

ORDINANCE NO. 585-B

AN ORDINANCE OF THE CITY OF SOUTHLAKE AMENDING ORDINANCE 585-A, WHICH ESTABLISHES REGULATIONS FOR THE PRESERVATION OF TREES; PROVIDING FOR DEFINITIONS; PROVIDING FOR PERMIT REQUIREMENTS; PROVIDING A REVIEW PROCESS; PROVIDING FOR TREE PROTECTION AND REPLACEMENT REQUIREMENTS; PROVIDING FOR RESTRICTIONS ON PRUNING AND PLANTING OF TREES; PROVIDING FOR ENFORCEMENT PROCEDURES AND CIVIL PENALTIES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Southlake, Texas, is a home rule City acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, on December 16, 1997, the City Council adopted Ordinance No. 585-A, revising regulation relating to the protection of trees; and

WHEREAS, trees are of great value in the maintenance of the public health and welfare of the citizens and in the conservation of natural resources; and

WHEREAS, the City Council of the City of Southlake has determined that tree preservation continues to be necessary to adequately protect the public health, safety and welfare; and

WHEREAS, the City Council wishes to amend Ordinance 585-A to provide for clarification of the provisions of the existing ordinance, to establish the requirements for submitting a tree survey, and to provide for civil penalties.

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

1.0 PURPOSE AND INTENT

The purpose of this ordinance is to promote site planning which furthers the preservation of mature trees and natural areas; to protect trees during

construction; to facilitate site design and construction which contribute to the long term viability of existing trees; and to control the removal of trees when necessary. It is the further purpose of this ordinance to achieve the following broader objectives:

- a. Prohibit the indiscriminate clearing of property.
- b. Protect and increase the value of residential and commercial properties within the City.
- c. Maintain and enhance a positive image for the attraction of new residences and business enterprises to the City.
- d. Protect healthy quality trees and promote the natural ecological environmental and aesthetic qualities of the City.

2.0 DEFINITIONS

2.1 **GENERAL RULES:** The following rules shall be applied in constructing, interpreting or otherwise defining the terms hereof:

- a. Words used in the present tense shall include the future, words used in the singular number shall include the plural number and words used in the plural shall include the singular.
- b. The word "shall" is mandatory and the word "may" is permissive.
- c. The word "person" shall include any individual, firm, corporation, partnership, joint venture, organization, or any other entity.

2.2 **DEFINITIONS:** Certain words or terms applicable to this Ordinance are defined as hereinafter provided. Words and terms used in this ordinance, but not defined in this ordinance shall have the meanings contained in the Zoning Ordinance, Landscape Ordinance or other ordinances of the City. Words and terms defined in two ordinances shall be read in harmony unless there exists an irreconcilable conflict, in which case the definition contained in this ordinance shall control.

ALTER; ALTERS; ALTERATION: The uprooting, severing the main trunk of the tree, or any act which causes or may reasonably be expected to cause a tree to die. It includes, but is not limited to: damage inflicted upon the tree's root system 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; an application of herbicidal or other lethal chemicals; excessive pruning; placement of nonpermeable pavement over the root system of a tree; and trenching within the critical root zone. A protected tree shall be considered to be altered if less than 75% of the critical root zone is maintained at undisturbed natural grade, or more than 25% of the canopy is removed, or the tree is disfigured to the extent a reasonable person would conclude the tree will not survive.

BUILDING PAD: The actual foundation area of a building and a reasonable area not to exceed six feet (6') around the foundation necessary for construction and grade transitions.

CLEAR-CUTTING: The removal of all of the trees or a significant majority of the trees within an area of land.

CRITICAL ROOT ZONE: The area of undisturbed natural soil around a tree defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the drip line. (See Appendix D.)

CUT/FILL: Areas where the natural ground level has been excavated (cut) or fill has been brought in.

DRIP LINE: Whichever is greater of: (1) a vertical line run through the outermost portion of the canopy of a tree and extending to the ground, or (2) if the tree is damaged or deformed as a result of tree growth or other cause, a circular area with a radius of $\frac{1}{2}$ the height of the tree extending outward from the centerpoint of the tree.

LANDSCAPE ADMINISTRATOR: The person appointed by the City Manager to serve as the person to administer the plans and City ordinances related to landscape and the person's designated representative.

LANDSCAPE ARCHITECT: A person licensed to use the title of "landscape architect" in the State of Texas in accordance with the state law.

MUNICIPAL/PUBLIC DOMAIN PROPERTY: Property in which title is held in the name of a governmental entity. Examples of this include City Hall, public parks, Corps of Engineers property, State of Texas R.O.W., libraries, fire stations, water tower sites or similar properties.

OWNER: Any person with an interest in land, or a lessee, agent, employee, or other person acting on behalf of the Owner.

PROTECTIVE FENCING: Snow fencing, chain link fence, orange vinyl construction fencing or other similar fencing at least four feet high and supported at a maximum of ten-foot intervals by approved methods sufficient enough to keep the fence upright and in place. The fencing shall be of a highly visible material.

