

ORDINANCE NO. 2269

AN ORDINANCE AMENDING THE CITY OF PORTLAND'S UNIFIED DEVELOPMENT ORDINANCE BY AMENDING *SECTION 709 BUFFERS AND LANDSCAPING* BY REQUIRING CERTAIN LANDSCAPING AND TREE PLANTING FOR NEWLY CONSTRUCTED ONE- AND TWO-FAMILY HOMES; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; ESTABLISHING A PENALTY AND SPECIFICALLY NEGATING A REQUIREMENT OF A CULPABLE MENTAL STATE; PROVIDING AND ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION IN THE CITY OF PORTLAND, TX.

WHEREAS the City desires to amend the Unified Development Ordinance to require tree plantings at newly built residential homes; and,

WHEREAS healthy trees in neighborhoods contribute to energy savings, better air and water quality, reduced storm water runoff, carbon storage and increased property values; and,

WHEREAS the Planning and Zoning Commission has conducted a Public Hearing according to law; and,

WHEREAS the City Council has conducted a Public Hearing according to law and determined that the request meets the criteria for approval established by the Unified Development Ordinance.

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

SECTION 1.

SECTION 1. Section 1003 Defined Terms, Chapter 10 Definitions, of the Unified Development Ordinance is hereby amended by adding the following to defined terms:

- A. Tree. Canopy: Also referred to as a shade tree, is a tree species designated as such in the Tree List found in the Table 2.Canopy Trees, Chapter 7 of this UDO.
- B. Tree. Understory: May also be referred to as an ornamental tree, is a tree species designated as such in the Tree List found in the Table 3.Understory Trees, Chapter 7 of this UDO.

SECTION 2.

Section 709 Buffers and Landscaping, Chapter 7 General Development Standards, of the Unified Development Ordinance is hereby amended to read as follows by adding the following language that is underlined (added) and deleting the language that is stricken (~~deleted~~) as delineated below:

- A. General. The use of drought-tolerant indigenous Texas gulf coast plant material is encouraged.
- B. *Residential Landscaping Requirements.* The following landscape requirements shall be applied to each residential zoning category.
- a. For new single- and two-family residential construction, the following minimum number of front-yard trees shall be installed prior to the issuance of a Certificate of Occupancy/Completion:
 - i. R-2, Single-Family Residential: four (4) canopy trees with a minimum caliper of two (2) inches at breast height;
 - ii. R-6, Single-Family Residential: two (2) canopy trees with a minimum caliper of two (2) inches at breast height;
 - iii. R-7, Single-Family Residential: One (1) canopy tree with a minimum caliper of three (3) inches at breast height and one (1) understory tree with a minimum caliper of one-and-a-half (1.5) inches at breast height;
 - iv. R-8, Single-Family Residential: One (1) canopy tree with a minimum caliper of three (3) inches at breast height.
 - v. R-8D, Two-Family Residential: One (1) canopy tree with a minimum caliper of three (3) inches at breast height, per home.
 - b. Required front- yard trees shall be planted outside of any recorded or prescriptive easement and in a manner that maintains a minimum 5-foot diameter clear space ring that is centered on the tree planting to ensure that on-premise utility lines or building foundations are not compromised due to root spread.
 - c. All required front-yard trees shall be in accordance with the approved plant list outlined in Table 2 and Table 3.
 - d. For all residential homes, 100% of the front- and side-yard must have sod or other permanent vegetative ground cover installed. The front- and side- yard shall be sodded unless a xeriscaping plan is submitted. Such a plan must be signed and sealed by a Texas Registered Landscape Architect or certified nursery professional.
 - i. R-2, Single-Family Residential homes may substitute grass seed for sod.
- C. *Application of Landscaping Requirements.* The landscaping requirements of this Section shall apply to building permits for the following:
- a. **New Development**
 1. New residential construction on property in all zoning districts;
 2. For one- and two-family residential building permit applications, proposed site landscaping and supporting information may be indicated on a site plan in lieu of providing a full landscape plan. Content and information to be provided on the site plan shall be at the discretion of the Director of Development Services or designee.
 - b. **Existing Development**

Properties with existing development that has been in place since or before (adoption date) and do not meet the minimum landscape requirements of this Section shall be considered nonconforming. Nonconforming landscape may continue until such time a building permit is issued for any of the following:

1. Construction, or alteration within the street yard results in either of the following:

- a. Any increase in impervious cover by 20% or more of existing structures.
- b. Any buildings subsequently added within the street yard.

