

ORDINANCE NO. 6681

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF SHERMAN, TEXAS, CHAPTER 10 (SUBDIVISION REGULATION) AND APPENDIX C (COMPREHENSIVE FEE SCHEDULE); PRESCRIBING NEW REGULATIONS RELATING TO TREE PROTECTION, PRESERVATION, PLANTING AND REMOVAL ON PROPERTIES LOCATED WITHIN THE SHERMAN CITY LIMITS AND THE CITY'S EXTRATERRITORIAL JURISDICTION; REQUIRING A PERMIT FOR THE REMOVAL OF CERTAIN PROTECTED TREES; PROVIDING FOR TREE MITIGATION CREDITS; SETTING THE TREE REPLACEMENT AND MITIGATION FEE; PROVIDING A PENALTY CLAUSE WITH A MAXIMUM FINE OF \$2,000, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

WHEREAS, the City Council of the City of Sherman, Texas ("City Council") finds that it is necessary to amend Chapter 10 (Subdivision Regulation) and Appendix C (Comprehensive Fee Schedule) of the Code of Ordinances, City of Sherman, Texas ("Code of Ordinance") to prescribe certain new regulations relating to tree protection, preservation, planting and removal on properties located within the Sherman city limits and extraterritorial jurisdiction ("City" or "Sherman"); and

WHEREAS, Sherman has complied with all legal notices and public hearing requirements as required by law; and

WHEREAS, the City Council finds that adopting this Ordinance promotes the health, safety and morals of Sherman and is in the best interest of the citizens of Sherman.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment to Chapter 10 (Subdivision Regulation) of the Code of Ordinances. Chapter 10 (Subdivision Regulation) of the Code of Ordinances is hereby amended as follows<sup>1</sup>:

**"CHAPTER 10 SUBDIVISION REGULATIONS**

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<sup>1</sup> Deletions are evidenced by ~~strikethrough~~; additions are *italicized*.

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## ARTICLE 10.02 DEVELOPMENT PROCEDURES

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**Sec. 10.02.007**            **Tree Protection**

(a)    *General*

- (1)    *Purpose. The purpose of this section is to preserve, protect and enhance existing trees and mitigate the effects of tree removal within the City of Sherman and its extraterritorial jurisdiction. Trees, particularly native species, add natural beauty and distinct local character, add shade, promote water conservation, provide locations for habitat, and increase property values. The provisions of this section are intended to support the long-term viability of healthy trees and promote natural ecological, environmental, and aesthetic quality in the community.*
- (2)    *Authority. The provisions of this section are adopted in accordance with state law and the City Charter. The provisions of this section shall be administered by the City Manager or his/her designee.*
- (3)    *Applicability. The provisions of this section shall apply to all property within the City limits and its extraterritorial jurisdiction. Applications for approval of subdivisions of land or plats or tree removal permits submitted after December 18, 2023 shall account for protected trees within the subject property in accordance with the provisions of this section and otherwise comply with the requirements of this section.*
- (4)    *Exemptions. Exemptions from the requirements of this section are as follows:*
  - (A)    *Subdivisions of land that total five (5) acres or less, or where no subdivision is proposed, parcels of land five (5) acre or less.*
  - (B)    *Trees that a certified arborist has determined and documented are dead, diseased, declining, or safety hazards.*
  - (C)    *Proposed public streets, utility easements, and required fire lanes.*
  - (D)    *As otherwise exempt under applicable law, including Section 212.905 of the Texas Local Government Code.*

(b)    *Definitions*

*Caliper inch. The diameter of the trunk measured twelve (12) inches above grade.*

*Clear-cutting. The indiscriminate cutting, plowing, or grubbing of trees without regard to type or size for the purpose of clearing the land.*



Critically alter. The uprooting, removing the canopy or severing the main trunk of a tree, or causing damage which may cause a tree to die. This includes but is not limited to the removal of a tree from a property, damage inflicted upon a tree by machinery, storage of materials or the compaction of soil above the root system of a tree, a change in the natural grade above the root system of a tree, or excessive pruning.

