

ORDINANCE NO. A-705

AN ORDINANCE TO AMEND CHAPTER 5, ENTITLED "BUILDINGS AND STRUCTURES" OF THE CODE OF ORDINANCE OF THE CITY OF LIVINGSTON, TEXAS, PROVIDING REQUIREMENTS FOR LANDSCAPING OF COMMERCIAL PROPERTIES; PROVIDING FOR CRIMINAL PENALTIES FOR VIOLATION THEREOF; PROVIDING FOR CUMULATIVE EFFECT; AND PROVIDING FOR SEVERABILITY THEREOF.

WHEREAS, it is the intent of the City Council to enhance the economy and the business of the City by promoting attractive surroundings in commercial development within the City; and

WHEREAS, it is the intent of the City Council to preserve the existing natural environment whenever possible and to provide landscape amenities, setbacks and screening which promote a positive community image by promoting quality development, enhancing property values, providing landscape improvements in all parts of the City and promoting orderly growth and aesthetic quality in the City; and

WHEREAS, regulating commercial landscaping will promote quality development by providing for consistent use of trees and other vegetation thereby enhancing the economy and business of the City, increasing property values and providing a better quality and improved environment for the welfare of its citizens,

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

SECTION 1. That Article IX of Chapter 5 (Buildings and Structures) is hereby created to read as follows:

Section 5-200. Application. This Article shall be known as the Commercial Landscaping Requirements for the City of Livingston.

A. Except as provided by this section, this Article shall apply to all commercial property within the City.

- B. Any commercial property existing at enactment of this ordinance shall be considered as conforming thereto for so long as there is no alteration of more than fifty percent (50%) of the principal structure

located within said development.

Section 5-201. Definitions.

- A. Artificial Lot shall mean a portion of a two-acre or larger tract, held singly or within contiguous tracts or parcels held under common ownership that contains the area to be developed as an individual project and that includes all improvements, including parking, related to the project to be developed.
- B. Buffering shall mean the use of shrubbery landscaping that at least partially obstructs an otherwise contiguous street view of parking lots and vehicles parked thereon.
- C. Building Site shall mean:
 - 1. A tract or parcel of land, together with all contiguous tracts or parcels which are held under common ownership upon which any commercial building or parking lot may be constructed; or
 - 2. An artificial lot contained within a building site and which is designated by the Community Development Coordinator out of a larger tract for purposes of satisfying this Article.
- D. Caliper shall mean the diameter of a tree trunk as measured six inches above the root collar for trees up to and including four inches in diameter and twelve inches above the root collar for trees having a diameter larger than four inches. The caliper of a tree with two trunks shall be determined by using the sum of the caliber of both trunks thereof. The caliper of a tree with multiple trunks shall be determined by using the sum of the caliper of the three largest trunks thereof.
- E. Commercial Building shall mean a building and accessory improvements associated therewith, other than a single family or duplex residence.
- F. Commercial Property shall mean all real property within the limits of the City other than single family or duplex residential property. The term shall include apartment complexes and other high density residential occupancies.

- G. Residential Property shall mean property which is dedicated or restricted to use by a single family or two family duplex for residential purposes, and which is not actually used for any other purpose; or real property upon which there exists a single family residence or a duplex two family residence.

Section 5-202. Required Site Plan; Issuance of Building Permit; Certificate of Occupancy.

- A. Each applicant for a building permit for the construction of a new commercial building or parking lot shall submit a site plan for the building site in accordance with the provisions of this Article. If designation of an artificial lot is requested, the site plan must reflect the location of all contiguous tracts or parcels held under common ownership and the specific area within such building site for which the artificial lot designation is sought.
- B. The site plan must show the location of existing and proposed utility lines, garbage or refuse storage points, roadways, sidewalks, street lights, building and parking lots. In addition, the site plan must reflect the location, species and number of trees and shrubs proposed for planting or preservation in accordance with the requirements of this Article.
- C. No permit shall be issued for the construction of a new commercial building or parking lot unless the Community Development Coordinator approves the site plan verifying that the Applicant has provided for the planting of trees and shrubs to the extent provided by this Article.
- D. No final certificate of occupancy shall be issued by the Community Development Coordinator for any new commercial building or parking lot except upon satisfaction of the requirements of this article. Prior to the issuance of a certificate of occupancy, the Community Development Coordinator shall inspect the building site to verify compliance with the approved plans.