D. Residential Landscaping Compliance.

- a. This section shall be applicable to all new permits at the time of original construction and at the time of substantial completion of construction of any dwelling.
- b. If weather conditions, drought conditions, scheduling delays, or similar conditions delay compliance, the Director of Development Services or their designee may grant a temporary Certificate of Occupancy if the owner or person in control of the premises enters into an agreement with the City agreeing to comply with the landscaping requirements within a specified time.
- c. All vegetation required to be installed must, after installation, be maintained in good condition. If the required vegetation becomes diseased, deteriorated, or dies, the owner of the premises must replace the vegetation within 90 days of written notice from the City.
- d. The Director of Development Services may approve alternative landscaping plans which meet or exceed the intent of this ordinance.

E. Residential Buffer Required. Any multifamily or nonresidential development located adjacent to a district specified in the table below shall incorporate a buffer in its development design.

	<u>Adjacent Use</u>	
<u>Development</u>	<u>Single-Family</u>	<u>Multifamily</u>
<u>Single-Family Project</u>		
<u>Multifamily Project</u>	•	
<u>Commercial Project</u>	•	•

a. Residential Buffer Design. A buffer strip with a minimum of ten (10) feet of depth shall be provided at the property line that separates districts. The buffer strip shall incorporate the following elements:

1. A decorative masonry wall or opaque fence with masonry columns. This structural screen shall have a minimum height of six (6) feet and a maximum height of eight (8) feet unless it abuts a required residential front yard. In that event, the structural screen shall have a maximum height of three (3) feet.
2. Sod or other permanent vegetative ground cover.

3. Small trees/shrubs. One specimen shall be installed per every ten (10) linear feet at a minimum. Shrubs may be placed at equal distances or in cluster formations. Specimens shall be selected from the list in Table 1. Small Trees/Shrubs; other drought-tolerant and native/adapted species are allowed if approved by a registered landscape architect.

4. Canopy trees with a minimum caliper of three (3) inches at breast height. One canopy tree shall be installed per every twenty-five (25) linear feet. Trees may be placed at equal distances or in cluster formations. Specimens shall be selected from the list in Table 2. Canopy Trees; other drought-tolerant and native/adapted species are allowed if approved by a registered landscape architect.

5. Grasses and/or grass-like ground cover. Specimens shall be selected from the list in Table 4. Grasses; other drought-tolerant and native/adapted species are allowed if approved by a registered landscape architect.

6. Irrigation designed to support all installed vegetation.

F. *Parking Lot Buffer Required.* Any parking lot containing ten (10) or more spaces which is located adjacent to a residential use shall incorporate a buffer in its development design.

G. *Parking Lot Buffer Design.* A buffer strip with a minimum of six (6) feet of depth shall be provided at the property line that separates the parking lot from a residence. The buffer strip shall incorporate the following elements:

1. A decorative masonry wall or opaque fence with masonry columns. This structural screen shall have a minimum height of six (6) feet and a maximum height of eight (8) feet unless it abuts a required residential front yard. In that event, the structural screen shall have a maximum height of three (3) feet.

2. Sod or other permanent vegetative ground cover (see Table 3. Grasses).

3. Small trees/shrubs (see Table 1. Small Trees/Shrubs). One specimen shall be installed every ten (10) linear feet at a minimum. Shrubs may be placed at equal distances or in cluster formations. Other drought-tolerant and native/adapted species are allowed if approved by a registered landscape architect.

4. Irrigation designed to support all installed vegetation.

F. *Parking Lot Perimeter Landscaping Required.* The perimeter of all parking lots containing ten (10) or more spaces shall incorporate landscaping in its development design.

G. *Parking Lot Perimeter Landscaping Design.* The area between any street and the parking lot shall be landscaped. The following elements shall be incorporated in the landscape design:

1. Sod or other permanent vegetative ground cover (see Table 3. Grasses).

2. Herbaceous perennials and decorative grasses shall be integrated for effect.

3. Small trees/shrubs no less than three (3) feet in height following installation shall be installed every ten (10) linear feet at a minimum (see Table 1. Small Trees/Shrubs). Shrubs may be placed at equal distances or in cluster formations. Other drought-tolerant and native/adapted species are allowed if approved by a registered landscape architect.

