



**ZONING AMENDMENT
STAFF REPORT**

City Council Meeting Date:
May 11, 2021

Council District All

Zoning Commission Recommendation:
Approval by a vote of 9-0

Opposition: None submitted
Support: None submitted

Continued Yes ___ No X
Case Manager Arty Wheaton-
Rodriguez
Surplus Yes ___ No X
Council Initiated Yes ___ No X

Owner / Applicant: City of Fort Worth Development Services Department

Site Location: All Districts

Proposed Change: An Ordinance Amending the Comprehensive Zoning Ordinance of the City of Fort Worth, being Ordinance No. 21653, as Amended, Codified as Appendix "A" of the Code of the City of Fort Worth (2015), by Amending:

- Chapter 6, "Development Standards" of Article 3, "Landscaping, Buffers, and Urban Forestry" to Revise Section 6.302 "Urban Forestry" Regulations to Relating Penalties for Violations

To review the proposed amendments: <https://www.fortworthtexas.gov/departments/citysecretary/events/zoning-commission-agenda>

Request: **TEXT AMENDMENT: To Amend Urban Forestry Regulations Relating Penalties for Violations**

Background:

Staff is proposing a Zoning Ordinance text amendment to amend the Urban Forestry section of the ordinance to strengthen our ability to levy civil penalties for violations of the Urban Forestry Ordinance. The City is doing this in response to questions on the constitutionality of our current ordinance, specifically with the right to appeal.

In brief the changes being proposed are limited to the penalty provision to clarify the following:

- 1) That a criminal citation may be issued when there is a violation or noncompliance with the urban forestry plan or permit or when a tree has been removed that was not approved. For the criminal penalty the fine shall not exceed \$500 in accordance with state law;
- 2) That a civil penalty may be issued, in addition to a criminal citation, when there is noncompliance or a violation or noncompliance with the urban forestry plan or permit or when a tree has been removed that was not approved.
- 3) What information the city staff will use to determine how the civil penalty will be calculated
- 4) That the director has the authority to assess the civil penalty
- 5) That the civil penalty may be appealed to the City Council
- 6) That no work may be done on site until the civil penalty is paid

Attachments:
Proposed Ordinance Amendment

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF FORT WORTH, BEING ORDINANCE NO. 21653, AS AMENDED, CODIFIED AS APPENDIX “A” OF THE CODE OF THE CITY OF FORT WORTH (2015), BY AMENDING CHAPTER 6, “DEVELOPMENT STANDARDS” OF ARTICLE 3, “LANDSCAPING, BUFFERS, AND URBAN FORESTRY” TO REVISE SECTION 6.302 “URBAN FORESTRY” REGULATIONS RELATING PENALTIES FOR VIOLATIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Chapter 211 of the Texas Local Government Code allows a municipality to regulate land use for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural or architectural importance and significance; and

WHEREAS, the Attorney General of Texas has ruled that a home-rule city may enforce its reasonable land development regulations for the purposes of maintaining aesthetics and property values which would include landscaping and tree preservation (AG Opinion No. GA-0697); and

WHEREAS, in order to maintain and enhance a positive image and a livable city it is important to promote site planning which furthers the preservation of mature trees and to protect trees during construction, to facilitate the design and construction which contribute to the long-term viability of existing trees and to control the removal of trees when necessary; and

WHEREAS, the City Council recognized that there was a need to establish regulations addressing the protection of healthy and significant trees and to provide for the replacement and replanting of trees that are necessarily removed during construction, development or redevelopment in an expeditious manner and with due regard for the legal rights of property owners; and

WHEREAS, it was the intent of the regulations to limit the removal of tree canopy, promote an urban forest, promote the orderly development of the City of Fort Worth, and to protect the public health, safety and general welfare of the citizens of the City of Fort Worth; and

WHEREAS, the regulations had the following objectives: to eliminate the process of clear cutting; to promote the preservation/conservation of trees throughout the City; to recognize the benefits of trees in the urban environment; to encourage the planting and preservation of quality trees that are suitable to an area; to promote a safe environment that includes trees; to aid in stabilizing the environment’s ecological balance by contributing to the process of air purification,

oxygen regeneration, ground-water recharge, and storm water runoff retardation, while at the same time aiding in noise, glare, wind and heat abatement; to provide visual buffering within and between land uses of differing character to alleviate the harshness of urban life; to enhance the beautification and aesthetics of the City; to safeguard and enhance property values and to protect public and private investment; to conserve energy; to provide habitat for wildlife; and to encourage the preservation of large trees which, once removed, can be replaced only after generations; and

WHEREAS, it is advisable that the City Council amend Ordinance Number 18615-05-2009, the “Urban Forestry Ordinance,” regarding the urban forestry regulations governing the preservation and removal of trees within the City; to revise the penalty provision for violations of the Urban Forestry Ordinance to provide for the assessment and appeal of a civil penalty and criminal penalty.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS AS FOLLOWS:

SECTION 1.

