

ORDINANCE NO. 5314

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY, THE SAME BEING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF DENISON, BY SUBSECTION 28.45 – MO - MORTON STREET OVERLAY DISTRICT; SUBSECTION 28.46 – HO HIGHWAY ORIENTED AND CORRIDOR DISTRICT; AND SUBSECTION 28.48 – AO AUSTIN AVENUE OVERLAY DISTRICT OF ARTICLE III – ZONING DISTRICTS; SUBSECTION 28.51 - LANDSCAPE REQUIREMENTS OF ARTICLE V – DEVELOPMENT STANDARDS; AND APPENDIX C - RECOMMENDED PLANT LIST (ZONING CASE 2023-087ZO); PROVIDING A PENALTY; PROVIDING SAVINGS, REPLEAING AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Denison (hereinafter referred to as “City”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City Council of the City adopted Chapter 28 of its Code of Ordinances, the same being the Comprehensive Zoning Ordinance of the City, which sets forth various regulations for promoting the public health, safety, morals and general welfare, and protecting and preserving places and areas of historical, cultural and/or architectural importance and significance within the City and are made with reasonable consideration, among other things, for the character of each zoning district and its peculiar suitability for the particular uses specified; and for landscaping for new development and redevelopment in all zoning districts, including the overlay districts in Article III, Section 28, Article V, Section 28.51 and Appendix C of the Zoning Ordinance, which contains the plant list to assist in the implementation of the landscape regulations; and

WHEREAS, the City Council has determined it necessary to amend the regulations for the planting of trees, shrubs, groundcovers and turf grasses as part of all new development and redevelopment projects; and

WHEREAS, planting of trees, shrubs, groundcovers and turf grasses appropriate for the local climate and rainfall amounts reduces the erosive effects of rainfall, protect water resources, mitigates ambient air temperatures and provides aesthetic and scenic benefits consistent with the quality of life desired by the residents of the City of Denison; and

WHEREAS, in order to achieve its goals, the City Council has determined that its existing regulations should be enhanced by revising the existing requirements for the installation of new trees, shrubs, groundcovers and turf grasses based upon the characteristics and plan for each development and within the major commercial corridors; and

WHEREAS, having considered the proposed amendments to the Zoning Ordinance and the appropriateness of the amendments; and

WHEREAS, after public notices were given in compliance with State law and public hearings were conducted, and after considering the information submitted at those public hearings and all

other relevant information and materials, the Planning and Zoning Commission of the City has recommended to the City Council the adoption of the amendments to the Comprehensive Zoning Ordinance as set forth in this Ordinance; and

WHEREAS, after complying with all legal notices, requirements, and conditions, a public hearing was held before City Council at which the City Council considered the recommendation of the Planning and Zoning Commission, amending specific requirements for the various overlay zoning districts in Sections 28.45, 28.46 and 28.48 of Article III (Zoning Districts); and amending in their entirety Section 28.51 Landscaping Requirements of Article V (Development Standards) and Appendix C (Recommended Plant List) of the Comprehensive Zoning Ordinance with the objectives of promoting the installation of new trees, shrubs, groundcovers and turf grasses in a manner that contributes to the public and environmental health and overall quality of life of the community thereby furthering the health, safety and welfare of the public, and the City Council does hereby find that the amendments to the Zoning Ordinance approved hereby accomplishes such objectives.

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

SECTION 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. FINDINGS. After due deliberations and consideration of the recommendation of the Planning and Zoning Commission and the information and other materials received at the public hearing, the City Council has concluded that the adoption of this Ordinance is in the best interests of the City of Denison, Texas, and of the public health, safety and welfare.

SECTION 3. ZONING AMENDMENTS. Chapter 28 of the Code of Ordinances of the City of Denison, Texas, of the Comprehensive Zoning Ordinance, is hereby amended in the following particulars as follows:

Article III, Section 28.45 MO – Morton Street Overlay District

Section 28.45.5 Special Requirements

C. Landscaping. Landscaping shall be installed in accordance with Section 28.51.6. However, the director of development services may approve a reduction in the minimum landscape strip width to five (5) feet and require only shrubs if the landscape strip prevents compliance with building setbacks or minimum parking requirements.

Article III, Section 28.46 HO- Highway Oriented and Corridor District

Section 28.46.5 Special Area and Design Standards

C. Landscaping.

1. Along the US 75 frontage road, a minimum thirty (30) foot wide landscape strip is required, which is measured from the property line and exclusive of rights-of-way. This landscape strip may be reduced to fifteen (15) feet in width if the combined width of the unpaved right-of-way and the landscaped edge is at least 40 feet.

(a). Within the landscape strip, one (1) tree with a minimum caliper of three (3) inches and one ornamental tree with a minimum caliper of two (2) inches shall be planted at thirty (30) feet on-center in an alternating pattern. Trees may be planted in clusters not to exceed eight (80) feet between clusters.

(b). Where parking spaces are located adjacent to the landscape strip, evergreen shrubs, a minimum size of five (5) gallons and

selected from the list of approved shrub materials in Appendix C, shall be planted to provide a solid three (3) foot tall opaque screen within two (2) years of planting.

2. Along intersecting streets that are designated as minor arterials or larger on the Thoroughfare Plan, a minimum fifteen (15) foot wide landscape strip is required within the boundaries of the HO district as described in Section 28.46.3.

(a). Within the landscape strip, one (1) shade tree a minimum caliper of three (3) inches shall be planted at thirty (30) feet on-center. Trees may be planted in clusters not to exceed eighty (80) feet between clusters.

(b). Where parking spaces are located adjacent to the landscape strip, evergreen shrubs, a minimum size of five (5) gallons and chosen from the list of approved shrub materials in Appendix C must be planted to provide a solid two (2) foot tall opaque screen within two (2) years of planting.

Article III, Section 28.48. AO – Austin Avenue Overlay District

Section 28.48.5 Special Requirements

D. Landscaping. Landscaping shall be installed in accordance with Section 28.51.6 in the Austin Avenue Overlay District from the railroad overpass at the intersection of Spur 503/Texoma Parkway and U.S. Hwy. 69 and Walker Street to the intersection of U.S. Hwy. 69/75. Within the remaining segment of the Austin Avenue Overlay District, the director of development services may approve a reduction in the minimum landscape strip width to five (5) feet and require only shrubs if the landscape strip prevents compliance with building setbacks or minimum parking requirements.

