

**CHAPTER 162: TREE PROTECTION AND PRESERVATION**

AN ORDINANCE REGULATING THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES ON PUBLIC GROUNDS AND IN NEW SUBDIVISIONS, LARGE SCALE DEVELOPMENTS, AND COMMERCIAL DEVELOPMENTS; PROVIDING PROTECTION FOR RARE AND LANDMARK TREES; AND PROVIDING FOR REMOVAL OF HAZARDOUS TREES.

**WHEREAS**, the trees located in the City of Fayetteville are a valuable natural resource which needs to be protected.

**NOW THEREFORE, TO PROTECT THIS NATURAL RESOURCE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

**Section 1. PURPOSE.** It is the purpose of this ordinance to preserve and enhance the natural beauty of Fayetteville, to protect the health and safety of the residents of Fayetteville, and to protect the environment, by providing for regulation of the planting, maintenance, and removal of trees within the City of Fayetteville, in order to accomplish where possible, the following objectives:

- A. To create a desirable environment for Fayetteville residents, businesses and industries.
- B. To moderate effects of sun, wind, and temperature changes.
- C. To buffer noise, air and visual pollution.
- D. To filter pollutants from the air and release oxygen.
- E. To decrease storm water runoff.
- F. To stabilize soil and prevent erosion.
- G. To provide habitat for wildlife.
- H. To increase property values and protect investment.
- I. To preserve desirable trees.
- J. To help preserve river and stream banks.
- K. To screen incompatible land uses.
- L. To establish minimum site management requirements for trees protected by this ordinance.
- M. To encourage public education about trees and landscaping and their value.
- N. To analyze a site before a site's natural state is disturbed.
- O. To promote energy conservation.

**Section 2. DEFINITIONS.**

A. **City of Fayetteville Landscape Manual.** A document having detailed instructions for preparing tree preservation plans and standards and specifications for tree protection, planting, maintenance, and design.

B. **Commercial Development.** Any development in an R-0, Commercial or Industrial Zone and any Conditional Use in any other zone which permits activities usually conducted within an R-0, Commercial or Industrial zone.

C. **Commercial Tree Pruner\Service.** A person who performs work on trees for profit.

D. **Development.** To make a physical change in the use or appearance of the land, demolition of a structure, the division of land into two or more parcels, removal of trees and removal or adding soil.

E. **Diameter breast height (DBH).** The diameter of a tree measured at a point four and one-half feet above the ground. If a tree splits into multi-trunks, the trunk is measured at its narrowest point below the split.

F. **Dripline.** An imaginary vertical line that extends downward from the outermost tips of the tree branches to the ground.

G. **Hazardous Tree.** A tree or tree parts with high probability of falling or causing injury or property loss; also, a tree harboring insects or a disease that could be detrimental to surrounding trees.

H. **Land disturbance.** Clearing, scraping, grubbing, or otherwise removing or destroying the vegetation of a site; or adding, removing, exposing, excavating, leveling, grading, digging, tunneling, trenching, burrowing, dumping, piling, dredging or application of toxic substance, storage of materials, and operation of equipment, or otherwise significantly disturbing the soil, mud, sand, or rock of a site.

I. **Landmark tree.** A landmark tree is any tree listed with the state or national registry or cited in the city's tree registry as being historically significant, by age, species or form.

J. **Landscape Administrator.** The person who is responsible for the administration of the tree protection and preservation ordinance.

K. **Mature Canopy Area.** The shade area a tree will provide at maturity.

L. **Person.** An individual, firm, corporation, partnership, business, group of individuals, city department or other entity which acts singly or collectively for a common purpose.

M. **Public Grounds.** Areas including street rights of way, alleys, parks, medians, substations, treatment plants, plazas, squares, public buildings and any other area designated for public use.

N. **Rare Tree.** A rare tree is a tree with a trunk diameter of 24" or more for large growing species and 8 inches or more for small growing species, over 200 years of age, or is representative of an uncommon or endangered species as designated in the City of Fayetteville Landscape Manual.

O. **Separate Offense.** In relation to trees, each tree is a separate offense.

P. **Street Right-of-way.** The area designated for city improvements on both sides of the street.

**Q. Tree and Landscape Advisory Committee.** An advisory committee appointed by the City Council to assist the Landscape Administrator with city beautification and the management of its trees.

**R. Topping.** Also referred to as stubbing, dehorning, pollarding and heading; it is the severe removal of the tree canopy back to large stubs.

**S. Tree.** Any self-supporting woody perennial plant, usually having a main stem or trunk and many branches, and at maturity normally attaining a trunk diameter greater than three inches at DBH and a height of over ten feet.

**T. Tree Preservation Area.** Those areas designated for tree protection in a tree preservation plan or a site plan.

**U. Tree Preservation Plan.** A site plan that delineates tree preservation areas and details measures to be taken to ensure protection and survivability of trees to be saved, prior to and during construction.

**V. Tree Registry.** A list of trees registered with the City of Fayetteville due to documented historic association, rare tree species or extraordinary value because of their age, size or type.

**W. Tree Surgery.** Includes cavity filling/repair, bracing, cabling, and wound treatment.

**Section 3. ADMINISTRATION AND APPEALS.**

A. The Landscape Administrator or his/her duly authorized representative shall be charged with the general administration of this ordinance. The Tree and Landscape Advisory Committee will be available for consultation and recommendations to aid in administration of this ordinance.

B. Appeals from decisions of the Landscape Administrator shall be in writing to the Planning Commission, unless specified otherwise herein. Notice of appeal should be addressed to the City Clerk and filed within 10 days of the decision of the Landscape Administrator.

C. Appeals from decisions of the Landscape Administrator may be filed by any of the following: the landowner, adjacent property owner, developer, or a citizen with the support of one (1) or more alderman.

**Section 4. ESTABLISHMENT OF A TREE AND LANDSCAPE ADVISORY COMMITTEE.**

**Membership.** There is hereby created a committee to be known as the "Tree and Landscape Advisory Committee", composed of citizens of Fayetteville.

A. Membership.

The committee shall consist of at least nine (9) members who shall be appointed through the regular boards and committees appointment procedure. Appointees shall include: one representative of the business community; one representative of a service organization; one representative from the land development community; one person trained in the field of forestry, landscaping or horticulture; one representative of an environmental group focused on tree protection; one representative of the utility industry; one representative from the University of Arkansas; two persons at large who are residents of the City of Fayetteville or the best available applicant. The Landscape Administrator shall be a nonvoting ex officio member.

B. All appointed members shall serve without pay.

C. The Committee shall elect from its members a chairperson, who shall serve a one-year term and shall be eligible for re-election to a subsequent term or terms. The Committee may elect such additional officers and establish any subcommittees as it deems necessary for the proper performance of its duties.

**Terms.**

A. Terms of membership on the Tree and Landscape Advisory Committee shall be for a period of two (2) years. However, three (3) of the initial membership terms shall be for a period of one (1) year so as to provide for staggered membership terms. Should a member be unwilling or unable to serve the full membership term, the vacancy shall be filled, for the unexpired term, by standard appointment procedure.