4. Canopy trees shall be installed every thirty (30) feet (see Table 2. Canopy Trees).

5. Irrigation designed to support all installed vegetation.

6. Pavers, flagstone, and similar decorative masonry or stone materials shall not cover more than sixty-five (65) percent of any parking lot perimeter landscaping.

H. *Parking Lot Interior Landscaping Required.* At least ten (10) percent of the interior area of off-street parking lots in front, side, and rear yards with street frontage that contain forty (40) or more parking spaces shall be landscaped. The following elements shall be incorporated in the landscape design:

1. Landscaping shall be restricted to terminal islands and/or divider medians.
 - a. Terminal islands, when used, shall be constructed at the end of parking rows with minimum six (6) inch high curbs. Their minimum width shall be five (5) feet and their minimum length shall be fifteen (15) feet.
 - b. Divider medians, when used, shall be constructed between abutting rows of parking spaces with minimum six (6) inch high curbs. Their minimum width without wheel stops preventing overhang shall be eight (8) feet. If wheel stops preventing overhang are installed, their minimum width shall be five (5) feet.
2. Permanent vegetative ground cover, but no sod (see Table 3. Grasses).
3. Herbaceous perennials and decorative grasses shall be integrated for effect (see Table 3. Grasses).
4. One small tree or shrub (see Table 1. Small Trees/Shrubs) no less than three (3) feet in height following installation shall be installed for each ten (10) parking spaces at a minimum.
5. One canopy tree (see Table 2. Canopy Trees) with a minimum crown height of eight (8) feet shall be installed for every twenty (20) parking spaces.
6. Irrigation designed to support all installed vegetation.
7. Pavers, flagstones, and similar decorative masonry and stone materials shall not cover more than sixty-five (65) percent of any parking lot interior landscaping.

I. *Landscape Maintenance.* Trees, shrubs, walls, irrigation improvements and other landscape features approved by the City shall be considered elements of the project in the same manner as parking and other details. The owner shall be responsible for regular maintenance of all landscaping in a way that presents a healthy, neat and orderly appearance. All landscaping shall be maintained free from disease, pests, weeds and litter. This maintenance shall include weeding, watering, fertilizing, pruning, mulching, edging and mowing as needed and in accordance with acceptable horticultural practice. It also includes the repair or replacement of required structures such as walls, and the replacement of defective landscaping required by this Section. All landscape areas shall be irrigated through an irrigation system or must be within seventy-five (75) feet of a hose attachment.

Table 1. Small Trees/Shrubs

Common Name	Scientific Name
Yaupon Holly	Ilex vomitoria

Common Name	Scientific Name
Crape Myrtle	Lagerstroemia spp.
Texas Lantana	Lantana horrida
Trailing White Lantana	Lantana montevidensis
Creosote Bush	Larrea tridentata
Texas Sage, Cenizo, or Texas Ranger	Leucophyllum frutescens
Barbados Cherry	Malpighia glabra
Giant Turk's Cap	Malvaviscus arboreous
Gulf Muhly	Muhlenbergia capillaris
Prickly Pear Cactus	Opuntia spp.
Retama or Jerusalem Thorn	Parkinsonia aculeata
Texas Ebony	Pithecellobium flexicaule
Blue Plumbago	Plumbago auriculata
Mexican Plum	Prunus mexicana
Fragrant Sumac	Rhus aromatic
Smooth Sumac	Rhus glabra
Prairie Flameleaf Sumac	Rhus lanceolata
Little-leaf Sumac	Rhus microphylla
Rosemary	Rosmarinus officinalis
Dwarf Palmetto Palm	Sabal minor
Scarlet Sage	Salvia coccinea

Common Name	Scientific Name
Autumn Sage	<i>Salvia greggii</i>
Texas Mountain Laurel	<i>Sophora secundiflora</i>
Yellow Bells or Esperanza	<i>Tecoma stans</i>
Yucca	<i>Yucca</i> spp.

