

ORDINANCE

AN ORDINANCE OF THE CITY OF DESOTO, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE AND MAP OF THE CITY OF DESOTO, TEXAS, AS HERETOFORE AMENDED BY AMENDING SECTION 39 TITLED "LANDSCAPE REQUIREMENTS" BY DELETING SUBSECTION 39.8 TITLED "TREE PRESERVATION" IN ITS ENTIRETY AND ADDING A NEW SUBSECTION 39.8 TITLED "TREE MITIGATION" SETTING FORTH REGULATIONS TO PROMOTE TREE PROTECTION AND MITIGATION OF TREE REMOVAL; BY AMENDING APPENDIX A-3 "DEFINITIONS" BY ADDING NEW DEFINITIONS; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1. That the Comprehensive Zoning Ordinance and Map of the City of DeSoto, Texas, duly passed by the governing body of the City of DeSoto on the 19th day of August, 1997, as heretofore amended be, and the same are hereby amended, by amending Section 39 titled "Landscape Requirements" by deleting Subsection 39.8 titled "Tree Preservation" in its entirety and adding a new Subsection 39.8 titled "Tree Mitigation", to read as follows:

"SECTION 39 LANDSCAPE REQUIREMENTS

DELETE 39.8 "TREE PRESERVATION" IN ITS ENTIRETY

~~39.8—TREE PRESERVATION~~

ADD NEW 39.8 AS FOLLOWS:

update

39.8 TREE MITIGATION

- A. Purpose: The purpose of Tree Mitigation and of this subsection 39.8 is to promote tree preservation by discouraging clearcutting and encouraging mitigation, while balancing the rights of property owners with the interests of the community; to contribute to the long-term viability of existing trees through their protection during construction or land disturbing activities; to reduce noise, heat and glare, and air pollution; to prevent soil erosion; to provide for shade and open space; to increase the value of residential and commercial properties within the City; and to maintain and enhance a positive image to attract new residences and business enterprises to the City. The provisions herein shall not be interpreted to prohibit or unduly inhibit development of private property.

B. Tree Removal Mitigation Permit.

- (1) A Tree Removal Mitigation Permit must be submitted to the Planning Division and acted upon by the Planning Manager before a set of Civil Plans can be submitted to the City as part of the subdivision (platting) review process, or prior to submitting a building permit for new multi-family or nonresidential development; or expansion of an existing multi-family or nonresidential building by fifty (50) percent or more of the existing square footage.
- (2) The Planning Manager will review the permit and have the ability to approve, approve with conditions or deny in accordance with this Section. The Planning Manager shall act on the application within thirty (30) calendar days of the date a complete application is submitted.
- (3) Any and all mitigation fees shall be paid prior to a Final Plat being recorded.
- (4) An appeal of the Planning Manager's decision to the City Council shall stay final action on the associated plat documents or building permit application. Denied applications may be appealed to the City Council within ten (10) calendar days from the date the permit was denied. Council shall hear the appeal within sixty (60) calendar days after the appeal is received. The action of City Council shall be final.
- (5) Any Tree Removal Mitigation Permit granted by the Planning Manager shall expire one (1) year after the date it was approved. Any tree not removed within this one (1) year period will no longer be deemed approved for removal. All tree fragments must be removed immediately after tree removal or risk violation of the City's Zoning Ordinance. Any permit shall be void if its terms are violated.

C. Exceptions: The following tree removal activities are exempt from the regulations of this Section:

- (1) Property platted prior to the adoption of this ordinance that does not contain structure(s).
- (2) Lots that contains a single family, duplex, or single family attached dwelling that is the person's residence.
- (3) Applications for a replat or amended plat.
- (4) Removal of trees by a plant and or tree nursery, grown for commercial sale, on property owned or operated.

- (5) Removal of trees determined by a qualified professional to be in a hazardous, dangerous, or diseased condition so as to endanger the public health, welfare or safety.
- (6) Tree removal actions deemed necessary in accordance with public safety personnel during a period of emergency such as tornado, storm, flood, or other acts of God.
- (7) Tree pruning solely for the purpose of removing diseased limbs or to shape for aesthetic or safety purposes.
- (8) City of DeSoto projects (e.g. Capital Improvement Projects, parks, and trails).
- (9) For existing franchise utilities, state and municipal entities, removal of trees that are interfering with or encroaching upon and/or damaging utilities, infrastructure, or structures, or are creating a safety hazard, as well as for general maintenance.
- (10) Trees located within the proposed right-of-way, visibility triangles, utility easements, or drainage facilities (easements and detention ponds), or anything that will be dedicated to the City per City approval.
- (11) Trees located within a proposed residential pad site for single-family development.
- (12) A Tree survey shall be required for clearing land for agricultural purposes; however, if no mitigation shall be required unless it is determined that the land was not put into agricultural use after one (1) year, the person responsible for having the trees removed shall mitigate these trees as provided herein.

