

ORDINANCE NO. 3302

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AMENDING THE SCOTTSDALE REVISED CODE, CHAPTER 46 (PLANNING AND DEVELOPMENT), ARTICLE 5 (PROTECTION OF NATIVE PLANTS) BY AND FOR THE PURPOSE OF PROTECTING NATIVE PLANTS, AS PROVIDED IN CASE NO. 11-TA-99, AND PROVIDING PENALITIES.

WHEREAS, the City of Scottsdale promotes and encourages the protection of certain native plant species; and

WHEREAS, it is necessary to update provisions pertaining to protection of native plants in the Scottsdale Revised Code;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Scottsdale, Arizona, as follows:

Section 1. That the Scottsdale Revised Code is amended by amending Chapter 46, Planning and Development, Article 5, Protection of Native Plants, Section 46-105, Definitions, to read as follows:

Sec. 46-105. Definitions.

In this article, unless the context otherwise requires:

Destroy means to kill, or cause the death of any protected native plant by any means.

Mutilate means to deface, maim, damage or disfigure any protected native plant by shooting, chopping, pushing over, burning, cutting or any other means.

Native plant permit means a permit issued by the city pursuant to the provisions of this article for the purpose of removing from the premises, relocating on the premises, or destroying any protected native plant.

Native plant program means a development plan specifying the proposed treatment of protected native plants for which a native plant permit is required.

Protected native plant means cacti which are ~~six (6)~~ **THREE (3)** feet or greater in height and indigenous trees which are four (4) inches or greater in caliper of the following species:

TREES	
<i>Botanical Name</i>	<i>Common Name</i>
Acacia constricta	Whitethorn Acacia

Acacia greggii	Catclaw Acacia
BERBERIS HAEMATOCARPA	RED BARBERRY
Canotia holocantha	Crucifixion Thorn
Celtis reticulata PALLIDA	DESERT Hackberry
Cercidium floridum	Blue Palo Verde
Cercidium microphyllum	Foothill Palo Verde
Chilopsis linearis	Desert Willow
Junliperous species	Juniper
Olneya tesota	Ironwood
Populus fremontii	Cottonwood
Prosopis species	Mesquite
Quercus species	Scrub Oak
Rhus ovata	Sugar Sumac
Vauquelinea Californica	Arizona Rosewood
CACTI	
<i>Botanical Name</i>	<i>Common Name</i>
Carnegiea gigantea	Saguaro
Ferocactus species	Barrel
Fouquieria splendens	Ocotillo
PENIOCEREUS GREGGII	DESERT NIGHT-BLOOMING CEREUS
Yucca elata	Soaptree Yucca

Relocate shall mean to transplant a protected native plant to another location on the premises.

Remove shall mean to transport a protected native plant from the premises on which it has been growing.

Unsalvageable plant means a protected native plant which cannot be successfully relocated due to any of the following:

- (1) Deteriorated health from disease, infestation, or natural causes
- (2) Physical constraints related to plant location, orientation, or general condition which obstruct and/or prevent the application of approved relocation techniques.

Section 2. That the Scottsdale Revised Code is amended by amending Chapter 46, Planning and Development, Article 5, Protection of Native Plants, Section 46-111, Permit approval -- Timing, to read as follows:

Sec. 46-111. Permit approval--Timing.

~~In the event that an application for a native plant permit~~ **NO NATIVE PLANT PERMIT SHALL BE ISSUED UNLESS AN APPLICATION** is submitted in conjunction with a **AN EXISTING OR** proposed development which requires development review board approval, city council approval, board of adjustment approval, or approval of a plat as determined by the city manager or designee;. **FOR PROPOSED DEVELOPMENT**, the native plant permit shall not be issued until the necessary development approvals have been secured.

Section 3. That the Scottsdale Revised Code is amended by amending Chapter 46, Planning and Development, Article 5, Protection of Native Plants, Section 46-114, Permit fees, to read as follows:

Sec. 46-114. Permit fees.

Upon application for a native plant permit, a fee shall be paid to the city in the amount of twenty-five dollars (\$25.00), plus an additional one dollar (\$1.00) for each protected native plant to be destroyed or relocated as specified in the native plant program, ~~up to a maximum fee of one thousand dollars (\$1,000.00).~~ The fee for modification of an approved native plant permit shall be twenty-five dollars (\$25.00), plus one dollar (\$1.00) per plant subject to the modification, ~~up to a maximum of two hundred fifty dollars (\$250.00).~~ The fee for modification of the native plant relocation methodology of the approved native plant program as required for permit approval shall be twenty-five dollars (\$25.00).

