

**City of Fayetteville Staff Review Form**

**2021-0358**

**Legistar File ID**

**5/18/2021**

**City Council Meeting Date - Agenda Item Only**  
N/A for Non-Agenda Item

Jonathan Curth

4/2/2021

DEVELOPMENT SERVICES (620)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

ADM-2021-000033: Administrative Item (Amend Unified Development Code §167, Tree Preservation and Protection, and §177, Landscape Regulations): Submitted by CITY STAFF for revisions to the UDC Chapters §167 and §177. The proposed changes would offer clarification, efficiencies, and additional options to both Tree Preservation and Landscaping codes.

**Budget Impact:**

Account Number	Fund
Project Number	Project Title
<b>Budgeted Item?</b> <u>NA</u>	Current Budget            \$            -
	Funds Obligated            \$            -
	Current Balance            \$            -
<b>Does item have a cost?</b> <u>No</u>	Item Cost
<b>Budget Adjustment Attached?</b> <u>NA</u>	Budget Adjustment
	Remaining Budget            \$            -

*V20180321*

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



**MEETING OF MAY 18, 2021**

**TO:** Mayor and City Council

**THRU:** Jonathan Curth, Development Services Director  
Peter Nierengarten, Environmental Director, Sustainability & Resilience  
Connie Edmonston, Parks and Recreation Director

**FROM:** Melissa Evans, Urban Forester  
John Scott, Urban Forester

**DATE:** April 30, 2021

**SUBJECT:** **ADM-2021-000033: Administrative Item (Amend Unified Development Code §167, Tree Preservation and Protection, and §177, Landscape Regulations):**  
Submitted by CITY STAFF for revisions to the UDC Chapters §167 and §177.  
The proposed changes would offer clarification, efficiencies, and additional options to both Tree Preservation and Landscaping codes.

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**RECOMMENDATION:**

City Staff and Planning Commission recommend approval of amendments to the Unified Development Code Chapters 167, Tree Preservation and Protection, and Chapter 177, Landscape Regulations to clarify standards, reduce redundancies, and streamline processes.

**BACKGROUND:**

To streamline portions of the Tree Preservation and Landscape Codes, staff proposes amendments to Chapters 167 and 177 of the Unified Development Code (UDC). The proposed amendments offer clarity, efficiency, and options to developers and staff.

Urban Forestry Staff is proposing amendments to the following portions of UDC 167 and 177.

1. 167.04 (E) Tree preservation priorities (Exhibit A)
2. 167.04 (E) Tree Preservation priorities with changes discussed but not approved at Planning Commission (Exhibit A1)
3. 167.04(F)(L) Tree preservation easements (Exhibit B)
4. 167.07 Commercial Tree Pruner/Service; Certificate, and Insurance Required (Exhibit C)
5. 167.07 Commercial Tree Pruner/Service; Certificate, and Insurance Required changes discussed at Planning Commission but not approved. (C1)
6. 177.08 - Timing of Installation (Exhibit D)
7. 167.04 (J) Off-site preservation and outside city limits (Exhibit E)
8. 167 Mitigation Alternatives, various location (Exhibit F)
9. 151 Definitions (Exhibit G)
10. A follow-up letter to developers that we spoke with in January. (Exhibit H)
11. Planning Commission Results Memo (Exhibit I)

Chapter 167 Tree Preservation and Protection in its current form has been in place since 2001 with minor updates and amendments since the initial implementation. The Urban Forestry Advisory Board reviewed this chapter for changes in 2018 and Chapter 177 Landscape Regulations in 2019. There were several recommended changes for both chapters. Urban Forestry experienced various delays in proposing amendments and was recently asked to bring some of the recommendations forward. The currently-proposed amendment represents the changes that staff found to be the least contentious and with potential for united support.

In vetting the proposal, staff met with developers, engineers, and other professionals in the development field during January 2021. They did not object to the proposed code changes and were very excited about the mitigation alternatives. The Urban Forestry Advisory Board forwarded the proposed code changes at their February 13, 2021 meeting.

**MARCH 22, 2021 Planning Commission Meeting:**

On March 22, the Planning Commission tabled the item with a request to follow-up with the initial focus group of developers that staff met with in January. Urban Forestry staff emailed a follow-up message (Exhibit H) to the group of developers and designers with the actions we took away from the January meeting. The email addresses the topics that were discussed at that initial meeting. Urban Forestry staff did not receive responses.

Staff also received a request from City Councilmember Turk to tighten up the language in Mitigation Alternatives' intent. Staff added language that mitigation alternatives should only be used for infill sites with at least 50% existing impervious area. These requirements were set to prevent greenfield sites from using this as a possible loophole for not planting trees.

**APRIL 12, 2021 PLANNING COMMISSION MEETING-** On April 12<sup>th</sup>, the Planning Commission unanimously approved the changes as written. Two important items were brought up and discussed. Dead trees were included as low priority trees and would have to be counted for mitigation. The Planning Commission voted 4-4 on an amendment to change the wording, citing a concern that developers might cut trees down before submitting development applications and not have any consequences for that act.

Urban Forestry staff and the City Attorney's office agree that it is not appropriate to require developers and property owners to count or mitigate dead trees. The Unified Development Code addresses the Planning Commission's concerns with 167.04 (D). A penalty is assessed for projects that remove trees in the previous five years preceding a development application. Therefore, Urban Forestry staff and the City Attorney recommends approval of alternate Exhibit A1, which omits 'dead trees' from the low priority list.

167.07 Commercial Tree Pruner/Service; Certificate and Insurance Required was questioned concerning Tree Care Industry Association (TCIA) Trimming Certificates. TCIA does not have a 'Trimming Certificate' but does instead have TCIA 'Accredited Company.' Staff noted these corrections and included them in 167.07 Exhibit C1. This information was confirmed with Bob Longo, the TCIA Member Engagement Coordinator for the Southeast.