**Powers and Duties.**

A. The Committee shall adopt and amend rules to govern the conduct of its business. Such shall be consistent with the provisions of the Arkansas Freedom of Information Act, Ark. Code Ann. §§25-19-101 et seq.

B. The Committee shall hold regular meetings and may call special meetings if necessary to carry out its duties.

C. The Tree and Landscape Advisory Committee, in coordination with the Landscape Administrator, shall:

1. Assist in the dissemination of news and information regarding the protection, maintenance, removal, and planting of trees in the City of Fayetteville.
2. Organize and administer an ongoing program of public education designed to increase public awareness of trees, their needs and proper care.
3. Advise and consult on issues pertaining to the Tree Protection Ordinance, its administration and enforcement.
4. Study the benefits and problems to determine the needs of the City of Fayetteville in connection with its trees.
5. Pursue the establishment of a comprehensive Fayetteville Street Tree Plan.

**Section 5. COMMERCIAL TREE PRUNER/SERVICE CERTIFICATE AND INSURANCE REQUIRED.**

A. A city issued commercial tree pruner/service certificate shall be required for the owner and supervisory personnel of each business performing commercial tree work within the city.

B. Each applicant shall attend an educational workshop on basic tree science and the proper techniques of tree pruning; or shall demonstrate sufficient knowledge of basic tree science and the proper techniques of tree pruning by scoring 75% or higher on a test provided by the National Arbor Society.

C. A certificate shall be issued when an individual has successfully completed the workshop or scored adequately on the test.

D. The certificate shall be available at each job site.

E. All persons engaged in the business of trimming trees shall be under the supervision of a certified tree pruner/service.

F. Those individuals performing commercial tree work on public grounds shall comply with all workers compensation requirements as set forth under Arkansas law and shall hold a City issued commercial tree pruner/service certificate.

G. Those individuals performing tree surgery shall comply with licensure requirements as set forth under Arkansas law.

H. Noncompliance with the standards, specifications and guidelines outlined herein, as well as those set forth in the City of Fayetteville Landscape Manual, shall result in the following actions being taken:

- a. First violation - warning issued and repeat training.
- b. Second violation - suspension of certificate for 30 days.
- c. Third violation - revocation of certificate.

Should a violation result in the revocation of an individual's certificate, such individual shall have the right to reapply for a commercial tree pruner/service certificate after thirty (30) days, subject to the limitations set forth in subsection J. Attendance at the educational workshop, as set forth above, is required prior to reissuance of such certificate.

I. Should an individual's certificate be revoked for a fourth violation within a one year period, reapplication for a certificate may be denied to such individual.

J. Appeals from denial of certification shall be in writing to the City Council.

**Section 6. LANDSCAPING.**

A. The City shall have the right to plant, prune, maintain and remove trees within all street rights-of-way, alleys, squares and other public grounds, as may be necessary to preserve or enhance the symmetry and beauty of such public grounds. Standards, specifications and guidelines are provided in the City of Fayetteville Landscape Manual.

**Section 7. TREE PLANTING, MAINTENANCE AND REMOVAL - STREET RIGHTS-OF-WAY AND OTHER PUBLIC GROUNDS.**

A. All tree planting, maintenance and removal on public grounds shall follow the standards, specifications and guidelines provided in the City of Fayetteville Landscape Manual, which shall be reviewed periodically by the Tree and Landscape Advisory Committee.

B. Trees may be planted within street rights-of-way or on other public grounds only after notification to the Landscape Administrator; and, providing the selection and location of said trees is in accordance with the guidelines of this ordinance.

C. Trees shall not be removed from a street right-of-way or other public grounds unless approval is received from the Landscape Administrator.

D. It shall be a violation of this ordinance to damage, destroy or mutilate any tree in a public right-of-way or on other public grounds, or attach or place any rope or wire (other than one to support a young or broken tree), sign, poster,

handbill or any other thing to any such tree.

E. It shall be unlawful for any person to top or cut back to stubs the crown of any tree in street rights-of-way or on other public grounds.

F. The City shall have the right to prune, maintain and remove any tree within the street rights-of-way, alleys, squares, and all public grounds when such interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign.

G. Trees shall not be planted to conceal a fire hydrant from the street or impede the line of sight on any street.

H. Trees severely damaged by storms or other causes where required pruning practices are impractical may be exempted from this ordinance.

I. City employees performing tree work on public grounds shall attend an educational workshop on basic tree science and the proper techniques of tree pruning. A certificate will be issued when an individual has successfully completed the workshop.

**Section 8. RIGHT OF INSPECTION.** The Landscape Administrator shall have the right to inspect all sites within the city involving tree preservation plans, tree preservation in rights-of-way and public grounds, landmark and rare trees, trees that constitute a hazard or a threat, and trees involving variance requests, or as otherwise required under the Fayetteville Code of Ordinances.

**Section 9. HAZARDOUS TREES**

A. Every owner of any tree overhanging a street or sidewalk within the city is responsible for pruning the branches so that such branches shall not obstruct vehicles or pedestrians.

B. The Mayor, or his/her duly authorized representative, is hereby authorized to order the owner of any real property within the city to cause the removal of any dead or diseased trees on their property, and further, to order compliance, when such trees constitute a hazard to life and property, or harbor insects which constitute a potential threat to other trees. Whenever any such condition is found to exist, the Mayor, or his/her duly authorized representative, shall give the owner of the property written notice to perform such acts within sixty (60) days. In case the owner of the property is unknown or his/her whereabouts is not known or he/she is a nonresident of this state, a copy of the written notice shall be posted upon the premises.

C. It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

D. If the conditions described in a notice given, as set forth above, are not removed or corrected within 60 days after such notice is given, the Mayor, or his/her duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property and the city shall have a lien against such property for such costs.

E. Enforcement of Lien shall be as set forth in Section 95.03 of the Fayetteville Code of Ordinances.

**Section 10. LANDMARK AND RARE TREES; TREE REGISTRY.**

A. There shall be established a Tree Registry, which shall be a list of trees, or groups of trees, registered with the City of Fayetteville due to documented historic association, rare tree species or of extraordinary value because of the age, size or type. Such Tree Registry shall be maintained at the City Administration Building by the Landscape Administrator.

B. Rare and landmark trees which are located on existing individual lots with single family homes shall be protected if voluntarily registered in the Tree Registry by the property owner. The owner shall be entitled to consultation with the Tree and Landscape Advisory Committee and/or the Landscape Administrator concerning proper care of the tree and a tree evaluation.

C. Rare and landmark trees (including those within 100 feet of a site) shall be shown on all preliminary plats, large scale developments, or site plans. The Landscape Administrator or his/her duly authorized representative may visit the site to determine the accuracy of identification.

D. Prior to removal or pruning of any registered landmark and/or rare tree, approval shall be received from the Landscape Administrator, who may seek review and recommendation from the Tree and Landscape Advisory Committee.

**Section 11. Tree protection in new subdivisions, large scale developments, commercial developments and on grading permits requests larger than one (1 acre).**

A. Development design. Proposed development shall be designed to maximize the preservation of rare and landmark trees. Where rare and landmark trees exist, flexible approaches such as adjustments to lot layout, placement of buildings and paved surfaces and location of utilities should be pursued in order to save them.

