

CITY OF WEST LAKE HILLS

AMENDMENT NO. 171 TO THE WEST LAKE HILLS CODE

TREE ORDINANCE

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE III, DIVISIONS 1 & 8, OF THE WEST LAKE HILLS CODE OF ORDINANCES; MODIFYING ENVIRONMENTAL REGULATIONS FOR ALL DISTRICTS, INCLUDING TREE REPLACEMENT AND LANDSCAPE PRESERVATION; PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; ENACTMENT; REPEALER; SEVERABILITY; EFFECTIVE DATE; CODIFICATION; PROPER NOTICE & HEARING; POPULAR NAME; PURPOSE; DEFINITIONS; SCOPE; AND ENFORCEMENT

WHEREAS, the City Council of the City of West Lake Hills (“City Council”) seeks to promote and enhance a superior community environment, to maintain the rural character, to maintain air quality and ecologic balance, to maintain property values, and to ensure the maximum preservation of the valuable natural features and scenic rural/wooded character as contemplated in the master plan of the city by establishing minimum standards and requirements relating to the protection of trees and natural vegetation; and

WHEREAS, the City Council strives to ensure, insofar as practical in permitting development of land and minimizing fire hazard, the maximum retention of natural vegetation to aid in protection against erosion of top soil, preservation of natural scenic qualities and healthy ecosystems of the city through good conservation practices, protection from flooding or landslides, noise absorption, maintenance of privacy, and in providing habitat, shade and color; and

WHEREAS, the City Council wants to protect mature trees and significant stands of trees in order to retain as many as possible consistent with the purposes set forth herein and also consistent with reasonable economic enjoyment of private property. In this context, privately owned trees have an impact on the quality of life for the entire community; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Section Chapter 211 of the Texas Local Government Code, the City is empowered to enact Zoning regulations, including those involving tree preservation and landscaping; and

WHEREAS, pursuant to Chapter 214 of the Texas Local Government Code, the City is authorized to regulate building in the city limits; and

WHEREAS, pursuant to Chapter 217 of the Texas Local Government Code, the City is allowed to define and prevent nuisances in the city limits, and hereby declares the unregulated deforestation of property in the city limits to constitute a public nuisance; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City of West Lake Hills to adopt the following rules.

NOW, THEREFORE, BE IT ORDAINED by the City Council of West Lake Hills:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. ENACTMENT

Chapter 14, Article III, Divisions 1 and 8 of the City of West Lake Hills Code of Ordinances is hereby established so to read in accordance with *Attachment A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as stated on *Attachment A*.

3. REPEALER

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this, the 10th day of February 2010, by a vote of 4 (*ayes*) to 0 (*nays*) to 0 (*abstentions*) of the City Council of West Lake Hills, Texas.

CITY OF WEST LAKE HILLS:

by: _____
Mayor Dave Claunch

ATTEST:

Janet Rogers, City Secretary

APPROVED AS TO FORM:
Alan J. Bojorquez, City Attorney

City of West Lake Hills

CODE OF ORDINANCES

CHAPTER 14: BUILDINGS AND BUILDING REGULATIONS

ARTICLE III. CONSTRUCTION CODE

DIVISION 8. GENERALLY

Sect. 14.66

~~*Fire safety buffer zone* means an area of land up to 30 feet from the perimeter of habitable structures for fire prevention purposes. This zone may be expanded, upon approval of the city staff, to include an area up to 100 feet from the perimeter of habitable structures for those lots having downslopes in excess of 25 percent below the habitable structure.~~

~~*Site clearance* means any clearing of vegetative cover except common household gardening, pruning and ground care.~~

CODE OF ORDINANCES

CHAPTER 14: BUILDINGS AND BUILDING REGULATIONS

ARTICLE III. CONSTRUCTION CODE

DIVISION 8. ENVIRONMENTAL REGULATIONS FOR ALL DISTRICTS

Sec. 14-315. Purpose.

- (a) This division is adopted to promote and enhance a superior community environment, to maintain the rural character, to maintain air quality and ecologic balance, to maintain property values, and to ensure the maximum preservation of the valuable natural features and scenic rural/wooded character as contemplated in the master plan of the city by establishing minimum standards and requirements relating to the protection of trees and natural vegetation.
- (b) It is intended that this division be administered with the foregoing purposes in mind and specifically so as to:
 - (1) Ensure, insofar as practical in permitting development of land and minimizing fire hazard, the maximum retention of natural vegetation to aid in protection against erosion of top soil, preservation of natural scenic qualities and healthy ecosystems of the city through good conservation practices, protection from flooding or

landslides, noise absorption, maintenance of privacy, and in providing habitat, shade and color; and

- (2) Protect mature trees and significant stands of trees in order to retain as many as possible consistent with the purposes set forth herein and also consistent with reasonable economic enjoyment of private property. In this context, privately owned trees have an impact on the quality of life for the entire community.

