

**CITY OF OVILLA, TEXAS
ORDINANCE NO. 010824-A**

AN ORDINANCE OF THE CITY OF OVILLA, TEXAS, AMENDING THE CODE OF ORDINANCES, CITY OF OVILLA, TEXAS, CHAPTER 10, "SUBDIVISION REGULATION," ARTICLE 10.02, "SUBDIVISION ORDINANCE," DIVISION 1, "GENERALLY," SECTION 10.02.001, "DEFINITIONS" TO ADD DEFINITIONS PERTAINING TO TREE PRESERVATION AND AMENDING DIVISION 5, "DESIGN AND IMPROVEMENT REQUIREMENTS," SECTION 10.02.137 "MINIMUM TREE PRESERVATION REQUIREMENTS" TO ADD REGULATIONS REGARDING TREE PRESERVATION, TREE REMOVAL PERMITS, AND TREE REPLACEMENT, TREE REFORESTATION FUND, AND AUTHORIZE THE CITY MANAGER TO ESTABLISH AND MAINTAIN TREE LISTS TO APPLY IN THE CITY LIMITS AND EXTRATERRITORIAL JURISDICTION; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING FOR AMENDMENTS; PROVIDING A CUMULATIVE REPEALER/SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY NOT TO EXCEED \$500.00 PER DAY FOR EACH OFFENSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT AND INCORPORATION INTO THE CODE OF ORDINANCES; AND PROVIDING AN EFFECT DATE.

WHEREAS, the City of Ovilla ("City") is a Type A General Law municipality located in Ellis and Dallas Counties, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City Council previously enacted minimum tree preservation requirements in Chapter 10, "Subdivision Regulation," Article 10.02, "Subdivision Ordinance" in the Code of Ordinances, City of Ovilla, Texas that apply to the City limits and the extraterritorial jurisdiction (the "ETJ"); and

WHEREAS, the City Council has investigated and finds that it would promote the public health, safety, and welfare to amend Chapter 10 to require tree removal permits and establish tree replacement, tree protection, tree pruning, and tree planting; and

WHEREAS, the City Council further finds it will be beneficial to permit payment into the Tree Preservation Fund if tree replacement is not feasible; and

WHEREAS, the City Council, in the exercise of its legislative discretion to adopt rules pursuant to Chapter 212 of the Texas Local Government Code, has concluded that Section 10.02.137 "Minimum Tree Preservation" in Chapter 10 of the Code of Ordinances should be amended as set forth in this Ordinance.

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

**SECTION 1.
INCORPORATION OF PREMISES**

The foregoing recitals are findings of the City Council and are hereby adopted and incorporated by reference and made a part of this Ordinance as if fully set forth herein.

SECTION 2. AMENDMENTS TO SECTION 10.02.001

That Chapter 10, "Subdivision Regulation," Division 1, "Generally," Section 10.02.001 in the Code of Ordinances, City of Ovilla, Texas, is hereby amended to add the following definitions to read as follows, and other definitions in Section 10.02.001 not expressly amended hereby shall remain in full force and effect:

Building Pad: The actual foundation area of a building and the area within six feet (6') of the foundation that is used for construction and grade transition.

Canopy. See Drip Line.

City Manager. The City Manager or designee.

Clear-Cutting: The removal of all of the trees or a significant majority of the trees within an area.

Critical Root Zone: The area of undisturbed natural soil around a tree defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the drip line. See Figure 10.1.

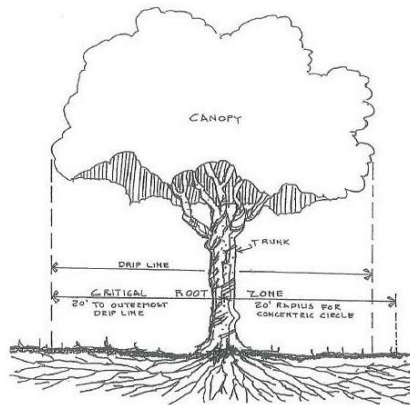


Figure 10.1 Critical Root Zone and Drip Line.

Cut/Fill: Areas where the natural ground level has been excavated (cut) or fill brought in.