Article V, Section 28.51. Landscape requirements.

28.51.1. Purpose:

The purpose of this section is to improve the appearance of vehicular use areas and property abutting public rights-of-way, require the installation and maintenance of trees, shrubs and other plant material to improve the aesthetics and natural environment of the city, reduce the amount of impervious surface area, stormwater runoff, and consequent pollution in local waterways, and promote the public health and safety through the reduction of air pollution, visual pollution, and glare. These standards recognize the value and necessity of air purification, water conservation

and the use of drought-tolerant plants and trees that are native or adapted to the region's climate, soils and environment.

28.51.2. Applicability:

A. The standards and criteria contained within this section are deemed to be minimum standards and shall apply as stated.

1. To all new residential and nonresidential development (including uses such as schools, government buildings and churches within a residential zoning district)
2. To any redevelopment that:
 - a. Increases the existing square footage of a structure(s) by more than thirty (30) percent; and/or
 - b. Increases the use of the site by more than thirty (30) percent.
 - c. Adds twenty (20) or more parking spaces to an existing parking lot.
3. To any nonresidential or multi-family use requiring a conditional use permit (CUP) or a planned development (PD) zoning designation, unless special landscaping standards are otherwise provided for in the ordinance establishing the CUP or PD District.

B. If at any time after the issuance of a certificate of occupancy, landscaping as required and approved according to this section is found to be not in conformance with the following standards and criteria

1. The Director of Development Services (or his/her designee) shall issue notice to the owner, citing the violation and describing what action is required to comply with this section.
2. The owner, tenant or agent shall have thirty (30) days from the date of said notice to establish/restore the landscaping, as required.
3. If the landscaping is not established/restored within the allotted time, then such person shall be in violation of this chapter and subject to the enforcement provisions of Article VII of this chapter.

C. Except for the provisions in section 28.51.6.A.7, this section 28.51 does not apply to lots in the CA – Central Area district.

28.51.3. Permits:

A.Landscaping for standard development/redevelopment: With the exception of single-family detached and duplex lots, no permits shall be issued for building, paving, grading or construction until a landscape plan is submitted and approved by the Director of Development Services (or his/her designee) along with the applicable required plan, as specified in section 28.13 of this chapter. The landscape plan may be shown on the required site plan (provided the plan remains clear and legible) or may be drawn on a separate sheet. For projects requiring a landscape plan, prior to the issuance of a certificate of occupancy for any building or structure, all landscaping shall be installed in accordance with the plan. For single-family detached and duplex lots, landscaping must be installed prior to the final inspection and in accordance with Section 28.51.7.

B.Landscaping for phased development: If development of a site is being accomplished in two (2) or more phases, landscaping may be established in phases. Phased landscaping shall only be permitted in conjunction with a required site plan, as specified in section 28.13 that is submitted and approved in phases as well. In all cases, a landscaping plan shall be submitted along with a required site plan.

C.Seasonal deferral for landscaping installation: In any case in which a certificate of occupancy is sought at a season of the year in which the Director of Development Services (or his/her designee) determines that it would be impractical to plant trees, shrubs or groundcover, or to successfully establish turf areas, the applicant may request a temporary deferral of installation-

1. The applicant shall submit a letter requesting temporary deferral which also states when the installation shall occur.
2. All landscaping required in accordance with this section shall be installed within six (6) months of the date of the approval of the temporary deferral.
3. Following the installation of the required landscaping and city approval of the same, the city shall issue a letter of compliance.
4. Failure to install the landscaping within the temporary deferral period shall be an offense.

28.51.4. Landscape Plan:

Prior to the issuance of a building, paving, grading or construction permit for any use other than single-family detached or duplex dwellings, a landscape plan shall be submitted to the Director of Development Services, or his/her designee. In accordance with Section 28.13 of this chapter the Director (or his/her designee) shall review such plans and shall approve same if the plans are in accordance with the criteria of this chapter. If the plans are not in conformance, they shall be disapproved and shall be accompanied by a written statement setting forth the changes necessary for compliance.

The Director of Development Services may establish procedures and forms for landscape plans for clarity and consistency of operations. The procedures and forms shall have the force of ordinance as if fully incorporated herein. Landscaping plans shall be prepared by a person knowledgeable in plant material usage and landscape design (e.g., landscape architect, landscape contractor, landscape designer, etc.) and drawn to a scale of not smaller than one (1) inch equals twenty (20) feet or such scale approved by the director of development services. Landscape plans shall contain the following minimum information:

- A. Existing property boundary lines, easements, buildings, parking lots, roads, and other improvements.
- B. Location of all trees to be preserved (do not use "tree stamps"), including approximate size and common name.
- C. Location of all new plant and landscaping material to be installed, including plants, mulch, gravel and rocks, paving, benches, living screens, fountains, statues, earthen berms, ponds (to include depth of water), topography of site, or other landscape features and materials.
- D. Planting schedule including species and common names of all plant materials, installation size, quantities (container size, planted height, etc.), and special planting instructions.
- E. Details of restoration of disturbed areas, including areas to be sodded or seeded, and identify ground cover.
- F. Location and details of irrigation, sprinkler, or water systems including location of water sources.
- G. Description of maintenance provisions.
- H. Name and address of the person(s) responsible for the preparation of the landscape plan, prepared date, and north arrow/symbol, and map insert depicting location of property.
- I. Such other information as may be required by the city to determine compliance with this section.

28.51.5. General standards:

The following criteria and standards shall apply to landscape materials and installation:

A. An automatic irrigation system is required for all landscaping, except in areas designated as natural areas to be preserved on the landscape plan and for individual single-family detached and single-family attached dwellings and duplexes.

B. Except as allowed by Section 21.2 of the Code of Ordinances, no plant materials or irrigation systems shall be installed in public rights-of-way or on other public property without an encroachment agreement approved by the city.

C. To insure drought-tolerance, all plant materials shall be native or adapted to the North Texas climate. Trees and shrubs shall be chosen from the approved plant materials list in Appendix C of this ordinance. No invasive species shall be used.