PUBLIC UTILITY: A business that offers a public utility service, such as gas, electricity, cable or telecommunications service and that installs facilities within public right-of-way or easements.

TREE: Any self-supporting woody perennial plant which will attain a trunk diameter of two inches or more when measured at a point four and one-half feet above ground level and normally an overall height of at least 15 feet at maturity, usually with one main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of oaks.

TREE BOARD: A board appointed by the City Council to carry out the duties and responsibilities set forth in this Ordinance. The Planning and Zoning Commission shall constitute the Tree Board unless the City Council appoints a separate tree board.

TREE, MARGINAL: A tree which the City has determined may or may not be worthy of preservation depending on the individual characteristics of the tree. (See Appendix A.)

TREE, PARK: Trees, shrubs, and all other woody vegetation in public parks and all areas owned by the City to which the public has free access as a park.

TREE, PROTECTED: (1) A quality tree that has a trunk with a diameter of six inches or greater at four and one-half feet above the ground, or (2) a marginal tree that has a trunk with a diameter of six inches or greater at four and one-half feet above the ground and that the Landscape Administrator has determined should be saved due to individual characteristics of the tree, or (3) an understory tree that has a trunk with a diameter of two inches or greater at four and one-half feet above the ground. (See Appendix A.) The diameter of a multi-trunk tree shall be determined by adding the total diameter of the largest trunk to $\frac{1}{2}$ the diameter of each additional trunk. (See Appendix E.)

TREE PROTECTION SIGN: A sign furnished to a person by the City's building official upon approval of a tree survey or tree permit which describes prohibited conduct detrimental to trees.

TREE, QUALITY: A tree which the City has determined typically has significant positive characteristics worthy of preservation. (See Appendix A.)

TREE, STREET: Trees, shrubs, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the City.

TREE SURVEY: A plan drawing that provides legend details about the location and details of trees and contains the information set forth in Schedule "B" hereto. It shall include drawings by a licensed surveyor, a licensed architect, or, if few trees are involved, a person approved by the Landscape Administrator.

TREE TOPPING: The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

TREE, UNDERSTORY: A tree which the City has determined has significant positive characteristics worthy of preservation and that does not typically attain great size. (See Appendix A)

UTILITY COMPANY: A company or entity, or agent for a company or entity, that provides a utility service such as the provision of gas, electric, cable, or telephone service within the City.

3.0 TREE PERMIT

3.1 **GENERALLY**: Except as otherwise provided in Section 3.3, below, a person must obtain a tree permit from the Landscape Administrator before altering any tree (including any protected tree, quality tree, marginal tree, or understory tree), park tree, or street tree in the City.

3.2 **OFFENSE**: A person commits an offense if the person alters a protected tree that does not meet an exception listed in Section 3.3, below, without first obtaining a tree permit from the City that authorizes alteration of that tree. A person commits an offense if the person alters a tree in violation of the permit.

- 3.3 EXCEPTIONS: It is an affirmative defense to prosecution for a violation of Section 3.2 if the person altered a tree for one of the reasons listed below. No tree permit is required if:
- a. The tree endangers the public health, welfare or safety and immediate alteration is required.
 - b. The tree has disrupted a public utility service due to a tornado, storm, flood or other act of God. Alteration shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.
 - c. The tree is located on the property of a licensed plant or tree nursery which has trees planted and growing on the premises for the sale or intended sale to the general public in the ordinary course of the nursery's business.
 - d. The tree is located on property zoned SF20, SF30, SF1, R-PUD and RE on which there is a residence used as a homestead. However, builders, contractors and owners are subject to the requirements of this Ordinance for all new construction prior to moving into and living on the homestead.
 - e. The tree is located on property which is zoned 'AG' (agricultural) and being actively used for agricultural purposes, as long as the tree is located within a total area of two acres surrounding the owner's residence and the residence is used as a homestead.
 - f. The tree must be altered to allow construction of improvements in
 - g. accordance with a building permit and in compliance with Section 6.7 of this Ordinance.

4.0 PERMIT REVIEW AND APPROVAL PROCESS

- 4.1 AUTHORITY FOR REVIEW: The Landscape Administrator shall be responsible for reviewing all requests for tree permits submitted in accordance with the requirements specified herein.
- 4.2 DEFERRAL OR APPEAL TO TREE BOARD: The Landscape Administrator may defer the approval of a tree permit to the Tree Board for any reason. A person aggrieved by a decision of the Landscape

Administrator may appeal the decision to the Tree Board. The decision of the Tree Board shall be final.