B. Preservation plan.

1. When required.

a. In proposed subdivisions and large scale developments, a tree preservation plan shall be submitted and approved by the Planning Commission as a portion of the preliminary plat or site plan. The tree preservation plan shall be reviewed, and recommendations shall be made to the Planning Commission by the Landscape Administrator. For commercial developments, a tree preservation plan shall be submitted with the Building Permit for approval by the Landscape Administrator. There shall be no land disturbance or tree removal until the tree preservation plan has been approved.

b. A tree preservation plan shall be submitted with all grading permit applications on parcels larger than one (1) acre. There shall be no land disturbance, grading or tree removal until the tree preservation plan has been approved.

2. The plan shall be submitted in compliance with instruction set forth in the City of Fayetteville Landscape Design Manual.

3. A preliminary site inspection, followed by periodic inspection will be conducted by the Landscape Administrator to ensure compliance with the Tree Preservation Plan.

4. Tree preservation areas, including all landmark and rare trees, existing trees located within the rights-of-way, easement areas, or on other public grounds, or trees preserved for the required canopy shall be designated in the tree preservation plan and shall be protected during land development as designated in the City of Fayetteville Landscape Design Manual.

5. Tree preservation area during development:

a. All landmark and rare trees or those trees designated for preservation shall be identified and protected before any construction activity.

b. Tree preservation areas shall be protected from construction activity to prevent impingement of construction vehicles, materials, spoils and equipment into the tree preservation area. A barrier must be adequately constructed and maintained on the site along the tree dripline or ten feet from the trunk, whichever is greater. If tree preservation areas are not adequately maintained and protected during construction, the Landscape Administrator shall prescribe remedial measures. All remedial measures shall be complete within the specified amount of time and shall be considered at the final plat approval or certificate of occupancy.

c. No filling, excavating or storage of materials, debris, or equipment shall take place within the tree dripline as shown in the tree preservation plan.

6. No landmark or rare tree shall be removed from land to be developed unless the Landscape Administrator, who may seek consideration and recommendation from the Tree and Landscape Advisory Committee, determines there is no reasonable way the property can be otherwise developed, improved, or properly maintained and the tree saved.

7. The saving of a rare or landmark tree or a tree shown to be significant to the site shall be considered upon application for any variance under Chapter 160 of the Fayetteville Code of Ordinances, and may constitute sufficient evidence that section 160.174 of the zoning code has been met in such variance application.

C. Canopy area. In all new subdivisions, large scale developments, and commercial developments, trees shall be preserved as outlined below under the percent minimum canopy:

The square foot percentage of "canopy area required" for preservation in new development is based on the total area of the property. The percent minimum canopy requirement shall not require the planting of trees to achieve the minimum unless trees were previously removed.

<b>Zoning Designations</b>	<b>Percent Minimum Canopy</b>
RE Residential estate	25
RA Residential Acre	25
RL Residential Large Lot	20
RS Residential Small Lot	20
R-1 Low Density Residential	25
R-1.5 Moderate Density Residential	20
R-2 Medium Density Residential	20
R-3 High Density Residential	20
R-O Office and Professional	20
C-1 Neighborhood Commercial	20
C-2 Thoroughfare Commercial	15
C-3 Central Business	15
C-4 Downtown Commercial	10
I-1 Light Industrial & Heavy Commercial	15
I-2 Heavy Industrial	15
P-1 Institutional	25

D. The percentage minimum canopy shall be determined upon the tree canopy existing prior to tree removal. If trees have been removed below the minimum percent canopy within five (5) years of application for development approval, the replacement canopy requirement shall be increased by ten (10) percent of total canopy.

E. Replacement canopy.

1. In the event a tree cannot be preserved as required, tree replacements, to be determined by the Landscape Administrator, may be required in lieu of the tree designated for preservation. Tree replacements should be of like or similar species in terms of size and ultimate canopy. Standards, specifications and guidelines are provided in the City of Fayetteville Landscape Manual.

2. The chart below is to be utilized to give a general quantification of the canopy for each general tree type. Examples of specific trees are listed in the City of Fayetteville's Landscape Design Manual.

<u>General Tree Type</u>	<u>Ultimate Canopy, Sq. Ft.</u>
Large Shade Tree or Major Street Tree	800
Medium street Tree and most Conifers	500
Small Flowering Tree	300

**Section 12. PENALTY.** Unless contradictory to any penalty set forth hereinabove, any person violating any provision of this ordinance or who fails to comply with any notice issued pursuant to the provisions of said ordinance, upon conviction or a plea of guilty, shall be subject to a fine not to exceed \$500.00 for each separate offense.

**Section 13. CONFLICT IN REGULATIONS.** Where a conflict arises between this ordinance and another ordinance, the more stringent requirement shall apply.

**Section 14. STOP WORK ORDER.** The Landscape Administrator may issue a stop work order directing the parties involved to cease and desist all work which does not comply with the Tree Preservation Plan. A hearing will be held within 48 hours of the issuance of the stop work order.

**Section 15. SUCCESSORS IN INTEREST.** Successors in interest of any person who as a developer of a subdivision (except single-family homeowners), large-scale development, commercial development, or conditional uses in other zones which are commercial in nature has been subject to the requirements of this ordinance shall abide by the requirements and conditions to which such developer of a subdivision (except single-family homeowners), large-scale development, commercial development, or conditional uses in other zones which are commercial in nature was subject, including compliance with the Tree Preservation Plan.

**Section 16. SEVERABILITY.** Should any section, clause, or phrase of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so invalidated.

**Section 17.** The City Council hereby determines that the aforesaid provisions are necessary and unless put into effect immediately, the public health, safety, and welfare of the people of Fayetteville will be adversely affected. Therefore, an emergency is hereby declared to exist and this ordinance being necessary for the public health, safety, and welfare shall be in full force and effect from and after its passage and approval.

**ORDINANCE NO. 4340**

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF FAYETTEVILLE, TO PROVIDE AMENDMENTS TO AND CLARIFICATION OF VARIOUS PROVISIONS CONCERNING TREE PRESERVATION AND PROTECTION.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That Chapter 151: Definitions, Unified Development Ordinance, Code of Fayetteville is hereby Amended by deleting the following definitions: **Development (Tree Protection and Preservation); Landmark Tree; Mature Canopy Area; Rare Tree;** and **Tree Preservation Area;** and in its stead, is inserted Exhibit "A" attached hereto and made a part hereof.

Section 2. That Sections 152(H) and 153.02(A) Unified Development Ordinance, Code of Fayetteville are hereby Amended by deleting the subheadings "Tree Protection and Preservation," and inserting "Tree Preservation and Protection" in their stead, and as to 153.02(A) only, striking the phrase "landmark and rare" and inserting the term "significant" in its stead.