D. No more than thirty (30) percent of required trees shall be the same species.

E. Where a parking lot or access aisle is adjacent to any landscaping, including the permeable areas and drip lines around trees and planting beds, such landscaping shall be protected with continuous curbs, curbs with openings, wheel stops or similar solid or semi-permeable barriers.

F. Landscaping materials such as mulch and gravel may be used under trees, shrubs and other plants, but shall not comprise a significant portion of the total landscaped area.

G. Tree caliper measurements of new required trees shall be the caliper of the tree measured at twelve (12) inches above the soil. Shade trees shall be a minimum caliper of three (3) inches. Ornamental trees shall be a minimum caliper of two (2) inches.

H. All new trees shall be surrounded by a permeable surface or be located within a tree grate that is a minimum of five (5) feet by five (5) feet in size.

I. Shrubs required pursuant to this section shall meet the following minimum criteria:

1. For non-residential and multi-family uses, shrubs shall be a minimum size of five (5) gallons at time of planting. To comply with the shrub requirement for single-family and duplex uses, shrubs shall be a minimum size of three (3) gallons at the time of planting.

2. Hedges, where installed for screening/buffering purposes, shall be planted and maintained so as to form a continuous, unbroken, solid visual screen which should be at least six (6) feet in height within three (3) years after planting. The exception to this shall be hedges that are installed as screening for parking lot/headlights. Such hedges shall form a continuous, solid visual screen which should be at least three (3) feet in height within two (2) years after planting.

J. Grass areas that are installed for the purposes of meeting the landscaping requirements of this section shall be sodded, plugged, sprigged, hydro-mulched (between the dates of April 16 and August 15) and/or seeded, except that solid sod shall be used in swales, earthen berms or other areas subject to erosion. Grass sod shall be clean and free of weeds and noxious pests or diseases. Grass areas that exist at the time of development or redevelopment and that are located in a designated natural area on the approved landscape plan are exempt from this requirement.

K. Ground covers that are installed for the purpose of meeting the landscaping requirements of this section shall be planted in such a manner as to present a finished appearance and reasonably complete coverage within one (1) year of planting. Ground covers that are existing at the time of development/redevelopment and that are located in a designated natural area on the approved landscape plan are exempt from this requirement.

L. Earthen berms shall have side slopes not to exceed 33.3 percent (three (3) feet of horizontal distance for each one (1) foot of vertical height). All berms shall provide necessary drainage provisions as may be required by the city's engineer.

M. Property owners shall insure that all landscaping, including trees and shrubs planted on a lot within the city, complies with the visibility standards contained in the Public Works Design Manual. Landscaping shall be pruned to not obstruct traffic signs and signals, visibility at intersections or impede the passage of pedestrians on sidewalks.

28.51.6. Minimum landscaping requirements for nonresidential and multi-family developments:

A. *Landscaping along Rights-of-Way:* Except as provided below and as specified within the overlay districts and planned development zoning districts, a minimum ten (10) foot wide landscape strip shall be provided adjacent to all public and private streets outside of the right-of-way. (See Figure A)

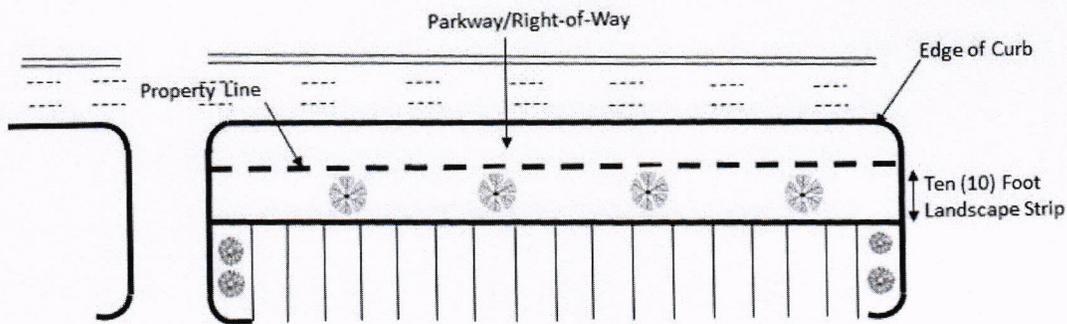


Figure A

1. Within the landscape strip shade trees a minimum caliper of three (3) inches shall be planted at 30 feet on-center. Trees may be planted in clusters not to exceed 80 feet between clusters. Ornamental trees may be substituted at a ratio of two to one (2:1).
2. Where parking spaces are located adjacent to the landscape strip, evergreen shrubs, a minimum size of five (5) gallons and chosen from the list of approved

shrub materials in Appendix C must be planted to provide a solid three (3) foot tall opaque screen after two (2) years.

3. Where the landscaped strip abuts a parking lot or drive aisle, continuous or intermittent curbs, wheel stops or similar solid or semi-permeable barriers shall be installed.

4. Permeable surfaces within the landscape strip shall be comprised of grass, groundcover, planting beds, or mulched areas. Gravel, rock, bark mulch or other similar materials may only be used underneath the tree canopy and shrubs in a required landscaped strip. Where bark mulch is used as groundcover, it shall be contained with edging material and shall be maintained at a constant depth of four (4) inches.

5. Where the location of existing overhead utility lines conflict with the tree planting requirements within the landscape strip, the developer may choose from two options:

a. Installation of ornamental trees instead of shade trees, at a rate of three (3) trees per 500 square feet of landscape strip; or

b. Planting the required shade trees in tree islands located within the first tier of parking spaces.

6. Where easements containing underground utilities conflict with tree planting requirements within the required landscape strip, the trees shall be planted outside the utility easement on the property owner's side and adjacent to the required landscape strip. (See Figure B)

7. On lots in the CA - Central Area district, a five (5) foot wide landscape strip is required adjacent to public and private streets that border a surface parking lot containing twenty (20) or more parking spaces. Shrubs shall be installed within the landscape strip in accordance with Section 2. above.

