

ORDINANCE NUMBER 745

AN ORDINANCE AMENDING CHAPTER 7 OFFENSES AND NUISANCE OF THE CODE OF ORDINANCES OF THE CITY OF HILSHIRE VILLAGE, TEXAS, BY REPLACING ARTICLE NO. 7.700 IN ITS ENTIRETY, AND DELETING ARTICLE 3.700, TREE PROTECTION, OF CHAPTER 3, BUILDING AND CONSTRUCTION IN ITS ENTIRETY. ESTABLISHING RULES AND REGULATIONS CONCERNING TREE PRESERVATION; PROVIDING A PENALTY IN AN AMOUNT PROVIDED FOR IN SECTION 1.106 OF THE CITY'S CODE OF ORDINANCES FOR ANY VIOLATION OF ANY PROVISION OF THIS ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HILSHIRE VILLAGE, TEXAS:

Section 1. The Code of Ordinances of the City of Hilshire Village, Texas (the "Code"), is hereby amended by replacing Article 7.700 under Chapter 7 Offenses and Nuisance in its entirety, to provide as follows:

ARTICLE 7.700. - TREE PRESERVATION

Sec. 7.701 – Purpose and Definitions

1. The purpose of this article is to preserve the Tree canopy and continue the wooded character that has been the hallmark of the city since its founding while protecting owners' rights to utilize and enjoy their property by:
 - a. establishing minimum Tree requirements,
 - b. requiring careful site planning and the protection of Trees,
 - c. controlling unnecessary Tree removal,
 - d. requiring Tree replacement, and
 - e. prohibiting indiscriminate cutting or clearing of Trees.
2. Properties used for commercial purposes are exempt from Section 7.701 1(1a) and 1(1b) of this article.

Sec. 7.702 – Definitions

As used in this article, the following words, terms, and phrases shall have the meanings ascribed to them in this section:

Approved Tree List shall mean a list approved and maintained by the city that lists species of Trees that are approved for meeting the minimum tree requirement described in this article.

Building shall mean any structure with a roof and enclosing walls that is used or intended for supporting or sheltering any use or occupancy.

Circumference or Diameter shall mean circumference or diameter measured at a point on a Tree four and one-half feet (4½') above the surrounding ground level. The equivalent Circumference or Diameter

may be used for measurement purposes. Tree Diameter in inches x 3.14 = Tree Circumference in inches. (For example, 6" Diameter X 3.14 = 18.84" Circumference). To measure a Tree that forks or has two boles or stems at or below four and one-half feet (4½'), only the Circumference or Diameter of the larger bole or stem shall be measured.

Critical Root Zone shall mean the area of a Tree that is within a circle centered on the trunk location, with the circle's Diameter being one-half of the sum of the longest and shortest drip line Diameters.

Subject Site shall mean any particular lot, tract, or parcel of land that is subject to the building permit process or otherwise invokes the regulations established in this article.

Tree shall mean a woody, perennial plant typically having a single stem or trunk, growing to a considerable height and bearing lateral branches at some distance from the ground.

Tree Removal Permit shall mean a permit issued by the city for the removal of a Tree.

Sec. 7.703 – Minimum Tree Requirement

- (1) Each lot shall have one (1) Tree that is eight inches (8") or greater in Diameter for every 2,000 square feet of lot area (excluding any land in the Harris County Flood Control District or utility easement), rounded to the nearest whole number (see Table 1). Trees in the Harris County Flood Control District or in a utility easement will not be counted.
- (2) If a lot has less than the number of Trees described in the preceding subsection, the owner shall keep the number of Trees larger than three inches (3") in Diameter, counting from the largest Diameter to the smallest Diameter, that are on the lot (excluding any land in the Harris County Flood Control District or a utility easement) at the time a Tree Removal Permit is sought or the provisions of this article are otherwise invoked.
- (3) A lot owner who is applying for a permit issued under the building permit process of the City's Code of Ordinances for the demolition of, construction of, or addition to any Building, or installation of a swimming pool shall, regardless of the number or size of the Trees existing on a lot prior to issuance of a permit, plant such additional Trees as may be necessary to meet the minimum tree requirement described in subsection (1) above if the owner is:
 - (a) constructing a new or replacement Building,
 - (b) constructing an addition[s] or extension[s] to an existing Building that increases the square footage of the Building by 40% or more, or
 - (c) installing a swimming pool.