- 4.3 SUBMITTAL REQUIREMENTS: The Landscape Administrator shall establish administrative procedures necessary to facilitate the implementation and enforcement of this Ordinance.
- a. Fees: A person shall submit, with the person's application for a tree permit, payment of a fee to the City of Southlake in the amount specified by City Council in a fee schedule, unless Section 9 of this Ordinance is applicable.
 - b. Required Documents: An applicant for a tree permit shall submit an aerial photo, map exhibit, or survey as required by Schedule A or as noted in Subsection 1 and 2 hereof, and must include the described in Schedule B.
 1. Alternative to Tree Survey: For property containing large, heavily wooded areas, the Landscape Administrator may, in lieu of a tree survey, authorize the submittal of an aerial photograph accompanied by a transparent plan of the development at the same scale as the photograph showing all areas that are exempt from the tree replacement and/or tree protection requirements, provided that a tree survey is submitted to the Landscape Administrator prior to any grading or construction. The Landscape Administrator may approve the submission of photographs in phases for a multi-phased project.
 2. Non-Disturbance Areas: If the Applicant designates a nearly wooded area as a non-disturbance zone in which no construction will occur, the Landscape Administrator may approve a non-disturbance zone and trees within the zone are not required to be individually identified on the survey.
 - c. Permit Expiration: A tree permit issued in connection with a building permit shall be valid for the period of that building permit's validity. A tree permit not issued in connection with a building permit plan shall become void 180 days after the issue date on the tree permit.

- 4.4 POSTING TREE PROTECTION SIGN: After the tree permit is issued, the permit holder shall post a “tree protection sign” at each entrance to the property upon which one or more trees is situated, and at any other location designated by the Landscape Administrator.
- 4.5 ACTION ON PERMIT APPLICATION: The Landscape Administrator or the Tree Board shall grant a tree permit based on the following criteria:
- a. Whether or not a reasonable accommodation or alternative solution can be made to accomplish the desired activity without the alteration of the tree;
 - b. The cost of preserving the tree;
 - c. The increased development costs caused by preserving the tree;
 - d. Whether the tree is worthy of preservation;
 - e. The effect of the alteration on erosion, soil moisture, retention, flow of surface waters, and drainage systems;
 - f. The need for buffering residential areas from the noise, glare, and visual effects of nonresidential uses;
 - g. Whether the tree interferes with a utility service;
 - h. Whether the proposed tree replacement procedures pursuant to Section 7 of this Ordinance adequately mitigate the alteration of the tree; and
 - i. Whether the alteration adversely affects the public health, safety or welfare.

5.0 ONGOING REVIEW OF DEVELOPMENT BY LANDSCAPE ADMINISTRATOR

- 5.1 EVALUATIONS: The Landscape Administrator shall evaluate any plans required by this Ordinance to determine whether the developer has made a good-faith effort to preserve as many protected trees as possible. The Landscape Administrator shall prepare an analysis and forward it to the Planning and Zoning Commission and the City Council for their consideration regarding denial or approval of any concept plan, site plan, and preliminary plat that is necessary for development. The Planning and Zoning Commission and the City Council shall take into consideration the

criteria for tree preservation listed in Section 4.5 of this Ordinance in determining whether to deny or approve any concept plan, site plan, or preliminary plat.

- 5.2 NONSUBSTANTIVE CHANGES: The Landscape Administrator shall be authorized to work with owners, developers, and builders to make nonsubstantive changes, within the scope of this Ordinance, to plans, permits and other requirements throughout the development and construction processes that will provide the greatest reasonable protection toward achieving the purposes of this Ordinance.

6.0 TREE REPLACEMENT AND TREE PROTECTION REQUIREMENTS

- 6.1 GENERALLY: If a tree permit is required for the alteration of a protected tree pursuant to this Ordinance, the tree replacement procedures set forth in Section 7 of this Ordinance and the tree protection procedures set forth in Section 8 of this Ordinance must be followed as prescribed in this Section.
- 6.2 PUBLIC UTILITY PROJECTS: For any project conducted by a public utility (except in a capacity covered by Section 3.3.b herein), all protected trees that the Landscape Administrator determines must be altered in order to install utility lines within public R.O.W. or utility easements shall be exempt from the tree replacement and tree protection requirements listed in Sections 7 and 8 of this Ordinance. Any protected trees within public R.O.W. or utility easements that the Landscape Administrator determines do not have to be altered shall be subject to the tree protection requirements listed in Section 8 of this Ordinance, but not to the tree replacement requirements listed in Section 7 of this Ordinance. The public utility's application for a tree permit must be accompanied by a site plan or construction plan that contains the information specified in Schedules A and B herein.
- 6.3 SELECTIVE THINNING AND REMOVAL OF UNDERBRUSH:
- a. The Landscape Administrator may issue a single tree permit allowing the alteration of certain protected trees from a densely forested area when the Landscape Administrator determines that the selective thinning is being done in a professionally accepted manner that will enhance the environment and the likelihood of survival for the remaining trees. If the Landscape Administrator issues a permit for selective thinning, the protected trees covered

by the permit shall be exempt from the tree replacement and tree protection requirements of Sections 7 and 8 of this Ordinance.

- b. The Landscape Administrator may issue a permit allowing the clearing and grubbing of brush located within or under the drip lines of protected trees subject to reasonable conditions to insure the maximum protection for the trees. The Permit Holder shall clear or grub by hand or with mowers. The use of dozers, loaders, or other moving equipment to clear or grub is prohibited.