Section 5-203. Artificial Lot Delineation.

- A. If a developer wishes to develop a portion of a two (2) acre or larger

tract, the developer may request that the Community Development coordinator delineate the portion of the tract to be developed as an artificial lot, for purposes of calculating landscape requirements for development. No artificial lot may be designated by the Community Development Coordinator unless it :

1. Wholly includes the area which is to be landscaped;
 2. Includes no more than fifty percent of the total area of all contiguous tracts or parcels under common ownership; and
 3. Includes all proposed buildings and structures to be constructed and all parking and access drives appurtenant thereto.
- B. Regardless of size of a building site, if a portion of the building site has been previously improved and new improvements are proposed in a substantially unimproved area, the Community Development Coordinator shall delineate an artificial lot encompassing the area on which construction is to be done. If the portion of the building site which will remain unimproved is less than two acres in size, said unimproved portion shall be wholly included within the artificial lot.

Section 5-204. Tree Planting and Landscaping Areas. The following tree planting and landscaping areas are hereby established on all commercial property:

- A. A strip running parallel and adjacent to the abutting street right of way along the front of the property as designated by the land owner or developer; and
- B. A strip running parallel and adjacent to the street right of way of any side street.

Section 5-205. Tree Planting Requirements.

- A. In construction of a new commercial building or parking lot, trees shall be planted within the front tree planting and landscaping area and within any side street tree planting and landscaping area and shall be maintained and replaced as necessary to maintain a minimum number of trees along the abutting frontages thereof

based upon the following

formula:

$$\text{Required Trees} = \frac{\text{Street Frontage in Feet}}{60}$$

- B. Trees listed in Section 5-214 hereof shall be acceptable for planting under the requirements of this Article. Each tree planted must have a minimum caliper of two inches, measured six inches above the root collar.
- C. Credit shall be given for planting those trees specifically designated for planting beneath overhead utility lines in Section 5-214 hereof only where so planted.
- D. In order to encourage the preservation of existing trees, a tree for tree credit toward the total number of trees required in a designated tree planting area shall be given for any existing tree maintained therein, as long as the existing tree complies with the size and type requirements otherwise specified in this ordinance.

5-206. Trees in Parking Lots. In addition to the requirements for planting of trees in front tree planting and landscaping areas and within any side street tree planting and landscaping areas, for parking lots, one tree of at least two inches in caliper must be planted for each thirty parking spaces. All such trees must be located in the interior of the parking lot or in an area immediately adjacent to the parking lot. In order to encourage the preservation of existing trees, a tree for tree credit toward the total number of trees required in a parking lot shall be given for any existing tree maintained therein as long as the existing tree complies with the size and type requirements otherwise specified in this ordinance.

5-207. Required Buffering of Parking Lots by Shrubs.

- A. New parking lots shall be effectively buffered from street view by planting of shrubs along each perimeter line thereof facing a public street.
- B. Shrubs shall be planted, maintained and replaced as necessary to maintain a minimum number of shrubs along the perimeter of a parking

lot based upon the following formula:

$$\text{Required Shrubs} = \frac{\text{Perimeter in Feet}}{5}$$

- C. Shrubs shall be placed uniformly in distance to provide substantially the same density of ground cover along the entire perimeter line. Shrubs shall be maintained at a height of not more than 36 inches nor less than 18 inches as measured from the surrounding soil line.