Table 1 - Number of Trees for Representative Lot Sizes

| Lot Size (sq ft) | # of Trees |
|------------------|------------|
| 24,000 | 12 |
| 22,000 | 11 |
| 20,000 | 10 |
| 18,000 | 9 |
| 16,000 | 8 |
| 14,000 | 7 |
| 12,000 | 6 |
| 10,000 | 5 |
| 8,000 | 4 |

Sec. 7.704 – Preservation and Protection of Trees

- (1) It is unlawful to remove any Tree that is eight inches (8") in Diameter or greater without first obtaining a tree removal permit from the city for each Tree to be removed.
- (2) It is unlawful to remove a Tree that is less than eight inches (8") in Diameter without first obtaining a tree removal permit from the city if:
 - (a) such Tree is required to meet the minimum tree requirement for the lot as described in section 7.703(2), or
 - (b) such Tree was planted as a replacement for a previously removed Tree.
- (3) It is unlawful to intentionally cause serious damage or death to any Tree that is eight inches (8") in Diameter or greater. Intentionally severing the main trunk or large branches or large roots, girding, poisoning, carving, mutilating, touching with live wires, piercing with nails or spikes, crushing or exposing the roots, or digging or drilling any hole or trench larger than three cubic feet (3 ft³) within the Critical Root Zone, unless no other suitable location is possible, may be considered acts intended to cause serious damage or death to the Tree.
- (4) Before beginning demolition or construction, appropriate protection for all Trees shall be in place. Appropriate protection shall mean, at a minimum, a fence four feet (4') in height and composed of a material which is strong enough to prevent vehicles, materials, debris, dirt and other demolition or construction refuse from piling up within the Critical Root Zone. Where possible, the fence shall be a minimum of six feet (6') away from the base of the Tree at all points to prevent damage to the Tree. If the location of a tree is less than six feet (6') from the foundation of the building or the property line, the protective fencing shall be located as far as possible from the base of the tree.

- (a) The applicant's lot will, after removal of the Tree, satisfy the minimum Tree requirement as described in section 7.703(1),
 - (b) The Tree is diseased, dying or dead,
 - (c) Construction is planned in the area where the Tree stands,
 - (d) The Tree creates a hazard that is or is likely to cause damage to property or danger to the public health, safety, or welfare, or
 - (e) Good arbor management practices indicate removal will be beneficial to surrounding Trees.
- (2) If the previous subsection is satisfied, the city will issue a Tree Removal Permit if a lot owner completes the following steps:
- (a) Executes the city's Tree Removal Permit application, which includes a certification that, upon removal of such Tree, either the lot will continue to satisfy the minimum tree requirement as described in section 7.703(1) or the lot owner will comply with Section 7.706 below regarding Tree replacement. If concurrent Tree Removal Permits are sought, the minimum tree requirement must be satisfied after all Trees are removed.
 - (b) Pays the application fee as adopted by city council. The application fee shall be waived by the city if the applicant shows that the Tree to be removed is diseased, dying or dead or if, after removal of a Tree, the lot has more than the minimum Tree requirement in section 7.703(1).
- (3) The city shall have a reasonable amount of time, but not less than 3 business days, to review the application. The city may require an owner to provide certification by an arborist that the criteria in subsection (1)(b), (d) or (e) exist.
- (4) Removal of a Tree without a Tree Removal Permit shall not constitute a violation of this article if immediate removal is necessary to protect against a serious and imminent risk to health, safety, or property as a result of an emergency and, because of such emergency, the lot owner could not obtain the Tree Removal Permit, provided that, as soon as reasonably possible after such Tree removal, the lot owner submits a Tree Removal Permit application without the fee and demonstrates that such emergency existed.
- (5) The city may require a lot owner to remove any Tree that is damaged, dead or dying, and that the city deems a danger to person or property. The owner shall have fourteen days (14) after receipt of the notice to remove the Tree.
- (6) Removal of a Tree shall be performed by the lot owner or by a reputable Tree removal company, and the owner shall ensure that the Tree removal work is adequately covered by bond or insurance.