Drip line. A vertical line run through the outermost portion of the crown of a tree and extending to the ground. This may also be referred to as the critical root zone.

Floodplain. The area designated as being within the 100-year floodplain on the Federal Emergency Management Agency (FEMA) flood insurance map (FIRM).

Mitigation. The method by which trees are replaced whether through replanting on the subject property, planting or transplanting to another location or same property, or through payment of fees-in-lieu of replanting approved by the City.

Parcel of land. Land in the City of Sherman city limits or extraterritorial jurisdiction, whether platted or not platted.

Street perimeter buffer. A required buffer located at the perimeters of a proposed development site which is directly adjacent to a street or roadway. These areas are considered as areas of high visual impact, and preservation of existing vegetation located along the perimeter of the proposed development site is highly encouraged and used to screen the site and minimize potential nuisances between land uses.

Protective fencing. Chain link, silt fence, or other fencing used to protect preserved trees during construction activities.

Tree, dead (or declining). A tree that is dead or in severe decline with substantial structural defects, no remedial options available, and no chance of recovery, as determined and documented by a certified arborist.

Tree, protected. Any tree of a size and species as outlined in Table 10.1 that is required to be protected under this section.

Tree, replacement. Trees planted to mitigate the loss of trees as a result of development or tree removal.

Tree, street. Trees planted within the right-of-way that may be located in a constrained location and should contain root systems and branch growth conducive to growth around pedestrians, vehicles, and public infrastructure.

Tree Fund. A City-administered fund established for collection of fees-in-lieu or replacement trees paid as mitigation and may include other contributions made in support of tree protection efforts.

Tree survey. A plan or drawing to scale that identifies the exact size, location, condition (healthy, dead, or declining), and species of protected trees.

(c) *Tree Classifications*

- (1) Protected Tree. Any species listed in Table 10.1 that measures 12 caliper inches or larger. Species not so listed do not require protection or replacement.
- (2) Heritage Tree. Any species listed in Table 10.1 that measures 36 caliper inches or larger.

(d) *Protected Tree Species*

The requirements for tree replacement and mitigation as outlined in this section apply only to the trees listed in Table 10.1.

<b>Common Name</b>	<b>Scientific Name</b>
<i>Pecan</i>	<i>Carya illinoensis</i>
<i>Black hickory</i>	<i>Carya texana</i>
<i>Walnut</i>	<i>Juglans nigra</i>
<i>Southern magnolia</i>	<i>Magnolia grandiflora</i>
<i>Texas oak</i>	<i>Quercus buckleyi</i>
<i>Red oak*</i>	<i>Quercus rubra</i>
<i>Bur oak*</i>	<i>Quercus macrocarpa</i>
<i>Chinkapin oak*</i>	<i>Quercus muehlenbergii</i>
<i>Shumard red oak</i>	<i>Quercus shumardii</i>
<i>Post oak</i>	<i>Quercus stellata</i>
<i>Live oak*</i>	<i>Quercus virginiana</i>
<i>Bald cypress</i>	<i>Taxodium distichum</i>
<i>American elm</i>	<i>Ulmus americana</i>
<i>Cedar elm*</i>	<i>Ulmus crassifolia</i>
<i>Lacebark elm*</i>	<i>Ulmus parvifolia</i>
<i>Chinese Pistachio*</i>	<i>Pistacia chinensis</i>
<i>Bigtooth maple</i>	<i>Acer grandidentatum</i>
<i>Caddo maple</i>	<i>Acer saccharum 'Caddo' (Acer barbatum)</i>
<i>Red mulberry</i>	<i>Morus rubra</i>

\* Trees that are recommended as appropriate street trees within public right-of-way or in close proximity.

(e) *Tree Removal Permit*

- (1) Prohibited Activities. It is unlawful for any person to remove or critically alter a tree without first obtaining a tree removal permit where it is required by this section or unless otherwise authorized in this section. Each tree removed or critically altered without a required permit shall constitute a separate offense.



