

ORDINANCE NO. 2012-____

**TOWN OF PROVIDENCE VILLAGE
TREE PRESERVATION AND PROTECTION**

AN ORDINANCE OF THE TOWN OF PROVIDENCE VILLAGE, DENTON COUNTY, TEXAS, ESTABLISHING A COMPREHENSIVE TREE ORDINANCE FOR THE CORPORATE LIMITS AND EXTRATERRITORIAL JURISDICTION OF THE TOWN OF PROVIDENCE VILLAGE; DEFINING TERMS; AND PROVIDING FOR CONFLICTS, PENALTIES, SEVERABILITY, PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Providence Village (“Town Council”) seeks to provide for the orderly development and use of property within the corporate limits of the Town (“Town”) and its extraterritorial jurisdiction (“ETJ”); and

WHEREAS, the Town Council seeks to maintain the value of Town’s scenic beauty and rural charm, which are the keystones of the Town's quality of life, through a comprehensive regulatory program that maintains the tree within the corporate limits; and

WHEREAS, in her 2008 report entitled, “ TREE PRESERVATION AND ITS IMPACT ON RESIDENTIAL DEVELOPMENT AND REAL ESTATE VALUE” Melissa Gerstle, Graduate student at The University of Texas at Arlington, summarized that the maintaining of mature trees increases the resale value of a home; and

WHEREAS, the Town Council desires to prevent the ill effects of urbanization within the corporate limits and extraterritorial jurisdiction; and

WHEREAS, the Town Council desires to conserve property values within the corporate limits and extraterritorial jurisdiction of the Town; and

WHEREAS, the Town Council finds that mature tree prevent the erosion of land; and

WHEREAS, the Town desires through this Ordinance to provide an attractive, orderly and unique environment for all its citizens and visitors; to protect the public interest, comfort, and general welfare and development of the Town; and

WHEREAS, the Town Council in compliance with the laws of the State of Texas, the ordinances of the Town, has given the requisite notices by publication and otherwise, and after holding public hearings and affording full and fair hearings to all property owners in the Town, and in the exercise of its legislative discretion, have concluded that these regulations pertaining to this ordinance should be adopted, and that the Tree Preservation and Protection Ordinance of the Town should be stated as follows:

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROVIDENCE VILLAGE, TEXAS:

ARTICLE 1. TREE PRESERVATION AND PROTECTION

Sec. 1.00.00 Scope and Purpose

(a) This article shall be effective within the geographical limits of the Town, including any areas subsequently annexed by the Town.

(b) The purpose of this article is to encourage the preservation of trees that once removed can be replaced only after generations, to preserve protected trees during construction and to control the removal of protected trees when necessary. It is the intent of this article to achieve the following:

- (1) Prohibit the indiscriminate clearing of property.
- (2) Protect and increase the value of residential and commercial properties within the Town.
- (3) Maintain and enhance a positive image for the attraction of new business enterprises to the Town.
- (4) Protect healthy quality trees and promote the natural ecological environmental and aesthetic qualities of the Town.
- (5) Help provide needed shaded areas in order to provide relief from the heat by reducing the ambient temperature.
- (6) Help prevent erosion.

Sec. 2.00.00 Definitions

For the purpose of this article, the following words and phrases shall have the meanings ascribed to them:

Buildable area. That portion of a building site exclusive of the required yard areas on which a structure or building improvements may be erected and including the actual structure, driveway, parking lot, pool and other construction as shown on a site plan and within fifteen (15') feet surrounding the structure and building improvements.

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 native 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. (Figure 2 on file in the office of the Town Secretary)

DBH or diameter at breast height. The diameter, in inches, of a tree as measured through the main trunk at a point four and one-half feet (4.5') above the natural grade. For a multi-trunk tree, the diameter shall be the total diameter of the largest trunk plus one-half (1/2) of the diameter of each additional trunk.

Drip line. The periphery of the area encompassing a tree determined by dropping imaginary vertical lines from the outermost portion of its canopy to the ground.