Sec. 7.706 – Replacement of Trees

- (1) If, after loss of or removal of a Tree, a lot does not or will not satisfy the minimum tree requirement as described in section 7.703(1) or (2), as applicable, then the lot owner shall, within 120 days after loss of or removal of such Tree, properly plant a replacement tree from the Approved Tree List. The replacement Tree shall be at least three inches (3") in Diameter measured at six inches (6") above the grade for each lost or removed Tree. A tree intended as a replacement tree shall not be planted in the Harris County Flood Control District or in a utility easement, but nothing in this article is otherwise intended to prohibit the planting of trees in the Harris County Flood Control District or a utility easement.
- (2) With the approval of the city's arborist, a lot owner may plant additional species that are not on, but are similar in size to those that are on, the Approved Tree List. If the city's arborist does not approve, the owner may appeal by submitting a written request to city council. Property owners are encouraged (but not required) to plant Trees native to the Texas Gulf Coast.
- (3) In situations of financial hardship, the city will have flexibility in obtaining outside help with re-forestation.

Sec. 7.707 - Tree Survey

- (1) Every permit issued under the building permit process of the City's Code of Ordinances for the demolition of, construction of, or addition to any Building, or the installation of a swimming pool shall include a Tree survey.

Permit applicants must obtain and complete the proper forms, available in the city office, to show compliance with this article.

- (2) The permit holder will make every effort to maintain the distribution of existing Trees. However, if the design, layout, plans, or construction of the proposed Building cannot avoid the removal of any Tree that is eight inches (8") in Diameter (25.12" in Circumference) or larger, then the permit holder shall be required to replace each removed Tree with a Tree from the Approved Tree List. Each replacement Tree shall have a minimum caliper of three inches (3") in Diameter (9.42" in Circumference).
- (3) The Tree survey shall be prepared by a person with expertise to prepare such a document, such as an architect, engineer, arborist, or surveyor.
- (4) The Tree survey shall accurately reflect, at a minimum, the following information:
 - (a) The actual location (i.e., trunk location), Diameter, and type of each Tree on the Subject Site which is eight inches (8") in Diameter (25.12" in Circumference) or larger,
 - (b) Building or structure outlines, parking areas and other paved surfaces, fences, utilities, and other improvements existing or to be constructed,
 - (c) The location of Tree protection fences,
 - (d) A scale, north arrow, name, address, phone number and profession or occupation of the person who prepared it, and the name of the permit applicant, and
 - (e) Identification of the real estate development and a description of the Subject Site and its location.
 - (f) The location and square footage of utility and flood control easements, and the square footage of the lot excluding utility and flood control easement square footage.

Sec. 7.708 - Final Inspection and Issuance of Certificate of Occupancy

At final inspection under every building permit that includes a Tree Survey, the city's inspector shall inspect and confirm compliance with the Tree survey and planting of required Trees, if any. No certificate of occupancy shall be issued until the minimum Tree requirement has been met but, if the certificate of occupancy is to be issued between May and September and the owner has agreed to meet the Minimum Tree Requirement, a provisional certificate of occupancy may be issued until such time as the owner has complied.

Sec. 7.709 - Destruction of or Damage to Trees on Public Property

In addition to the violation of any criminal law dealing with destruction of public property, it shall be unlawful to remove, destroy, kill, or damage any Tree located on any public property in the city except when necessary in furtherance of the public health, safety or welfare. This section shall not prevent the city or any public utility from performing necessary maintenance or repair activities that may affect Trees located within easements or on public property.