Section 4. That the Scottsdale Revised Code is amended by amending Chapter 46, Planning and Development, Article 5, Protection of Native Plants, Section 46-120, Penalties, to read as follows:

Sec. 46-120. Penalties.

(a) *Generally.* Any violation of this article is a Class 1 misdemeanor which, upon conviction, may be punishable by a fine not exceeding two thousand five hundred dollars (\$2,500.00), or by imprisonment for a term not to exceed six (6) months, or by both such fine and imprisonment, at the discretion of the city magistrate. Each day this violation continues shall constitute a separate offense.

(b) A native plant permit shall not be issued after a violation resulting in destruction, removal, or relocation of protected native plants has been discovered until such time as a restoration program has been approved and the property has been restored with protected native plants of equivalent type, size, density, distribution, and condition as existed on the property prior to the violation. A program for restoration of the site shall be approved by the ~~development review board~~ **CITY MANAGER OR DESIGNEE** and shall be based on the expected type, size, density, distribution, and condition of protected native plants within the vegetation communities in which the violation occurred. **APPEAL OF A DECISION MADE BY THE CITY MANAGER OR DESIGNEE REGARDING A RESTORATION PROGRAM SHALL BE HEARD BY THE DEVELOPMENT REVIEW BOARD.** Appeal of a decision made by the development review board regarding a restoration program may be made to the city council in accordance with the rules and procedures established in section 1.400 of the zoning ordinance.

(c) *Waiver of restoration requirement generally.* The city manager or designee may waive the restoration requirement in subsection (b) above when it will further the purpose of this article and be in the best interest of the community, and when it is demonstrated that development of the property is imminent as determined by the following criteria:

- (1) A development proposal is submitted for approval by development review board within ten (10) days of the notice of violation.
- (2) The general plan designation of the property is consistent with the proposed development.
- (3) The zoning of the property is consistent with the proposed development.
- (4) Infrastructure improvements are in place which can support the proposed development.

(d) *Granting of waiver; cost of replacing and maintaining native plant materials.*

- (1) If a waiver is granted, a sum of money shall be paid to the city for the purpose of replacing and maintaining native plant materials. The development review board shall determine the sum of money to be paid to the city from the following schedule:
 - a. *Protected native trees.* Three hundred dollars (\$300.00) per caliper inch (measured one (1) foot above ground level).
 - b. *Protected native cacti.* Two hundred dollars (\$200.00) per foot.
 - c. *Maximum per plant.* Ten thousand dollars (\$10,000.00).
- (2) Determination of the sum of money to be paid to the city pursuant to this section shall be based upon the type, size, density, distribution, and condition of plant materials that existed on the property prior to the violation, or upon inspection of the remains of plant materials or other physical evidence as may be available. Appeal of a decision of the development review board regarding this determination may be made to city council in accordance with the rules and procedures established in section 1.400 of the zoning ordinance.
- (3) The sum of money required by this subsection shall be used to replace removed or damaged plant materials whose retention is required by a native plant program approved in conjunction with the development proposal specified in subsection (c)(1) of this section and to maintain replacement plant materials for a period of three (3) years. Additionally, fifteen (15) percent of the total amount payable shall be kept by the city as payment for the enforcement of these regulations and administration of the agreement specified in section 46-120(c)(3).
- (4) Prior to issuance of any permits for construction on or development of the property, the property owner shall enter into an agreement with a landscape installation and maintenance service and the city to ensure replacement and three (3) years' maintenance of the replacement plant materials, to provide disbursement of the sum of money for the purposes of replacement and to pay administrative costs. The sum of money paid to the city in excess of the amounts specified in the agreement shall be refunded.

Section 5. The amendment of the Scottsdale Revised Code does not affect the rights and duties that matured or penalties that were incurred and proceedings that were begun before the effective date of this amendment.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 21st day of March, 2000.

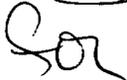
ATTEST:

CITY OF SCOTTSDALE, an Arizona
municipal corporation

By: 
Sonia Robertson
City Clerk

By: 
Sam Kathryn Campana
Mayor

APPROVED AS TO FORM:


By:  David A. Pennartz
City Attorney