Development: Any manmade change to improved or unimproved real estate.

Drip Line: A vertical line running through the outermost portion of the canopy of a tree and extending to the ground. See Figure 10.1.

Extraterritorial Jurisdiction or ETJ: That property which lies within the jurisdiction of the City of Ovilla for enforcement of Chapter 10.

Limits of Construction: A delineation on the graphic exhibit which shows the boundary of the area within which all construction activity will occur.

Property. Real property located in the City and the ETJ.

Protective Fencing: Chain link fence, wire fence, orange vinyl construction fencing, snow fencing or other similar fencing with a four foot (4') approximate height.

Selective Thinning: The removal of selected trees from within a densely forested area.

Tree: Any self-supporting woody perennial plant which will attain a trunk minimum tree canopy diameter of two inches (2") or more when measured at a point four and one half feet (4.5') above ground level and normally an overall height of at least fifteen feet (15') at maturity, usually with one (1) main stem or trunk and many branches. It may appear to have several stems or trunks as in several varieties of oaks.

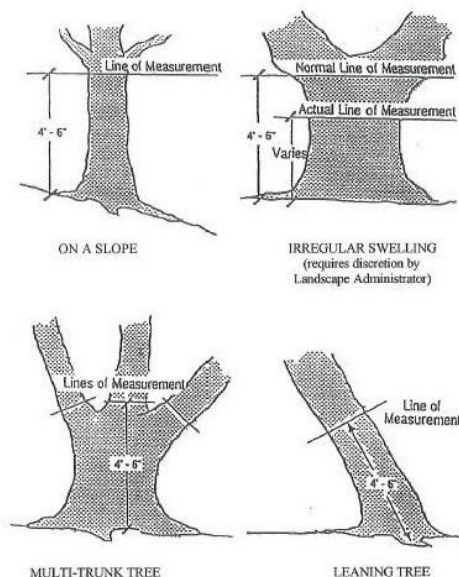


Figure 10.2 Tree Diameter Measurement

Tree Board: This Board shall be the Planning and Zoning Commission unless otherwise appointed by City Council.

Tree Fund: A City administered fund established for collection of fee-in-lieu-of payments paid as Mitigation and may include other contributions made in support tree preservation efforts.

Tree Removal Permit: Written authorization by the City provided to an owner, or authorized representative, of property that allows the removal of a Protected Tree.

Tree, Marginal: A tree which the City has determined may or may not be worthy of preservation depending on the individual characteristics of the tree.

Tree, Park: Trees in public parks and all areas owned by the City to which the public has free access to as a park.

Tree, Protected: A quality tree that as a diameter of six inches (6") or greater; an understory tree that has a diameter of two inches (2") or greater; and a marginal tree that has a diameter of six inches (6") or greater that the City Manager has determined should be saved due to individual characteristics and/or location of the tree. The diameter of a tree shall be determined by measuring at four and one-half feet (4.5') above ground. For a multi-trunk tree, the diameter shall be the total diameter of the largest trunk plus half (1/2)

the diameter of each additional trunk.

Tree, Quality: A tree which the City has determined typically has significant positive characteristics worthy of preservation.

Tree, Street: Trees on land lying between property lines on either side of all streets, alleys, avenues, lanes or ways within the City.

Tree Topping: The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

Tree, Understory: A tree which the City has determined has significant positive characteristics worthy of preservation and that does not typically attain great size.

SECTION 3. AMENDMENTS TO SECTION 10.02.137

That Chapter 10, "Subdivision Regulation," Division 5, "Design and Improvement Requirements," Section 10.02.137, "Minimum tree preservation" in the Code of Ordinances, City of Ovilla, Texas, is hereby amended to read as follows:

Sec. 10.02.137 Minimum tree preservation

A. Purpose and Intent. The purpose of this section is to promote development that furthers the preservation of mature trees and natural areas, to protect trees during development or land altering activities before development; to facilitate development that contributes to the long term viability of existing trees; and to control the removal of trees when necessary. It is the further purpose of this section to achieve the following broader objectives:

1. Prohibit the indiscriminate clearing of property;
2. Protect and increase the value of property;
3. Maintain and enhance a positive image for the attraction of new business enterprises;
4. Protect healthy quality trees and promote the natural ecological environmental and aesthetic qualities of trees; and
5. Promote the health, safety, and general welfare and safe, orderly, and healthful development.