Sec. 14-316. Preservation of Existing Landscape Vegetation and Natural Features.

- (a) Landscape shall be preserved in its natural state to the greatest extent possible.
- (b) Vegetative screening shall be maintained to the greatest extent possible, especially along the perimeter of all properties in order to maximize the screening and buffering of structures, driveways and parking areas from adjacent properties.
- (c) Structures, driveways, and parking areas shall be designed and located to fit harmoniously with the natural terrain and to minimize the necessity for removing trees, vegetation, and soil, or the addition of fill.
- (d) In order to reduce the risk of fire on all properties, dead trees and brush piles shall be cleared and removed in accordance with Section 14-317 below.

Sec. 14-317. Permits.

- (a) **Prohibition.** No trees or vegetation may be removed from any property except as allowed under subsections (b), (c) or (d) below. Anyone wishing to remove trees or vegetation under any other conditions must receive a variance from the city.
- (b) **No-Fee Permit.** A no-fee permit issued by a city inspector is required under the following conditions:
 - (1) When removing a single tree per 12-month period with a trunk diameter of less than 6 inches as measured at a point 54 inches above the ground.
 - (2) When pruning multiple live trees. In such cases, the removal of limbs and foliage more than feet above the ground is prohibited without the prior written approval of the city inspector. The city inspector may require additional screening to be installed along the periphery of the property to when at the city inspector's discretion the screening is necessary and reasonable to mitigate the community impact of the pruning and to maintain the rural feel of the neighborhood.

- (3) When removing “understory vegetation” which is defined as the naturally occurring brush, shrubs and small trees that typically grow under the canopy of larger trees in a wooded area.
 - (4) When removing trees or vegetation as necessary to provide locations for the new construction or expansion of structures, driveways, parking areas or a small yard not visible from streets or adjacent properties at a similar elevation consistent with a site plan and or building permit previously approved by the city. In such cases, an additional building permit is required under Chapter 14, Division 3 of the city code.
 - (5) When removing live conifers and *Juniperus* species (commonly referred to as “cedars”) of less than 12 inches in diameter as measured at a point 54 inches above the ground as a fire prevention measure in order to establish a “fire safety buffer zone” which is defined as an area of land extending up to 30 feet from the perimeter of habitable structures established for fire prevention purposes. This zone may be expanded, upon approval of the city inspector, to include an area up to 100 feet from the perimeter of habitable structures for those lots having down slopes in excess of 25% below the habitable structure. Trees removed in accordance with this Subsection (b)(5) do not require replacement.
 - (6) When removing diseased, dying or dead trees with a trunk diameter larger than 6 inches as measured at a point 54 inches above the ground under the following conditions:
 - a. The property owner must submit a request for the permit to the city inspector specifying the affected species, location and trunk diameter.
 - b. If the city inspector concurs with the property owner’s assessment of the condition of the tree, then the permit shall be issued.
 - c. If the city inspector does not concur with the property owner’s assessment of the condition of the tree, then the property owner shall have the right to submit a signed letter from a certified arborist identifying the specific disease or condition from which the tree suffers and providing a professional justification for the tree’s removal. The city administrator shall then consider the arborist’s letter and determine if a permit is warranted. If the city administrator does not approve the permit, then the applicant may appeal the decision to the city council.
 - d. In all cases, the permit for removal must be received prior to removal of the tree except as otherwise provided for in Subsection (c) below.
- (c) **Timing for No-Fee Permit.** The no-fee permit must be received prior to removal except when said trees or vegetation have naturally fallen onto a structure and/or are blocking a driveway, sidewalk or other means of egress from a property or structure. In

such cases, the permit must be secured by the end of the next business day. Any tree stump(s) must be left in place until the city inspector has come onsite to measure the stump(s) for the purpose of determining the replacement requirements (if any).

(d) **Exception.** A permit is not required to remove trees or vegetation under the following conditions:

(1) When the vegetation removal is considered common household gardening or ground care.

(2) When removing dead branches or pruning a single live tree.

(3) When removing existing piles of dead brush or dead vegetation.