Urban Forestry Staff also heard from Jeremy Williams; he suggested we include all of the ISA accreditations: Municipal Arborist, Master Arborist, Tree Worker (Climber & Lift Specialist). Urban Forestry staff recommends approval of the alternate Exhibit C1, which corrects the accreditation.

## **DISCUSSION:**

The following summary explains the proposed Code Amendments:

**167.04 (E) Tree Preservation Priorities-** Urban Foresters have regular debates with developers, engineers, and property owners on high, middle, and low priorities. Trees that are alive, healthy, and providing ecosystem services are a high priority for our City regardless of size. We are proposing to simplify this into two different categories, High and Low. High priority trees are alive, and 8 inches DBH (Diameter at Breast Height) and low priority are invasive, unhealthy as determined by a tree care professional, and very small trees. Staff recognizes that this will increase mitigation requirements and ran several scenarios based on the new proposals. We found that for most projects, it would only amount to one or two trees. Larger subdivision projects that are adding hundreds of homes would be impacted the most.

**167.04 (F) (L) Tree Preservation Easement Size-** Currently, our code does not give staff or developers guidance on the size of a tree preservation easement. Logically, the minimum tree preservation requirement should be the same as the tree preservation easement requirement. If the required minimum preservation amount is not available, then typical negotiations with Urban Forester should occur. *Public Comments:* Urban Forestry staff did meet with several engineers, developers and received positive feedback from the developers for the proposed changes.

**167.07 (A) Commercial Tree Pruner/Service: Certificate and Insurance Required-** The code required Urban Forestry staff to test, certify, and keep an active list of anyone working in the City of Fayetteville trimming or removing trees. The code intended to protect consumers and trees from less than desirable practices, specifically after the 2009 Ice Storm. Staff agrees with the purpose but recognizes two professional organizations that certify and have continuing education requirements for best management practices in the tree care industry. The proposed code eliminates those redundant requirements and requires that professionals in the tree care industry have nationally recognized certifications. The changes do not change insurance requirements or other requirements for business owners.

**177.08 Timing of Installation-**The proposed change allows developers to delay planting trees for more optimal weather conditions in a different season. The change will give trees a better chance for survival. The amendment will codify an existing practice.

**167.04 (J) Off-Site Preservation-**Current code allows off-site preservation outside of City limits. No one in five years has used this option. The staff does not have jurisdiction outside the City limits and would like to remove this portion. This portion of code was brought forth in 2015 to

help a developer who had some code violations. The developer never used this new option. If this is needed in the future, it could be brought through as a variance.

**167.01 Mitigation Alternatives-** The last change we are proposing is to add Mitigation Alternatives to the code. We think this is an opportunity to add some flexibility to infill developments. The idea is that on-site infill projects that do not have space for trees can install a green façade or a green roof. The staff has researched this project and found the ratio of the alternatives compared to a tree. The proposed change offers developers three options to planting trees, intensive green roofs, extensive green roofs, and green facades.

**151 Definitions** – Add necessary definitions of terms to the Definitions Chapter.

**BUDGET/STAFF IMPACT:**

None

**Attachments:**

- Exhibit A-G, Proposed amendments to §167 and §177
- Exhibit H, Post-Planning Commission developed follow-up
- Planning Commission staff report

## Exhibit A

### Code Changes 167.04

(E) *Tree Preservation Priorities.*

- (1) *Percent minimum canopy.* 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 existing and not to be vacated 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) *Existing Natural Features.* 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) *Preservation Priorities.* 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.~~
- (3) *High Priority Trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. **High priority trees are alive, healthy, greater than or equal to an eight-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a four-inch diameter. Low priority trees are dead, invasive species or unhealthy as determined by a tree care professional pursuant to 167.07. Low priority trees are less than an eight-inch diameter at breast height for larger and medium species and less than a four-inch diameter at breast height for smaller trees species. The preservation and protection of lower priority trees shall 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 Urban Forester.~~

**Table 2**  
Preservation Priorities

<b>High Priority</b>	<b>Mid-level Priority</b>	<b>Low Priority</b>
Canopied slopes	Contiguous woodlands	Invasive species
Floodways and riparian buffers	Non-native woodlands	Relic orchards
Native woodlands	Use buffers	Less-desirable species
Significant trees		

~~\*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 Developments.*

(1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed 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. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.

(2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of ~~priority~~ **high priority** canopy based upon the tree preservation criteria set forth in §167.04(B) above.

(I) *Re2. quest for On-Site Mitigation.*

(1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.

(2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees 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.

(3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape 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), 2-inch caliper trees per acre removed.

~~(b) *Mid-Level Priority Canopy.* When removing mid-level priority canopy required, the canopy square footage removed shall be forested at a base density of one hundred fifty (150), 2-inch caliper trees per acre removed.~~

(c) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.

## Exhibit A1

### Code Changes 167.04

(E) *Tree Preservation Priorities.*

- (1) *Percent minimum canopy.* 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 existing and not to be vacated 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) *Existing Natural Features.* 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.
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- (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend to the Planning Commission the option that will potentially preserve the largest amount of ~~priority~~ **high priority** canopy based upon the tree preservation criteria set forth in §167.04(B) above.

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  - (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.
- (3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape 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), 2-inch caliper trees per acre removed.
  - ~~(b) *Mid-Level Priority Canopy.* When removing mid-level priority canopy required, the canopy square footage removed shall be forested at a base density of one hundred fifty (150), 2-inch caliper trees per acre removed.~~
  - (c) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.