B. Applicability.

This section shall apply to all property in the City and the ETJ as follows:

1. All vacant and undeveloped property.
2. All property to be developed.

C. **Exemptions.** A tree removal permit and tree protection and replacement requirements shall not be required under any of the following circumstances. The burden of proof as a qualified exemption is upon

the remover of a tree. It is highly recommended that qualification as an exemption be determined with the City Manager prior to removal of any tree.

1. Diseased Trees: The tree is diseased, damaged beyond the point of recovery, or in danger of falling as determined by the City Manager prior to the removal of the tree. The removal of a diseased tree by the City or an individual is required to reduce the chance of spreading the disease to adjacent healthy trees.

2. Public Safety: The tree endangers the public health, welfare or safety and immediate removal is required.

D. General Provisions.

1. Clear-cutting: The clear-cutting of land as defined in this section is prohibited.

2. Selective Thinning: The removal of selected trees from within a densely forested area when done in a professionally accepted manner shall be allowed as a single permit upon approval by the City Manager. Approval will only be granted when the City Manager determines the selective thinning is being done in a manner that would enhance the environment and likelihood of survival for the remaining trees.

3. Ground Level Cuts: Where protected tree removal is allowed through exemption or by tree removal permit and the root system is intertwined with protected trees which are intended to be saved, the tree shall be removed by flush cutting with the natural level of the surrounding ground. Where stump removal is also desired, stump grinding shall be allowed, or upon approval of the City Manager, a trench may be cut between the two trees sufficient to cut the roots near the tree to be removed, thereby allowing removal of the remaining stump without destruction of the root system of the saved tree.

E. Minimum Tree Canopy. Twenty-five percent (25%) of the tree canopy within the development shall be preserved. A tree stand delineation shall be submitted with the final plat detailing the tree save areas. Within the tree save area, the existing understory must be preserved.

F. Tree Removal Permits.

1. No person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree situated on property and/or outside of the required 25% tree canopy regulated by this section without first obtaining a tree removal permit, and complying with the requirements of this section, unless otherwise specified in this section.

2. Approval Process.

a. Authority for Review: The City Manager shall be responsible for the review and approval of all requests for tree removal permits. In granting a tree removal permit, the authority may impose conditions deemed necessary to implement this section.

1) **Deferrals:** The City Manager may defer the approval of a tree removal permit to the Tree Board for any reason. All decisions made by the Tree Board shall be final.

2) **Appeals:** Any decision made by the City Manager may be appealed to the Tree Board. All decisions made by the Tree Board shall be final.

b. Submittal Requirements: The City Manager shall establish administrative procedures necessary to facilitate the implementation and enforcement of this Section 10.02.137.F.

1) Tree Removal Permit: A request for a tree removal permit must be submitted and approved prior to the removal of any protected tree in the City unless the tree is exempt under a provision of this Section 10.02.137.

2) Fees: All tree removal permits shall be accompanied by a payment made to the City in the amount specified by City Council.

3) Required Documents: A tree survey shall be required as determined by the City Manager and must include the items listed below:

- a) Appropriate Title (i.e. Tree Removal Exhibit, or Tree Survey).
- b) Title block which includes street address, lot and block, subdivision name, city and date of preparation.
- c) North arrow, graphic and written scale in close proximity.
- d) Scale at a size no larger than 1" = 100'.
- e) Name, address and phone number of owner and person preparing the document.
- f) Location of all right-of-way lines and public easements.
- g) Location of all buildings, structures, and other improvements which are existing or intended on the lot.
- h) Areas of cut/fill with amount of each shown and flow lines shown.
- i) Existing and proposed spot elevations, grades and major contours, along with existing landscaping, streams, ponds and major natural features.
- j) Areas of no disturbance labeled as "No Disturbance Area." This area must be clearly marked on the survey and surrounded with protective fencing on the ground. A single incidence removal of underbrush and vines is allowed. The City Manager shall have the authority to designate areas as "no disturbance" areas where a survey would not be required due to no intended consequences.
- k) All protected trees, shown individually. Canopy trees 6" or greater in size and understory trees 2" or greater in size. Trees in close proximity that all have a caliper of less than four inches (4") may be designated as a group of trees with quantity of quality, marginal and understory trees shown. An area may be designated as a "No Disturbance Area" on the survey when approved by the City Manager and trees within that zone are not required to be individually identified on the plan.
- l) The location of protected trees must be tied by horizontal control (i.e. dimensions from lot lines, or placed through coordinates determined via survey.)
- m) All protected trees shown with diameter (4.5' from the ground), common name and condition.
- n) Any proposed replacement trees shown with caliper size, common name of tree and mature size.
- o) Graphic representations distinguishing protected trees that will be saved versus those that will be removed.
- p) Phasing of tree survey along with phasing of the development is permitted.

4) Permit Expiration: A tree removal permit shall become void one hundred eighty (180) days after the issue date on the permit.

c. Action on Permit Application: The City Manager or the Tree Board, if applicable, shall grant a tree removal permit based on the following criteria:

- 1) Whether or not a reasonable accommodation or alternative solution can be made to accomplish the desired activity without the removal of the tree;
- 2) The cost of preserving the tree;
- 3) Whether the tree is worthy of preservation. Trees listed as marginal trees are not considered worthy of preservation depending on the individual characteristics of the tree;
- 4) The effect of the removal on erosion, soil moisture, retention, flow of surface waters, and drainage systems;
- 5) The need for buffering areas from the noise, glare, and visual effects of development;
- 6) Whether the tree interferes with a utility service;
- 7) Whether the proposed tree replacement pursuant to the tree replacement Requirements hereof adequately mitigates the removal of the tree; and
- 8) Whether the removal affects the public health, safety or welfare.

G. Tree Replacement Requirements.

1. Tree Replacement: In the event it is necessary to remove a protected tree, the person removing the tree shall be required to replace the protected trees being removed with quality trees as defined herein. A sufficient number of trees shall be planted to equal or exceed the diameter (measured at 4.5' above ground level) of each tree removed. This mitigative measure is not meant to supplant good site planning. Tree replacement will be considered only after all design alternatives which could save more existing trees have been evaluated and reasonably rejected. Replacement trees shall be a minimum of 3" diameter (measured at 1' above ground) and seven feet (7') in height when planted.

2. Replacement Procedures: At the time of review, the person responsible for replacement, the time of replacement and the location of the new trees will be determined by the City Manager. The replacement trees shall be located on the subject site whenever possible. If this is not feasible, the City Manager has the authority to allow the planting to take place on another property, including public property. If the City Manager approves the planting of replacement trees more than 30 days after the removal of protected trees, the applicant shall deposit a cash escrow with the City an amount equal to the cost of the replacement trees. All required replacement trees must be covered by a one-year warranty that is acceptable to the City Manager.

H. Tree Reforestation Fund: In situations where it is not feasible to place all required replacement trees on the property, the applicant, upon approval of the City Manager, may make a payment into the Tree Reforestation Fund in lieu of planting the replacement tree on the subject site. The funds shall be used only for purchasing and planting trees on public property or acquiring wooded property which shall remain in a naturalistic state in perpetuity. The amount of the payment shall be equivalent to 100 percent of the tree replacement costs. The amount will be calculated by the City Manager and based on the most current edition of the Evaluation of Shade Trees prepared by Texas A & M Extension Service or similar publication or resource.