Section 5-208. Landscape Screening. Screening for commercial and industrial uses shall include screening adjacent to existing residential development, and screening of refuse handling facilities (including refuse disposal and recycling) and ground level mechanical equipment visible from public right of way.

- A. Screening Adjacent to Residential Development. Commercial development occurring adjacent to existing residential development shall be screened along each property line common to the residential development, using any combination of trees, shrubs, berms, walls, wood fencing or decorative fencing which provides year-round obstruction of view and is equivalent to use of opaque fencing of six feet in height or using any existing natural physical features of the property, such as significant vegetation.
- B. Refuse handling facilities and mechanical equipment shall be screened by opaque walls or wooden screening fences of not less than the height of the facilities or equipment to be screened or as otherwise required to screen the view from any public street right of way. Permanent walls are required on three (3) sides with an opaque gate allowed on the fourth side for access by the refuse collection vehicle.

Section 5-209. Alternative Compliance. Where unique natural features such as soil characteristics, topography, geological characteristics, water features, significant vegetation, peculiarly-shaped building sites or locations of existing structures on the site inhibit site design or pose unnecessary constraints to appropriate development, the Community Development Coordinator may approve an alternative landscape and screening plan upon determining that such plan meets the intent of the standards of this Ordinance and meets or exceeds a plan in strict compliance. In permitting

such alternative compliance,

the Community Development Coordinator shall determine that:

- A. Such alternative is in harmony with the intent and purpose of the regulations contained in this ordinance;
- B. Such alternative will not adversely affect the health, safety or general welfare of the public;
- C. Alternative compliance is needed due to unique circumstances affecting the property or the owner's use of the property (financial consideration alone not being sufficient grounds therefor); and
- D. The owner has made provisions for alternative landscaping reasonably equivalent in value and utility to the requirement sought to be varied.

Section 5-210. Maintenance Requirements.

- A. The owner of the property shall be responsible for the regular maintenance of all required trees and shrubs in a vigorous and healthy condition, free from disease or pests. This maintenance shall include mowing, edging, weeding, watering, fertilizing, pruning or other maintenance provided by generally accepted horticulture practice. Landscaped areas shall be kept free of trash, litter, weeds and other such material or plants not a part of the landscaping.
- B. All plant materials shall be maintained in a healthy and growing condition as appropriate for landscaping. Dead, diseased or severely damaged trees or shrubs shall be removed by the owner of the property and replaced with plant material of similar variety and size as soon as possible, and no later than thirty (30) days following written notice by the Community Development Coordinator.
- C. Traffic Visibility.
 - 1. When a driveway intersects a public right of way or when the subject property abuts the intersection of two or more public rights of way, all landscaping shall provide unobstructed cross visibility at a level between three and eight feet, at least ten feet extending from each side of the driveway or abutting intersection and parallel to the public right of way. Trees having over eight feet of clear trunk with

limbs and foliage trimmed in such a manner as to not extend into the cross visibility area shall be allowed, provided there is no traffic hazard.

2. A property owner shall maintain landscaping in such a manner as not to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal or device, or to obstruct or interfere with the view of the driver of approaching, emerging or intersecting traffic or to prevent a traveler on any street from obtaining a clear view of approaching vehicles.

Section 5-211. Failure to Maintain Required Number of Trees or Shrubs.

- A. Upon finding that any building is maintained in violation of the requirements of this Article, the Community Development Coordinator shall notify the owner of the property in writing and direct the owner to plant trees or shrubs as necessary to conform to the requirements of this Article within thirty (30) days of said notice. Whenever a corporation, partnership or other association or entity is the owner of the property, notice shall be sufficient if given to the President, Vice President, Secretary, Treasurer, Manager or any agent or employee of the corporation, partnership, association or entity. Written notice is effective when either:
1. placed in the United States Mail, postage prepaid, and sent to the address of the owner as listed on the application for permit or in the records of the Community Development Coordinator; or
 2. personally delivered to the owner of the property.
- B. The owner of property commits an offense if he intentionally or knowingly fails to maintain the required number of trees or shrubs applicable under this article in any tree planting and landscaping area or parking lot or perimeter located upon the property as described in this Article. Whenever a corporation, partnership or other association or entity is the owner of the property, the President, Vice President, Secretary, Treasurer, Manager or any agent or employee of the corporation, partnership, association or entity shall be severally liable for prosecution and any penalty prescribed for violation.