## Exhibit B

### Code Change 167.04

- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed 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. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
  - (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester 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 in §167.04(B) above.
    - (a) *Preservation Plan for Entire Development.* 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 percent minimum canopy requirement for the site be so protected, **the preserved canopy shall be placed in a tree preservation easement and** 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. Proposed 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 defined individual lots 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.
- (L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*
- (1) **Large scale developments, large scale site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with**

**The Urban Forester. 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 approved tree preservation easements which shall be clearly depicted **and noted** on the easement plats for large scale developments, **large scale site improvements, commercial final plats, and any plats with a tree preservation easement** ~~nonresidential subdivisions~~. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Urban Forester. ~~Lots in residential subdivisions are expressly exempt from these requirements.~~ If it is impractical to include the actual depiction of the canopy in a tree preservation easement 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 easements, 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 urban forester, 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 easement shall seek prior approval from the Urban Forester, 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 Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No.

## Exhibit C

### Code Change 167.07

167.07 - Commercial Tree Pruner/Service; Certificate And Insurance Required

- (A) *Certificate Required.* Before cutting, pruning, removing, felling, or trimming any tree within the City of Fayetteville, the owner and supervisory personnel of each business performing commercial and residential tree work shall obtain a city issued commercial tree pruner/service professional certificate for tree care. Felling a tree is the process of safely cutting down trees. Removal of trees on the ground and tree debris already on the ground does not require certification. Machine operators on sites with approved grading plans are not required to be certified for land clearing or land grubbing on approved projects. A person working on cutting, pruning, felling, or trimming trees that are not currently certified shall be seeking certification and under the direct supervision of a person certified. Current and in good standing certification proof shall be required at all job sites. Property owners are responsible for confirming certification. The City of Fayetteville recognizes:

- i International Society of Arboriculture Certified Arborists
- ii Tree Care Industry Association Trimming Certificates

- (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:

- (1) General aggregate: \$100,000.00
- (2) Personal & advertising: \$100,000.00
- (3) Each occurrence: \$100,000.00

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 (I.S.A.).~~

- ~~(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.~~

- (C) *Worker's Compensation.* Those individuals performing commercial tree work on public grounds shall comply with all worker's compensation requirements as set forth under Arkansas law. and shall hold a city issued commercial tree pruner/service certificate.

- (D) *Licensure.* Those individuals performing tree surgery shall comply with licensure requirements as set forth under Arkansas law.

(Code 1991, §162.13; Ord. No. 3699, §14, 4-20-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

## Exhibit C1

### Code Change 167.07

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- i International Society of Arboriculture: Certified Arborists, Municipal Arborist, Master Arborist, Tree Worker (Climber & Lift Specialist)
- ii Tree Care Industry Association Accredited Company

- (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:

- (1) General aggregate: \$100,000.00
- (2) Personal & advertising: \$100,000.00
- (3) Each occurrence: \$100,000.00

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.

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(Code 1991, §162.13; Ord. No. 3699, §14, 4-20-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

## Exhibit D

### Code Changes to 177.08 - Timing Of Installation

Required landscaping shall be installed prior to the issuance of a final certificate of occupancy or filing of the final plat, whichever development procedure is most applicable. A ninety (90) day temporary certificate of occupancy may be issued or a final plat may be filed once the owner deposits, with the City, U.S. currency or an irrevocable letter of credit in an amount equal to 150% of the estimated cost of the uninstalled plant material. The letter of credit must be from a bank or banking institution doing business within the State of Arkansas which is a member of the Federal Deposit Insurance Corporation. **Tree planting may be delayed for optimal planting times with approval from the Urban Forester. A deadline for delayed planting will be set and must be agreed upon with the Urban Forester.**

## Exhibit E

### Code Change 167.04

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

(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 of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits. ~~or, with the express approval of the City Council by its resolution, within ¼ mile of the Fayetteville city limits.~~

(3) *Off-Site Forestation.*

(a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. ~~or, with the express approval of the City Council by its resolution, within one-quarter mile of the Fayetteville city limits.~~ A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the City to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.

## Exhibit F

### CHAPTER 167: - TREE PRESERVATION AND PROTECTION

#### 167.01 - Purpose

It is the purpose of this chapter to preserve and protect the health, safety, and general welfare, and enhance the natural beauty of Fayetteville by providing for regulations 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 that assist in the generation of oxygen;
- (6) To reduce storm water 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;
- (11) To promote energy conservation; and
- (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 (trees) shall next be pursued.
- (3) If on-site mitigation (trees) 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 off-site forestation cannot be achieved, on-site mitigation alternatives (green roofs and or green facades) shall be pursued.**
- (6)** If none of the above approaches can be achieved, payment shall be made to the tree escrow account.

(Code 1991, §162.01; Ord. No. 3699, §1 4-20-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 5986 , §1, 7-6-17)

167.04 – Tree Preservation and Protection During Development

- (8) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), as well as the following:
- (a) The applicant's mitigation plan shall meet or exceed the required number of mitigation trees based on the forestation requirements as set forth at §167.04(I)(4).
  - (b) All plans requesting residential on-site mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
    - (i) Approval of a plan requesting residential on-site mitigation shall be contingent upon the applicant depositing with the City an irrevocable letter of credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable letter of credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban Forester for approval.
    - (ii) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City shall release the letter of credit.
    - (iii) 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 Urban Forester. 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.
    - (iv) 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.
  - (c) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape plan that complies with the standards outlined in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual* in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the approved street tree species list, or be otherwise specifically approved by the Urban Forester. The applicant's mitigation plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of mitigation trees are planted.

**(9) Request for On-Site Mitigation Alternatives (Green Roofs or Green Facades).**

- (a) Intent.** The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
- (b) Applicability.** On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not

have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.

- (c) **Timing of Request for On-Site Mitigation Alternatives.** Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
- (d) **Intensive Green Roof-** A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
- (e) **Extensive Green Roof-** A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
- (f) **Green Façade-** A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12" by 12" trellis system connected to the building.
- (g) **Mitigation Alternative Calculations.** The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
  - (i) The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.
  - (ii) The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.
  - (iii) The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.

- (4) *Tree Escrow Account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, and off-site forestation, and **on-site mitigation alternatives** to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.