- (2) Presumption. Where trees are removed or critically altered in violation of this section but evidence of the number of trees so removed or critically altered is unavailable, it shall be presumed that every 1,200 gross square feet of tree canopy removed or critically altered, as shown on an aerial image taken within 36 months of the date of the removal or critical alteration, constitutes the removal or critical alteration of one tree.
- (3) Tree Removal Permit Required. A tree removal permit is required for the removal or critical alteration of any tree on a parcel greater than five (5) acres within the City limits or extraterritorial jurisdiction. A tree removal permit is not required if:
- a. The tree is being removed or critically altered on an existing platted lot being used for a one- or two-family residence.
  - b. The tree endangers the public health, welfare, or safety and immediate removal is required from a certified arborist, including documentation stating the diameter, species and reason for removal;
  - c. The tree has disrupted a public utility service due to a tornado, storm, flood, or other force of nature. Critical alteration shall be limited to the portion of the tree reasonably necessary to re-establish or maintain reliable utility service;
  - d. The tree is being critically altered as part of routine utility maintenance;
  - e. The tree is located on City-owned property and is being critically altered as part of routine maintenance;
  - f. The tree is dead as documented by a certified arborist, including information citing the diameter, species, and reason for removal, unless the tree was required under a landscape plan or was a required replacement tree under this section;
  - g. The tree is located on the property of a plant or tree nursery, or an orchard, where trees are planted and grown on the premises for the sale or intended sale to the general public in the ordinary course of the nursery's or orchard's business; or
  - h. Removing underbrush with hand tools, not including grubbing under drip lines.
- (4) Tree Removal Permit Application. A tree removal permit application and submittal fees shall be submitted to the Development Services Department in conformance with the requirements of this section. All applications and filings shall meet the requirements as defined by the tree removal application checklist, as it exists or may be amended, which shall be established and maintained by the Director of Development Services.
- (5) Approval. The City Manager or his/her designee shall have the authority to issue a tree removal permit if it complies with all the requirements of this Code.
- (6) Appeals. See Subsection 10.02.007(j) for appeals.
- (7) Expiration. A tree removal permit shall expire six months after its issuance.

(f) *Tree Survey*

- (1) *Tree Survey Required.* A tree survey shall be submitted concurrent with the submittal of a preliminary plat application or a tree removal permit. The tree survey shall be performed and certified by a certified arborist, registered landscape architect, or registered professional land surveyor. The submitted tree survey shall include the exact size, location, condition (healthy, dead, or declining), and species of each protected tree that measures 12 caliper inches or larger. It is recommended that the tree survey include trees that measure eight (8) caliper inches or larger to retain eligibility for preserved tree credits according to Subsection 10.02.007(g)(1).
- (2) *Alternatives to a Tree Survey.*
  - (A) *No Protected Trees on Site.* In lieu of a tree survey, the applicant may submit a sworn affidavit or sworn declaration from a certified arborist, registered landscape architect, or registered professional land surveyor certifying that there are no protected trees on the property or all protected trees on the property are entirely dead or declining. The affidavit or declaration shall be approved by the City Manager or his/her designee to be accepted as an alternative to the required tree survey.
  - (B) *Preservation Areas.* In lieu of a tree survey, the applicant may submit a landscape plan together with the preliminary plat submittal or a tree removal permit depicting no-disturbance preservation areas that include substantial existing tree canopy coverage that will not be disturbed, removed or critically altered, with the following conditions:
    - (i) The no-disturbance preservation areas shall constitute a minimum of 20 percent of the land subject to the preliminary plat application or tree removal permit that contains a substantial existing tree canopy;
    - (ii) To confirm the existence of substantial existing tree canopy coverage in the designated areas, the alternative plan submittal shall include aerial photographs and on-site photos. City staff may deem it necessary to conduct a visit to the project site for visual confirmation, and if so, the applicant shall allow such visit;
    - (iii) Trees within the designated areas do not need to be identified as a protected tree species;
    - (iv) The areas may be selected by the applicant but shall be located in the following priority order:
      - (1) Floodplains and riparian corridors;
      - (2) Street perimeter buffer areas;