- 6.4 CLEAR-CUTTING: The Landscape Administrator may issue a single tree permit allowing the clear-cutting of protected trees from property zoned "AG" (agricultural) after the Landscape Administrator makes an on-site inspection of the property to be cleared and receives a written statement from the applicant describing the purpose and reason for the clear-cutting, but only if the Landscape Administrator determines that the clear-cutting is for a legitimate, agricultural reason. If the Landscape Administrator issues such a permit, the protected trees covered by the permit shall be exempt from the tree replacement and tree protection requirements of Sections 7 and 8 of this Ordinance. If the land ceases to be used for agricultural purposes at any time within three years after the permit is obtained to remove the trees, the owner of the land must comply with the tree replacement requirements contained in Section 7 of this Ordinance. This requirement runs with the land.
- 6.5 DISEASED, DAMAGED, OR DANGEROUS TREES: The Landscape Administrator may issue a tree permit for any tree that is diseased, infected or damaged beyond the point of recovery, or in danger of falling (except as described by Section 3.3.a herein) as determined by the Landscape Administrator prior to the alteration of the tree. A diseased tree may be altered by the City or an individual to reduce the chance of spreading the disease to adjacent healthy trees. If the Landscape Administrator issues such a permit, the protected trees covered by the permit shall be exempt from the tree replacement and tree protection requirements of Sections 7 and 8 of this Ordinance.
- 6.6 AGRICULTURAL: The Landscape Administrator may issue a tree permit for the alteration of up to seven protected trees per calendar year on property zoned 'AG' (agricultural) and being actively used for agricultural purposes. If the Landscape Administrator issues such a permit, the protected trees covered by the permit shall be exempt from the tree replacement and tree protection requirements of Sections 7 and 8 of this

Ordinance. (However, protected trees altered in excess of seven per calendar year are not excepted under this section and will require tree permits and must comply with tree replacement and tree protection requirements.)

6.7 NEW DEVELOPMENTS:

- a. Residential subdivision: In a residential subdivision, all protected trees that the Landscape Administrator determines must be altered in order to install utility lines within public R.O.W. or utility easements or drainage easements as shown on an approved Final Plat, or to achieve the cut/fill drainage as designated on the master drainage construction plan, shall be exempt from the tree replacement and tree protection requirements listed in Sections 7 and 8 of this Ordinance. Any protected trees within these areas that the Landscape Administrator determines do not have to be altered shall be subject to the tree protection requirements listed in Section 8 of this Ordinance, but not to the tree replacement requirements listed in Section 7 of this Ordinance. All other areas of the subdivision shall be subject to both the tree replacement and the tree protection requirements, and all other provisions of this Ordinance.
- b. Single Lot Residential Development: In a single lot residential development, all areas within the building pad site, driveways, public sidewalks, patios, septic tank and lateral lines, parking area, and pool and associated deck area shall be exempt from the tree replacement and tree protection requirements of Sections 7 and 8 of this Ordinance. All other areas of the lot shall be subject to both the tree replacement and the tree protection requirements, and all other provisions of this Ordinance.
- c. Non-residential Development: In a non-residential development, all protected trees that the Landscape Administrator determines must be altered in order to install utility lines within public R.O.W. or public utility or drainage easements as shown on an approved Final Plat, or to install fire lanes, required parking areas and building pad sites as shown on an approved Site Plan, shall be exempt from the tree protection and tree replacement requirements listed in Sections 7 and 8 of this Ordinance. Any protected trees within these areas that the Landscape Administrator determines do not have to be altered shall be subject to the tree protection

requirements listed in Section 8 of this Ordinance, but not to the tree replacement requirements listed in Section 7 of this Ordinance. All other areas of the development shall be subject to both the tree replacement and the tree protection requirements, and all other provisions of this Ordinance.

1. Mitigation for Parking: If a person provides parking spaces in addition to the required number of parking spaces, the person shall be required to replace trees which are required to be altered due to the parking or to make payment to the City Reforestation Fund, or a combination thereof, as directed by the Landscape Administrator. The following formula shall be used to calculate the number of trees to be replaced or the payment due: The Landscape Administrator shall identify the total number of parking spaces above the number required by the Zoning Ordinance and calculate the number of trees to be replaced or mitigated based on an equivalent number of spaces in the lot containing the greatest number of trees.

- 6.8 PRUNING: The Landscape Administrator may issue a tree permit to allow pruning of a protected tree that alters the tree if such pruning is necessary to allow construction or demolition of a structure. If the Landscape Administrator issues such a permit, the protected tree covered by the permit shall be exempt from the tree replacement and tree protection requirements of Sections 7 and 8 of this Ordinance. For all other pruning for which a tree permit is required, Sections 7 and 8 shall apply.