I. Tree Protection.

A major purpose of Section 10.02.137 is to protect all protected trees which are not required to be removed to allow approved construction to occur. The following procedures are required:

1. Tree Protection Plan Requirements. All tree preservation plans shall include the following:
 - a. A Tree Protection Detail Sheet shall include the following at a minimum.
 - 1) The requirements of Section 10.02.137.I.2 to L.4 shall be noted.
 - 2) A graphics legend to be used throughout the plans for the purposes of showing the following: Trees to be flagged, protective fencing, trees requiring bark protection, boring, areas of cut and fill impacting protected trees.
 - 3) Graphic tree exhibit showing the features of a tree to include the critical root zone, trunk, canopy, drip line and method of diameter measurement.
 - 4) Graphic exhibits showing methods of protection to include tree protection fences, boarded skirts, etc.
 - 5) Graphic exhibits showing construction methods to include grade changes, boring, trenching etc.
 - 6) Graphic exhibit showing appropriate pruning practices, in accordance with the tree pruning recommendations on file in the office of the city secretary.
 - b. All practices which will be employed in meeting the requirements of this section shall be shown graphically on all applicable sheets within the tree protection plans.
 - c. Documents as required in Section 10.02.137.F.2.b.3.
2. Prohibited Activities: The following activities shall be prohibited within the limits of the critical root zone of any protected tree subject to the requirements of Section 10.02.137.
 - a. Material Storage: No materials intended for use in construction or waste materials accumulated due to excavation or demolition shall be placed within the limits of the critical root zone of any protected tree.
 - b. Equipment Cleaning/Liquid Disposal: No equipment shall be cleaned or other liquids deposited or allowed to flow overland within the limits of the critical root zone of a protected tree. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.
 - c. Tree Attachments: No signs, wires or other attachments, other than those of a protective nature shall be attached to any protected tree.
 - d. Vehicular Traffic: No vehicular and/or construction equipment traffic or parking shall take place within the limits of the critical root zone of any protected tree other than on an existing street pavement. This restriction does not apply to single incident access within the critical root zone for purposes of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance or emergency restoration of utility service or routine mowing operations.
 - e. Grade Changes: No grade changes shall be allowed within the limits of the critical root zone of any protected tree unless adequate construction methods are approved by the City

Manager.

f. Impervious Paving: No paving with asphalt, concrete or other impervious materials in a manner which may reasonably be expected to kill a tree shall be placed within the limits of the critical root zone of a protected tree except as otherwise allowed in Section 10.02.137.

3. Preserved Tree: A protected tree shall be **considered to be preserved only if a minimum of seventy-five percent (75%) of the critical root zone is maintained at undisturbed natural grade and no more than twenty-five percent (25%) of the canopy is removed due to building encroachment.**

4. Prior to Construction Activity: The following procedures shall be followed on property”

a. Tree Flagging or Marking: Trees that are approved by the City Manager for removal shall be flagged with bright fluorescent orange vinyl tape wrapped around the main trunk or marked with bright fluorescent orange paint at a height of four feet (4') or more such that it is very visible to workers operating construction equipment. This shall not include the flagging or marking of all protected trees adjacent to right-of-way within approved development during the construction of the roadway. Trees that are not flagged or marked shall be saved and protected by fencing in accordance with the requirements hereinafter.

b. Protective Fencing: In those situations where a protected tree is so close to the construction area that construction equipment might infringe on the root system or is within 20 feet (20') of the construction area, a protective fencing shall be required between the outer limits of the critical root zone of the tree and the construction activity area. Four feet (4') high protective fencing shall be supported at a maximum of 10-foot intervals by approved methods. All protective fencing shall be in place prior to commencement of any site work and remain in place until all work has been completed on the property.

c. Bark Protection: In situations where a protected tree remains in the immediate area of intended construction, the tree shall be protected by enclosing the entire circumference of the tree with 2" x 4" lumber encircled with wire or other means that do not damage the tree. The intent is to protect the bark of the tree against incidental contact by construction equipment.

5. Permanent Construction Methods.

a. Boring: Where it is not possible to trench around the critical root zone of a protected tree, boring of utilities under the protected tree shall be required. The length of the bore shall at least be the width of the critical root zone and the depth of the bore shall be at least twenty-four (24").

b. Grade Change: In situations where the grade change within the critical root zone of a protected tree exceeds the limits noted in Section 10.02.137.I.2.e herein, the procedures noted in the City standard detail sheet shall be required.

c. Trenching: All trenching shall be designed to avoid trenching across the critical root zone of any protected tree. Although this section is not intended to prohibit the placement of underground utilities, the placement of these utilities is encouraged to be located outside of the critical root zone of protected trees. Irrigation system trenching shall be placed outside of the critical root zone with only the minimum required single head supply line allowed within that area placed directly to the tree trunk.

d. Root Pruning: All roots 2" or larger in diameter which are exposed as a result of trenching or other excavation shall be cut off square with a sharp medium tooth saw and covered with pruning compound within 2 hours of initial exposure.