Section 3. That Section 155.05(A), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

**§155.05 APPEALS FROM PLANNING COMMISSION DECISIONS.**

**A. Appeals To City Council.**

**7. Tree Preservation Plan.** Owners of record or any member of the City Council wishing to contest a Tree Preservation Plan must appeal the decision to deny or approve the preliminary subdivision plat or large scale development according to the procedures set forth in subsection (A)(2) above.

Section 4. That Section 156.03(C), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

**§156.03 DEVELOPMENT.**

**C. Consideration By The Planning Commission.**

**5 Tree Preservation Plan.** A developer may petition the Planning Commission for a variance from the requirements of Chapter 167: Tree Preservation and Protection, in those cases where their strict application would work an injustice as applied to the proposed development due to a situation unique to the subject real property;

**EXHIBIT "A"****To be inserted at Chapter 151: Definitions, Unified Development Ordinance:**

**Abbreviated Tree Preservation Plan.** (Tree Preservation and Protection) A shorter, less formal Tree Preservation Plan required of Applicants seeking Building, Grading or Parking Lot Permits, but who are not subject to the requirements for Large Scale Developments or Subdivisions.

**Administrative Determination.** (Tree Preservation and Protection) Final action by the Landscape Administrator to either approve, conditionally approve or disapprove a Tree Preservation Plan. Administrative determinations apply only to those projects which do not require Planning Commission approval.

**Analysis Report.** (Tree Preservation and Protection) A report, which among other things, sets forth any alternative designs the Applicant considered in arriving at the proposed design.

**Applicant.** (Tree Preservation and Protection) Any person, party, partnership, corporation or other business entity seeking the City's approval of a proposed Tree Preservation Plan.

**Base Density.** (Tree Preservation and Protection) The number of trees an Applicant must plant based upon the quality and number of the trees proposed to be removed per acre.

**Bona Fide Agricultural Purpose.** (Tree Preservation and Protection) The aim or goal of facilitating the ongoing commercial pursuit of farming, dairying, pasturage, horticulture, viticulture, or the keeping or raising of livestock or poultry, not otherwise prohibited by city ordinance.

**Caliper.** (Tree Preservation and Protection) The diameter of a young tree (those with a diameter of 4" or less) measured 6" above ground level.

**Canopied Slopes.** (Tree Preservation and Protection) Any land with a slope of 15% or greater containing trees, woody shrubs and herbaceous plants that serve the function of sustaining the structural integrity of the soil, thus reducing the likelihood of erosion, slide, or slump.

**Canopy.** (Tree Preservation and Protection) The combined crowns of all trees on a tract of land.

**Conservation Easement.** (Tree Preservation and Protection) A formal, legally binding agreement between parties, usually a landowner and a private or public entity, providing for the preservation of land in its natural state.

**EXHIBIT "A"**

**Contiguous Woodlands.** (Tree Preservation and Protection) A portion of canopy existing on the site of proposed development, which is a part of a larger, unbroken forest, whether or not it extends onto adjacent lots.

**Forestation.** (Tree Preservation and Protection) The act of planting trees.

**Invasive Species.** (Tree Preservation and Protection) Any species not indigenous to a region, which becomes established and displaces native species.

**Landscape Establishment Guarantee.** (Tree Preservation and Protection) A bond, irrevocable letter of credit, or other surety held by the City until the satisfactory conclusion of the three-year landscape establishment period.

**Less Desirable Species.** (Tree Preservation and Protection) Low-Priority trees or other woody shrubs listed in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

**Mitigation.** (Tree Preservation and Protection) The planting of trees on-site in an effort to lessen the environmental damage caused by the injury or removal of trees during development.

**Native Woodlands.** (Tree Preservation and Protection) A biological community dominated by trees and woody shrubs native to the Ozark Plateau, covering an area of 10,000 square feet or greater. A list of species native to the Ozark Plateau may be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

**Non-native Woodlands.** (Tree Preservation and Protection) A biological community of trees and woody shrubs, covering an area of 10,000 square feet or greater, descended from non-native species brought to the area during urban settlement. A list of typical non-native species may be found in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

**Percent Minimum Canopy.** (Tree Preservation and Protection) The amount of existing tree canopy an Applicant must preserve based on the zoning designation of the land to be developed.

**Relic Orchard.** (Tree Preservation and Protection) Groups of fruit trees originally planted for agricultural purposes, but since taken out of production.

**Riparian.** (Tree Preservation and Protection) Of, relating to, or located on the bank of a river or stream.

**Riparian Buffer.** (Tree Preservation and Protection) A biological community consisting of trees, woody shrubs and groundcover that exists along the banks of rivers, creeks or intermittent and perennial streams.

**EXHIBIT "A"**

**Significant Tree.** (Tree Preservation and Protection) A tree with a diameter at breast height (DBH) of 24" or more for Fast Growth Species, 18" or more for Slow and Moderate Growth Species, and 8" or more for Understory Species, as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. A tree may also be considered significant because of advanced age for its species, or because it represents an uncommon or endangered species, or due to its location on a site designated as historic by local, state or federal authorities.

**Tree Preservation Area.** (Tree Preservation and Protection) Those areas designated for the protection of both preserved and planted trees depicted on a Tree Preservation Plan, Abbreviated Tree Preservation Plan, Preliminary Plat, Large Scale Development, or Site Plan.

**Use Buffer.** (Tree Preservation and Protection) Trees or other woody shrubs that serve to screen incompatible land uses, unwanted light, or noise.

**EXHIBIT "B"**  
**CHAPTER 167:**  
**TREE PRESERVATION AND PROTECTION**

**§167.01 PURPOSE.**

It is the purpose of this chapter to protect and promote the health, safety, and general welfare and preserve and enhance the natural beauty of Fayetteville by providing for regulation of the preservation, planting, maintenance, and removal of trees within the city, in order to accomplish the following objectives:

**A. Objectives.**

1. To preserve existing tree canopy.
2. To create a healthful environment for Fayetteville residents, businesses and industries.
3. To moderate the harmful effects of sun, wind and temperature changes.
4. To buffer noise, air and visual pollution.
5. To filter pollutants from the air and assist in the generation of oxygen.
6. To reduce stormwater runoff and the potential damage it may create.
7. To stabilize soil and prevent erosion, with an emphasis on maintaining tree canopy on hillsides defined as Canopied Slopes in Chapter 151.
8. To provide habitat for birds and other wildlife.

9. To preserve riparian banks and beds, and prevent sedimentation.
10. To screen incompatible land uses.
11. To promote energy conservation.
12. To protect and enhance property values.

**B. Principles.** This chapter shall be enforced according to the following principles:

1. Preservation shall be the first, best, and standard approach.
2. If preservation cannot be achieved, On-Site Mitigation shall next be pursued.
3. If On-Site Mitigation cannot be achieved, Off-Site Preservation shall be pursued.
4. If Off-Site Preservation cannot be achieved, Off-Site Forestation shall be pursued.
5. If none of the above approaches can be achieved, payment shall be made to the Tree Escrow Account.