(e) **Permit Application Process.** Each application for a tree removal permit shall be made by the owner of the property or by the owner's authorized agent. Applicants may contact the city by phone, U.S. mail, fax, email or in person to request an appointment with the city inspector who will conduct an onsite meeting with the applicant in order to document the size, species, location and condition of the tree(s) to be removed. If granted by the city inspector in accordance with Subsection (f) below, the applicant will receive a copy of an approved application to serve as the permit for display per Subsection (g) below and the city shall retain a copy for its records.

(f) **Issuance.** The city inspector shall issue the proper permit once the relevant criteria defined in this division have been met.

(g) **Display.** The property owner must display the permit near the mailbox or primary entrance to the property for the duration of the vegetation removal process.

(h) **Expiration.** Tree removal permits issued in accordance with this section for new construction shall expire 2 years from the date of issuance. If the associated building permit issued for the new construction expires or is revoked for any reason, then the tree removal permit shall expire as well. All other permits issued for removal in accordance with this section shall expire in 90 days.

Sec. 14-318. Tree and Vegetation Removal and Replacement.

(a) **Removal Policy.**

(1) Existing vegetation shall be left undisturbed to the maximum extent possible. In most circumstances, if a tree must be removed, it should be replaced with a non-invasive species so that the native, natural landscape of the city is preserved for future generations.

- (2) Trees less than 6 inches in diameter measured at a point 54 inches above the ground may be removed with a permit in accordance with Section 14-317(b).
- (3) Trees greater than or equal to 6 inches and less than 14 inches in diameter measured at a point 54 inches above the ground may be removed with a permit in accordance with Section 14-317(b)(4).
- (4) The removal of trees greater than or equal to 14 inches in diameter measured at a point 54 inches above the ground is prohibited except as allowed under Section 14-317(b)(6) and therefore such removal requires a variance from the city council.

(b) Removal Procedure.

- (1) Tree Survey.
 - (a) For all new construction on an undeveloped lot without existing structures, the property owner must provide the city inspector with a tree survey of the entire property.
 - (b) For all new construction on a developed lot with existing structures, the city administrator at his sole discretion may allow the property owner to submit a tree survey of less than the entire property.
 - (c) All tree surveys must be conducted by a Texas registered surveyor or engineer prior to a permit being issued and must include all trees with trunk diameters of 3 inches or greater at 12 inches above the ground.
 - (d) All trees to be removed must be highlighted or marked on the survey.
- (2) Trunk diameters of the trees that the property owner proposes to remove shall be measured at a point 54 inches above the ground. If a tree trunk splits at a height of less than 54 inches, the tree diameter shall be calculated by adding the sum of the diameter of the largest stalk, plus $\frac{1}{2}$ of the diameter of all remaining smaller stalks all measured at a point 54 inches above the ground.

(c) Violation of Removal Procedure.

- (1) No person shall remove a tree in violation of this division.
- (2) The diameter of trees removed in violation of this division shall be measured at the widest portion of the exposed base of the trunk for purposes of calculating replacement requirements. If no exposed base of trunk exists, then the city

inspector shall estimate the diameter of trees that were removed for purposes of calculating replacement requirements.

- (3) Any person removing tree(s) or vegetation in violation of the regulations provided in this division shall replace the tree(s) removed with tree(s) of equivalent species and size (caliper inches and canopy diameter). If tree(s) removed are not Exhibit A tree(s), then Exhibit A tree(s) must be used as replacements.
- (4) Any person violating any of the provisions of this Ordinance shall be deemed guilty of a Class C misdemeanor, and such offense shall be punishable by a fine not to exceed two thousand dollars (\$2,000.00) per offense. Each tree removed in violation of this Ordinance shall be considered a separate offense. A person does not commit an offense under this section unless the person intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.
- (5) It is a separate offense to fail to replace trees or vegetation, or remit to the city cash-in-lieu, as provided in this Code, within 60 days of issuance of a final order by the city.
- (6) Criminal fines imposed under this Code are in addition to replacement requirements and any other remedies available at law or in equity.

(d) Calculating Tree Replacement Requirements.