Sec. 7.710 - Exemptions from Requirements of this Article

- (1) The provisions of this article shall not apply to Trees removed or trimmed within an easement for public or private utilities by the easement's owner, or the owner's employee or authorized contractor, or by the utility provider or its authorized contractor, if the trimming or removal of such Trees is required to properly use or maintain the easement. This article shall also not apply to Trees removed or trimmed by the city or its authorized representative or by the utility provider or its authorized contractor on any public property or within any public right-of-way, including, but not limited to, drainage easements and roadway easements.
- (2) If this article would require a Tree to be planted from May through September in any year, the planting may be delayed until October of that same year.

Sec. 7.711 - Enforcement

- (1) The city has the authority and right to inspect any property to ensure compliance with this ordinance.
- (2) The city may require any lot owner to prove that the owner is in compliance with this ordinance.

- (3) The city may withhold, revoke, or suspend any Tree Removal Permit or building permit if any condition or requirement of this article or such permit is not fulfilled.
- (4) The city may order an immediate stop to the removal of any Tree, any activity that is likely to cause serious damage or death to any Tree, or any demolition or construction of a Building, if such activity is being done in violation of this ordinance.
- (5) The city has the authority to hire a tree inspector for advice in conjunction with enforcing this ordinance.
- (6) Anyone that intentionally, knowingly, recklessly, or with criminal negligence violates any of the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount as provided for in the general penalty provision in Chapter 1, Section 1.106, of the City's Code of Ordinances. Each day during which such violation shall exist or occur shall constitute a separate offense. The owner of any property where any violation of this article occurs and any agent, contractor, builder, architect, individual or entity that assists in the commission of such offense shall be guilty of a separate offense and, upon conviction thereof, shall be punished as above provided.

Sec. 7.712 - Appeal

Anyone whose request for a building permit, Tree Removal Permit, or certificate of occupancy has been denied due to the interpretation or application of this article may appeal that decision to the city council by filing a written notice of appeal with the city. The city council shall provide the applicant an opportunity to present evidence and arguments demonstrating that the applicant has complied with this article and is entitled to a permit or certificate of occupancy, and that the city erred in refusing to issue the requested permit or certificate of occupancy. If, at the conclusion of the hearing, a majority of the city council determines that the applicant is entitled to a permit or certificate of occupancy, the city shall issue one. Otherwise, the city's denial shall be affirmed.