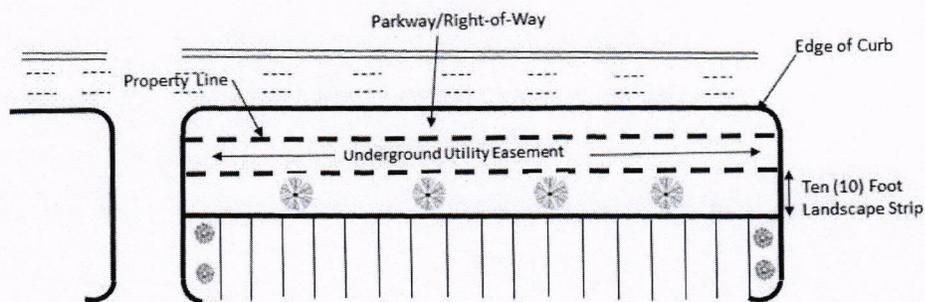


Figure B

B. *Requirements for landscaping in and around parking lots:* Parking lots, including those within the CA - Central Area district containing twenty (20) spaces or more, shall be landscaped in accordance with this section in addition to the required landscape strip as described in section 28.51.6 above.

1. There shall be eight (8) square feet of permeable interior landscaping for each parking space or fraction thereof. The permeable space shall be grass, shrubs, groundcover, trees or a combination of these materials. Gravel, bark mulch, decomposed granite or other similar materials shall only be used under tree canopy and shrubs. Trees are required as described in subsections 28.51.6.B.2 and B.3 below.
2. There shall be a minimum of one (1) shade tree that is a minimum caliper of three (3) inches planted in the parking area for every fifteen (15) parking spaces. Ornamental trees may be substituted at a ratio of two to one (2:1), for no more than 50% of required shade trees. (See Figure C)
3. A landscape island is required at the end of all rows of parking and at a ratio of one (1) landscape island for every fifteen (15) parking spaces or fraction thereof. Landscape islands must be spaced at no more than fifteen (15) parking spaces apart and must be a minimum of ten (10) feet by eighteen (18) feet in size. Each landscape island must contain one (1) shade tree three (3) inches in caliper or two (2) ornamental trees if approved by the Director of Development Services in accordance with subsection 28.51.6.B.2 above.
4. A minimum ten (10) foot wide landscaped area is required to separate parking areas that have one hundred (100) or more parking spaces.

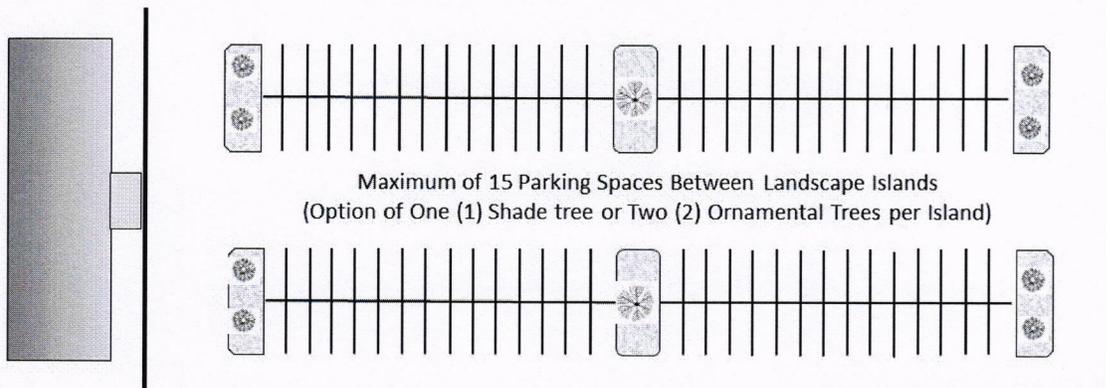


Figure C

28.51.7. Minimum Landscaping Requirements for Single-Family Residential or Duplex Lots:

A. These standards shall apply to all single-family dwelling lots two years after the date that plat was approved or the date the city accepted the public improvements, in accordance

with Section 211.016 of the Texas Local Government Code:

1. Trees shall be provided for each lot as follows: a. For lots one hundred (100) feet or less in width:

(1). Required front yards twenty (20) feet or more in depth – a minimum of one (1) shade tree with a minimum caliper of three (3) inches or two (2) ornamental trees a minimum of two (2) inches in caliper.

(2). Where the required front yard is less than twenty (20) feet, ornamental trees may be planted in lieu of shade trees.

(3). Where the required front yard is five (5) feet or less in depth, shrubs may be planted in lieu of shade trees or ornamental trees.

b. For lots wider than one hundred (100) feet as measured at the front yard setback, a minimum of two (2) shade trees with a minimum caliper of three (3) inches shall be planted in the front yard.

c. Existing trees located within the front yard that meet the minimum size requirements above that are to be preserved may be counted to meet the requirements in subsection 28.51.7.A.1 above.

2. Shrubs, a minimum of three (3) gallons in size, shall be provided for each lot as follows and shall be planted in the front yard:

a. Lots less than 7000 square feet – 12 shrubs

b. Lots size 7000 square feet to 10,000 square feet – 15 shrubs

c. Lots greater than 10,000 square feet – 20 shrubs

B. As an erosion control measure, front, side and rear yards of new single-family, single-family attached and duplex dwelling units shall be sodded prior to the final inspection. These areas may also include mulched planter beds with shrubs and hardscape such as patios, driveways and sidewalks.

28.51.8. Maintenance:

Required landscaping must be maintained in a healthy, growing condition at all times and free from refuse and debris. The property owner is responsible for regular weeding, mowing of grass, irrigating, fertilizing, pruning and other maintenance needs. Plantings and ground cover required by an approved landscape plan that have died shall be replaced within three (3) months of notification by the city. However, the time for compliance may be extended by up to six (6) months by the director of development services in order to allow for seasonable or weather conditions.