D. Tree Removal Mitigation Permit Requirements. A Tree Removal Mitigation Permit application must include the following:

- (1) Attend a pre-development meeting with City staff prior to submittal to review requirements.
- (2) Completed and signed application (including legal description and location map) and fee of \$25.00.
- (3) **Tree Survey:** Must be prepared, signed, and stamped/sealed by a qualified professional and drawn to an engineering scale consistent with that of the associated plat (if applicable), which includes the following:

- (i) The boundaries of the entire parcel proposed for development, except for areas denoted as non-disturbance areas and all exempt areas, including the location of all existing or proposed lots and structures; and improvements such as streets, alleys, grade changes, and easements.
 - (ii) Identification of each tree greater than ten (10) caliper inches and tag number, with an X over those proposed to be removed.
 - a) Trees are to be represented on the tree survey by identifying the furthest drip line of each tree.
 - b) Trees to be preserved will be represented by a solid circle.
 - c) Trees to be removed are to be represented by a dashed circle.
 - (iii) **Tree Inventory Table.** A table will be included listing all surveyed trees by number provided on the tag of each tree, species, size, health condition, whether to be removed or preserved, and a brief narrative denoting why the tree is being removed (if applicable). This information must be compiled in a tabular format with each tree identified by a sequential number corresponding to a numbered tree on the survey.
- (4) If a non-disturbance area has been identified and protected as provided herein, no further survey of trees in that area is required.
- E. Mitigation for Trees Removed on Site. It is the desire of the City that as many trees as possible be preserved and protected on site.

- (1) Protected Trees shall be replaced by planting trees on the property equal to the total caliper inches as calculated using the following replacement rate:

Size of Protected Tree	Mitigation Ratio (in caliper inches)
Less than 10"	No mitigation
10" to 18"	1:1
18" to 25"	2:1
Greater than 25"	3:1

- (2) **Tree Credits** - If any protected tree is preserved outside of the non-disturbance area, credit for preservation shall be given that will be counted toward the mitigation requirements for the removal of protected trees within the buildable area.
 - (i) Any tree that is preserved and receives positive credit towards mitigation is exempt from being used to fulfil required landscaping.

- (ii) Following is a list of credits available for the preservation of protected trees on a site or project. Tree Credits will be awarded using the following table:

Caliper Size Tree	Positive Credits*
6" – 10"	1:1
10" to 18"	3:1
18" to 24"	4:1
Greater than 24"	5:1

* (1 credit is equal to on 3" caliper tree)

- (3) A landscape plan must be submitted indicating size, type, and location of replacement trees, with a planting schedule, time of completion, and stating who will be responsible for planting of the trees. The replacement trees must be chosen from the large tree list found within the Approved Plant List of the City of DeSoto Zoning Ordinance (Appendix A-4). The replacement trees must have a minimum caliper of three (3) inches measured six (6) inches above grade. All trees planted must be provided with an irrigation system approved by City staff.
- (4) An extension for the planting of trees may be granted by the Planning Manager because of seasonal weather concerns.
- (5) A replacement tree that dies within two years of the date it was planted must be replaced by another replacement tree that complies with the Tree Removal Mitigation Permit.

F. Planting Replacement Trees on Public Property: If the applicant determines there is no space available for some or all of the replacement trees on the lot or tract the trees were removed from, the replacement trees *may* be planted on public property owned by the City of DeSoto, in locations approved by Parks and Recreation Services. All trees planted on City property must be provided with an irrigation system.

G. Paying Mitigation Fees: Caliper inches removed that are not mitigated with either planting of replacement trees on site or planting trees on public property, must be mitigated by paying a fee of \$150 per caliper inch, with a maximum total mitigation cost of \$10,000 per acre of the development. The fee must be paid prior to obtaining any building permits for the site. This fee will be used by the City to plant trees in street ROW, parks and other public spaces.

H. Trees Preservation: Protected trees which are not required to be removed or have been identified on the tree survey plan to be preserved, must be protected under the following conditions, prior to the commencement of construction:

- (1) Install protective fencing prior to the commencement of any site preparation work (clearing, grubbing or grading) and shall be maintained through all phases of the construction. This fencing shall completely surround the tree or cluster of trees and placed at the outermost limits of the tree branches (dripline) or CRZ, whichever is greater.
- (2) Install fencing to separate or protect non-disturbance areas.
- (3) Pruning to provide clearance for structures, vehicular traffic, and construction equipment.
- (4) No movement or storage of large equipment, or cleaning of equipment and material under the canopy of any Protected Tree or trees to remain; and no disposal of any waste material such as, but not limited to, paint, oil, solvents, asphalt, concrete, mortar, etc., under the canopy of any Protected Tree(s).
- (5) All grading within protected root zone areas shall be done by hand or with small equipment to minimize root damage.
- (6) Water the trees most heavily impacted by construction activities deeply a minimum of once a week during period of hot, dry weather. Tree crowns are to be sprayed with water periodically to reduce dust accumulation on leaves.