- (1) Trees of any species with a trunk diameter of less than 6 inches do not require replacement.
- (2) Conifer and Juniper trees (commonly referred to as “cedars”) with a trunk diameter of less than 12 inches that are removed to establish a fire safety buffer zone in accordance with Section 14-317(b)(5) do not require replacement.
- (3) To compensate for the removal of live trees that are not diseased, dying or dead (as defined in accordance with Section 14-317(b)(6)) and that are removed in accordance with this section, the property owner must install replacement trees according to the following requirements:
 - a. All trees with trunk diameters equal to or greater than six inches and less than 14 inches must be replaced on a 75% basis. In such cases, the replacement trees planted must have trunk diameters of at least 3 inches. *For example, if a 12-inch tree is removed, then a total of 9 replacement inches must be planted using trees with a minimum trunk diameter of 3 inches.*
 - b. All trees with trunk diameters greater than or equal to 14 inches require a variance to Section 14-318(a)(4) and must be replaced on a 150% basis. In such

cases, the replacement trees planted must have trunk diameters of at least 6 inches. *For example, if a 16-inch tree is removed, then a total of 24 replacement inches must be planted using trees with a minimum trunk diameter of 6 inches.*

<i>Trunk Diameter <6"</i>	<i>From 6" to <14"</i>	<i>14" and Larger</i>
No Replacement Required	75% Replacement Required	Requires Variance; 150% Replacement Required
–	Must use replacement trees with trunk diameters of at least 3"	Must use replacement trees with trunk diameters of at least 6"

- (4) To compensate for the loss of diseased or dying trees removed in accordance with this Section and with Section 14-317(b)(6), the property owner must install replacement trees on a 50% basis. In such cases, the replacement trees planted must have trunk diameters of at least 1 ½ inches. *For example, if a 9-inch tree is removed, then a total of 4 ½ replacement inches must be planted using trees with a minimum trunk diameter of 1 ½ inches.*
- (5) In the case of dead trees removed in accordance with this section and with Section 14-317(b)(6), no replacement is required.
- (6) For purposes of calculating the replacement inches as required above, the trunk diameters of all replacement trees shall be measured at a point 12 inches above the ground.
- (7) Replacement trees shall count on an inch-for-inch basis unless the replacement tree trunk diameter is 6 inches or greater, in which case the replacement tree shall count double toward the replacement requirements.
- (8) When using a species with multiple trunks (e.g., *Texas Mountain-Laurel, Yaupon Holly*, etc.) for replacement purposes, the following chart shall be used to convert the planting container measurement to the equivalent trunk diameter for the purposes of this section:

<i>Planting Container Size</i>	<i>Equivalent Trunk Diameter</i>
20 gallons	3 inches
30 gallons	4 inches
40 gallons	5 inches

- (9) The planting of native grasses or ground cover is encouraged, but shall not satisfy any tree replacement requirement.

(e) **Replacement Procedure.**

- (1) The replacement trees shall be planted in appropriate locations with species listed in Exhibit A only. When installing replacement trees, priority should be given to the setback areas and other locations in order to maximize the visible screening of buildings and structures on the property from adjacent properties.
- (2) Whenever replacement is required, the property owner shall submit to the city inspector for approval a replacement site plan showing the locations, species and sizes of all replacement trees and vegetation prior to their installation. If during installation, the property owner is reasonably unable to conform to the approved replacement site plan, then the property owner must submit an amended site plan to the city inspector within 7 days of installation and ultimately subject to the city inspector's approval.
- (3) Installation of the replacement trees must be completed prior to the expiration of the tree removal permit and within 90 days of receiving the approval of the replacement site plan from the city inspector. The city inspector may allow for additional time upon request due to weather or other circumstances beyond the property owner's control.
- (4) The property owner shall notify the city inspector upon completion of installation. The city inspector shall then verify that the installation conforms to the approved replacement site plan.
- (5) All replacement and relocated trees must survive at least 3 years. The city inspector may contact the property owner during this 3-year period to arrange for a site visit by the city inspector in order to confirm that the trees have survived. Trees that do not survive for 3 years must be replaced.

(f) **Landscape Fund.**

- (1) There is hereby created a landscape fund for the city.
- (2) To qualify for the exceptions enumerated under this Subsection (f), an applicant must provide a tree replacement site plan that accommodates at least 90% of the tree replacement inches otherwise required under this section. An applicant who has demonstrated the ability to replace this minimum threshold has qualified as "substantially complete."
- (3) When the city administrator determines that tree replacement requirements of this section cannot be reasonably satisfied on-site, and the applicant has met the

threshold of substantially complete, the remaining required replacement inches may be satisfied by the payment of one hundred fifty dollars (\$150.00) per inch to the city and placed in the city's landscape fund in lieu of planting additional required replacement trees. In making the discretionary determination, the city administrator shall consider the topography, existing and proposed structures, and condition of remaining vegetation.