28.51.9. Tree preservation and incentives for preservation of natural areas and trees:

A. Tree preservation requirements.

1. Purpose. The purpose of this section is to establish regulations to prohibit the unapproved removal, transplanting and clear cutting of trees, preserve and replace existing protected trees within the city and to provide protection of trees during construction, development, or redevelopment of a site. In addition, this section shall further the following public purposes:

- a. Encourage the preservation and protection of existing protected trees and protected tree stands and groves, and which include the preservation of open spaces in the design of undeveloped residential and non-residential developments;
- b. Reward site design that preserves existing protected trees and associated habitat by offering preservation credits to off-set required replacement rates for protected trees that are necessarily removed during construction, development, and redevelopment;
- c. Preserve trees that further the ecological, environmental, and aesthetic qualities that contribute to the unique, natural beauty of Denison;
- d. Preserve and provide for trees that offer shade and windbreaks; reduce the erosive effects of rainfall, protect water resources, mitigate ambient air temperatures and improve air quality;
- e. Prevent the untimely and indiscriminate removal or destruction and clear-cutting of trees; and
- f. Preserve heritage trees (greater than forty (40) caliper inches (CI)) to the greatest extent possible.

2. Definitions.

Buildable area. The portion of a lot exclusive of required yard areas on which a structure or building improvements may be erected.

Building pad. The actual foundation area of a building and a ten-foot clear area around the foundation necessary for construction and grade transitions. This also includes the term "building footprint." **Caliper inch (CI).** Method of measuring the trunk diameter of a nursery grown tree. The point of measurement is approximately six (6) inches above the top of the root ball.

Clear-cutting. The indiscriminate cutting, plowing, or grubbing of trees without regard to type or size for the purpose of clearing the 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.

Critically alter. The uprooting, removing the canopy or severing the main trunk of a tree, or any act which causes or may reasonably be expected to cause a tree to die.

This includes, but is not limited to the removal of a tree from a property, damage inflicted upon the root system of a tree 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 chemical or the misapplication of beneficial chemicals, excessive pruning, placement of nonpermeable pavement over the root system of the tree, or trenching within the primary root zone. Additionally, a tree may be considered critically altered if more than twenty-five (25) percent of the primary root zone is altered or disturbed at natural grade, or more than twenty-five (25) percent of the canopy is removed.

Development. Any manmade change to improved or unimproved real estate including, but not limited to, buildings and other structures, paving, drainage, or utilities, and agricultural activities.

Diameter at breast height (DBH). The diameter of the tree trunk diameter measured in inches at a height of four (4) feet above the natural grade. For multiple-trunk trees, DBH shall be the sum of the diameter of the individual trunks.

Drip line. A vertical line run through the outermost portion of the crown of a tree and extending to the ground. This may also be referred to as the root protection zone.

Floodplain. The area designated as being within the 100-year floodplain on the Federal Emergency Management Agency flood insurance map (FIRM).

Grove. A group of twelve (12) or more protected trees with no undergrowth. The grove of protected trees can be a single cluster or in a linear row.

Grubbing. Excavating or removing a significant part of the root system.

Mitigation. The method by which trees are replaced whether through replanting on the subject property, transplanting to another location or same property, or through payment of fee-in-lieu-of replanting approved by the city.

Mitigation plan. The city approved plan of mitigation for a property (also referred to as tree protection/mitigation plan).

Protective fencing. Chain link, orange vinyl construction fence or other fencing at least four (4) feet in height.

Replacement trees. Trees planted to mitigate the loss of protected trees during development.

Tree. Any self-supporting woody plant which will attain a trunk caliper of three (3) inches or more DBH and which normally attains a height of at least fifteen (15) feet at maturity, with one (1) or more main stems or trunks and many branches. This does not include trees commonly known as ornamental trees.

Tree, dead (or declining). A tree that is dead or in severe decline with substantial structural defects, no remedial options available, and no chance of recovery as determined and documented by a certified arborist or registered landscape architect.

Tree fund. A city administered fund established for collection of fee-in-lieu-of replacement trees paid as mitigation and may include other contributions made in support tree preservation efforts.

Tree, heritage. Any protected tree species with 40 CI or greater as measured at DBH.

Tree preservation plan. A plan or drawing to scale that illustrates which trees are to be preserved, which trees are to be removed, and the manner in which trees will be protected during the construction process.

Tree, protected. Any tree species other than those specifically identified herein as an "Unprotected Tree" and having a trunk caliper of seven (7) inches or more, measured four (4) feet above natural grade level (also referred to as measured at DBH).

Tree, replacement. Large trees (canopy and shade trees) as outlined in appendix C, Required Plant Lists, of this chapter. This shall also include shade trees listed in the Texas SmartScape Database for North Central Texas.

Tree survey. A plan or drawing to scale that identifies the size, location and species of trees seven (7) inches or more DBH on a property.

Tree, unprotected (exempt from section 28.51.8). The trees which are specifically exempt from the mitigation provisions of section 28.51.8 regardless of caliper inches at DBH based on species type. The scientific and common names of these trees are identified in section 28.51.8.4.j.

3. Applicability. The provisions of this section apply to:

- a. All vacant and undeveloped property; and
- b. All property to be redeveloped, including additions and/or alterations.
- c. All developed property for which a tree protection/mitigation plan, landscape plan or planned development overlay district has been approved by the city and identifies trees required to be planted or preserved in accordance with this section.

4. Exemptions.

- a. This section does not apply to individual single-family, duplex, and townhouse lots after initial development and final inspection of the dwelling units by the building inspections department. Individual single-family and duplex lots five (5) acres or less in size created through a minor plat in

accordance with the subdivision ordinance are also exempt. However, if a tree proposed for removal was required by the landscape regulations of chapter 28 at the time of permitting and/or as required by the provisions of an approved planned development overlay district ordinance for the property, the owner shall replace the tree with a minimum three (3) caliper inch large tree of the species outlined in appendix C. Clear-cutting is prohibited on all individual single-family, duplex and townhouse lots five (5) acres or larger in size.

b. For all new single-family developments, the buildable area, as defined above, plus the area needed to establish proper drainage, detention and retention areas, sidewalks, septic systems and lateral lines, fences, screening walls, swimming pools and decking, driveways, public street rights-of-way, private street lots and utility easements are exempt. Sufficient area to allow the normal operation of construction equipment for these improvements is also exempt.

c. For all nonresidential and multifamily developments, the building pads, proposed public street rights-of-way, utility easements, areas needed to establish property drainage, detention and retention areas, drive aisles, sidewalks and fire lanes are exempt. Sufficient area to allow the normal operation of construction equipment for these improvements is also exempt.