**§167.02 CITY OF FAYETTEVILLE TREE PRESERVATION, PROTECTION, AND LANDSCAPE MANUAL.** The Landscape Administrator, in cooperation with other members of City

**EXHIBIT "B"**

Staff, shall promulgate and periodically revise forms, procedures and regulations to implement this chapter, and publish this information in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

A. Copies of the Tree Preservation, Protection, and Landscape Manual are to be made readily available to the public and shall include, but need not be limited to:

1. Specific criteria for gaining City approval of Tree Preservation Plans;
2. The format and content of reports and plans the Applicant must submit to the City pursuant to this chapter;
3. Tree protection during construction;
4. A glossary of important terms used in this chapter;
5. Size and species requirements for trees planted for On-Site Mitigation or Off-Site Forestation;
6. Maintenance of trees (including but not limited to pruning, irrigation, and protection from disease).

B. The Tree and Landscape Advisory Committee shall review and may recommend revisions to the Tree Preservation, Protection, and Landscape Manual at least every three (3) years to reflect changes in arboricultural and horticultural practices, lists of preferred tree species, City policies or the content of this chapter.

**§167.03 TREE REGISTRY.**

A. Trees or groups of trees which are documented to be of historic merit, of an uncommon or endangered species, or are of extraordinary value due to their age, size, or type, may be registered in the City of Fayetteville's Tree Registry. It shall be the duty of the Landscape Administrator to maintain and keep this Registry on file in the Administrator's office.

B. Registration of trees shall be voluntary and may be done by the owner(s) of the property on which the tree is located. Registration shall not run with the land, unless the property owner wishes to use an express trust to transfer a benefit in the tree or groups of trees to the City. Registered tree owners are entitled to consultation with the Tree and Landscape Advisory Committee and/or the Landscape Administrator concerning proper care and protection of the tree, as well as an evaluation of the tree's condition.

**§167.04 TREE PRESERVATION AND PROTECTION DURING DEVELOPMENT.**

A. **Applicability.** The provisions of this section shall apply to proposed Subdivisions, Large Scale Developments, and developments required by other chapters of the Unified Development Ordinance to go through the City's permitting process. Persons seeking to build one (1) single-family dwelling unit or one (1) duplex are specifically exempt from the provisions of this section.

1. **Subdivisions and Large Scale Developments.** Applicants seeking

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approval of proposed Subdivisions and Large Scale Developments shall submit a Site Analysis Plan, Analysis Report, and Tree Preservation Plan with the Preliminary Plat or Site Plan. There shall be no land disturbance, grading or tree removal until a Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

**2. Grading Permits.** An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for Grading Permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

**3. Building Permits.** Tree preservation requirements apply to all permit applications for non-residential construction, and the construction of multi-family residential buildings composed of three (3) or more dwelling units. An Abbreviated Tree Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for Building Permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

**4. Parking Lots.** Tree preservation requirements apply to all permit applications for the construction of parking lots with five (5) or more spaces. An Abbreviated Tree

Preservation Plan, as set forth in §167.04(H)(3), shall be submitted with the application for permits on projects that are not required to go through the Subdivision or Large Scale Development process. There shall be no land disturbance, grading or tree removal until an Abbreviated Tree Preservation Plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

**B. Tree Preservation Criteria.** The Landscape Administrator shall consider the following factors, and any other relevant information, when evaluating Tree Preservation Plans:

1. The desirability of preserving a tree or group of trees by reason of age, location, size or species.
2. Whether the design incorporates the required Tree Preservation Priorities.
3. The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
4. The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
5. Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
6. Whether the size or shape of the lot reduces the flexibility of the design.

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7. The general health and condition of the tree or group of trees, or the presence of any disease, injury or hazard.

8. The placement of the tree or group of trees in relation to utilities, structures and the use of the property.

9. The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.

10. Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.

11. Construction requirements for On-Site and Off-Site drainage.

12. The effects of proposed On-Site Mitigation or Off-Site Alternatives.

13. The effect other chapters of the UDO, or City policies have on the development design.

14. The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.

15. The impact a substantial modification or rejection of the application would have on the Applicant.

**Note:** The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

**C. Canopy Area.** In all new Subdivisions, Large Scale Developments, Industrial and Commercial Developments, and all other improvements listed above, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the Applicant has been approved for On-Site Mitigation or Off-Site Alternatives as set forth in subsections (I) & (J) below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the Applicant is seeking approval, less the right-of-way dedications. An Applicant shall not be required to plant trees in order to reach the Percent Minimum Canopy requirement on land where less than the minimum exists prior to development, unless trees have been removed.

**Table 1 – Minimum Canopy Requirements**

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
A-1 Agricultural (Non-agricultural uses)	25
RE Residential Estate	25
RA Residential Acre	25
RL Residential Large Lot	20
RS Residential Small Lot	20
R-O Residential-Office	20
R-1 Low Density Residential	25
R-1.5 Moderate Density Residential	20
RMF-6 Low Density Multi-Family Residential	20

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<b>ZONING DESIGNATIONS</b>	<b>PERCENT MINIMUM CANOPY</b>
RMF-12 Moderate Density Multi-Family Residential	20
RMF-18 Medium Density Multi-Family Residential	20
R-2 Medium Density Residential	20
R-3 High Density Residential	20
C-1 Neighborhood Commercial	15
C-2 Thoroughfare Commercial	15
C-3 Central Business Commercial	15
C-4 Downtown	10
I-1 Heavy Commercial and Light Industrial	15
I-2 General Industrial	15
P-1 Institutional	25

**D. Prior Tree Removal.**

1. If trees have been removed below the required minimum within the five (5) years preceding application for development approval, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional ten percent (10%) of the total area of the property for which the Applicant is seeking approval, less the right-of-way dedications. The number of trees required to be planted shall be calculated

using the Base Density for High Priority trees.

2. If an Applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional ten percent (10%) reforestation requirement shall be waived.

**E. Tree Preservation Priorities.**

1. Proposed designs must meet the Percent Minimum Canopy requirements for the particular zoning designation, emphasizing the preservation and protection of High Priority trees on the site. Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed, wherever possible, to avoid existing canopy.

2. Each design shall consider the existing natural features of the site, the Preservation Priorities for the trees, and the impact their proposed removal may have both on and off site.

3. The list of Preservation Priorities (see Table 2) shall guide the review of each development's design. The submittal of designs which do not incorporate Preservation Priorities for the trees on the site shall result in the denial of the Tree Preservation Plan.

4. The preservation and protection of High Priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. The preservation and protection of lower priority trees shall

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not be substituted for that of High Priority trees, except:

a. when the justification for such a substitution is set forth in the Analysis Report; and,

b. the substitution is approved by the Landscape Administrator.

**Table 2 – Preservation Priorities**

High Priority	Mid-level Priority	Low Priority
<i>Canopied Slopes,</i>	<i>Contiguous Woodlands,</i>	<i>Invasive Species,</i>
<i>Floodways &amp; Riparian Buffers,</i>	<i>Non-native Woodlands,</i>	<i>Relic Orchards, and</i>
<i>Native Woodlands ,and</i>	<i>and,</i>	<i>Less Desirable Species.</i>
<i>Significant Trees.</i>	<i>Use Buffers.</i>	

**Note:** Each of the above is listed alphabetically beneath its respective category. They are not presented in any particular order of importance within that category.