Grade change. Any changes in ground level or soil compaction within an area around or near the trunk of a tree that may adversely affect the health of the tree.

Limits of construction. Delineation on the site plan defining the areas within which all construction activity may occur.

Mayor. The mayor of the Town and/or his designee.

Person. Any person, corporation, partnership, firm, association or artificial entity, or any agent or employee of the foregoing.

Protective fencing. A barrier from entry, constructed from chain link, orange plastic, or other similar material at a minimum height of four feet (4') above ground level, restricting access to a Tree Protection Zone.

Tree. Any living, self-supporting, woody perennial plant which at maturity will attain a trunk diameter of two inches (2") or more when measured at DBH and which will typically attain at maturity a height of at least fifteen feet (15').

Tree, protected. Any tree having a DBH of six inches (6") or more, except mesquite, thorny honey locust, and willow trees.

Tree, replacement. A tree as listed in the approved tree replacement ([section 1.00.015](#)) that has a minimum caliper required by this article and a minimum height of seven feet (7'), measured at ground level (natural grade) at the time of planting.

Sec. 3.00.00 Applicability

The terms and provisions of this article apply to all property in the territorial limits of the Town unless excepted herein. This article shall apply to all persons, including property owners, managers, trustees, and those persons who have control or responsibility over real property.

Sec. 4.00.00 Exceptions

(a) Nothing herein contained shall require any change in the plans, construction or designated use of any parcel of property for which a permit for construction has been issued, as of the effective date of this article.

(b) During the period of an emergency, such as a tornado, storm, flood or other natural disaster, the requirements of this article may be waived as deemed necessary by the mayor or his designee.

(1) In addition to rights granted by easement, utility service providers lawfully within the right-of-way may remove trees during the period of an emergency that are determined by the provider to be a danger to public safety and welfare by interfering with utility service.

(2) The Town may clear streets and public rights-of-way of damaged or fallen trees, tree limbs, or other debris as needed as a result of a storm event.

(c) In the installation or maintenance of facilities, utility service providers, including the Town, or their contractors, agents, successors and assigns shall have the right to trim or remove trees so as to prevent any part of such trees from becoming a danger to public health, safety and welfare by interfering with utility service. Trimming shall be done in a manner such that the aesthetics and health of the trees are not destroyed. Existing trees already growing into utility lines shall be trimmed as necessary. The Town may require boring under trees within the critical root zone area instead of trenching.

(d) In the installation or maintenance of drainage facilities, creek channel lining, or erosion control measures, the Town, or its contractors, agents, successors and assigns shall have the right to trim or remove trees so as to prevent any part of such trees from becoming a danger to public health, safety and welfare by interfering with said drainage improvements. The Town may require boring under trees within the critical root zone area instead of trenching.

(e) Diseased or damaged protected trees which are beyond the point of recovery or in danger of falling shall be exempt from the tree replacement and preservation plan requirements of this article. A tree removal permit shall be required but no permit fee shall be assessed or charged. In the case of code enforcement action, the notice of violation and description of the action to be taken shall serve as the permit to commence work. The removal of a diseased tree may be required to reduce the chance of spreading the disease to adjacent, healthy trees.

(f) Plant nurseries shall be exempt from the provisions of this article only in relation to those trees planted and growing on the premises for sale, either retail or wholesale.

(g) Any paved surface within the critical root zone of a protected tree that is in existence on or before the effective date of this article may be replaced or maintained.

(h) Seven percent (7%) of the total caliper inches of all protected trees situated on property used for residential or agricultural purposes, but not in the commercial designated corridors, may be removed per year. The maximum in any consecutive five-year period shall be twenty-one (21%) of the total caliper inches of all protected trees. Trees situated on the exempted three-acre area surrounding the primary dwelling under [section 4\(a\)](#) of this article shall not be used in or subject to this calculation. A tree removal permit shall be submitted and approved before any such removal is begun. No fee will be assessed or charged for the permit. Notwithstanding the foregoing, no person shall remove a protected tree with a DBH of eighteen (18”) inches or more without approval of the Town Council.