d. During the period of an emergency such as a tornado, severe thunderstorm, ice storm, flood, or other natural disaster, the requirements of this ordinance may be waived as deemed necessary by the emergency management coordinator or other designee of the city manager.

e. In addition to rights granted by easement, utility companies franchised by the city may remove trees during the period of an emergency that are determined by the company to be a danger to public safety and welfare by interfering with utility service.

f. Any plant nursery (growing for commercial sales) shall be exempt from the terms and provisions of this section only in relation to those trees planted and growing on the premises for the sale or intended sale to the public.

g. Utility and drainage easements required by the city and utility companies to install and maintain infrastructure.

h. Trees that are diseased or dead, unless the tree was required to be planted as part of an approved landscape plan or tree mitigation plan.

i. The city may approve selective thinning of protected trees, upon the recommendation of a certified arborist engaged by the developer, which will enhance the likelihood of survival of a larger tree or trees.

j. Unprotected (exempt) tree species - the following tree species are exempt from the provisions of this section unless located in a floodplain:

Scientific Name	Common Name
Acer saccherinum	Silver Maple
Ailanthus altissima	Tree of Heaven
Albizia julibrissin	Mimosa
Celtis occidentalis	Common Hackberry
Fraxinus velutina	Arizona Ash
Gleditsia triacanthos	Honey Locust
Juniperus virginiana	Eastern Red Cedar
Maclura pomifera	Bois d'Arc
Melia azedearach	Chinaberry
Morus alba	Mulberry
Populus spp.	Cottonwood
Prosipus glandulosa	Honey Mesquite
Robinia pseudoacacia	Black Locust
Salix spp.	Willow
Sapium sebiferum	Chinese Tallow
Thuja spp.	Arborvitae
Ulmus alata	Winged Elm
Ulmus pumila	Siberian Elm

5. Tree preservation requirements. A violation of subparagraphs a., c. or d. below shall be an offense. The following requirements must be met:

a. In all zoning districts, no clear-cutting of land is allowed without a permit. An approved tree preservation plan or approved site plan is the permit that allows the removal of trees subject to this ordinance.

b. Removal and clearing of underbrush (but not grubbing) is allowed and does not require a permit.

c. No tree, seven (7) inches DBH or greater, may be cut to remove the canopy, removed, transplanted or critically altered unless located in areas specifically exempted by this section, the city has approved removal based on the tree's health and condition, or the city has approved removal after assessment of a mitigation fee.

d. Regardless of the exemptions identified in subsections 28.51.8.4.b and 28.51.8.4.c, where a development project is proposed for twenty-five (25) or more acres, a minimum of fifteen (15) percent of the total caliper inches of protected trees shall be preserved, excluding any protected trees in a floodway.

6. Tree survey and preservation plan requirements. Failure to comply with this paragraph 6 shall be an offense.

a. Tree survey. A tree survey must be submitted with all site plan and preliminary plat applications. A tree preservation plan, if applicable, shall be submitted with all final plat applications. The planning department is authorized to maintain a list of required information for tree surveys and tree preservation plans. The tree survey shall include the exact location, size, condition if damaged or diseased, and common name of each protected (non-exempt) tree seven (7) inches DBH or larger, including those located in the 100-year floodplain. The tree survey for properties with ten (10) or fewer protected trees may be shown on the site plan or preliminary plat instead of a separate plan.

(1) For property containing large heavily wooded areas, the city may, in lieu of a tree survey, authorize the submittal of an aerial photograph indicating all areas of tree cover that will not be disturbed or critically altered, provided that a tree survey and tree preservation plan of all other areas is submitted prior to any grading or construction. Trees within the non-disturbance area do not need to be individually identified unless they will be used for tree preservation incentives.

(2) In lieu of a tree survey, the applicant may submit a statement from a certified arborist or registered landscape architect certifying that there are no protected trees on a property.

b. Tree preservation plan. The tree preservation plan shall indicate which trees are to be preserved, which are to be removed and the manner in which they will be protected during the construction period. A tree mitigation plan, if required, must be included as part of the tree preservation plan.

7. Requirements for tree preservation. Developers shall adhere to the following tree protection measures on all construction sites and as depicted in Figure D. Failure to comply with this paragraph 7 shall be an offense.

a. Prior to grading, brush removal, or construction, the developer shall clearly tag or mark all trees to be preserved.

b. The developer shall erect protective fencing around each tree or group of trees to prevent the placement of debris or fill within the root protection zone. The fence shall be installed prior to the release of any permit. If the protection fence is found removed, down, or altered at any time during

construction prior to final inspection or landscape installation, a stop work order may be issued.

c. During the construction phase of development, the developer shall establish a construction entrance that avoids protected trees and prohibit cleaning, parking, or storage of equipment or materials under the canopy of any tree or group of trees being preserved. The developer shall not allow the disposal of any waste material such as, but not limited to, paint, oil solvents, asphalt, concrete, mortar, etc. in the canopy area.

d. No attachments or wires of any kind, other than those of a protective nature shall be attached to any tree.

e. No fill or excavation may occur within the drip line of a tree to be preserved unless there is a specific approved plan for use of tree wells or retaining walls. Major changes of grade, six (6) inches or greater, will require additional measures to maintain proper oxygen and water exchange with the roots.