7.0 TREE REPLACEMENT PROCEDURES

- 7.1 GENERALLY: If required by Section 6, above, the following procedures shall apply to any person who alters a protected tree for which a permit is required.
- 7.2 TREE REPLACEMENT: If a person alters a protected tree for which a permit is required, the person shall replace the protected tree with a quality tree as designated in the Landscape Ordinance and approved by the Landscape Administrator. This tree replacement requirement is not meant to supplant good site planning. Tree replacement will be considered only after all design alternatives which could save more existing trees have been evaluated and reasonably rejected.

- a. Size and Number: A sufficient number of trees shall be planted to equal or exceed, in caliper, the diameter of each tree altered, measured at 4.5' above ground level. Each replacement tree shall be a minimum of 3" caliper at one foot above ground level, and seven feet in height when planted.
- b. Location: Each replacement tree should be planted on the same property as the tree which was altered. However, if the replacement tree cannot be planted on the same property in accordance with universally accepted arborists' standards, the Landscape Administrator may:
 - 1. require replacement on private property if also approved by the Chief of Building Services,
 - 2. require replacement on public property, or
 - 3. require payment to the Reforestation Fund in accordance with Section 7.3, below.
- c. Responsibility for Replacing Trees: The Landscape Administrator will determine the agent responsible for replacing the trees, the time of replacement, and the location of the replacement trees. The requirement to replace trees shall run with the land.
- d. Delayed Replacement: If the Landscape Administrator approves the planting of replacement trees more than 30 days after the alteration of protected trees, the applicant shall provide the Landscape Administrator with an affidavit that all replacement trees will be planted within six months. The Landscape Administrator may require the person to furnish the City a cash deposit or surety bond in the approximate amount of the cost to replace the trees.
- e. Duration: A replacement tree that dies within three years of the date it was planted must be replaced by another replacement tree. This requirement runs with the land.

7.3 REFORESTATION FUND: If required by the Landscape Administrator, the applicant, instead of compliance with Section 7.2, above, shall make a payment into the Reforestation Fund or other specifically dedicated fund. The funds shall be used only for purchasing and planting trees on private property approved by the Landscape Administrator and the Chief of

Building Services, on public property, for acquiring wooded property which shall remain in a naturalistic state in perpetuity, or for establishing a landscape or wildlife preserve or similar nature area.

- a. The amount of the payment required for each replacement tree shall be calculated based on a schedule published and reviewed annually by the Landscape Administrator which sets forth the average cost of a quality tree added to the average cost of planting a tree.
- b. The Landscape Administrator shall submit quarterly reports to the City Council of the deposits and disbursements from the Reforestation Fund.

7.4 OFFENSE: A person commits an offense if the person fails to replace a tree or make a payment in accordance with the Landscape Administrator's direction pursuant to this Section 7.

8.0 TREE PROTECTION PROCEDURES

8.1 GENERALLY: If required by Section 6, above, the following procedures shall apply to protect any protected tree for which a permit is required.

8.2 CONSTRUCTION PLAN REQUIREMENTS: All construction plans shall include the requirements listed in Appendix 'C.'

8.3 PROHIBITED ACTIVITIES IN CRITICAL ROOT ZONE: The following activities are prohibited within the limits of the critical root zone of any protected tree subject to the requirements of this ordinance.

- a. Material Storage: No materials intended for use in construction or waste materials accumulated due to excavation or demolition shall be placed within the limits of the critical root zone of any protected tree.
- b. Equipment Cleaning/Liquid Disposal: No equipment shall be cleaned or other liquids deposited or allowed to flow overland within the limits of the critical root zone of a protected tree. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.

- c. Tree Attachments: No signs, wires or other attachments, other than those of a protective nature, shall be attached to any protected tree. Fencing attached to a tree via “U” nails or bent nails is allowed only if the fencing is parallel to and contiguous with the tree.
 - d. Vehicular Traffic: No vehicular and/or construction equipment traffic or parking shall take place within the limits of the critical root zone of any protected tree other than on existing street pavement. This restriction does not apply to single incident access within the critical root zone for purposes of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance, emergency restoration of utility service, or routine mowing operations.
 - e. Grade Changes: No grade changes shall be allowed within the limits of the critical root zone of any protected tree unless adequate construction methods are approved by the Landscape Administrator.
 - f. Impervious Paving: No paving with asphalt, concrete or other impervious materials that may reasonably be expected to kill a tree shall be placed within the limits of the critical root zone of a protected tree except as otherwise allowed in this Ordinance.
- 8.4 PROHIBITED ACTIVITIES IN DRIP-LINE: No heavy equipment, including but not limited to trucks, tractors, trailers, bulldozers, bobcat tractors, trenchers, compressors, and hoists, shall be allowed inside the drip-line of any protected tree on any construction site without the specific approval of the Landscape Administrator.
- 8.5 PROCEDURES REQUIRED PRIOR TO CONSTRUCTION: The following procedures shall be followed on all types of construction projects (including without limitation residential, commercial, and municipal / public domain projects).
- a. Protective Fencing: Prior to construction, the contractor or subcontractor shall construct and maintain, for each protected tree on a construction site, a protective fencing which encircles the outer limits of the critical root zone of the tree to protect it from construction activity. All protective fencing shall be in place prior to

commencement of any site work and remain in place until all exterior work has been completed.