Sec. 5.00.00 Tree Preservation and Protection

(a) No person shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree, directly or indirectly, regardless of whether the protected tree is on private property or the abutting public right-of-way, unless exempt or excepted under the provisions of this article.

(b) The Town may issue a stop-work order for any development or construction project or activity at any time if the requirements of this article are not being met. Efforts will be made to allow a developer or builder to comply before the project is shut down.

(c) No clear-cutting of land is allowed. Prior to the removal of any protected tree, regardless of construction or development schedule, a tree preservation plan must be submitted to and approved by the Town.

(d) Prior to construction or development of a commercial or residential subdivision project on a site that contains one (1) or more trees, a tree preservation plan must be submitted to and approved by the Town. If the site does not contain any protected trees, a letter, prepared by a registered surveyor, engineer, architect or landscape architect, shall be submitted to the Town which verifies that protected trees are not on the subject site.

(e) The tree preservation plan submittal shall be accompanied by a site plan that includes but is not limited to the following:

- (1) Delineation of site boundaries.
- (2) Location of all existing or proposed structures and of all improvements such as streets, drives, alleys, septic systems, and easements.
- (3) Tree location map. All requests for tree removal permits must be accompanied by a map showing at a minimum the requirements as listed below.
- (4) Map requirements. Maps shall show: the location of all buildings, structures, pools, utilities, other improvements intended on the lot and limits of construction line shown if applicable; the location of all protected trees; the location of tree(s) to be removed and replacement trees with dimensions from two nearest property lines; the

caliper and common name of trees to be removed and any required replacement trees shown with caliper size and the common name of tree.

(5) The reason for the proposed tree removal shall be summarized on legend form on the plan. The same summary shall also be submitted on a legible 8.5" x 11" document.

Sec. 6.00.000 Protection of Trees

Protected trees that are not to be removed or have been identified on the tree preservation plan to be preserved must be protected under the following conditions:

(1) 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.

(2) No equipment shall be cleaned or other foreign materials deposited or allowed to flow overland within the critical root zone of a protected tree. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.

(3) No signs, wires or other objects, other than those of a protective nature, shall be attached to any protected tree. However, lighting of a decorative nature may be attached to a protected tree so long as the lighting is attached in a manner so as not to damage the protected tree.

(4) Construction traffic or parking shall be limited so as to avoid taking place within the limits of the critical root zone of any protected tree other than on an existing paved surface. This restriction does not apply to 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 or emergency restoration of utility service, or routine mowing operations, however, these activities should be conducted in such a manner as to minimize the impact on the protected tree.

(5) No grading or grade changes shall be conducted or allowed within the limits of the critical root zone of any protected tree unless required for structural integrity of buildings or improvements on approved building sites.

(6) No paving with asphalt, concrete or other impervious materials shall be placed within the critical root zone of a protected tree. However, paving may encroach within the critical root zone of a tree upon approval by the Town.

(7) No person, directly or indirectly, shall prune, cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree on Town-owned property unless otherwise permitted by this article.

Sec. 7.00.000 Tree Removal Permit

(a) An application for tree removal permit must be submitted to and approved by the Town prior to the removal of any protected tree unless exempt or excepted under this article. The fee for a tree removal permit shall be established by the Town Council.

(b) Permits for tree removal issued in connection with a building permit or site plan shall be valid for the period commensurate with the building permit or site plan. Permit(s) for tree removal not issued in connection with a building permit or a site plan shall become void one hundred eighty (180) days after the issue date on the permit. Notwithstanding, a permit may be revoked by the mayor or his designee if the holder of the permit violates any provisions of the permit or this article.

Sec. 8.00.000 Action on Permit Application

(a) Upon receipt of a sufficient application for a tree removal permit, the mayor or his designee shall review and approve or deny all requests submitted in accordance with the requirements specified herein.

(b) Any denial of a permit by the mayor or his designee may be appealed to the Town Council. Action by the Town Council shall be final.