**F. Tree Preservation Requirements for Proposed Residential and Non-Residential Subdivisions.** Where trees exist, flexible approaches such as adjustments to lot layout, placement of buildings and paved surfaces, and location of utilities shall be pursued in order to meet the Percent Minimum Canopy required for the applicable zoning designation.

**1. Residential Subdivisions.** The Percent Minimum Canopy in residential subdivisions shall be located in areas that have the least possibility of impact as utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. All Residential Subdivisions requesting tree removal below the Percent Minimum Canopy requirement are required to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed to avoid existing canopy.

**2. Non-Residential Subdivisions.** Two options are available for establishing a Tree Preservation Plan for the development of Non-Residential Subdivisions. The Landscape Administrator shall recommend to the Planning Commission the option that will potentially preserve the largest amount of priority canopy based upon the Tree Preservation Criteria set forth at §167.04(B) above. The Landscape Administrator may, when appropriate, recommend approval of a plan that contains some of the features of both options, provided the plan satisfies the intent and requirements of this chapter.

**a. Preservation Plan for Entire Subdivision.** The developer may choose to preserve the Percent Minimum Canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the Final Plat, and shall be protected as set forth in §167.04(L) below. Should the entire

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Percent Minimum Canopy requirement for the site be so protected, the Final Plat shall include a statement that the individual lots, as represented thereon, shall not require separate Tree Preservation Plans.

**b. Preservation Plan for Infrastructure Only.** The developer, in consultation with City Staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from this defined area by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The Final Plat shall include a statement that the individual lots shall require separate Tree Preservation Plans.

### G. Initial Review.

**1. Meeting with the Landscape Administrator.** It is strongly recommended that prospective Applicants meet with the Landscape Administrator for an Initial Review of the proposed Tree Preservation Plan for the site prior to submitting a Preliminary Plat, Large Scale Development, or Site Plan to the City. During the Initial Review, the Landscape Administrator shall

make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be non-binding. However, Applicants proceed at the risk of higher costs due to changes required by a noncompliant submittal should they choose not to have the Initial Review or to disregard the recommendations of the Landscape Administrator.

**2. Letter of Confirmation.** The Landscape Administrator shall document whether the Applicant participated in the Initial Review meeting in a Letter Of Confirmation to the Applicant. If the Applicant chose to attend an Initial Review meeting, the letter shall also document any recommendations made. The Landscape Administrator shall ensure that a copy of the letter becomes part of the permanent file for the project.

**H. Submittal of Plans.** Applicants should bear in mind that all plans will be evaluated according to the Tree Preservation Criteria and Percent Minimum Canopy requirements as set forth under §167.04(B) & (C).

**1. Site Analysis Plan.** On sites with existing tree canopy, the Applicant shall conduct a Site Analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a Site Analysis Plan, and clearly showing the locations and types of all natural features on a site, including features one hundred feet (100') beyond the property lines. The Site Analysis Plan shall also specifically depict the applicable Preservation Priority level for each tree or group of trees on the site. The plan should include, but need not be limited

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to, delineation of the following features as they exist on the site:

a. The existing topography of the site highlighting slopes of 15% or greater and indicating the natural drainage patterns.

b. The property line boundaries of the site.

c. Soils identified according the Unified Soil Classification System.

d. Any Significant Trees existing on the site, and the location of trunks, spread of the canopy, species, Diameter at Breast Height (DBH), and the overall health of each Significant Tree.

e. Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, Diameter at Breast Height (DBH), and general health of the trees.

f. All existing utilities and utility easements.

g. All perennial and intermittent streams and creeks that exist on the site or within one hundred feet (100') of the site.

h. Floodplains and floodways on the site.

i. All existing rights of way within and surrounding the project site including any designated trails or bike paths.

j. Any other factors that may impact the design of the site.

**2. Tree Preservation Plan.** The Applicant shall indicate all proposed site improvements, and delineate in the Tree Preservation Plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to fencing, limits of root pruning, as well as restrictions on traffic and material storage. The Plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off site, as well as the proposed location of utilities. The Applicant should consult the City of Fayetteville Tree Preservation, Protection and Landscape Manual for details, examples and specific checklists.

**3. Abbreviated Tree Preservation Plan.** Applicants requesting approval of development projects that require Building, Grading or Parking Lot permits, but that do not fall under the requirements for Large Scale Developments or Subdivisions, shall prepare and submit an Abbreviated Tree Preservation Plan. The information for this plan may be combined with the Site Plan, Plat Drawing or Grading Plan. The Applicant is expected to show the general location of all existing groups of trees, individual Significant Trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restrictions on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the Landscape Administrator is highly recommended before applying for any of the

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above-mentioned permits. The Applicant should consult the City of Fayetteville Tree Preservation, Protection, and Landscape Manual for details, examples and specific checklists. Applicants submitting Abbreviated Tree Preservation Plans shall not be required to submit either a Site Analysis Plan or Analysis Report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the Abbreviated Tree Preservation Plan.

**4. Analysis Report.** The Applicant shall submit an Analysis Report detailing the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed On-Site Mitigation options or Off-Site Alternatives, as detailed below.

**5. Grading and Utility Plans.** All subsequent Grading and Utility Plans shall depict the Tree Preservation Areas on the site, to include the preserved trees and the physical limits of all protective measures required during construction.

**6. Submittal Requirements.** The Applicant shall submit two (2) copies of a Site Analysis Plan and Analysis Report to the Landscape Administrator, concurrently with their Tree Preservation Plan. Applicants submitting Abbreviated Tree Preservation Plans shall not be required to submit either a Site Analysis Plan or Analysis Report.

**7. Conservation Easements.** The City shall encourage the use of conservation

easements for the added protection of trees preserved or planted to meet Percent Minimum Canopy requirements in those instances where such would be of mutual benefit to the Applicant and the City.

**I. Request for On-Site Mitigation.** If an Applicant is able to demonstrate to the Landscape Administrator's satisfaction that a site's physical or spatial constraints prevent the preservation of the Percent Minimum Canopy, the Applicant may request On-Site Mitigation. Trees that are required to be planted in compliance with other development chapters shall not be counted for the purpose of satisfying the On-Site Mitigation or Off-Site Alternative requirements of this chapter.

**1. Timing of Request for On-Site Mitigation.** Requests to remove trees below the Percent Minimum Canopy requirement must be incorporated in, and submitted concurrently with the Applicant's Tree Preservation Plan.

**2. Plan Requirements.** The Tree Preservation Plan must graphically represent the species and location for all trees to be planted on-site. It shall also include a chart clearly stating the following information:

a. The number of trees requested for removal;

b. The percentage below the Percent Minimum Canopy requirement they represent; and,

c. The species and number of trees to be planted, based on the Forestation Requirements below.

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**3. Planting Details and Notes.** Planting details and notes shall be included on the Tree Preservation Plan as set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

**4. Forestation Requirements.** The number and species of trees required for forestation shall be based upon the quality of the canopy lost:

**a. High Priority Canopy.** When removing High Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of two hundred (200) two inch (2") caliper trees per acre removed.

