans, the protection of trees on the site, the trees being installed, the trees being removed or to perform his/her official duties.
 3. To ensure compliance with this article where a tree replacement plan has been submitted and approved.
 4. To issue a stop work order to a person to cease performing any work being done without a requisite permit or otherwise in violation of this article.
- c. *Faulty Work.*
 1. If the installation of replacement trees are found to be of substandard quality, incorrectly or defectively installed or found not to be installed in accordance with the tree replacement plan and the latest edition of the *American Standard for Nursery Stock*, as published by the American Association of Nurserymen, the forestry manager or Zoning Administrator, as appropriate, shall notify the owner in writing all the changes that need to be made in order for the work to conform with the tree replacement plan and the provisions of this article.
 2. If the forestry manager or Zoning Administrator, as appropriate, finds that the protected trees on the site were damaged due to construction during the subdivision or site plan process, the forestry manager or Zoning Administrator, as appropriate, shall notify the owner in writing

identifying the damaged trees and the owner shall replace the damaged trees in accordance with section 14-26.

3. A subdivision plat shall not be recorded, a certificate of occupancy shall not be issued, or fiscal shall not be released until the forestry manager or Zoning Administrator, as appropriate, re-inspects the site and finds that the changes requested have been completed correctly and in accordance with the tree replacement plan and the provisions of this article or the fiscal posted is paid into the tree fund.

d. *Final Inspection.*

1. Upon the completion of all the installation of trees, the owner shall notify the forestry manager or Zoning Administrator, as appropriate, that the work is ready for final inspection.
2. If faulty work or substandard plant material is found, the owner shall be notified of the necessary changes to be done in accordance with subsection 14-29(2)c. above. If such work is found to be correctly installed and in accordance with the tree replacement plan, the forestry manager or Zoning Administrator, as appropriate, shall provide written notification to the appropriate city official that the owner has met the requirements of this article.

ARTICLE 11

That Chapter 14, Article II, Section 14-32 Appeals is hereby amended to read as follows:

Sec. 14-32 – Appeals.

- (a) *Denial of Protected Tree Removal Permit.* If an application for a protected tree removal permit is denied, the applicant may appeal such action to the zoning board of adjustment by filing written notice of such appeal with the Zoning Administrator within ten days of notice of the denial of the application by the forestry manager. The board shall have 45 days from the date of the appeal to review said denial. The board may affirm or reverse the determination of the forestry manager. If the board fails to act within 45 days, the appeal shall be automatically granted and a protected tree removal permit issued.
- (b) *Denial of Tree Removal Request Through The Subdivision Process.* If a protected tree removal request is denied, the applicant may appeal such action to the city council by filing written notice of such appeal with the city secretary within ten days of notice of the denial of the application by the planning and zoning commission. The city council shall have 30 days from the date of the appeal to review said denial. The city council may affirm or reverse the determination of the planning and zoning commission. If the city council fails to act within 30 days, the appeal shall be automatically granted and a protected tree removal request approved.

- (c) *Denial of Tree Removal Request Through The Site Plan Process.* If a protected tree removal request is denied, the applicant may appeal such action to the zoning board of adjustment by filing written notice of such appeal with the Zoning Administrator within ten days of notice of the denial of the application by the Zoning Administrator. The board shall have 45 days from the date of the appeal to review said denial. The board may affirm or reverse the determination of the Zoning Administrator. If the board fails to act within 45 days, the appeal shall be automatically granted and a protected tree removal request approved.

ARTICLE 12

A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

B. The invalidity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.

C. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Alternative 1.

By motion duly made, seconded and passed with an affirmative vote of all the Council members present, the requirement for reading this ordinance on two separate days was dispensed with.

READ, PASSED, and ADOPTED on first reading this 25th day of August, 2011.

Alternative 2.

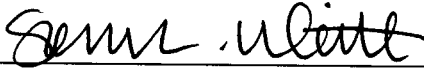
READ and **APPROVED** on first reading this the ____ day of _____,
2011.

READ, APPROVED and **ADOPTED** on second reading this the ____ day of
_____, 2011.



ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Secretary



City Council Agenda Summary Sheet

Agenda Item No. 8A5.

Agenda Caption:

Consider an ordinance amending Chapter 14, Article II, Tree Protection and Preservation, Code of Ordinances (2010 Edition), to change terminology regarding the Development Services Office. (First Reading)

Meeting Date:

August 25, 2011

Department:

Planning and Development Services

Staff Person making presentation: Peter Wysocki

Planning and Development Services Director

Item Summary:

In light of the recent consolidation of the Planning Department and the Development Services Office, this ordinance replaces the terminology in Chapter 14 from Development Services Office to Planning and Development Services Department, and DSO Planner or DSO Engineer to Planning and Development Services Director/Zoning Administrator. The term "Zoning Administrator" is defined in Chapter 46, Zoning, and includes the duties of the Planning and Development Services Director.

Cost: N/A

Source of Funds: N/A

Date of Public Hearing (if required): N/A

Recommended Action: Adoption