(c) Consideration for the approval of a tree removal permit shall be based upon the following guidelines:

(1) Whether the removal of the protected tree is permitted by this article and the exceptions enumerated herein;

(2) Whether or not a reasonable accommodation or alternative solution can be made to accomplish the desired activity without the removal of the protected tree;

(3) The effect of the removal of the protected tree on erosion, soil moisture, retention, flow of surface waters, and drainage systems;

(4) The need for buffering of residential areas from the noise, glare, and the visual effects of streets, highways and nonresidential uses;

(5) Whether the removal of the protected tree affects the public health, safety or welfare of the residents of the Town; and

(6) Whether the application demonstrates the attempt to preserve existing trees on the site.

(d) No certificate of occupancy shall be issued until all fines and administrative and civil penalties for violations of this article have been paid to the Town.

Sec. 9.00.000 Prior to Construction

The following procedures shall be followed on all construction projects including but not limited to residential subdivisions, commercial, multi-family, manufacturing developments, residential builders and municipal/public, utility easement, right-of-way, manufactured housing development, road construction, and sidewalk construction:

- (1) Tree flagging. All protected trees on the subject property within forty (40') feet of a construction area or surface improvements such as driveways, alleys or walks, shall be flagged with bright fluorescent orange vinyl tape of at least 2-inch width wrapped around the main trunk at a height of four (4') feet or more such that the tape is visible to workers operating construction equipment. This shall include the flagging of all protected trees adjacent to rights-of-way within approved residential subdivisions during the construction of roadways. All flagging shall remain in place during the entire phase of construction at all times.
- (2) Open space flagging. All trees or groups of trees within areas intended to be preserved as open space shall be enclosed with bright fluorescent orange vinyl tape of at least 2-inch width along all areas of possible access or intrusion by construction equipment. Tape shall be supported at a maximum of twenty-five (25') foot intervals by wrapping trees or other approved methods. Single incident access for the purposes of clearing underbrush is allowed. All flagging shall remain in place during the entire phase of construction at all times.
- (3) Protective fencing. Protective fencing will be located at the drip lines of all protected trees that border the limits of construction, and only where construction activity occurs, as designated by the mayor or his designee.
- (4) Bark protection. In situations where a protected tree remains in the immediate area of intended construction, the tree shall be protected by enclosing the entire circumference of the tree with 2-inch by 4-inch lumber encircled with wire or other means that do not damage the tree. The purpose is to protect the bark of the tree against incidental contact by large construction equipment.

Sec. 10.00.000 Permanent Construction Methods

- (a) Boring. Boring of utilities under protected trees may be required in certain circumstances. 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 forty-eight (48") inches.
- (b) Trenching. Where possible, all trenching shall be designed to avoid trenching across the critical root zone of any protected tree. This shall not inhibit the placement of necessary underground utility services such as electric, telephone, gas, etc. No trenches in the critical root zone of a protected tree may be left open for more than 24 hours.

(c) Root pruning. It is required that all roots two (2") inches or larger in diameter which are exposed as a result of trenching or other excavation be cut off square with a sharp medium tooth saw and covered with pruning compound within two hours of initial exposure.

(d) Rehabilitation. All post boring and trenching in the critical root zone and root pruning shall require rehabilitation treatments of watering and fertilizing with root stimulator as recommended by an arborist certified by the International Society of Arborists.

Sec. 11.00.000 Tree Replacement Requirements

(a) Replacement trees shall be required under the following conditions:

(1) To replace a protected tree that is removed as specified in this article, unless excepted by [section 4](#) of this article; or

(2) To replace a tree that was identified on a tree preservation plan but dies within two (2) years of the date it was planted.

Replacement trees shall not be required for protected trees that are removed because the protected trees are situated within the buildable area of residential properties.