**b. Mid-Level Priority Canopy.** When removing Mid-Level Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of one hundred fifty (150) two inch (2") caliper trees per acre removed.

**c. Low Priority Canopy.** When removing Low Priority canopy below the Percent Minimum Canopy required, the canopy square footage removed shall be forested at a Base Density of one hundred (100) two inch (2") caliper trees per acre removed.

**5. Base Density.** Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The Base Density formula used above is based on two inch (2") caliper trees. However, the Landscape Administrator may approve the use of trees with less than two inch (2")

caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the Species Density Table to be found in the City of Fayetteville Tree Preservation, Protection and Landscape Manual, along with examples for using the Base Density formula.

**6. Preferred Species.** All trees to be planted shall be species native to the region, when available, and selected from the list of preferred tree species set forth in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the Landscape Administrator.

**7. Placement of Trees.** The Applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.

**8. On-Site Mitigation Incentive.** If all of the required trees can be located on-site, the Landscape Administrator may approve up to a twenty percent (20%) reduction in the number of trees to be planted. Any incentive reductions allowed shall be based upon the following factors:

**a.** The species of the mitigation trees; and,

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b. The space needed for the healthy growth of the trees.

**J. Request for Off-Site Alternatives.**

If an Applicant is able to demonstrate to the Landscape Administrator's satisfaction that neither preservation, nor On-Site Mitigation can be achieved, the Applicant may request Off-Site Alternatives. For Non-Residential Subdivisions and Large Scale Developments, Off-Site Alternatives shall be allowed only if, after taking into consideration the proposed design of the project, On-Site Mitigation is deemed impossible due to environmental or spatial constraints. Trees that are required to be planted in compliance with other development chapters shall not be counted for the purpose of satisfying the On-Site Mitigation or Off-Site Alternative requirements of this chapter.

**1. Timing of Request for Off-Site Alternatives.** Requests for Off-Site Alternatives must be incorporated in, and submitted concurrently with the Applicant's Tree Preservation Plan.

**2. Off-Site Preservation.** The Applicant may seek approval from the Landscape Administrator to preserve an equal or greater amount of canopy cover at a site within the City limits.

**3. Off-Site Forestation.** If Off-Site Preservation cannot be achieved, the Applicant may seek approval from the Landscape Administrator to plant the required number of trees on another site owned by the Applicant and located within the City limits.

**4. Tree Escrow Account.** Large

Scale Development Applicants requesting Off-Site Alternatives, all Residential Subdivision Applicants requesting tree removal below the Percent Minimum Canopy requirement, and any other Applicant unable to achieve either On-Site Mitigation, Off-Site Preservation or Off-Site Forestation, shall make a payment to the City of Fayetteville Tree Escrow Account for each tree required to meet the Base Density requirements set forth above. The amount of money to be paid shall be based on the fair market value of materials and labor at the time of planting. The Applicant shall submit cost estimates to the Landscape Administrator for approval.

a. All Residential Subdivisions requesting tree removal below the Percent Minimum Canopy requirement are required to contribute to the Tree Escrow Account, due to the fact that the health and survival of the trees may be adversely affected as individual lots are developed. The City shall use the money paid into the Tree Escrow Account to plant street trees within the subdivision, when possible, once the subdivision is built out.

b. Money contributed in lieu of On-Site Mitigation or Off-Site Forestation shall be paid prior to issuance of a Building Permit on all Commercial, Industrial, or Multi-Family Residential buildings and prior to Final Plat acceptance for all Residential and Non-Residential Subdivisions.

c. Money contributed under this section:

(1) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and

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maintenance, utilizing either City Staff or contract labor;

(2) Shall be deposited in a separate interest-bearing Tree Escrow Account; and

(3) Shall not revert to the general fund for ongoing operations.

d. Planting locations will be sought in appropriate sites within a one (1) mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, and if that cannot be achieved, anywhere in the City limits. The location of appropriate planting spaces is to be derived from the Fayetteville Tree Inventory to be updated every seven (7) to ten (10) years.

**5. Maintenance Agreement and Landscape Establishment Guarantee.** All Plans requesting On-Site Mitigation or Off-Site Forestation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the Applicant responsible for the health of all planted trees.

a. Approval of a Plan requesting On-Site Mitigation or Off-Site Forestation shall be contingent upon the Applicant depositing with the City either currency, bond, irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The bond, irrevocable letter of credit or other surety must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Landscape Administrator for approval.

b. Upon completion of the three year landscape establishment period, the Landscape Administrator shall inspect the site and determine whether ninety percent (90%) of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City shall release the currency, bond or letter of credit.

c. In the absence of such a finding, the Applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Landscape Administrator. If the Applicant does not take remedial steps to bring the property into compliance, the City shall use the necessary moneys from the Landscape Establishment Guarantee to do so.

d. In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.

**K. Tree Preservation Plan Review Form.** The Landscape Administrator shall use a standardized form for all Recommendations or Administrative Determinations made regarding an Applicant's Tree Preservation Plan.

1. The form shall clearly indicate whether the Landscape Administrator is making a final Administrative Determination, or a Recommendation to the Planning Commission or City Council.

2. The form shall also clearly indicate whether the Applicant's plan is

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"Approved," "Disapproved" or "Conditionally Approved," and explain the reasoning therefore.

3. A statement shall appear on the form explaining the process by which a final Administrative Determination may be appealed in accordance with Chapter 155 of the Unified Development Ordinance.

4. The Landscape Administrator shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.

#### **L. Continuing Preservation and Protection Under Approved Tree Preservation Plans.**

1. In order to ensure that an Applicant's heirs, successors, assigns or any subsequent purchasers of the subject property are put on notice as to the existence and extent of an approved Tree Preservation Plan, Tree Preservation Areas shall be clearly depicted on the Easement Plats for Large Scale Developments and the Final Plats for Non-Residential Subdivisions. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Landscape Administrator. Lots in Residential Subdivisions are expressly exempt from these requirements. If it is impractical to include the actual depiction of the canopy to be preserved on the Easement Plat or Final Plat itself, a note cross-referencing an accompanying document shall suffice.

2. The geographic extent and location of Tree Preservation Areas, once recorded, may only be modified or abolished

with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the Landscape Administrator, who shall ask the City Clerk to place it on the agenda of the next regularly scheduled City Council meeting.

3. Property owners wishing to remove diseased or dead trees from within a recorded Tree Preservation Area, shall seek prior approval from the Landscape Administrator, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the Landscape Administrator determines that natural replacements of sufficient health and vigor are already present in the Tree Preservation Area.

#### **§167.05 TREE PROTECTION MEASURES AND CONSTRUCTION.**

**A. Site Inspection.** A preliminary site inspection followed by periodic inspections will be conducted by the Landscape Administrator to ensure compliance with the Tree Preservation Plan.