J. Tree Pruning Restrictions.

1. General: No protected tree should be pruned in a manner which significantly disfigures the tree without proper cause or in a manner which would reasonably lead to the death of the tree.

2. Allowed Pruning: The City Manager may approve pruning of a protected tree in cases where protected trees must be strategically pruned to allow construction or demolition of a structure. When allowed, all pruning shall be in accordance with **Section 10.02.137.I.3** above, approved Arboricultural techniques, and the tree pruning recommendations on file in the City Secretary's Office for public inspection. This subsection is not intended to require a tree removal permit for reasonable pruning performed or contracted to be performed by the owner of the tree when unrelated to construction activity.

K. Tree Planting Restrictions.

1. Overhead Lines: Any required replacement trees shall not be planted within an area such that the mature canopy of the tree will be within ten feet (10') of overhead utility lines.

2. Proximity to Utilities: Any required replacement trees or street trees shall not be planted within five feet (5') of electrical facilities (underground or surface), public utility lines, including water lines, sewer lines, transmission lines or other utilities. No trees shall be planted within ten feet (10') of a fire hydrant. Shrubs will be permitted outside of the minimum clearance of surface electrical facilities established by the franchise electrical company.

3. Street Corners: No street tree shall be planted closer than twenty-five feet (25') of any street corner, measured from the point of nearest intersecting curbs or curb lines.

L. Tree Lists. The City Manager is authorized to establish and maintain the list of Quality Trees, Marginal Trees, and Understory Trees as part of Section 10.02.137. The list will be in the City Secretary's Office for public inspection.

M. Priority of Interpretation. If there is a conflict between Section 10.02.137 and the Zoning Ordinance, then this section controls.

SECTION 4. CUMULATIVE REPEALER/SAVINGS CLAUSE

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided, however, that any complaint, action, claim, or lawsuit, which has been initiated or has arisen under or pursuant to such Ordinance on the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose, the Ordinance shall remain in full force and effect.

SECTION 5. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

**SECTION 6.
PENALTY.**

Any person, firm, or corporation violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$500.00. Each continuing day's violation under this Ordinance shall constitute a separate offense.

**SECTION 7.
ENGROSSMENT AND ENROLLMENT AND
INCORPORATION INTO THE CODE OF ORDINANCES**

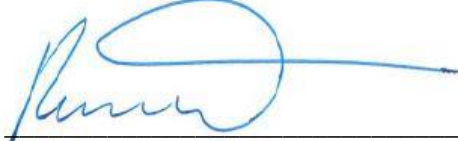
The City Secretary is hereby directed to engross and enroll this Ordinance by copying the exact Caption and Effective Date clause in the minutes of the City Council and by filing this Ordinance in the Ordinance records of the City. The provisions of this ordinance shall be included and incorporated in the City of Ovilla Code of Ordinances and shall be appropriately renumbered, if necessary, to conform to the uniform numbering system of the Code.

**SECTION 8.
EFFECTIVE DATE**

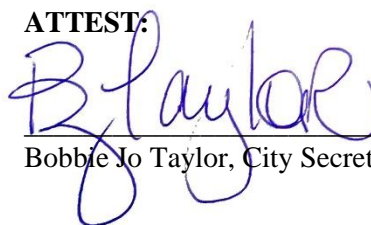
This Ordinance shall take effect upon its passage and publication as required by law. The City Secretary is directed to publish the caption of this Ordinance as required by law.

PASSED AND APPROVED by the City Council of the City of Ovilla, Texas, this the 12th day of February 2024.

CITY OF OVILLA

By: 
Richard Dormier, Mayor

ATTEST:


Bobbie Jo Taylor, City Secretary