SECTION 2. That the Comprehensive Zoning Ordinance and Map of the City of DeSoto, Texas, duly passed by the governing body of the City of DeSoto on the 19th day of August, 1997, as heretofore amended be, and the same are hereby amended, by amending Appendix A-3 "Definitions" by adding new definitions, to read as follows:

A-3 DEFINITIONS

Add the following new definitions:

Agricultural – Relating to the art or science of cultivating the ground, including the propagation and harvesting of crops, and the rearing and management of livestock; tillage; husbandry; farming.

Caliper - The thickness of trees measured in inches. For existing trees this measurement is made 4.5 feet above ground level. For trees to be planted, this measurement is made six (6) inches above grade or ground level.

Critical Root Zone (CRZ) – The imaginary circle on the ground that corresponds with the "dripline" of the tree.

Diameter-At-Breast-Height (DBH) - The tree trunk diameter measured in inches at a height 4.5 feet above the ground. If a tree forks into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point beneath the forks.

Diseased Tree – Sustained and progressive impairment of a tree caused by things such as environmental factors, bacteria, or insects, that render the tree unhealthy and in a weakened state or possibly a threat for infecting other trees.

Drip Line - The vertical line extending from the outermost edge of the tree canopy to the ground.

Legacy Tree – A tree that has a diameter of over 25 inches, measured four and one-half feet above natural grade, and is not of the unprotected tree list.

Non-Disturbance Areas – Any area of a proposed subdivision or site within which no grading or other development activities will take place and which has been buffered for protection.

Protected Tree - A tree of any species that is not classified as unprotected in this article that is at least ten (10) inches in caliper measured four and one-half feet (4½) above natural grade or a tree that was planted as a replacement tree.

Residential Pad Site – The building area footprint for the main structure of a single-family residential home.

Tree Removal Mitigation Permit - An official written City authorization issued by the Planning and Zoning Division to allow removal of any tree that is regulated within this section.

Tree Survey - A survey plan sealed by a qualified professional, indicating location, size, and species of all trees that are at least ten (10) inches in caliper measured at DBH above natural grade on a property.

Unprotected Tree - Any tree of the following species regardless of size; or other trees approved by the Planning Manager:

Bois d'arc	<i>Maclura pomifera</i>
Cottonwood	<i>Populus deltoids</i>
Hackberry/Sugarberry	<i>genus Celtis</i>
Honey Locust	<i>Gleditsia tracanthos</i>
Mesquite	<i>genus Prosopis</i>
Mimosa	<i>Albizia julibrissin</i>
Mountain Cedar	<i>Juniperus ashei</i>
Mulberry	<i>genus Morus</i>
Silver Maple	<i>Acer saccharinum</i>
White Poplar	<i>Populus alba</i>



Qualified professional – A certified arborist, registered landscape architect, or qualified surveyor or botanist.

SECTION 3. To the extent of any irreconcilable conflict with the provisions of this ordinance and other ordinances of the City of DeSoto governing the use and development of the Property and which are not expressly amended by this ordinance, the provisions of this ordinance shall be controlling.

SECTION 4. That all provisions of the ordinances of the City of DeSoto in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of DeSoto not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 5. 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 not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Comprehensive Zoning Ordinance as a whole.

SECTION 6. An offense committed before the effected date of this ordinance is governed by the prior law and the provisions of the Comprehensive Zoning Ordinance, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

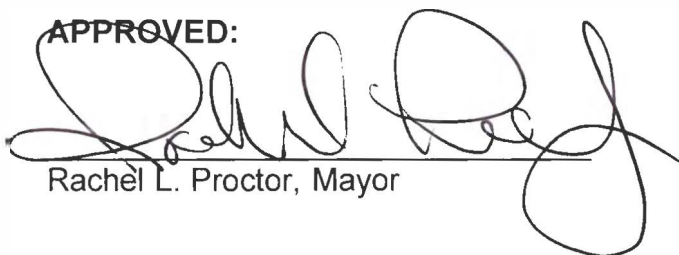
SECTION 7. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Comprehensive Zoning Ordinance of the City of DeSoto, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand (\$2,000.00) Dollars for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 8. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

IT IS ACCORDINGLY SO ORDAINED.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DESOTO, TEXAS ON THIS THE 2nd DAY OF NOVEMBER, 2021.



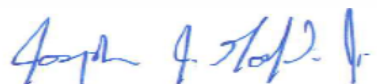
APPROVED:

Rachel L. Proctor, Mayor

ATTEST:



Alicia Thomas, Interim City Secretary

APPROVED AS TO FORM:



Joseph J. Gorfida, Jr., City Attorney
(09-08-2021:TM 124639 (September 8, 2021))