- (a) Residential developments which cannot achieve the base density tree requirements

(Code 1991, §162.06; Ord. No. 3699, §6, 4-20-93; Ord. No. 3963, §4, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

#### 167.10 - Tree Maintenance Agreements

- (A) *Maintenance Agreement and Landscape Establishment Guarantee.* All plans requesting on-site mitigation or off-site forestation shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.

- (1) Approval of a plan requesting on-site mitigation, **on-site mitigation alternatives**, 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 of 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. The amount shall be equal to that provided in §167.04(J)(4).

- (2) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the City shall release the currency, bond, or letter of credit.
- (3) 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 Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the City shall use the necessary monies from the landscape establishment guarantee to do so.
- (4) 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.
- (5) However, in lieu of cash surety, letter of credit, or bond, the monitoring and maintenance requirement may also be met through proof of a three year tree maintenance contract with a landscape contractor approved by the Urban Forester. The contract shall name the City of Fayetteville as a third party beneficiary. This fully executed contract shall contain:
  - (a) Itemized proof of payment or charge for three (3) years of watering ~~and maintenance~~ for each required tree **and maintenance for on-site mitigation alternatives.**
  - (b) A clause that requires that if the approved contract is breached, the developer shall either immediately supply an acceptable replacement maintenance contract or shall deposit into the City's Tree Escrow Account the amount set forth in §167.04(J)(4).
  - (c) After inspection by the Urban Forester at the end of the three year period, if the Urban Forester determines that less than 90% of the trees or **90% of the on-site mitigation alternatives** are found healthy and with a reasonable chance of surviving to maturity, the trees shall be replaced by the developer within sixty (60) days of notice from the Urban Forester. If the developer fails to comply, the City would recover losses as outlined in the contract.

(Ord. 5818, 10-20-15; Ord. No. [5986](#), §§38, 39, 7-6-17) 167.11—167.99 - Reserved (Ord. No. 5818, 10-20-15)

## Exhibit G

### 151 - Definitions

Mitigation Alternatives- Mitigation alternatives are plantings that are not trees but still offer environmental benefits. Intensive Green Roofs, Extensive Green Roofs, and Green Facades are mitigation alternatives.

Intensive Green Roof- A green roof with 6 inches or greater soil medium that can sustain plant species with deeper root systems.

Extensive Green Roof- A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.

Green Façade- A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12" by 12" trellis system connected to the building.

Felling – The process of safely cutting a tree down and bringing the tree to the ground.

## Exhibit H

### **A follow-up requested by Planning Commission at the previous meeting. Sent Wednesday March 30, 2021 at 9:18 AM.**

Hello Fayetteville Developers and Associated Professionals – Thank you very much for providing feedback on the City's proposed Tree Preservation Ordinance changes in January! We have an update on the proposed code changes. The proposed ordinance changes will be discussed at the Planning Commission meeting on Monday, April 12 – the meeting starts at 5:30. At the April 5<sup>th</sup> planning commission meeting, we were asked to follow up with you all, which is a great suggestion, and we should have done this sooner.

Attached is the planning commission packet with the proposed ordinance changes. Since we last discussed the proposed ordinance amendments with you, the following changes have been made:

- Removal of changes to the Hazardous Tree code at the advice of the City Attorney's Office
- Changed the green roof and green screen provision so that they are only allowed on sites that do not have room for mitigation trees and are within limited Form-Based Zoning Districts with no building area maximum requirement. This will restrict their use to tight redevelopment sites that don't have room to add trees – ideally; these are previously developed sites with little to no green space.
- Jessie Fulcher's from Rausch Coleman wanted some language changed for Tree Preservation easements for exhibit B, which we addressed and received his approval.
- We did run numbers for the Priority level changes, and surprisingly, the number of trees required at high priority was not significant:
  1. Sagely Place off Zion was required to plant 486 trees with the new levels; they would only have to plant 15 additional trees.
  2. S. School Development would add one tree
  3. Ruppel Road Multi-Family development would have had to at 11 additional trees under this new proposal. They were required to plant 31 trees.
  4. Magnolia Park, which required 1078 trees, would have only added 113 trees. This does not consider invasive species on the property that would have brought the number of trees lower.

There were requests for allowing parkland dedication, stormwater runoff, and tree preservation easement to overlap. We are going to look at that for later changes. Things to consider about this:

- Tree preservation easements are meant to preserve existing trees; parkland dedication is for parks and possibly some recreation activity. Parks require some development and planning, so the trees preserved would not be preserved in perpetuity because parks have to be planned and constructed.

- Stormwater areas and tree preservation easements can co-exist. The only concern is making sure drainage is not blocked by roots or other debris. We allow this. The Walgreens on Ruppel has their tree preservation easement in their drainage area.

Trees in the right of ways were brought up at our initial meeting, and I wanted to let you know I am working with Transportation and GIS to map right-of-way trees. I am also working with them on BMP for median trees; you may have noticed we have mulched trees in our right of ways recently.

We discussed counting trees in the right-of-way for or against in the review process; it is difficult because right-of-way can be used for road widening (see Zion Road) or utility extensions, so the trees there are not guaranteed longevity.

We also talked about credit for trees that were not counted as preserved but not cut down and getting credit for the tree if they lived. I am still contemplating this situation. It raises more questions on how this would work and how long before they could be counted as living beyond the construction (3 years, 5 years?). Who received the credit for preserving the tree, the property owner? What if the property changes hands, and what is the credit? Do they not have to mitigate upfront for the possible death of a tree? Whom would we ask to mitigate if the tree dies and the property has changed ownership?

This would be another one to spend some more time and think about for the future.

Let me know if you have questions or concerns about the proposed changes.