- b. **Bark Protection:** In situations where a protected tree remains in the immediate area of intended construction and the Landscape Administrator determines the tree bark to be in danger of damage by construction equipment or other activity, the contractor or subcontractor shall protect the tree by enclosing the entire circumference of the tree with 2" x 4" lumber encircled with wire or other means that do not damage the tree. The intent is to protect the bark of the tree against incidental contact by large construction equipment.

8.6 CONSTRUCTION METHODS:

- a. **Boring:** Boring of utilities under protected trees shall be required in those circumstances where it is not possible to trench around the critical root zone of the protected tree. When required, the length of the bore shall be the width of the critical root zone at a minimum and shall be a minimum depth of 48 inches.
- b. **Grade Change:** In situations in which the Landscape Administrator approves the grade change within the critical root zone of a protected tree, the procedures noted in the City's standard detail sheet shall be followed.
- c. **Trenching:** All trenching shall be designed to avoid trenching across the critical root zone of any protected tree, unless otherwise approved by the Landscape Administrator. Trenching within the critical root zone requires a tree permit. The placement of underground utility lines such as electric, phone, gas, etc., is encouraged to be located outside of the critical root zone of protected trees. Trenching for an Irrigation system shall be placed outside of the critical root zone, except the minimum required single head supply line is allowed to extend into the critical root zone perpendicular to the tree trunk and in the manner that has the least possible encroachment into the critical root zone.
- d. **Root Pruning:** All roots two inches or larger in diameter which are exposed as a result of trenching or other excavation shall be cut off

square with a sharp medium tooth saw and covered with pruning compound within two hours of initial exposure.

- 8.7 OFFENSE: A person commits an offense if the person violates or fails to comply with this Section 8.

9.0 EXCEPTIONS TO PERMIT FEE REQUIREMENT

- 9.1. CITY: When altering any protected tree, the City is exempt from the tree permit fee, but must obtain a permit and comply with all tree replacement and tree protection procedures as listed in Sections 7 and 8. Protected trees proposed to be altered must be shown on construction plans approved by the Landscape Administrator.
- 9.2. DISEASED, DAMAGED, OR DANGEROUS TREE: A person is exempt from the tree permit fee if altering a diseased, damaged, or dangerous tree pursuant to Section 6.5, above.
- 9.3 PUBLIC UTILITIES: When altering any protected tree, a public utility is exempt from the tree permit fee, but must obtain a permit and comply with all tree replacement and tree protection procedures as listed in Sections 7 and 8. Protected trees proposed to be altered must be shown on construction plans approved by the Landscape Administrator.

10.0 COMPREHENSIVE TREE PLAN

It shall be the responsibility of the Tree Board to study, investigate, counsel and develop and/or update periodically, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs on all municipal / public domain property. The Board shall present the plan to the Council and, when adopted by the Council, the plan shall represent the comprehensive tree plan for the City.

11.0 STREET AND PARK TREES

- 11.1 ACCEPTABLE TREES: The Landscape Administrator shall maintain a list of trees acceptable for planting on municipal / public domain property. Trees other than those listed as acceptable may only be planted upon written approval of the Landscape Administrator.

- 11.2 STREET TREE SPACING: The spacing of street trees will be in accordance with recommendations of the Landscape Administrator.
- 11.3 STUMP REMOVALS: All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.
- 11.4 PERMIT REQUIRED: A person, other than an agent of the City, must obtain a tree permit before the person may prune, treat, remove, damage, or destroy a street or park tree (regardless of whether it is a protected tree and regardless of whether it is significant enough to “alter” the tree) within the City. A person commits an offense if the person violates this Section 11.4.

12.0 TREE PRUNING

- 12.1 OFFENSE: A person commits an offense if the person alters or significantly disfigures a protected tree by pruning.
- 12.2 PERMIT REQUIREMENTS FOR PUBLIC UTILITIES: Unless pruning is requested by the owner of the tree or excepted from this Ordinance pursuant to Section 3.3.b herein, the public utility shall obtain a tree permit before beginning *any* pruning (regardless of whether the pruning will alter or significantly disfigure the tree).
- 12.3 PRUNING TECHNIQUE: When allowed, all pruning shall be conducted in accordance with universally accepted arborists’ standards and the recommendations contained in Appendix G.
- 12.4 REQUIRED PRUNING: The owners of all trees adjacent to public R.O.W. shall maintain a minimum clearance of ten feet (10') above the traveled pavement or curb of a public street. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. (*Cross-reference: Section 3.3 of this Ordinance regarding exceptions.*)
- 12.5 TREE TOPPING: It shall be unlawful for any person to top any tree without having a tree permit approved by the Landscape Administrator, unless an exception listed in Section 3.3 of this Ordinance applies. However, if the Landscape Administrator determines that topping the tree is necessary because the tree has been severely damaged by storms or other causes, or is under utility wires or other obstructions, making other

pruning practices impractical, the Landscape Administrator may issue a tree permit allowing topping of the tree.