- C. It shall be an affirmative defense to any prosecution under this Section that the Community Development Coordinator failed to give written notice of violation as required by this Article, or that the owner complied with the notice within the period of time therein provided.

Section 5-212. Removal of Unsafe Trees.

- A. A tree which is dead, diseased or severely damaged or otherwise unsafe by reason of disease or other matters, or poses a hazard to public health, safety or welfare shall be deemed a public nuisance. Said nuisance shall be abated by removal of the tree.
- B. A person is presumed to have caused or allowed the existence of the said public nuisance upon real property if the person owns, occupies or controls the real property and the nuisance remains unabated after the tenth day after the date on which the person is notified to abate the nuisance by the Community Development Coordinator.
- C. If the owner of the property does not abate the nuisance within ten days of notice of violation, the City may remove the tree and pay for the removal and charge the expenses to the owner of the property. Notice of the violation must be given to the owner in writing, either personally or by certified mail, return receipt requested and addressed to the owner at the owner's address as recorded in the County Tax Office; or, if personal service cannot be obtained or the owner's address is unknown, by publication at least once within a newspaper of general circulation within the City; by posting the notice on or near the front door of a building on the property; or by posting the notice on a placard attached to a stake driven into the ground on the property at the site of the nuisance. The notice shall state that the person receiving the notice shall abate the nuisance before the tenth day after the date on which the notice was given; and that failure to abate the nuisance may result in abatement by the City, assessment of costs, and filing a lien against the property on which the nuisance exists.
- D. The Community Development Coordinator, on behalf of the City Council, shall assess a lien against any real property upon which a nuisance shall have been abated. To obtain a lien against the property, the Community Development Coordinator must file a

statement of expenses in the real property records of the County. In addition to the cost of abating the nuisance, such notice shall include an administrative fee equal to the cost of legal notification and any required title opinion, but in no event shall such administrative fee be less than fifty dollars (\$50.00). The lien obtained by the City Council is security for the expenditures made and interest accruing at the rate of ten percent (10%) on the amount due from the date of filing of the statement of expenses in the real property records. The lien is inferior only to tax liens. The City Council may bring suit for foreclosure in the name of the City to recover the expenditures and interest due. The statement of expenses or a certified copy of the statement is prima facie proof of the expense incurred by the City in doing the work. The City Secretary is authorized to execute and deliver a release of lien upon full payment of the assessment together with interest thereon as provided herein. Any compromise resulting in release for less than full payment together with accumulated interest shall be first approved by the City Council prior to execution and delivery of any release by the City Secretary.

Section 5-213. Penalty. Any person who shall violate a provision of this Article or shall fail to comply with any of the requirements hereof shall be guilty of a misdemeanor and upon conviction may be punished by a fine as provided by Section 1-5 of this Code of Ordinances. A violation for failure to abate a nuisance as described in this Article shall be deemed to be violative of fire safety, public health and sanitation as described in Section 1-5 of this Code of Ordinances and in Chapter 54 of the Texas Local Government Code. Each day a violation continues after due notice has been served shall be deemed a separate offense.