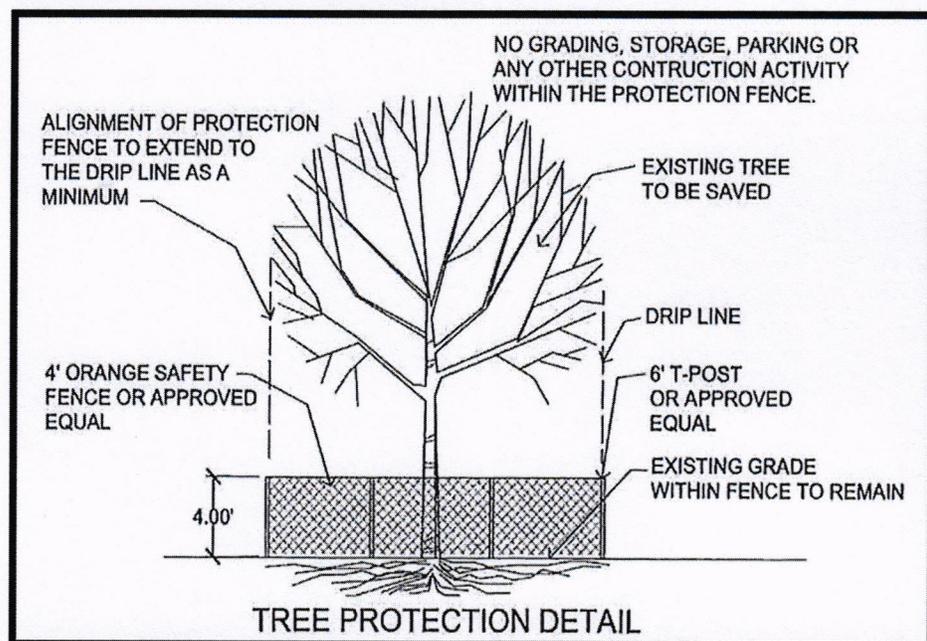


Figure D

8. Tree replacement and mitigation. Failure to comply with this paragraph 8 shall be an offense.

a. If protected (non-exempt) trees seven (7) inches and larger DBH are removed from a property, replacement trees, a minimum of three (3) inches in caliper, must be planted to equal the diameter of the tree(s) removed. Replacement trees are a credit toward the trees removed from the property and shall be in addition to trees required by other landscape requirements of the zoning ordinance.

b. Replacement trees planted to mitigate tree removal may be located on the property being developed or in a location mutually agreed upon by the city and developer.

c. If all replacement trees cannot be properly located, the developer may pay a mitigation fee in the amount established in the comprehensive fee schedule to the city in lieu of tree replacement. All fees shall be paid prior to removal of a protected tree.

B. Incentives for preservation of protected trees and groves of protected trees. These incentives are designed to encourage the preservation of existing, protected trees and existing groves of protected trees. These incentives shall not be used to reduce the required amount of landscaping required by the zoning ordinance, overlay districts or the requirements of a specific planned development overlay district.

1. Tree preservation. The following incentives are applicable for existing protected trees that are preserved:

a. Tree credits. Credit toward the total number of protected trees required as outlined in the following:

DBH of Existing Tree	Credit Against Tree Requirement
6" – 12"	2 trees
Over 12" to 20"	3 trees
Over 20" to 30"	3.5 trees
Over 30" to 40"	4 trees
Over 40"	5 trees

b. Preservation of groves of protected trees. All mitigation requirements of this section may be met by submitting a tree preservation plan depicting a minimum of fifteen (15) percent of the caliper inches of protected trees be preserved in one (1) or more groves.

C. Appeals and alternative compliance. When the literal enforcement of the provisions of this section creates an undue hardship due to the number and size of protected trees and in consideration of the topography of the subject property, an applicant may submit an appeal to the city council consisting of an alternative compliance plan. The alternative compliance plan shall clearly delineate any proposed reductions to the standards and depict alternative standards.

D. Penalty; enforcement.

1. It shall be an offense for any person(s) or entity to cause the transplanting of a protected tree, removal of a protected tree, cutting a protected tree to remove the

canopy and/or clear cutting without first obtaining an approved permit or in violation of a permit required by this section.

2. Each protected tree removed, cut to remove the canopy, transplanted, or clear-cut without a permit or in violation of a permit shall constitute a separate offence. Violation of this section shall not constitute an exemption to the replacement and mitigation requirements contained herein.

3. A person commits an offense if the person critically alters a protected tree not meeting an exception listed in this section without first obtaining a permit or in violation of a permit from the city.

4. Any person who violates or causes the violation of this section by the:

a. Transplanting of a protected tree, removal of a protected tree, cutting a protected tree to remove the canopy and/or clear-cutting without first obtaining an approved permit or in violation of a permit;

b. Critically altering a protected tree without first obtaining a permit from the city, or by critically altering a tree in violation of the permit; or

c. By failing to follow the tree replacement procedures, shall be guilty of a misdemeanor and upon conviction shall be fined one hundred fifty dollars (\$150.00) per caliper inch of the tree, not to exceed five hundred dollars (\$500.00) per tree.

The unlawful transplanting of a protected tree, removal of a protected tree, cutting a protected tree to remove the canopy, clear-cutting, or critical alteration of each protected tree shall be considered a separate incident and each incident shall subject the violator to the maximum penalty set forth herein for each tree.

5. Any person, firm, corporation, agent or employee thereof who violates any provisions of this section other than those listed above, 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 critical 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.

6. Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this section. 7. Acceptance of improvements. The city may refuse to accept any public improvements until the person pays all penalties for violations of this section; provided, however, that acceptance of public improvements shall be authorized before all trees shall be replaced if, with the Director of

Development Services' approval, the person furnishes the city with a cash deposit or surety bond in the approximate amount of the cost to replace the tree(s).

8. Certificate of occupancy. No certificate of occupancy (CO) shall be issued until any and all penalties for violations of this section have been paid to the city. No CO shall be issued until all required replacement trees have been planted or appropriate payments have been made to the reforestation fund; provided, however, that a CO may be granted before all trees have been replaced if, with the director of development services' approval, the person furnishes the city with a cash deposit or surety bond in the approximate amount of the cost to replace the tree(s).

Appendix C

Appendix C – Recommended Plant Lists is hereby repealed and replaced in its entirety as follows:

**APPENDIX C
REQUIRED PLANT LISTS**

Approved Shade Trees

SHADE TREES	
Common Name	Scientific Name
Afghan Pine	<i>Pinus eldarica</i>
American Elm¹	<i>Ulmus americana</i>
Austrian Pine	<i>Pinus nigra</i>
Bald Cypress¹	<i>Taxodium distichum</i>
Bigelow Oak¹	<i>Quercus sinuate var. brevilba</i>
Black Hickory¹	<i>Carya texana (aka Carya buckleyi)</i>
Black Locust	<i>Robinia pseudoacacia</i>