- (3) *Trail corridors, as depicted in the City's adopted Trails Master Plan;*
- (4) *Parkland, open spaces, and outdoor amenity spaces; and*
- (5) *Other areas, as selected by the applicant.*

(v) *The City Manager or his/her designee must approve the landscape plan with such preservation areas designated, and such approval may be withheld at the sole discretion of the City Manager or his/her designee.*

(g) *Tree Replacement Standards*

(1) *Mitigation Ratios. Protected trees meeting the minimum size and species requirements shall be replaced according to the mitigation ratios established in Table 10.2, unless an alternative to the tree survey requirement was approved under Section 10.02.007(f). To the extent any provision of this section conflicts with a provision of Section 212.905 of the Texas Local Government Code, the provision in Section 212.905 controls.*

<i>Table 10.2</i>	
<i>Caliper Inches</i>	<i>Mitigation ratio</i>
<i>12" - 23"</i>	<i>Replace 1 caliper inch for every 2 caliper inches removed</i>
<i>24" - 35"</i>	<i>Replace 1 caliper inch for every 1 caliper inch removed</i>
<i>36" and above</i>	<i>Replace 3 caliper inches for every 1 caliper inch removed</i>

- (2) *Mitigation Limit. The total number of caliper inches required to be mitigated, as calculated according to the mitigation ratios in Table 10.2, shall not exceed 100 caliper inches per acre.*
- (3) *Replacement Tree Size. All replacement trees required per the mitigation ratios in Table 10.2 shall be a minimum of three (3) caliper inches.*
- (4) *Landscape Credit. Replacement trees that are planted on site as mitigation for removal of protected trees are eligible to be counted toward the landscaping requirements of Section 14.04.006 of this Code.*
- (5) *Timing of Mitigation Compliance.*
  - (A) *Replacement trees shall be planted within 90 days of issuance of a tree removal permit. If replacement trees cannot be planted within 90 days, the City Manager or his/her designee may approve a delay in replacement of up to six months after the date of tree removal permit issuance.*
  - (B) *If an applicant cannot replace the mitigation trees required or gain approval to plant on an alternate site, a fee-in-lieu payment into the City Tree Fund shall be required before the tree removal permit can be issued.*

(h) *Tree Preservation Incentives*

- (1) *Preserved Tree Credits.* Trees listed in Table 10.1 that are preserved onsite and measure eight (8) caliper inches or greater may be credited toward the replacement trees required in Subsection 10.02.007(f)(1) or the landscape requirements in Subsection 14.04.006.
- (2) *Preserved tree credits will be granted according to the standards set out in Table 10.3.*

<b>Table 10.3</b>	
<b>Preserved Tree Size (in caliper inches)</b>	<b>Credits toward replacement tree requirement</b>
8" - 35"	<i>1 caliper inch for every 1 caliper inch preserved</i>
36" and above	<i>36 caliper inches</i>

- (3) *Code Conflicts.* In certain cases, the preservation of protected trees may be desirable enough to take priority over full compliance of certain conflicting subdivision and zoning regulations, including, but not limited to, setbacks, lot design standards, building heights, sidewalks, lighting, signage, parking spaces, parking lot design, and driveway separation. When a conflict exists between the preservation of a protected tree and other provisions of this Article 10 or of Article 14, the applicant may request an alternative standard or design. The applicant's request may be considered and approved by the City Manager or his/her designee, provided that a reasonable application of public health and safety standards are maintained with the proposed design.