We would love your support for these changes. Thanks

John J. Scott  
Urban Forestry  
Parks & Recreation  
ISA Certified Arborist  
City of Fayetteville, Arkansas  
Phone 479-444-3470



**TO:** Fayetteville Planning Commission

**THRU:** Ted Jack, Park Planning Superintendent  
Connie Edmonston, Parks & Recreation Director  
Peter Nierengarten, Environmental Director

**FROM:** John J. Scott, Urban Forester

**DATE:** April 12, 2021 **Updated with PC hearing results from 4/12/2021**

**SUBJECT:** **ADM 2021- 000029 Code Changes to UDC 167, Tree Preservation and Protection and UDC Chapter 177, Landscape Regulations.**

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**RECOMMENDATION:**

Staff recommends approval of amendments to the Unified Development Code Chapters 167: Tree Preservation and Protection and Chapter 177 Landscape Regulations to clarify standards, reduce redundancies, and streamline processes.

**RECOMMENDED MOTION:**

*"I move to forward **ADM 2021-000029**, recommending in favor of all amendments as recommended by staff."*

**MARCH 22, 2021 Planning Commission Meeting:**

On March 22, the commission tabled the item and wanted a follow-up with the initial group of developers that staff met with in January. Urban Forestry staff has emailed a follow-up message (Exhibit H) to the group of developers and designers with the actions we took away from the January meeting. The email addresses the topics that were discussed at that initial meeting. Staff has not received responses.

Staff also got a request from City Council member Turk to tighten up the language in Mitigation Alternatives' intent. Staff did add that mitigation alternatives should only be used for infill projects with at least 50% impervious paving. These requirements were set to prevent greenfield sites from using this as a possible loophole for not planting trees.

**BACKGROUND:**

To streamline portions of the Tree Preservation and Landscape Codes, staff proposes amendments to Chapters 167 and 177 of UDC. The proposed amendments offer clarity, efficiency, and options to developers and staff.

Urban Forestry Staff is proposing amendments to the following portions of UDC 167 and 177.

1. 167.04 (E) Tree preservation priorities (Exhibit A)
2. 167.04(F)(L) Tree preservation easements (Exhibit B)
3. 167.07 Commercial Tree Pruner/Service; Certificate, and Insurance Required (Exhibit C)
4. 177.08 - Timing of Installation (Exhibit D)

5. 167.04 (J) Off-site preservation and outside city limits (Exhibit E)
6. 167 Mitigation Alternatives, various location (Exhibit F)
7. 151 Definitions (Exhibit G)
8. A follow-up letter to developers that we spoke with in January. (Exhibit H)

**DISCUSSION:** Staff met with developers, engineers, and other professionals in the development field. They did not object to the proposed code changes and were very excited about the mitigation alternatives. The Urban Forestry Advisory Board approved the proposed code changes at their February 13, 2021 meeting. The following summary explains the proposed Code Amendments:

**167.04 (E) Tree Preservation Priorities-** Urban Foresters have regular debates with developers, engineers, and property owners on high, middle, and low priorities. Trees that are alive, healthy, and providing ecosystem services are a high priority for our City regardless of size. We are proposing to simplify this into two different categories, High and Low. High priority trees are alive, and 8 inches DBH (Diameter at Breast Height) and low priority are invasive, dead, and very small trees. Staff recognizes that this will increase mitigation requirements and ran several scenarios based on the new proposals. We found for most projects; it would only amount to one or two trees. Larger subdivision projects that are adding hundreds of homes would be impacted the most.

**167.04 (F) (L) Tree Preservation Easement Size-** Currently, our code does not give staff or developers guidance on the size of a tree preservation easement. Logically, the minimum tree preservation requirement should be the same as the tree preservation easement requirement. If the required minimum preservation amount is not available, then typical negotiations with Urban Forester should occur. *Public Comments:* Urban Forestry staff did meet with several engineers, developers and received positive feedback from the developers for the proposed changes.

**167.07 (A) Commercial Tree Pruner/Service: Certificate and Insurance Required-** The code required Urban Forestry staff to test, certify, and keep an active list of anyone working in the City of Fayetteville, trimming or removing trees. The intention of the code was to protect consumers and trees from less than desirable practices, specifically after the 2009 Ice Storm. Staff agrees with the purpose but recognizes two professional organizations that certify and have continuing education requirements for best management practices in the tree care industry. This is like our city attorney requiring all lawyers that pass the bar exam to take a test and keep credentials to practice in the City of Fayetteville. Additionally, our attorney would have to administer tests, record insurance, and make sure they renew yearly. The proposed code eliminates those redundant requirements and requires that professionals in the tree care industry have nationally recognized certifications. The changes do not change insurance requirements or other requirements for business owners.

**177.08 Timing of Installation-**The proposed change allows developers to delay planting trees for more optimal weather conditions in a different season. The change will give trees a better chance for survival. The amendment will codify an existing practice.

**167.04 (J) Off-Site Preservation-**Current code allows off-site preservation outside of City limits. No one in five years has used this option. The staff does not have jurisdiction outside the City limits and would like to remove this portion. This portion of code was brought forth in 2015 to help a developer who had some code violations. The developer never used this new option. If this is needed in the future, it could be brought through as a variance.

**167.01 Mitigation Alternatives-** The last change we are proposing is to add Mitigation Alternatives to the code. We think this is an opportunity to add some flexibility to infill

developments. The idea is that on-site infill projects that do not have space for trees can install a green façade or a green roof. The staff has researched this project and found the ratio of the alternatives compared to a tree. The proposed change offers developers three options to planting trees, intensive green roofs, extensive green roofs, and green facades.