That the Code of the City of Fort Worth, Texas (2015), as amended, is hereby further amended by repealing and reinstating in its entirety Appendix A, Chapter 6, “Development Standards,” Article 3 “Landscaping, Buffers and Urban Forestry,” Section 6.302 subsection (j), to read as follows:

(j) Penalties for violation

- (1) Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance may be issued a citation and upon conviction thereof may be fined in an amount not to exceed \$500. In cases of offenses involving the illegal removal of trees or noncompliance with an approved permit or urban forestry plan, the removal of each tree constitutes a separate offense. In cases of continuing violation, each separate day that a violation continues constitutes a separate offense.
- (2) Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any provision of this ordinance may be subject to a civil penalty in accordance with Section 2-322 of the City Code for the removal of trees. The civil penalty authorized by this paragraph may be imposed by the Director in addition to the misdemeanor penalty in paragraph (1) of this section. The imposition of a civil penalty may be appealed to the City Council. Any appeal must be made in writing and must be filed with the Director within 10 calendar days following the date of the initial written decision. The Director shall refer the appeal to the City Council and the decision of the City Council shall be final. The aggrieved shall bear the burden of proof to show why, by preponderance of the evidence, the civil penalty should not be assessed. The imposition of a civil penalty under this section suspends all permits or

permit applications issued to or for the benefit of the property and all work under such any permits until the civil penalty is fully paid.

~~— a. Assessed a penalty of \$200 per diameter inch of all trees, regardless of size, removed or damaged without a valid urban forestry permit and/or tree removal permit, \$400 per diameter inch of significant or large tree removed or damaged without a valid urban forestry plan or permit; and/or~~

~~— b. Issued a citation for a misdemeanor and upon conviction shall be fined not more than \$500 for the removal or damage of each tree.~~

(23) Where illegal tree removal has occurred and the physical evidence has been removed from the site, ~~a~~the civil penalty will be assessed based on calculations using any remaining physical evidence, photos and documents~~aerial photographs~~ available to the city, calculated at a rate of \$4.94 per square foot of illegally removed canopy for all trees regardless of size or \$9.88 per square foot of in accordance with Section 2-322 of the City Code for significant or large trees removed or damaged.

(34) a. ~~Any person in~~ The owner of a single lot within a one-family or two-family residentially zoned district who removes or causes to be removed trees without first obtaining the required permit may be issued an after-the-fact permit. An after-the-fact permit shall be issued if:

1. The applicant can demonstrate that the criteria for removal in the after-the-fact application would meet the regulations in effect at the time the tree was removed; and

2. The applicant has paid the fee for an after-the-fact permit which shall be double the fee of a ~~tree removal~~urban forestry permit.

b. A citation may be issued for a misdemeanor and upon conviction shall be fined not more than \$500 for the removal or damage of each tree.

c. If the applicant cannot demonstrate that the criteria for removal in the after-the-fact application would have met the current regulations, then an after-the-fact permit shall not be issued and the person shall be in violation of this section, subject to both criminal and civil penalties.

d. A second after-the-fact permit shall not be issued if:

1. Another violation of this section occurs by a person previously issued an after-the-fact permit; or

2. The after-the fact permit was issued on the same site on which an after-the-fact permit was issued within five years of the date of the second violation.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (2015), as amended, except where the provisions of this ordinance are 2021 Sec. 6.302.j. Urban Forestry Penalty Amendment

Ordinance No. _____

in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases 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.

SECTION 4.

Any person, firm, or corporation, who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation exists shall constitute a separate offense.

SECTION 5.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of Ordinances No. 3011, 13896, 21653 and any other ordinances affecting zoning which 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.

SECTION 6.

The City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption, penalty clause and effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 52.013, Texas Local Government Code.

SECTION 7.

All other provisions of the Zoning Ordinance of the City of Fort Worth not herein amended shall remain in full force and effect.

SECTION 8.

This ordinance shall take effect upon adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

By: _____
Melinda Ramos,
Sr. Assistant City Attorney

Mary J. Kayser,
City Secretary

ADOPTED: _____

EFFECTIVE: _____