(b) Replacement trees shall be planted in accordance with the provisions of this article per the following rates:

For each Protected Tree to be Removed (" Caliper)	Required Size and Number of New Replacement Trees
6" to 12" caliper	Minimum 3" caliper, equivalent to 150% of caliper inches removed
Greater than 12" to 30" caliper	Minimum 4" caliper, equivalent to 150% of caliper inches removed
Greater than 30" caliper	Minimum 6" caliper, equivalent to 150% of caliper inches removed

(c) No more than 34% of the number of replacement trees shall be of the same species when twelve (12) or more replacement trees are required. All replacement trees must be of a species designated in the approved tree replacement list ([section 15](#)).

(d) The replacement trees shall be located on the subject site. However, if there is not a suitable location for the replacement trees on the subject site, the Town Council may approve either of the following or a combination of the following:

(1) The planting of the replacement trees within a public right-of-way, public park land or any other municipally-owned property;

(2) The planting of the replacement trees within private open space (common ground areas); and

(3) The payment of a fee into the tree restoration fund in the amount in accordance with a fee schedule provided by the Town. The fee schedule shall be based on the current Texas A & M Extension Service Fact Sheet for Evaluation of Texas Shade Trees. The funds shall be used for the purposes of purchasing, installing and maintaining trees on public rights-of-way, public parkland or any other municipally-owned property, or any other purpose as determined by the Town Council.

Sec. 12.00.000 Miscellaneous Provisions

(a) Trees required to be planted by this article shall be planted in such a manner as not to constitute, at the time of planting and at the point of full maturity, any interference with the visibility triangles at intersections nor to interfere with the view of motor vehicles.

(b) If any tree required to be retained or planted as required by this article should die within a period of two (2) years after completion of the activities associated with construction or development, the property owner or person required to plant the replacement tree(s) shall replace the trees within six months at a ratio of one-to-one with an approved identical size tree from the approved replacement tree list. ([section 15](#)).

(c) The filling and reclamation of property and mitigation as delineated on a Section 404 Permit, issued by the U.S. Army Corps of Engineers, shall be permitted in lieu of the requirements of this article. The removal of any protected tree on the subject property shall be in accordance with a filling, reclamation, and mitigation plan approved and/or ordered by the Corps of Engineers incident to the filling and reclamation of wetlands and flood lands on such property. As soon as the reclamation and mitigation prescribed by the Corps of Engineers has been completed, and the property is no longer under the supervision and authority of the Corps of Engineers, this article shall immediately apply to such property thereafter.

Sec. 13.00.000 Appeals, Variances

(a) The Town Council shall hear appeals from decisions of the mayor or his designee and may approve a tree removal permit and approve an exception to all or a portion of the requirements of this article to provide for replacement trees for the following:

(1) A public or recreational use or structure but not including rights-of-way or easements.

(2) A private use that usually requires large areas of open space or impervious surface.

(3) Development of heavily forested sites where strict compliance with the requirements of this article will unreasonably burden the use of the property.

Sec. 14.00.000 Penalties

(a) Any person who cuts, removes or destroys a protected tree in violation of this article may be subject to a civil penalty imposed by the mayor or his designee of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each caliper inch of protected tree cut, removed or destroyed. Upon a finding that a person has violated this article, the mayor or his designee shall determine an appropriate administrative penalty, after due consideration of the danger of repetition, the severity of the offense, and all relevant circumstances. The mayor or his designee shall transmit notice of the violation and of the assessment of administrative penalties to the offending person who may, within twenty (20) days after receipt of notice, request an appeal of the mayor's assessment to the Town Council. Said notice of appeal must be timely and shall state the basis of the appeal in plain and intelligible language. The Town Council shall, upon receipt of a notice of appeal, promptly schedule the matter for hearing and upon hearing, shall sustain, reverse or modify the determination and assessment of the mayor his designee, as the Town Council deems appropriate and in the ends of justice. The Town Council's determination shall be final.

(b) Any person violating any term or provision of this article shall be deemed guilty of a misdemeanor and subject to a penalty as provided for in this article, and upon conviction shall be punished by fine in accordance with the general penalty provision found in [section 9](#) of this code for each offense, and each and every day such violation shall continue shall constitute a separate offense.