**151 Definitions** – Add necessary definitions of terms to the Definitions Chapter.

**RECOMMENDATION:** Staff recommends forwarding ADM 2021-000029 to the City Council with a recommendation of approval.

<b>PLANNING COMMISSION ACTION:</b> Required <u>YES</u>			
<b>Date:</b>	<input type="checkbox"/> Tabled	<input type="checkbox"/> Approved	<input checked="" type="checkbox"/> Denied
<b>Motion:</b>	#1 Canada		
<b>Second:</b>	Sparkman		
<b>Vote:</b>	8-0-0		

**Forward to City Council with a recommendation of approval as ordinance is written**

**Motion #2 to Amend:**  
**Motion:** Sharp  
**Second:** Belden  
**Action:** Motion to Amend to not include dead trees as counting towards high priority or low priority trees.  
**Vote:** 4-4-0 (motion failed)

**BUDGET/STAFF IMPACT:**  
None

**Attachments:**  
Exhibit A- G

**Exhibit A**

**Code Changes 167.04**

(E) *Tree Preservation Priorities.*

- (1) *Percent minimum canopy.* 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 existing and not to be vacated 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) *Existing Natural Features.* 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) — Preservation Priorities. 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.~~

~~(3) — High Priority Trees. The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. High priority trees are alive, healthy, greater than or equal to an eight-inch diameter at breast height for large and medium species of trees. High priority for small species of trees is greater than or equal to a four-inch diameter. Low priority trees are dead, invasive species, or unhealthy as determined by a tree care professional pursuant to 167.07. Low priority trees are less than an eight-inch diameter at breast height for larger and medium species and less than a four-inch diameter at breast height for smaller trees species. The preservation and protection of lower priority trees shall 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 Urban Forester.~~

**Table 2**  
Preservation Priorities

High Priority	Mid-level Priority	Low Priority
Canopied slopes	Contiguous woodlands	Invasive species
Floodways and riparian buffers	Non-native woodlands	Relic orchards
Native woodlands	Use buffers	Less desirable species
Significant trees		

~~\*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 Developments.*

(1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed 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. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.

(2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester shall recommend

to the Planning Commission the option that will potentially preserve the largest amount of **priority high priority** canopy based upon the tree preservation criteria set forth in §167.04(B) above.

- (l) *Re2. quest for On-Site Mitigation.*
- (1) *Timing of Request for On-Site Mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.
  - (2) *Plan Requirements.* The tree preservation plan must graphically represent the species and location for all existing trees 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.
  - (3) *Planting Details and Notes.* Planting details and notes shall be included on the tree preservation plan or landscape 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), 2-inch caliper trees per acre removed.
    - ~~(b) *Mid-Level Priority Canopy.* When removing mid-level priority canopy required, the canopy square footage removed shall be forested at a base density of one hundred fifty (150), 2-inch caliper trees per acre removed.~~
    - (c) *Low Priority Canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of one hundred (100), 2-inch caliper trees per acre removed.

## Exhibit B

### Code Change 167.04

- (F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Developments.*
- (1) *Residential Developments.* The percent minimum canopy in residential developments shall be located in areas that have the least possibility of impact as public infrastructure and proposed 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. Residential developments requesting tree removal below the percent minimum canopy requirement may choose either residential on-site mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04(J)(4)(a). Trees in existing and not to be vacated utility easements shall not be counted toward the percent minimum canopy requirement, and such proposed utilities shall be routed to avoid existing canopy and shall count toward the percent minimum canopy requirement.
  - (2) *Nonresidential Developments.* Two (2) options are available for establishing a tree preservation plan for the development of nonresidential developments. The Urban Forester 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 in §167.04(B) above.
    - (a) *Preservation Plan for Entire Development.* 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 percent minimum canopy requirement for the site be so protected, **the preserved canopy shall be placed in a tree preservation easement and** 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. Proposed 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 defined individual lots 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.
- (L) *Continuing Preservation and Protection Under Approved Tree Preservation Plans and Tree Preservation Easements.*
- (1) **Large scale developments, large scale site improvements, and commercial preliminary plats are required to dedicate a tree preservation easement, if any existing tree are to be preserved. The tree preservation easement shall be the size of the minimum canopy preservation requirement, if possible. If the minimum tree preservation canopy is not available, the applicant will not be required to dedicate the minimum canopy preservation. The applicant will have to dedicate a tree preservation easement that is agreed upon with the Urban Forester. 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 approved tree preservation easements which shall be clearly depicted **and noted** on the easement plats for large scale developments, **large scale site improvements, commercial final plats, and any plats with a tree preservation easement** ~~nonresidential subdivisions~~. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the Urban Forester. ~~Lots in residential subdivisions are expressly exempt from these requirements.~~ If it is impractical to include the actual depiction of the canopy in a tree preservation easement 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 easements, 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 urban forester, 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 easement shall seek prior approval from the Urban Forester, 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 Urban Forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation easement.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. No. 4855, 4-18-06; Ord. No. 4930, 10-03-06; Ord. No. 5308, 3-16-10; Ord. No. 5312, 4-20-10; Ord. No. 5427, 8-2-11; Ord. No. 5513, 7-17-12; Ord. No. 5773, 5-19-15; Ord. No.

## Exhibit C

### **Code Change 167.07**

167.07 - Commercial Tree Pruner/Service; Certificate And Insurance Required

(A) *Certificate Required.* Before cutting, pruning, removing, felling, or trimming any tree within the City of Fayetteville, the owner and supervisory personnel of each business performing commercial and residential tree work shall obtain a city-issued commercial tree pruner/service professional certificate for tree care. Felling a tree is the process of safely cutting down trees. Removal of trees on the ground and tree debris already on the ground does not require certification. Machine operators on sites with approved grading plans are not required to be certified for land clearing or land grubbing on approved projects. A person working on cutting, pruning, felling, or trimming trees that are not currently certified shall be seeking certification and under the direct supervision of a person certified. Current and in good standing certification proof shall be required at all job sites. Property owners are responsible for confirming certification. The City of Fayetteville recognizes:

**i International Society of Arboriculture Certified Arborists**

**ii Tree Care Industry Association Trimming Certificates**

(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:

- (1) General aggregate: \$100,000.00
- (2) Personal & advertising: \$100,000.00
- (3) Each occurrence: \$100,000.00