12.6 GROUND LEVEL CUTS: Where protected tree removal is allowed through exemption or by a tree permit, and the root system is intertwined with protected trees which are intended to be saved, the tree shall be removed by flush cutting with the natural level of the surrounding ground. Where stump removal is also desired, stump grinding shall be allowed or, upon approval by the Landscape Administrator, a trench may be cut between the two trees sufficient to cut the roots near the tree to be removed, thereby allowing removal of the remaining stump without destruction of the root system of the saved tree.

13.0 TREE PLANTING RESTRICTIONS

A person commits an offense if the person:

- a. plants any required replacement tree within an area such that the mature canopy of the tree will interfere with overhead utility lines;
- b. plants any required replacement tree or street tree within an area such that the mature root zone of the tree will interfere with underground public utility lines (including water lines, sewer lines, transmission lines or other utilities);
- c. plants a tree within ten feet (10') of a fire hydrant; or
- d. plants a street tree closer than 35 feet (35') to any street corner, measured from the point of nearest intersecting curbs or curblines.

14.0 TREE SURVEY REQUIRED BEFORE GRADING

A person commits an offense if the person grades or causes grading on any property in the City prior to obtaining a grading permit. No grading permit shall be issued until a tree survey, if required, has been submitted to and approved by the Landscape Administrator.

15.0 ENFORCEMENT

15.1 DEVELOPER'S AGREEMENT: The City shall not approve a developer's agreement unless it provides that all construction activities shall meet the requirements of this Ordinance.

- 15.2 **BUILDING PERMIT:** No building permit shall be issued unless the applicant signs an application or permit request which states that all construction activities shall meet the requirements of this Ordinance. The Building Official shall make available to the applicant:
- a. a copy of the tree preservation ordinance or a condensed summary of the relevant aspects pertaining to the type of permit requested; and
 - b. a tree protection sign.
- 15.3 **ACCEPTANCE OF IMPROVEMENTS:** The City may refuse to accept any public improvements until the person pays all civil penalties for violations of this Ordinance or complies with Section 7 of this Ordinance; provided, however, that acceptance of public improvements shall be authorized before all trees have been replaced if, with the Landscape Administrator's approval, the person furnishes the City with a cash deposit or surety bond in the approximate amount of the cost to replace the trees.
- 15.4 **CERTIFICATE OF OCCUPANCY:** No Certificate of Occupancy (C.O.) shall be issued until all civil penalties for violations of this ordinance have been paid to the City. No Certificate of Occupancy shall be issued until all replacement trees have been planted or appropriate payments have been made to the Reforestation Fund; provided, however, that a Certificate of Occupancy may be granted before all trees have been replaced if, with the Landscape Administrator's approval, the person furnishes the City with a cash deposit or surety bond in the approximate amount of the cost to replace the trees.

16.0 VIOLATIONS

- 16.1 Any person who: (1) violates Section 3 of this Ordinance by altering a protected tree without first obtaining a tree permit from the City, or by altering trees in violation of the permit, or (2) violates Section 7 of this Ordinance by failing to follow the tree replacement procedures, shall:
- a. be assessed a penalty by the Landscape Administrator equal to One Hundred Dollars (\$100.00) per diameter inch of the tree(s) altered; and
 - b. be guilty of a misdemeanor and upon conviction shall be fined One Hundred Dollars (\$100.00) per diameter inch of the tree(s) altered , not to exceed Five Hundred Dollars (\$500.00) per incident. The unlawful

alteration of each protected tree shall be considered a separate incident and each incident subjects the violator to the maximum penalty set forth herein for each tree.

16.2 Any person, firm, corporation, agent or employee thereof who violates any other provisions of this ordinance shall be guilty of a misdemeanor and upon conviction hereof shall be fined not to exceed Five Hundred Dollars (\$500.00) for each incident. The unlawful alteration of each protected tree shall be considered a separate incident and each incident subjects the violator to the maximum penalty set forth herein for each tree.

16.3 A person is criminally responsible for a violation of this ordinance if the person alters, or permits or causes to be altered, a protected tree without complying with the requirements of this Ordinance.

17.0 **SEVERABILITY**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

18.0 **CONFLICTING ORDINANCES**

This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City; and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed. Specifically, Section 3.4 of Ordinance No. 585-A, which provides that all developments which have not submitted final construction plans as of December 17, 1997 shall be subject to the requirements for tree protection and replacement specified herein, is saved from repeal, so that it will continue to apply to projects in construction. Further, the first sentence in Section 3.5 c. of Ordinance No. 585-A, which provides that all builders who have not submitted a request for a building permit as of December 17, 1997 are subject to the requirements of the Ordinance, is hereby saved from repeal. Said sections shall continue in full force and effect.