Sec. 7.713 – Approved Tree List

| | Common Name | Scientific Name | Growth | Characteristics |
|----|--------------------------------------|---|----------|---|
| 1 | American Elm (White Elm) | <i>Ulmus americana</i> | Rapid | Texas native, reliable fall color, seeds or fruit eaten by wildlife. Deep green leaves turn bright yellow in fall. Fast-growing, vase-shaped shade tree that tolerates a wide range of conditions. Dutch elm disease not too bad in Texas; extensive, shallow root system. |
| 2 | Bald Cypress | <i>Taxodium distichum</i> | Moderate | Deciduous conifer with feather-like leaves, round seed balls, and fibrous bark. Adapted to many soil and moisture conditions. Grows well in wet areas. Woody 'knees' develop on wet sites. (Has very aggressive roots – do not plant near house or sewer lines) |
| 3 | Black Walnut | <i>Juglans nigra</i> | Moderate | Texas native, seeds or fruit eaten by wildlife. Distinctive shade tree for open spaces. Fruits can be extremely messy. Webworm can be a problem. Leaves drop early in the fall. |
| 4 | Blackgum (Black Tupelo) | <i>Nyssa sylvatica</i> | Moderate | Texas native, reliable fall color, attractive seeds or fruit, seeds or fruit eaten by wildlife. Prefers acid soils. Bright, shiny foliage turns red and purple early in the fall. Shallow-rooted. |
| 5 | Bur Oak (Mossycup Oak) | <i>Quercus macrocarpa</i> | Slow | Texas native, reliable fall color, attractive seeds or fruit, seeds or fruit eaten by wildlife. Unique leaf shape; large acorn is enclosed in a fuzzy cap. Excellent, drought-tolerant native tree, with rough texture and large acorn. |
| 6 | Bitternut hickory (swamp hickory) | <i>Carya cordiformis</i> | Moderate | Large pecan hickory with commercial stands located mostly north of the other pecan hickories. |
| 7 | Carolina Basswood (Linden) | <i>Tilia caroliniana</i> | Rapid | Texas native, showy or fragrant flower, attractive seeds or fruit. Large, oval shade tree with interesting winged fruits. Flowers are a favorite of honeybees. Needs plenty of room. |
| 8 | Cedar Elm | <i>Ulmus crassifolia</i> | Moderate | Texas native, reliable fall color. Fine textured leaves turn yellow in fall. Tough, drought-tolerant shade tree, well-adapted to a variety of conditions. |
| 9 | Cherrybark Oak | <i>Quercus falcata var. pagodifolia</i> | Moderate | Texas native, reliable fall color, seeds or fruit eaten by wildlife. Excellent native shade tree for a variety of planting situations. |
| 10 | Chinkapin Oak | <i>Quercus muehlenbergii</i> | Moderate | It is also planted widely as a shade tree suitable for limestone soils. Occurs from northeast Texas to Central Texas and south to the Guadalupe River, and also in the mountains of West Texas, growing on mostly limestone soils, especially at the base of bluffs and along stream courses. |
| 11 | Green Ash | <i>Fraxinus pennsylvanica</i> | Rapid | Texas native, reliable fall color. Tolerates a wide range of soil conditions. Needs pruning to develop strong branch structure. |

| | Common Name | Scientific Name | Growth | Characteristics |
|----|--|-------------------------------------|---------------|---|
| 12 | Laurel Oak (swamp laurel oak, diamond- leaf oak, water oak, obtusa oak) | <i>Quercus laurifolia</i> | Moderate | native to the southeastern and south-central the United States, from coastal Virginia to central Florida and west to southeast Texas |
| 13 | Live Oak (Encino) | <i>Quercus virginiana</i> | Rapid | Texas native, seeds or fruit eaten by wildlife. Glossy, deep green leaves remain all winter; long-lived shade tree. Allow plenty of room; can develop surface roots. |
| 14 | Loblolly Pine | <i>Pinus taeda</i> | Rapid | Texas native. Medium-length green needles and large, brown cones in the fall. Tolerates a wide range of site conditions, but prefers good drainage. |
| 15 | Montezuma Cypress (Bald Cypress) | <i>Taxodium mucronatum</i> | Rapid | Texas native, attractive seeds or fruit. Delicate, feathery foliage casts a light shade. Bark is reddish and shredding. |
| 16 | Nuttall Oak | <i>Quercus nuttallii</i> | Moderate | Grows well on heavy, poorly drained, clay soils deposited by rivers. |
| 17 | Overcup Oak | <i>Quercus lyrata</i> | Moderate | Texas native, seeds or fruit eaten by wildlife. Small acorns are an important wildlife food source. Tolerates poor drainage and heavy clay soils. (slow to leaf out in the spring) |
| 18 | Pecan | <i>Carya illinoensis</i> | Moderate | Texas native, seeds or fruit eaten by wildlife. Nuts are an important wildlife food. Mature crown is open and airy. State tree of Texas. Plant with plenty of room. (slow to leaf out in the spring. Fruit will stain sidewalk) |
| 19 | Red Maple | <i>Acer rubrum</i> | Rapid | Texas native, reliable fall color, attractive seeds or fruit. Flowers and winged fruits in spring are red. Brilliant fall color, yellow to red. (Bark is easily injured by weed eater) |
| 20 | River Birch | <i>Betula nigra</i> | Rapid | Texas native. Attractive pinkish peeling bark. Works well as multiple trunk specimen. Prefers moist sites like stream banks. Susceptible to ice damage. (Needs high nitrogen to stay healthy) |
| 21 | Shumard Oak | <i>Quercus shumardii</i> | Rapid | Texas native, reliable fall color, seeds or fruit eaten by wildlife. Young trees have "candelabra" shape; fall color is orange to deep red. Widely available; prefers well-drained soils. Seed source of trees may determine success. |
| 22 | Hybrid Magnolia | <i>Little Gem or D.D. Blanchard</i> | Moderate | Grows better than the Southern Magnolia |
| 23 | Southern Magnolia | <i>Magnolia grandiflora</i> | Moderate | Texas native, showy or fragrant flower, attractive seeds or fruit, seeds or fruit eaten by wildlife. Large, white flowers and glossy, deep green leaves. Plant in well drained soil and let limbs grow to the ground. Some cultivars tolerate alkalinity. |