Section 5-214. Trees Appropriate for Planting. By way of description, and subject to the limitations of Paragraph D below, the following trees are appropriate to be planted as indicated:

A. Those trees requiring little water:

Common Name	Light Needed	Approximate Size
Texas Persimmon	Full Sun	10-30 feet
Red Cedar	Full Sun	30-80 feet

Crepe Myrtle	Moderate Sun	10-30 feet
Slash Pine	Full Sun	80-100 feet
Mexican Plum	Full Sun	10-30 feet

B. Those trees requiring moderate water with good drainage:

Common Name	Light Needed	Approximate Size
Pecan	Full Sun	80-100 feet
Shagbark Hickory	Moderate Sun	80-100 feet
Black Hickory	Full Sun	80-100 feet
American Holly	Moderate Sun	30-80 feet
Yaupon Holly	Moderate Sun	30-80 feet
Black Walnut	Full Sun	80-100 feet
Sweet Gum	Full Sun	80-100 feet
Southern Magnolia	Full Sun	30-80 feet
Sweet Bay	Moderate Sun	30-80 feet
Tupelo	Moderate Sun	30-80 feet
Chinese Pistache	Full Sun	80-100 feet
White Oak	Full Sun	80-100 feet
Southern Red Oak	Full Sun	80-100 feet
Overcup Oak	Full Sun	80-100 feet
Bur Oak	Full Sun	80-100 feet
Chinkapin Oak	Full Sun	80-100 feet
Water Oak	Full Sun	80-100 feet
Nuttail Oak	Full Sun	80-100 feet
Shumard Oak	Full Sun	80-100 feet
Post Oak	Full Sun	80-100 feet
Texas Red Oak	Full Sun	80-100 feet
Live Oak	Full Sun	80-100 feet

Red Maple	Full Sun	80-100 feet
Gum Bumelia	Moderate Sun	30-80 feet
Red Bud	Moderate Sun	30-80 feet
Hawthorne	Moderate Sun	10-30 feet
Eastern Persimmon	Full Sun	30-80 feet
Anaqua	Full Sun	10-30 feet
Green Ash	Full Sun	80-100 feet
Ginkgo	Moderate Sun	30-80 feet
Juniper	Moderate Sun	30-80 feet
Tulip Poplar	Moderate Sun	30-80 feet
Eastern Hophornbeam	Moderate Sun	30-80 feet
Shortleaf Pine	Full Sun	80-100 feet
Loblolly Pine	Full Sun	80-100 feet
Japanese Black Pine	Full Sun	30-80 feet
Carolina Cherry Lau	Moderate Sun	10-30 feet
Purple Leaf Plum	Full Sun	10-30 feet
Callery Pear	Full Sun	30-80 feet
Bradford Pear	Full Sun	30-80 feet
Willow Oak	Full Sun	80-100 feet
Monterey Oak	Full Sun	80-100 feet
Winged Elm	Full Sun	80-100 feet
American Elm	Full Sun	80-100 feet
Drake Elm	Full Sun	80-100 feet
Cedar Elm	Full Sun	80-100 feet

C. Those trees requiring significant water or tolerating poor drainage:

Common Name	Light Needed	Approximate Size
Bald Cypress	Moderate Sun	80-100 feet
Montezuma Cypress	Full Sun	80-100 feet

D. Only the following trees are designated for planting beneath overhead utility lines:

1. Texas Persimmon
2. American Holly
3. Yaupon Holly
4. Red Bud
5. Hawthorne
6. Anacua
7. Crepe Myrtle
8. Purple Leaf Plum
9. Mexican Plum

SECTION 2. That if any provision of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

SECTION 3. That this ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Livingston, and this ordinance shall not operate to repeal or affect any 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 ordinance or ordinances are hereby repealed.

SECTION 4. That all regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Livingston in the discharge of his or her duties, shall not thereby render himself or herself personally liable, and he or she is hereby relieved from all personal liability for any damage that might accrue to persons or

property as
a result of any act required or permitted in the discharge of said duties.

SECTION 5. That this ordinance shall take effect upon its publication as required by law.

APPROVED AND ADOPTED this 14th day of November, 2006.

SIGNED:

BEN R. OGLETREE, JR., MAYOR

ATTEST:

IRENE NICKS, City Secretary