19.0 **SAVINGS CLAUSE**

All rights and remedies of the City of Southlake are expressly saved as to any and all violations of the provisions of any ordinances affecting the regulations for the preservation of trees that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

20.0 **PUBLICATION CLAUSE**

The City Secretary of the City of Southlake is hereby directed to publish the proposed ordinance or its caption and penalty together with a notice setting out the time and place for a public hearing thereon at least ten (10) days before the second reading of this ordinance, and if this ordinance provides for the imposition of any penalty, fine or forfeiture for any violation of any of its provisions, then the City Secretary shall additionally publish this ordinance in the official City newspaper one time within ten (10) days after passage of this ordinance, as required by section 3.13 of the Charter of the City of Southlake.

21.0 **EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained. This ordinance shall not apply to any development or construction activity performed pursuant to a building permit for which an application was made prior to the effective date of this ordinance. For such development or construction, the requirements of Ordinance 585-A shall continue to apply.

PASSED AND APPROVED ON FIRST READING ON THIS ____ DAY OF _____, ____.

ATTEST:

MAYOR

CITY SECRETARY

PASSED AND APPROVED ON FIRST READING ON THIS ____ DAY OF _____, ____.

ATTEST:

MAYOR

CITY SECRETARY

APPROVED AS TO FORM AND LEGALITY:

City Attorney

Date Adopted:

Effective Date:

Schedule A - SUMMARY OF REQUIRED DOCUMENTS				
Ref	Activity Item	Required Document		
		Aerial Photo	Map Exhibit	Survey
	RESIDENTIAL SUBDIVISION			
A.	With submittal of a Concept Plan, Site Plan, and Preliminary Plat.	Yes ¹		Note ²
	RESIDENTIAL HOMES			

B.	With submittal of a building permit request for any construction that occurs within forty feet (40') of any protected tree on lots 20,000 square feet or larger.	Yes ³		Yes
	COMMERCIAL DEVELOPMENTS			
C.	With the submittal of a Concept Plan, Site Plan and Preliminary Plat.	Yes ³		Yes
	COMMERCIAL BUILDERS			
D.	With submittal of a Concept Plan, Site Plan and Preliminary Plat for building permit request.	Yes ³		Yes
	UTILITY COMPANY			
E.	With request for tree removal or pruning to maintain services.		Yes	
<p>Notes:</p> <ol style="list-style-type: none"> 1. The aerial photo must be accompanied by a transparent plan of the development (at the same scale as the photo) showing all information required by this Ordinance. 2. The Landscape Administrator has the authority to require a detailed tree survey on particular areas when determined to be needed to evaluate the impact on trees. 3. The Landscape Administrator may approve an aerial photograph in lieu of a tree survey for large heavily wooded areas or large projects completed in phases. 				

Schedule B - SUMMARY OF DOCUMENT REQUIREMENTS

Ref	Required on Document			Item
	Aerial Photo	Map Exhibit	Survey	
1		Yes	Yes	Appropriate Title (i.e. "Tree Removal Map Exhibit," or "Tree Survey")
2		Yes	Yes	Title block which includes street address, lot and block, subdivision name, city and date of preparation.
3			Yes	Must be prepared by a licensed surveyor, licensed architect, or, depending on the number of trees, another person if approved by the Landscape Administrator
4	Yes	Yes	Yes	North arrow, graphic and written scale in close proximity
5	Yes			Scale at a size no larger than 1" = 200' (i.e. 1"=100' OK)
6		Yes	Yes	Name, address and phone of owner and person preparing the document
7	Note ¹	Yes	Yes	Location of all ROW lines and public easements
8		Yes	Yes	Location of all buildings, structures, pools, parking and other improvements which are existing or intended on the lot
9			Yes	Areas of cut / fill with amount of each shown and flow lines shown
10			Yes	Existing and proposed spot elevations, grades and major contours, along with existing landscaping, streams, ponds and major natural features.

11	Yes ²	Yes ²	Yes ²	Areas of no disturbance labeled as “No Disturbance Area.” This area must be clearly marked on the plan and surrounded with protective fencing on the ground. A single incidence removal of underbrush and vines is allowed, subject to the requirements of Section 6.3.
12			Yes	All protected trees shown individually on the plan. ³ Trees in close proximity that all have a caliper of less than four inches (4") may be designated as a group of trees with quantity of quality, marginal and understory trees shown. (see appendix 'A')
13		Yes	Yes	Trees must be tied by horizontal control (i.e. dimensions from lot lines, or placed through coordinates determined via survey.)
14			Yes	All protected trees shown with diameter (4.5' from the ground), common name and condition.
15			Yes	Any proposed replacement trees shown with caliper size, common name of tree and mature size.
16	Yes	Yes	Yes	Graphic representations as required by Appendix “H” herein.
17			Yes	Phasing of tree survey along with phasing of the development is permitted.

Notes:

1. The aerial photo must be accompanied by a transparent plan of the development (at the same scale as the photo) showing all information required by this Ordinance.
2. The Landscape Administrator shall have the authority to designate areas as “no disturbance” areas where a tree survey would not be required due to no intended construction.
3. An area may be designated as a “No Disturbance Zone” on the plan when approved by the Landscape Administrator and trees within that zone are not required to be individually identified on the plan.