Bur Oak¹	<i>Quercus macrocarpa</i>
Caddo Maple	<i>Acer saccharum "Caddo"</i>
Cedar Elm¹	<i>Ulmus crassifolia</i>
Chinquapin Oak¹	<i>Quercus muhlenbergii</i>
Durrand Oak¹	<i>Quercus sinuata var. sinuata</i>
Green Ash¹	<i>Fraxinus pennsylvanica</i>
Japanese Black Pine	<i>Pinus thunbergii</i>
Lacebark Elm²	<i>Ulmus parvifolia</i>
Lacey Oak¹	<i>Quercus fusiformis</i>
Live Oak¹	<i>Quercus virginiana</i>
Mexican Sycamore	<i>Platanus mexicana</i>
Monterey Oak (aka Mexican White Oak)¹	<i>Quercus polymorpha</i>
Pecan¹	<i>Carya illinoensis</i>
Pond Cypress	<i>Taxodium accendens</i>

Post Oak ¹	<i>Quercus stellata</i>
Sawtooth Oak	<i>Quercus acutissima</i>
Shumard Red Oak (aka Texas Red Oak) ¹	<i>Quercus shumardii (aka texana)</i>
Southern Magnolia ¹	<i>Magnolia grandiflora</i>
Sweetgum ¹	<i>Liquidambar styraciflua</i>
Texas Ash ¹	<i>Fraxenis texensis</i>
Texas Walnut ¹	<i>Juglans microarpa</i>
Willow Oak ¹	<i>Quercus phellos</i>
Winged Elm ¹	<i>Ulmus alata</i>

¹ = Native species, which is preferred but not required.

Approved Ornamental Trees

ORNAMENTAL TREES	
Common Name	Scientific Name
Carolina Buckthorn ¹	Rhamnus caroliana
Chittamwood ¹	Sideroxylon lanuginosum (aka Burmelia lanuginose)
Crepe Myrtle (tree form)	Lagerstroemia indica
Desert Willow ¹	Chilopsis linearis
Eastern Redbud ¹	Cercis canadensis
Eastern Red Cedar ¹	Juniperus virginiana
Eve's Necklace ¹	Sophora affinis
Hawthorne ¹	Crataegus spp.
Hollywood Juniper	Juniperus chinensis 'Torulosa'
Little Gem Magnolia	Magnolia grandiflora 'Little Gem'
Mexican Buckeye ¹	Ungnadia speciosa
Mexican Plum ¹	Prunus mexicana
Mexican Redbud ¹	Cercis canadensis var. mexicana
Possumhaw Holly (aka Deciduous Yaupon Holly) ¹	Ilex decidua
Prairie Flameleaf Sumac ¹	Rhus lanceolata
Red Buckeye ¹	Aesculus pavia
Roughleaf Dogwood ¹	Cornus drummondii
Rusty Blackhaw Viburnum ¹	Viburnum rufidulum
Texas Buckeye ¹	Aesculus arguta/glabra
Texas Mountain Laurel ¹	Sophora secundiflora
Texas Persimmon ¹	Diospyrus texana
Texas Redbud ¹	Cercis canadensis var. texensis

Thornless Common Honeylocust ¹	<i>Gleditsia triacanthos</i> var. <i>inermis</i>
Wax Myrtle ¹	<i>Myrica cerifera</i>
Western Soapberry ¹	<i>Sapindus drummondii</i>

¹ = Native species, which is preferred but not required.

Approved Shrubs

Shrubs	
Common Name	Scientific name
Agarita* ¹	<i>Berberis trifoliolata</i>
American Beautyberry*	<i>Callicarpa americana</i>
Apache Plume*	<i>Fallugia paradox</i>
Aromatic Sumac*	<i>Rhus aromatica</i>
Barberry	<i>Berberis thunbergii</i> spp.
Coralberry* ¹	<i>Symphoricarpos orbiculatus</i>
Dwarf Burford Holly	<i>Ilex cornuta</i>
Dwarf Crepe Myrtle	<i>Myrica pusilla</i>
Dwarf Wax Myrtle* ¹	<i>Myrica pusilla</i>
Dwarf Yaupon Holly*	<i>Ilex vomitoria</i> 'Nana'
Evergreen Sumac* ¹	<i>Rhus virens</i>
Flame Acanthus*	<i>Anisacanthus quadrifidus</i>
Foster Holly	<i>Ilex x attenuate</i> "Foster"
Flowering Quince	<i>Chaenomeles japonica</i>
Fragrant Mimosa*	<i>Mimosa borealis</i>
Glossy Abelia	<i>Abelia grandiflora</i>
Indian Hawthorn ¹	<i>Rhapiolepis indica</i>
Lindheimer Nolina* ¹	<i>Nolina lindheimeri</i>
Nandina	<i>Nandina</i> spp.
Nellie R. Stevens Holly	<i>Ilex x "Nellie R. Stevens"</i>
Red Yucca	<i>Hesperaloe parviflora</i>
Tam Juniper ¹	<i>Juniperus sabina</i> 'Tamariscifolia'
Texas Nolina* ¹	<i>Nolina texana</i>
Texas Sage*	<i>Leucolphyllum frutescens</i>
Turks Cap*	<i>Malvaviscus drummondii</i>

* = Native species, which is preferred but not required.

¹ = Considered Evergreen

SECTION 4. SAVINGS/REPEALING CLAUSE. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5. SEVERABILITY. Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 6. PENALTY. Any person, firm, corporation or entity violating this Ordinance or any provision of the Zoning Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing days' violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Denison from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 7. PUBLICATION AND EFFECTIVE DATE. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

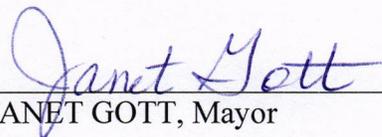
SECTION 8. OPEN MEETING. That it is hereby found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

AND IT IS SO ORDERED.

On motion by Council Member Hander, seconded by Council Member Courtright, the above and foregoing ordinance was passed and approved on this the 18th day of September 2023, by the following vote:

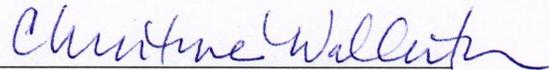
- Ayes: Hander, Courtright, Thorne, Gott, Massey, Crawley and Thomas
- Nays:
- Abstentions:

At regular meeting September 18, 2023.



JANET GOTT, Mayor

ATTEST:



Christine Wallentine, City Clerk