**B. Tree Protection.** Tree Preservation Areas shall be protected from construction activity to prevent impingement by or the storage of construction vehicles, materials, debris, spoils or equipment in Tree Preservation Areas. No filling, excavating or other land disturbance shall take place in Tree Preservation Areas. Before

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commencing any construction activity, the Applicant shall construct tree protection barriers on the site along the tree dripline or ten feet (10') from the trunk, whichever is greater. The Applicant shall also post signs at each tree preservation area in accordance with the standards, specifications and guidelines provided in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual. The Landscape Administrator may require other protective measures based upon the individual characteristics of the site and the proposed construction methods. Tree protection measures shall also protect any off-site trees the roots of which extend onto the site of the proposed construction. Any Applicant damaging or destroying an off-site tree shall be required to mitigate such damage or destruction as prescribed by the Landscape Administrator. If the required barriers surrounding the tree preservation areas are not adequately maintained and protected during construction, the Landscape Administrator shall prescribe remedial measures, and may issue a Stop Work Order in accordance with §153.07(C). All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting Final Plat approval or issuing a Certificate of Occupancy.

### §167.06 TREE PLANTING, MAINTENANCE, AND REMOVAL ON STREET RIGHTS-OF-WAY AND OTHER PUBLIC GROUNDS.

**A. Follow Tree Preservation, Protection, and Landscape Manual.** All tree planting, maintenance or removal on public grounds shall follow the standards, specifications and guidelines provided in the

City of Fayetteville Tree Preservation, Protection, and Landscape Manual.

**B. Tree Planting.** Trees may be planted within street rights-of-way or on other public grounds only after notification to the Landscape Administrator; and, provided the selection and location of said trees is in accordance with the requirements of this chapter.

**C. Tree Removal.** Trees shall not be removed from a street right-of-way or other public grounds unless approval is received from the Landscape Administrator, with the exception that City employees may remove trees when necessary to accomplish emergency repairs to sewer or water systems, or in order to alleviate flooding.

**D. Damage to Trees.** It shall be a violation of this chapter to damage, destroy or mutilate any tree in a public right-of-way or on other public grounds, or attach or place any rope or wire (other than one to support a young or broken tree or limb), sign, poster, handbill or any other thing to any such tree.

**E. Top or Cutback to Stubs.** It shall be unlawful for any person to top or cut back to stubs the crown of any tree in street rights-of-way or on other public grounds.

**F. Reserved Rights.** The City reserves the right to plant, preserve, prune, maintain or remove any tree within the street rights-of-way, alleys, squares, and all public grounds when such interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign, or, as may be necessary to preserve or enhance the

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symmetry and beauty of such public grounds.

**G. Line of Sight.** Trees shall not be planted to conceal a fire hydrant from the street or impede the line of sight on any street.

**H. Storm Damage.** Trees severely damaged by storms or other accidental causes, where required pruning practices are impractical, are exempt from this chapter.

**I. City Employees.** Before cutting, pruning, removing or trimming any tree, City employees performing tree work on public grounds shall attend an educational workshop on basic tree science and the proper techniques of tree pruning. A certificate will be issued when an individual has successfully completed the workshop.

**J. Public Utilities.** Nothing in this section shall be construed to prohibit public utilities from pruning or removing trees that encroach upon electric, telephone, or cable television transmission lines, or gas, sewer or water pipes.

**§167.07 COMMERCIAL TREE PRUNER/ SERVICE: CERTIFICATE AND INSURANCE REQUIRED.**

**A. Certificate Required.** Before cutting, pruning, removing or trimming any tree within the City of Fayetteville, the owner and supervisory personnel of each business performing commercial tree work shall obtain a City issued Commercial Tree Pruner/Service Certificate.

**B. Liability Insurance.** Each business performing commercial tree work, to include

tree surgery, within the City of Fayetteville, shall be required to carry liability insurance in the following minimum amounts:

General Aggregate: \$100,000

Personal & Advertising: \$100,000

Each Occurrence: \$100,000

Proof of coverage shall include the name of the insurance company issuing the policy, the name of the insured, the policy number, effective and expiration dates, and the signature of an authorized representative of the insurance company.

**C. Workshop.** Owners and supervisory personnel shall attend an educational workshop on basic tree science and the proper techniques of tree pruning; or shall demonstrate sufficient knowledge of basic tree science and the proper techniques of tree pruning by scoring 75% or higher on a test provided by the International Society of Arboriculture (ISA).

**D. Certificate Issuance.** A certificate shall be issued when an individual has successfully completed the workshop or scored adequately on the test.

**E. Job Site.** It shall be the responsibility of the business owner to ensure that a copy of the certificate is maintained at each job site.

**F. Supervision.** All persons engaged in the business of trimming trees shall be under the supervision of a certified tree pruner/service.

## EXHIBIT "B"

**G. Workers Compensation.** Those individuals performing commercial tree work on public grounds shall comply with all workers compensation requirements as set forth under Arkansas law and shall hold a City issued Commercial Tree Pruner/Service Certificate.

**H. Licensure.** Those individuals performing tree surgery shall comply with licensure requirements as set forth under Arkansas law.

### §167.08 HAZARDOUS TREES.

**A. Pruning.** Every owner of any tree overhanging a street or sidewalk within the city is responsible for pruning the branches so that such branches shall not obstruct vehicles or pedestrians.

**B. Order of Removal.** The Mayor, or his/her duly authorized representative, is hereby authorized to order the owner of any real property within the City to cause the removal of any dead or diseased trees on their property, and further, to order compliance, when such trees constitute a hazard to life and property, or harbor insects which constitute a potential threat to other trees. Whenever any such condition is found to exist, the Mayor, or his/her duly authorized representative, shall send written notice via First Class mail to the property owner ordering the performance of such acts within twenty (20) days. If the property owner's identity or whereabouts are unknown, a copy of the written notice shall be posted upon the premises.

**C. Non-compliance.** It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

**D. Removal By City.** If the conditions described in a notice given, as set forth above, are not removed or corrected within twenty (20) days after such notice is given, the Mayor, or his/her duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property, and the City shall have a lien against such property for such costs. Enforcement of the lien shall be as set forth in section 95.03 of the Fayetteville Code of Ordinances. Such action shall not be taken if the owner has evidenced a willingness to comply by hiring a qualified tree service before the expiration of the twenty (20) day period.

**§167.09 LOCAL DISASTER EMERGENCY.** If it becomes necessary for the Mayor to declare a local disaster emergency pursuant to A.C.A. 12-75-108(b)(2), the provisions of this chapter may be suspended for up to thirty (30) days, if strict compliance with its provisions would prevent, hinder, or delay actions necessary to cope with the disaster emergency.

provided that such variance shall not have the effect of nullifying the intent and purpose of the chapter. The Planning Commission's approval of said variance must be affirmed by the City Council to become effective, and a denial of the requested variance may be appealed to the City Council.

Section 5. That Chapter 167: Tree Protection and Preservation, Unified Development Ordinance, Code of Fayetteville is hereby repealed, and Exhibit "B" attached hereto and made a part hereof, is inserted in its stead.

PASSED AND APPROVED this 2<sup>nd</sup> day of October, 2001.

APPROVED:

By: *Dan Coody*  
DAN COODY, Mayor

ATTEST:

By: *Heather Woodruff*  
Heather Woodruff, City Clerk