(i) *Alternative Mitigation Methods*

- (1) *Fee-in-Lieu Payment.* If replacement tree plantings cannot be fully accommodated on site with adequate space and conditions for long-term health, then an alternative fee-in-lieu payment to the City Tree Fund, which is hereby established, may be considered. If the applicant can demonstrate every effort has been made to plant the required replacement trees on site, the City Manager or his/her designee may consider a fee-in-lieu payment for the remaining balance of replacement tree value. Payments to the fund will be on a per caliper inch basis and are set out in Appendix C, Fee Schedule, of this Code. Payments to the Tree Fund are to be used for the sole purpose of planting trees on public property, including parks, along streets, and in common open spaces, and can also be used for pruning, irrigation, and maintenance of trees on public property. Replacement trees and fee-in-lieu payments may be combined to satisfy the requirement.
- (2) *Off-Site Mitigation.* If replacement tree plantings cannot be fully accommodated on site, then replacement trees may be proposed to be planted in a location mutually agreed upon by the City Manager or his/her designee and the applicant, including parks and other public places such as streets, medians, and other common open spaces.



(j) *Appeals*

*The City Council shall consider an appeal seeking alternative compliance if it determines that all options to achieve compliance with this section have been exhausted and the required mitigation creates an undue hardship for the applicant. An applicant may submit an alternative compliance plan or request for relief from compliance as part of an appeal application to the City Council. The applicant's proposed alternative compliance plan shall clearly delineate any proposed reductions to the standards and depict alternative standards or relief.*

(k) *Tree Protection Standards*

*To protect designated preserved trees or no-disturbance preservation areas during development, construction or disturbance is prohibited within the dripline area of the trees. During construction, this defined area shall be flagged and encircled with protective fencing and a three-inch layer of mulch spread beneath the drip line. Trees preserved on site must remain in compliance with the assurance of establishment and vitality requirement in Section 14.04.006 of this Code.*

(l) *Enforcement*

- (1) *Enforcement. The City shall determine compliance and enforcement in accordance with the provisions of this Code.*
- (2) *Clear-cutting. Clear-cutting of a property in advance or while seeking approval of annexation, zoning, utility agreement, development agreement, economic incentives, or other discretionary approvals of the Sherman City Council may result in denial or refusal of consideration."*

**SECTION 3: Amendment to the Code of Ordinances, Appendix C (Comprehensive Fee Schedule).** The Code of Ordinances, Appendix C (Comprehensive Fee Schedule) is amended as follows<sup>2</sup>:

**"APPENDIX C: COMPREHENSIVE FEE SCHEDULE**

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(2) **Engineering and Subdivision Fees**

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(C) ***Tree Protection***

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<sup>2</sup> Deletions are evidenced by ~~strikethrough~~; additions are *italicized*.

<i>Tree Replacement and Mitigation Fee</i>	<i>\$350 per caliper inch of replacement inches</i>
<i>Tree Removal Permit</i>	<i>\$250</i>

(D)(C) Third-Party Review and Inspections. For new infrastructure construction projects, the city engineer may require a third-party inspector to provide plan review, testing and/or inspection services. If so required by the city engineer, the applicant shall pay the City an amount equal to the third-party contractor’s fee.”

SECTION 4: Penalty. Any person, firm, corporation or entity violating any provision of this Ordinance, or the Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding FIVE HUNDRED DOLLARS (\$500.00), unless the violation relates to fire safety, zoning or public health and sanitation, in which case the fine amount shall not exceed TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude Sherman from filing suit to enjoin the violation. Sherman retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 5: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 6: Repealing/Savings. The Code of Ordinances shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7: Open Meeting. The meeting at which this Ordinance was introduced and passed was open to the public and that public notice of the time, place and purpose of said meeting was given all as required by law.

SECTION 8: Effective Date; Publication. This Ordinance shall become effective from and after its adoption and publication as required by law. The City Clerk is directed to publish the caption of this Ordinance as required by law.



**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this 18<sup>th</sup> day of December, 2023.**



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**DAVID PLYLER, MAYOR**

**ATTEST:**



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**LINDA ASHBY, CITY CLERK**

**APPROVED AS TO FORM:  
ABERNATHY, ROEDER,  
BOYD & HULLETT, P.C.**



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**RYAN D. PITTMAN, CITY ATTORNEY**