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 (I.S.A.).~~

~~(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.~~

(C) *Worker's Compensation.* Those individuals performing commercial tree work on public grounds shall comply with all worker's compensation requirements as set forth under Arkansas law. ~~and shall hold a city-issued commercial tree pruner/service certificate.~~

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

(Code 1991, §162.13; Ord. No. 3699, §14, 4-20-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

## Exhibit D

### **Code Changes to 177.08 - Timing Of Installation**

Required landscaping shall be installed prior to the issuance of a final certificate of occupancy or filing of the final plat, whichever development procedure is most applicable. A ninety (90) day temporary certificate of occupancy may be issued or a final plat may be filed once the owner deposits, with the City, U.S. currency or an irrevocable letter of credit in an amount equal to 150% of the estimated cost of the uninstalled plant material. The letter of credit must be from a bank or banking institution doing business within the State of Arkansas which is a member of the Federal Deposit Insurance Corporation. **Tree planting may be delayed for optimal planting times with approval from the Urban Forester. A deadline for delayed planting will be set and must be agreed upon with the Urban Forester.**

## **Exhibit E**

### **Code Change 167.04**

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

- (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 of the Urban Forester to preserve an equal or greater amount of canopy cover at a site within the city limits. **or, with the express approval of the City Council by its resolution, within ¼ mile of the Fayetteville city limits.**
- (3) *Off-Site Forestation.*
  - (a) If off-site preservation cannot be achieved, the applicant may seek approval from the Urban Forester to plant the required number of trees on another site owned by the applicant and located within the city limits. **or, with the express approval of the City Council by its resolution, within one-quarter mile of the Fayetteville city limits.** A tree preservation easement must be conveyed concurrently with or prior to submission of a final plat by the applicant to the City to protect any off-site preservation or forestation and the legal description of the tree preservation easement shall also appear on the final plat.

## **Exhibit F**

### **CHAPTER 167: - TREE PRESERVATION AND PROTECTION**

#### **167.01 - Purpose**

It is the purpose of this chapter to preserve and protect the health, safety, and general welfare, and enhance the natural beauty of Fayetteville by providing for regulations 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 that assist in the generation of oxygen;
  - (6) To reduce storm water 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;
  - (11) To promote energy conservation; and
  - (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 (trees) shall next be pursued.
  - (3) If on-site mitigation (trees) 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 off-site forestation cannot be achieved, on-site mitigation alternatives (green roofs and or green facades) shall be pursued.**
  - (6)** If none of the above approaches can be achieved, payment shall be made to the tree escrow account.

(Code 1991, §162.01; Ord. No. 3699, §1 4-20-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. [5986](#), §1, 7-6-17)

- (8) *Residential On-Site Mitigation.* Applicants requesting on-site mitigation for residential developments shall comply with all the provisions of §167.04(I), as well as the following:
- (a) The applicant's mitigation plan shall meet or exceed the required number of mitigation trees based on the forestation requirements as set forth at §167.04(I)(4).
  - (b) All plans requesting residential on-site mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
    - (i) Approval of a plan requesting residential on-site mitigation shall be contingent upon the applicant depositing with the City an irrevocable letter of credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable letter of credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban Forester for approval.
    - (ii) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City shall release the letter of credit.
    - (iii) 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 Urban Forester. 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.
    - (iv) 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.
  - (c) Developers requesting mitigation trees be planted along the street right-of-way of residential developments shall submit a landscape plan that complies with the standards outlined in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual* in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the

approved street tree species list, or be otherwise specifically approved by the Urban Forester. The applicant's mitigation plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of mitigation trees are planted.

- (9) Request for On-Site Mitigation Alternatives (Green Roofs or Green Facades).**
- (a) Intent.** The intent is to allow previously developed sites with at least 50% existing impervious area and limited space for planting trees to use on-site mitigation alternatives to meet the mitigation requirements and still contribute beneficial plant materials that provide positive ecosystem services.
  - (b) Applicability.** On-Site Mitigation Alternatives shall only be allowed as alternatives to planting trees in form-based zoning districts that allow for mixed-use and do not have a building area maximum requirement. On-Site Mitigation Alternatives may not be utilized on sites that have adequate space to meet landscape requirements.
  - (c) Timing of Request for On-Site Mitigation Alternatives.** Requests for on-site alternatives must be incorporated and submitted concurrently with the applicant's tree preservation plan.
  - (d) Intensive Green Roof-** A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.
  - (e) Extensive Green Roof-** A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.
  - (f) Green Façade-** A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12" by 12" trellis system connected to the building.
  - (g) Mitigation Alternative Calculations.** The applicant's plan to install an extensive green roof, intensive green roof, and green façade in lieu of a mitigation tree shall be based from square footage of tree canopy.
    - (i)** The calculation for an extensive green roof shall be based from a ratio of 1 square foot of tree canopy to 2.5 square feet of extensive green roof.
    - (ii)** The calculation for an intensive green roof shall be based from a ratio of 1 square foot of tree canopy to 1.4 square feet of intensive green roof.
    - (iii)** The calculation for a green façade shall be done based from a ratio of 1 square foot of tree canopy to 2.5 square feet of green façade.
- (4) Tree Escrow Account.** Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation, and off-site forestation, and **on-site mitigation alternatives** to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three (3) years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four (4) years to ensure it remains the fair market costs for tree planting and maintenance for three (3) years.
- (a)** Residential developments which cannot achieve the base density tree requirements

(Code 1991, §162.06; Ord. No. 3699, §6, 4-20-93; Ord. No. 3963, §4, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

#### 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.

(Ord. No. 4316, 6-5-01; Ord. No. 4340; 10-2-01)

167.10 - Tree Maintenance Agreements

(A) *Maintenance Agreement and Landscape Establishment Guarantee.* All plans requesting on-site mitigation or off-site forestation shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.