(c) Any person who violates any of the provisions of this article, or who fails to comply therewith or with any of the requirements hereof, or who commences construction or development of any real property in violation of any plan submitted or approved under this article, or who fails to obtain a permit where required herein, or who erects, occupies or alters any structure or building, or commences to erect, occupy, or alter any structure or building in violation of any plan submitted or approved under this article, shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined accordance with the general penalty provision found in [section 9](#) of this code. Each and every day such violation exists or is continued to exist shall constitute a separate offense. The owner of the building, structure, property or premises, or part thereof, where such violation exists, and any architect, builder, contractor or agent employed in connection therewith who may have assisted in the commission of any such violation shall each be deemed guilty of a separate offense and, upon conviction, shall be subject to the penalties herein provided. Upon conviction, the judge may order the defendant to replace the tree or trees with other trees equal to or greater in height, diameter and type of that which was unlawfully removed.

(d) In addition to the penalties hereinabove provided, the Town may, it its option, pursue compliance with the terms and provisions of this article by injunctive relief in the appropriate courts of Denton County, Texas.

(e) The remedies provided in this article shall be cumulative and the Town's pursuit of any one remedy shall not be construed as an election; the Town may pursue any and all remedies allowed by state law or the ordinances of the Town.

Sec. 15.00.000 Approved New and Replacement Tree List

Large Trees	Small/Ornamental Trees
Afgan Pine *	American Holly
American Elm	Aristocrat Pear
Bald Cypress	Ashe Juniper *
Big Tooth Maple	Bradford Pear
Black Hickory *	Carolina Buckthorn
Blackjack Oak	Desert Willow *
Buckeye *	Dogwood Crepe Myrtle
Bur Oak *	Eastern Redbud *
Caddo Maple	Escarpment Live Oak
Catalpa *	Eve's Necklace
Cedar Elm *	Flowering Crabapple
Chinese Pistachio *	Forest Pansy Redbud *
Chinquapin Oak *	Foster Holly
Durand Oak	Golden Raintree
Eastern Red Cedar	Japanese Black Pine
Ginko	Japanese Maple
Lacebark Elm *	Little Gem Magnolia
Lacey Oak	Mexican Plum *
Live Oak	Mexican Redbud
Mountain Cedar	Mountain Laurel *
Pecan	Nellie R. Stevens
Plateau Live Oak *	Oklahoma Redbud *
Post Oak	Possumhaw *
Red Maple	Prairie Flameleaf Sumac
Shumard Red Oak *	Purple Plum
Southern Live Oak *	Rusty Blackhaw
Southern Magnolia	Saucer Magnolia

Sugarberry *	Savannah Holly
Sweetgum	Smoke Tree *
Sycamore	Texas Persimmon *
Texas Ash *	Texas Redbud
Texas Red Oak *	Washington Hawthorne
Trident Maple	Yaupon Holly *
Western Soapberry *	Vitex *
White Ash	Wax Myrtle

* Plants preferred due to lower water demand and high pest resistance.

Sec 15.00.00 Severability Clause

If for any reason any section, paragraph, subdivision, word, phrase, clause or provision of this Ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, word, phrase, clause or provision of this Ordinance. For it is the definite intent of this Town Council that every section, paragraph, subdivision, word, phrase, clause or provision of this Ordinance be given full force and effect for its purpose.

Sec 16.00.00 Effective Clause

This Ordinance shall take effect immediately from and after its passage and publication of the caption of said Ordinance, as the law in such cases provides.

READ, CONSIDERED, PASSED, AND APPROVED ON FIRST READING by the Town Council at a regular meeting the 13th day of August, 2012, at which a quorum was present.

READ, CONSIDERED, PASSED, AND APPROVED ON SECOND AND FINAL READING by the Town Council at a regular meeting the ____ day of _____, 2012, at which a quorum was present.

PASSED AND APPROVED on second and final reading this ____ day of _____, 2012.

By: _____
Brian D. Roberson, Mayor

ATTEST:

By: _____
Connie S. Hansen, Town Secretary

APPROVED AS TO FORM:

By: _____
Philip Mack Furlow, Town Attorney