Table 2. Canopy Trees

Common Name	Scientific Name
Chittamwood	<i>Bumelia lanuginosa</i>
Mediterranean Fan Palm	<i>Chamaerops humilis</i>
Thornless Common Honeylocust	<i>Gleditsia triacanthos</i>
Canary Island Date Palm	<i>Phoenix canariensis</i>
Mesquite	<i>Prosopis glandulosa</i>
Mexican White Oak	<i>Quercus polymorpha</i>
Southern Live Oak	<i>Quercus virginiana</i>
Escarpment Live Oak	<i>Quercus fusiformis</i>
Texas Palmetto or Texas Sabal	<i>Sabal mexicana</i>
Palmetto Palm	<i>Sabal palmetto</i>
Western Soapberry	<i>Sapindus drummondii</i>
Windmill Palm	<i>Trachycarpus fortunei</i>
Cedar Elm	<i>Ulmus crassifolia</i>
Chinese Evergreen Elm	<i>Ulmus parvifolia</i>

Common Name	Scientific Name
Mexican Fan Palm	Washingtonia robusta

Table 3. Understory Trees

<u>Common Name</u>	<u>Scientific Name</u>
<u>Anacacho Orchid Tree</u>	<u>Bauhinia congesta</u>
<u>Anacahuita/Wild Olive</u>	<u>Cordia boissieri</u>
<u>Buckeye, Mexican</u>	<u>Ungnadia speciosa</u>
<u>Condalia, Bluewood</u>	<u>Condalia hookeri</u>
<u>Crape/Crepe Myrtle</u>	<u>Lagerstroemia indica</u>
<u>Desert Willow</u>	<u>Chilopsis linearis</u>
<u>Eve's Necklace</u>	<u>Sophora affinis</u>
<u>Holly, Possumhaw</u>	<u>Ilex decidua</u>
<u>Holly, Yaupon</u>	<u>Ilex vomitoria</u>
<u>Jerusalem Thorn/Retama</u>	<u>Parkinsonia aculeata</u>
<u>Persimmon, Texas</u>	<u>Diospyrus mexicana</u>
<u>Plum, Mexican</u>	<u>Prunus mexicana</u>
<u>Redbud, Mexican or Texas</u>	<u>Cercis canadensis var. mexicana or texensis</u>
<u>Texas Mountain Laurel</u>	<u>Sophora secundiflora</u>
<u>Viburnum, Rusty Blackhaw</u>	<u>Viburnum rufidulum</u>

Table 4. Grasses

Common Name	Scientific Name
Sideouts Grama	<i>Bouteloua curtipendula</i>
Cedar Sedge	<i>Carex planostachys</i>
Perennial Fountain Grass	<i>Pennisetum alopecuroides</i>
Annual Fountain Grass	<i>Pennisetum setaceum</i>
Little Bluestem	<i>Schizachyrium scoparium</i>
Mexican Feathergrass	<i>Stipa tenuissima</i>
Eastern Gamagrass	<i>Tripsacum dactyloides</i>
Silver Bluestem	<i>Bothriochloa laguroides</i>
Splitbeard Bluestem	<i>Andropogon ternarius</i>
Rescuegrass	<i>Bromus unioloides</i>

SECTION 3. PENALTY

Any person who violates this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not exceeding two thousand dollars (\$2,000.00). Each and every day that a violation of this Ordinance occurs shall constitute a separate offense. The culpable mental state required by Chapter 6.02, Texas Penal Code, is specifically negated and dispensed with and a violation is a strict liability offense.

SECTION 4. REPEALER

All previously adopted rules, regulations, policies, and ordinances in conflict with this Ordinance are hereby repealed.

SECTION 5. SEVERABILITY

If any provision, section, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is, for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the


intent of the City Council in adopting this Ordinance that no portion hereof, or provisions or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this Ordinance are declared severable for that purpose.

SECTION 6. PUBLICATION AND EFFECTIVE DATE

This Ordinance shall be published after second reading hereof by publishing the caption thereof in the official newspaper with a statement the public may view the Ordinance in the Office of the City Secretary. This Ordinance shall take effect upon publication.

PASSED and APPROVED on second reading this 1st day of November 2022.

CITY OF PORTLAND


Cathy Skurrow
Mayor

ATTEST:


Annette Hall
City Secretary