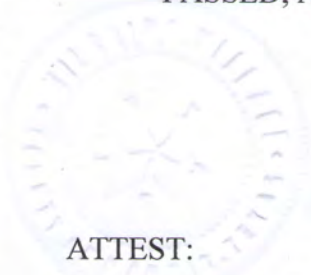
| | Common Name | Scientific Name | Growth | Characteristics |
|----|-------------------------------|---|---------------|---|
| 24 | Swamp Chestnut Oak (Cow Oak) | <i>Quercus michauxii</i> | Moderate | Texas native, reliable fall color, seeds or fruit eaten by wildlife. Large leaves turn deep red in fall; large acorns are popular with wildlife. Tolerates seasonal poor drainage, but prefers loamy soils. |
| 25 | Sweetgum | <i>Liquidambar styraciflua</i> | Rapid | Texas native, reliable fall color, attractive seeds or fruit. Distinctive star-shaped leaves and round, spiky seed balls. Rapid, upright growth. Fall color ranges from yellow to purple. |
| 26 | Sycamore (American Planetree) | <i>Platanus occidentalis</i> | Rapid | Texas native, attractive seeds or fruit. Old bark flakes off to reveal pale new bark. Round fruit is a mass of small seeds. Provide plenty of room and a moist site. (Mexican Sycamore better leaves) |
| 27 | Thornless Honeylocust | <i>Gleditsia triacanthos var. inermis</i> | Rapid | Texas native, reliable fall color, attractive seeds or fruit, seeds or fruit eaten by wildlife. Wildlife eat seed pods. |
| 28 | Water Oak (Pin Oak) | <i>Quercus nigra</i> | Rapid | Texas native, seeds or fruit eaten by wildlife. Dark green bell-shaped leaves form a dense canopy. This common native does best on well drained, moist sites. (after 60 years prone to insects and disease) |
| 29 | White Ash | <i>Fraxinus americana</i> | Rapid | Texas native, reliable fall color. Fall color is yellow, orange, and purple. Male trees are seedless. A relatively clean shade tree. Prefers loamy, well-drained soils. |
| 30 | White Oak | <i>Quercus alba</i> | Slow | Texas native, reliable fall color, seeds or fruit eaten by wildlife. Excellent long-lived shade tree. Wildlife eat acorns. Fall color is red. Works best on well-drained, loamy soils. |
| 31 | Willow Oak | <i>Quercus phellos</i> | Rapid | Texas native, reliable fall color, seeds or fruit eaten by wildlife. Narrow, light green leaves turn yellow-brown in the fall. Fine twigs and strong branch structure. Prefers moist conditions. |

Section 2. Any person who shall intentionally, knowingly, recklessly, or with Criminal negligence violates any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

Section 3. To the extent there may exist any conflict or inconsistency between the terms of any two ordinances of the City, the more restrictive of the two documents shall prevail and shall be interpreted and enforced according to its own terms.

Section 4. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Hilshire Village, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED this 19 day of DECEMBER 2017


Russell Herron
Russell Herron, Mayor

ATTEST:

Susan Blevins
Susan Blevins, City Secretary