- (1) Approval of a plan requesting on-site mitigation, **on-site mitigation alternatives**, 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 of 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. The amount shall be equal to that provided in §167.04(J)(4).
- (2) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the City shall release the currency, bond, or letter of credit.
- (3) 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 Urban Forester. If the applicant does not take remedial steps to bring the property into compliance, the City shall use the necessary monies from the landscape establishment guarantee to do so.
- (4) 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.
- (5) However, in lieu of cash surety, letter of credit, or bond, the monitoring and maintenance requirement may also be met through proof of a three year tree maintenance contract with a landscape contractor approved by the Urban Forester. The contract shall name the City of Fayetteville as a third party beneficiary. This fully executed contract shall contain:
  - (a) Itemized proof of payment or charge for three (3) years of watering ~~and~~ maintenance for each required tree **and maintenance for on-site mitigation alternatives.**
  - (b) A clause that requires that if the approved contract is breached, the developer shall either immediately supply an acceptable replacement maintenance contract or shall deposit into the City's Tree Escrow Account the amount set forth in §167.04(J)(4).
  - (c) After inspection by the Urban Forester at the end of the three year period, if the Urban Forester determines that less than 90% of the trees or **90% of the on-site mitigation alternatives** are found healthy and with a reasonable chance of surviving to maturity, the trees shall be replaced by the developer within sixty (60) days of notice from the Urban Forester. If the developer fails to comply, the City would recover losses as outlined in the contract.

(Ord. 5818, 10-20-15; Ord. No. [5986](#), §§38, 39, 7-6-17) 167.11—167.99 - Reserved (Ord. No. 5818, 10-20-15)

## Exhibit G

### Definitions- 151

**Mitigation Alternatives- Mitigation alternatives are plantings that are not trees but still offer environmental benefits. Intensive Green Roofs, Extensive Green Roofs, and Green Facades are mitigation alternatives.**

**Intensive Green Roof- A green roof with 6 inches or great soil medium that can sustain plant species with deeper root systems.**

**Extensive Green Roof- A green roof with 2 to 5 inches of soil medium that can sustain plant species with shallow root systems.**

**Green Façade- A green façade is created by growing climbing plants up and across the façade of a building, either from plants grown directly in the ground or a large container of at least 12 inches of soil medium. Plants can attach directly to the building or be supported with a 12" by 12" trellis system connected to the building.**

**Felling – The process of safely cutting a tree down and bringing the tree to the ground.**

## **Exhibit H**

**A follow-up requested by Planning Commission at the previous meeting. Sent Wednesday March 30, 2021 at 9:18 AM.**

Hello Fayetteville Developers and Associated Professionals – Thank you very much for providing feedback on the City's proposed Tree Preservation Ordinance changes in January! We have an update on the proposed code changes. The proposed ordinance changes will be discussed at the Planning Commission meeting on Monday, April 12 – the meeting starts at 5:30. At the April 5<sup>th</sup> planning commission meeting, we were asked to follow up with you all, which is a great suggestion, and we should have done this sooner.

Attached is the planning commission packet with the proposed ordinance changes. Since we last discussed the proposed ordinance amendments with you, the following changes have been made:

- Removal of changes to the Hazardous Tree code at the advice of the City Attorney's Office
- Changed the green roof and green screen provision so that they are only allowed on sites that do not have room for mitigation trees and are within limited Form-Based Zoning Districts with no building area maximum requirement. This will restrict their use to tight redevelopment sites that don't have room to add trees – ideally; these are previously developed sites with little to no green space.
- Jessie Fulcher's from Rausch Coleman wanted some language changed for Tree Preservation easements for exhibit B, which we addressed and received his approval.
- We did run numbers for the Priority level changes, and surprisingly, the number of trees required at high priority was not significant:
  1. Sagely Place off Zion was required to plant 486 trees with the new levels; they would only have to plant 15 additional trees.
  2. S. School Development would add one tree
  3. Ruppel Road Multi-Family development would have had to at 11 additional trees under this new proposal. They were required to plant 31 trees.
  4. Magnolia Park, which required 1078 trees, would have only added 113 trees. This does not consider invasive species on the property that would have brought the number of trees lower.

There were requests for allowing parkland dedication, stormwater runoff, and tree preservation easement to overlap. We are going to look at that for later changes. Things to consider about this:

- Tree preservation easements are meant to preserve existing trees; parkland dedication is for parks and possibly some recreation activity. Parks require some development and planning, so the trees preserved would not be preserved in perpetuity because parks have to be planned and constructed.
- Stormwater areas and tree preservation easements can co-exist. The only concern is making sure drainage is not blocked by roots or other debris. We allow this. The Walgreens on Ruppel has their tree preservation easement in their drainage area.

Trees in the right of ways were brought up at our initial meeting, and I wanted to let you know I am working with Transportation and GIS to map right-of-way trees. I am also working with them on BMP for median trees; you may have noticed we have mulched trees in our right of ways recently.

We discussed counting trees in the right-of-way for or against in the review process; it is difficult because right-of-way can be used for road widening (see Zion Road) or utility extensions, so the trees there are not guaranteed longevity.

We also talked about credit for trees that were not counted as preserved but not cut down and getting credit for the tree if they lived. I am still contemplating this situation. It raises more questions on how this would work and how long before they could be counted as living beyond the construction (3 years, 5 years?). Who received the credit for preserving the tree, the property owner? What if the property changes hands, and what is the credit? Do they not have to mitigate upfront for the possible death of a tree? Whom would we ask to mitigate if the tree dies and the property has changed ownership?

This would be another one to spend some more time and think about for the future.

Let me know if you have questions or concerns about the proposed changes. We would love your support for these changes. Thanks

John J. Scott  
Urban Forestry  
Parks & Recreation  
ISA Certified Arborist  
City of Fayetteville, Arkansas  
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