- (4) In the event the applicant's replacement plan is not substantially complete (i.e., it cannot meet the 90% threshold set forth above), the city council will have the sole authority to determine what, if any, monetary funds may be accepted in lieu of tree replacement. The city council reserves the right to require the applicant to comply with all tree replacement requirements under this section.
- (5) Proceeds accumulated in the landscape fund shall be expended solely on tree preservation or landscaping projects on public property throughout the City of West Lake Hills.

Sec. 14-319. Tree Care and Maintenance.

- (a) Tree pruning must not be done in a manner that is detrimental to the tree. Any action undertaken which intentionally or recklessly causes or tends to cause injury, death, or disfigurement to a tree is considered to be detrimental. Examples of detrimental actions which are prohibited may include cutting, poisoning, burning, over-watering, relocating, or transplanting a tree.
- (b) Tree protection that meets City of Austin standards must be provided during any construction project. City of Austin standards can be found online at http://www.ci.austin.tx.us/trees/preserve_code.htm .
- (c) Compliance with all oak wilt regulations found within the City's Code of Ordinances is required, including, but not limited to, the immediate application of an appropriate pruning sealant on all fresh cuts. For more information about oak wilt diagnosis, treatment and prevention, please visit the Texas Forest Service's website at <http://www.texasoakwilt.org/> .

EXHIBIT A
ELIGIBLE SPECIES FOR TREE REPLACEMENT

Small Trees/ Large Shrubs, Deciduous

American Smoketree (*Cotinus obovatus*)
Anacacho Orchid-tree (*Bauhinia congesta*)
Carolina Buckthorn (*Rhamnus caroliniana*)
Common Hoptree (*Ptelea trifoliata*)
Desert-Willow (*Chilopsis linearis*)
Goldenball Leadtree (*Leucaena retusa*)
Honey Mesquite (*Prosopis glandulosa*)
Huisache (*Acacia farnesiana*)
Mexican Buckeye (*Ungnadia speciosa*)
Mexican Plum (*Prunus mexicana*)
Mexican Redbud (*Cercis canadensis var. mexicana*)
Paloverde (*Parkinsonia aculeata*)
Possum-Haw Holly (*Ilex decidua*)
Prairie Flameleaf Sumac (*Rhus lanceolata*)
Prickly Ash (*Zanthoxylum hirsutum*)
Red Buckeye (*Aesculus pavia*)
Rusty Blackhaw (*Viburnum rufidulum*)
Rough-Leaf Dogwood (*Cornus drummondii*)
Texas Buckeye (*Aesculus glabra var. arguta*)
Texas Redbud (*Cercis canadensis var. texensis*)
Wooly Bumelia (*Bumelia lanuginosa*)

Small Trees/ Large Shrubs, Evergreen

Eve's Necklace (*Sophora affinis*)
Yaupon Holly (*Ilex vomitoria*)
Texas Mountain-Laurel (*Sophora secundiflora*)
Texas Persimmon (*Diospyros texana*) (semi-evergreen)
Texas Pistache (*Pistacia texana*)
Cherry Laurel (*Prunus caroliniana*)
Spanish Bayonet (*Yucca treculeana*)
Torrey Yucca (*Yucca torreyi*)

Medium-Large Trees, Deciduous

Escarpment Black Cherry (*Prunus serotina var. eximia*)
Bald Cypress (*Taxodium distichum*)
American Elm (*Ulmus americana*)
Cedar Elm (*Ulmus crassifolia*)
Texas Madrone (*Arbutus texana*)
Bur Oak (*Quercus macrocarpa*)
Chinquapin Oak (*Quercus muehlenbergii*)
Durand Oak (*Quercus sinuata var. sinuata*)

Lacey Oak (*Quercus laceyi*)
Post Oak (*Quercus stellata*)
Monterrey Oak (*Quercus polymorpha*)
Shin Oak (*Quercus sinuata* var. *breviloba*)
Shumard Red Oak (*Quercus shumardii*)
Texas Red Oak (*Quercus texana*)
Pecan (*Carya illinoensis*)
Texas Ash (*Fraxinus texensis*)
Sycamore (*Platanus occidentalis*)
Texas Walnut (*Juglans microcarpa*)
Western Soapberry (*Sapindus drummondii*)

Medium-Large Trees, Evergreen

Live Oak (*Quercus virginiana*)
Plateau Live Oak (*Quercus fusiformis*)