

**ORDINANCE NO. O-2019-004**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS, AMENDING CHAPTERS 8 AND 14 OF THE UNIFIED DEVELOPMENT CODE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE AND PROVIDING FOR OTHER PROVISIONS.**

\* \* \* \* \*

**WHEREAS**, the City Council of the City of Magnolia, Texas has adopted a “Unified Development Code” (“UDC”) by ordinance No O-2015-018; and

**WHEREAS**, the City Council of the City of Magnolia Texas has studied the present provisions of the UDC regarding Jurisdiction and Enforcement, Design Standards and Definitions; and

**WHEREAS**, the City Council finds it necessary to amend certain sections in Chapters: (i) Chapter 6 “Landscaping and Buffering”; and (ii) Chapter 14 “Word Usage, Measurements, Calculations and Definitions”; and

**WHEREAS**, the City Council hereby finds and determines that the all public notification and comment procedures and any required hearings under Texas State Law have been followed pertaining to the proposed amendments to the UDC.

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

**Section 1.** Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted as findings of fact and conclusions of law by the City Council and made a part hereof for all purposes.

**Section 2.** Chapter 8 of the Unified Development Code, Sec. 8-2-1.02, Land Clearing and Tree Preservation is amended by adding a new section 4 to section E. as shown in the attached Exhibit “A” and incorporated herein for all purposes.

**Section 3.** Chapter 8 of the Unified Development Code is hereby amended by adding new section 8-2-1.05, Mitigation Payments in lieu of Land Clearing or Tree Removal, and adding new section 8-2-1.06, Tree Mitigation Fund, as shown in the attached Exhibit “A” and incorporated herein for all purposes.

**Section 4.** Chapter 14 of the Unified Development Code is hereby amended by amending Article 14-3, Section 14.3.01 Land Use Definitions by amending the definition of "Protected Tree" as shown in the attached Exhibit "A" and incorporated herein for all purposes.

**Section 5.** Repealing Clause. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

**Section 6.** Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be 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 or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

**Section 7.** Compliance Clause and Effective Date. The City Council finds, determines and declares that a sufficient written notice was posted and this Ordinance was passed in accordance with the Open Meetings Act. The City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a) of the Local Government Code, at which time this Ordinance takes effect.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Magnolia, Montgomery County, Texas on this the 12th day of February 2019.



CITY OF MAGNOLIA, TEXAS

A handwritten signature in blue ink, appearing to read "Todd Kana", written over a horizontal line.

Todd Kana, Mayor

ATTEST:

A handwritten signature in blue ink, appearing to read "Lynne George", written over a horizontal line.

Lynne George, CPM, TRMC  
City Secretary

# EXHIBIT A

## CHAPTER 8 LANDSCAPING AND BUFFERING

---

### ARTICLE 8-2 GENERAL LANDSCAPING REQUIREMENTS

#### Sec. 8-2-1.02 Land Clearing and Tree Preservation

---

- E. **Land Clearing or Tree Removal Permit Required.** Any land clearing or protected tree removal in preparation of development or the redevelopment or substantial improvement of an existing property within the City shall require a permit as set out in *Chapter 11, Permits and Procedures*. A land clearing and tree removal permit may be issued for the removal of trees that qualify under Subsection C., above, if it is demonstrated that:
1. No reasonable alternative site design at the same *density* and intensity could be approved that:
    - a. Would preserve a significant stand of trees or protected trees; or,
    - b. If large-scale preservation is not possible, would preserve the largest of the protected trees; or
    - c. If protection of the largest trees is not possible, would preserve a greater number of protected trees than the proposed development design.
  2. Relocation of the trees to another location on-site or within the City is not practical or economically feasible;
  3. The trees are replaced with the number of new trees for which credit would be given if the protected trees were preserved (see *Section 8-2-1.04, Credit for Existing Trees*);
  4. Or, mitigation is granted pursuant to *Section 8-2-1.05, Mitigation Payments in lieu of Land Clearing or Tree Removal*.

#### Sec. 8-2-1.05, Mitigation Payments in lieu of Land Clearing or Tree Removal

A. **Variance Permitted.**

1. An applicant may seek a variance (see Sec. 12-1-1.02) as to all or a portion of the requirements of Sec. 8-2-1.02, *Land Clearing and Tree Preservation*, upon the condition that the applicant pay mitigation fees in lieu of preservation or planting to a Tree Mitigation Fund as established by Sec. 8-2-1.06, *Tree Mitigation Fund*.
2. An applicant for a variance bears the burden of demonstrating compliance with this section and Sec. 8-2-1.06, *Tree Mitigation Fund*.
3. Mitigation payments per the variance requirements of Sec. 12-1-1.02 may not be sought for any landscaping requirement as provided for in Sec. 8-2-1.03, *Development Landscaping*.

B. **Mitigation Fees.**

1. *Generally.* Table 8-2-1.05, *Mitigation of Tree Requirements*, provides the specific mitigation fee payments as applied to Diameter at Breast Height (DBH) and Tree Height of a healthy tree unit.



2. *Application of Table.* The mitigation fee to be applied is to be the lesser of the two values as determined between the DBH and the height of the tree at issue. For Example, if the DBH is 7 inches and the height of the tree is 36 ft., a mitigation fee of \$700 is to be applied.

Table 8-2-1.05 Mitigation of Tree Requirements <sup>1</sup>		
Diameter at Breast Height (DBH)	Tree Height	Mitigation Fee
At least 3.5 inches, but less than 5 inches	At least 10 ft., but less than 15 ft.	\$400
At least 5 inches, but less than 9 inches	At least 15 ft., but less than 24 ft.	\$700
At least 9 inches, but less than 12 inches	At least 24 ft., but less than 32 ft.	\$1,000
At least 12 inches, but less than 16 inches	At least 32 ft., but less than 40 ft.	\$1,400
16 inches or more	40 ft. or more	\$1,700
<sup>1</sup> If the Diameter at Breast Height (DBH) is less than 3.5 inches or if the height of the tree is less than 10 ft. then no mitigation fee is required.		

### Sec. 8-2-1.06, Tree Mitigation Fund

- A. **Fund Establishment.** The City Council shall establish a dedicated account to be known as the Tree Mitigation Fund. Mitigation fees paid as provided by this Article shall be recorded for the benefit of the fund and accounted for in a manner that distinguishes such funds from other general funds of the city.
- B. **Expenditure of Funds.**
1. *Generally.* The assets of the fund shall be expended under the direction of the Administrator and may be used to purchase and plant new trees in the public parks, parkways, medians and rights-of-way of public streets and upon the grounds of other public property of the city. The funds may be used for no other purposes than as listed in this section.
  2. *Planting Costs.* Planting costs payable from the fund include the installation of related irrigation equipment and other measures necessary for the protection and subsequent maintenance of new trees for a period of up to three years following planting.

## Ch. 14 Word Usage, Measurements, Calculations and Definitions

### ARTICLE 14-3 DEFINITIONS

#### Section 14.3.01 Land Use Definitions

##### P Terms

**Protected Tree** means a single live oak or magnolia tree with a diameter of 12 inches or greater and other trees with a diameter of ~~16~~ 16 inches or greater, measured ~~24 inches above grade~~ at DBH.