

ORDINANCE NO. 2023-011

AN ORDINANCE OF THE CITY OF WEST LAKE HILLS, TEXAS (“CITY”) AMENDING CHAPTER 22 BUILDING REGULATIONS, ARTICLE 22.03 CONSTRUCTION CODE, DIVISION 9 TREES AND VEGETATION, SECTION 22.03.303 REQUIRED PERMITS AND TREE SURVEY; ADDING SECTION 22.03.303 (J) REQUIRING A FIRE EXTINGUISHER AT A WORK SITE AND SECTION 22.03.303 (K) PROVIDING FOR REVOCATION OF A PERMIT FOR VIOLATIONS; PROVIDING A SEVERABILITY CLAUSE; SAVINGS CLAUSE; A REPEAL CLAUSE; NOTICE OF OPEN MEETING CLAUSE; PENALTY AND AN EFFECTIVE DATE.

WHEREAS, the Governor of Texas issued a disaster proclamation for 191 Texas Counties including Travis County based on the existence of wildfires that pose an imminent threat of widespread or severe damage, injury or loss of life and further certifying that such conditions continue to exist; and

WHEREAS, the City Council wishes to amend Article 22.03, to create additional city authority necessary to reduce the likelihood or spread of wildfires in the city;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST LAKE HILLS, TEXAS:

SECTION I. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of West Lake Hills and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION II. Chapter 22 Building Regulations, Article 22.03 Construction Code, Division 9 Trees and Vegetation, Section 22.03.303 Required Permits and Tree Survey, shall be amended and replaced to read as follows:

§ 22.03.303 Required permits and tree survey.

(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 to remove:

- (1) Single tree. A single tree with a trunk diameter of less than ten (10) inches (as measured at a point 54 inches above the ground) once per calendar year.
- (2) Understory vegetation. In order to establish a small yard or septic field only when deemed appropriate by the city inspector, except as allowed in subsection (3) below.
- (3) New construction. Trees or vegetation for any new construction or expansion of structures, driveways, parking areas or a small yard not visible from streets or adjacent

properties at an elevation consistent with a site plan and/or building permit previously approved/issued by the city. In such cases, an additional building permit is required under article 22.03 of this code. Please see subsection (4) below for additional replacement requirements related to new construction.

(4) Fire safety buffer zone.

(A) Trees less than twelve (12) inches in diameter (as measured at a point fifty-four (54) inches above the ground) and understory vegetation to establish a “fire safety buffer zone” (FSBZ) as part of firescaping according to Firewise Landscape Design and The Texas Forest Service at Texas A&M, which is defined as an area of land extending up to thirty (30) feet from the perimeter of habitable structures established for fire prevention purposes.

(B) This FSBZ may be expanded, upon approval of the city inspector, to include an area up to one hundred (100) feet from the perimeter of habitable structures for those lots having down slopes in excess of 25% below the habitable structure only for the removal of Ashe Junipers (commonly referred to as “cedars”) if less than twelve (12) inches in diameter as measured at a point fifty-four (54) inches above the ground.

(C) Trees removed to establish a FSBZ, as described in this subsection, do not require replacement, except:

(i) Full replacement inches are required for trees and vegetation removed to establish the FSBZ in the proposed footprint of any new construction or expansion of structures within a FSBZ within five (5) years of issuance of the permit for the FSBZ.

(ii) Full replacement inches are required for trees and vegetation removed to expand a FSBZ (related to new construction) within five (5) years of issuance of the permit for a prior FSBZ.

(5) Non-native invasive species tree(s) or plant(s). Non-native invasive species trees, plants and shrubs do not require replacement as long as the city arborist/inspector identifies them as such and stipulates that no adverse effect of erosion will occur from the removal. In the case of non-native invasive shrubs or understory that serve as understory vegetative screening at external perimeter of property, the city inspector may require replacement native vegetative screening to be installed along the periphery of the property when, at the city inspector’s discretion, the screening is necessary and reasonable to mitigate the community impact of the loss of the removal and to maintain the rural feel of the neighborhood.

(6) When removing live conifers and Juniperus species (commonly referred to as “cedars”) of three (3) inches in diameter or less as measured at a point fifty-four (54) inches above the ground as a fire prevention measure whether inside or

outside of a fire safety buffer zone. Trees removed in accordance with this subsection do not require replacement.

(7) When removing diseased, dying or dead trees, or a tree that poses an imminent or immediate threat to persons or property as determined by the city inspector or city administrator, 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, including a description of the threat if applicable.

(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, condition from which the tree suffers, or the threat it poses 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 on-site to measure the stump(s) for the purpose of determining the replacement requirements (if any).

(d) Exception.

(1) A permit is not required to remove trees or vegetation in the following instances:

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

(B) When pruning live trees so that no more than 25% of a tree's live foliage shall be trimmed off or pruned per year. The Texas Forest Service at Texas A&M's best management practices recommends removing no more than 25% of the live foliage within the tree canopy in an annual growing season. Refer to article 24.04 regarding pruning times and methods for Oak Wilt prevention.

(C) When removing dead vegetation, dead brush piles, and other flammable dead organic material.

(D) Limbing-up. When removing dead or living limbs to reduce the fuel ladder effect as follows:

- (i) Trees that are fifteen (15) feet or higher may be limbed up to nine (9) feet;
- (ii) Trees that are twenty (20) feet or higher may be limbed up to twelve (12) feet if they are within 30 feet of a habitable structure;
- (iii) In all cases, no more than 25% of the tree's live foliage may be removed per year.

(2) Exemption from the requirement to obtain a permit does not exempt a person from adhering to the Code of Ordinances.

(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 on-site 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 the 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 completed application providing 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 one (1) year 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 within sixty (60) days from the date such permit is approved.

(i) Tree survey. Applications for tree removal variances where no construction is involved, and thus bypasses ZAPCO going directly to the city council, must include a tree survey.

(j) Activities that require the use of heavy equipment or chainsaws in conjunction with a permit issued under Section 22.03.303 (b) shall be equipped with a working fire extinguisher located within the permitted work site and easily accessible.

(k) In addition to the issuance of a Stop Work Order, the no-fee permit shall be subject to termination if a violation of this Article occurs.

SECTION V. SEVERABILITY CLAUSE. If any provision, section, sentence, clause, or phrase of this ordinance or application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances

shall not be affected thereby, it being the intent of the City Council of the City of West Lake Hills in adopting, and the Mayor in approving this Ordinance, that no portion thereof or provisions or regulation contained herein shall become inoperative or fall by reason of any unconstitutionally or invalidity of any portion, provision, or regulation.

SECTION VI. SAVINGS CLAUSE. The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

SECTION VII. REPEALER CLAUSE. The provisions of the Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent by any other ordinance.

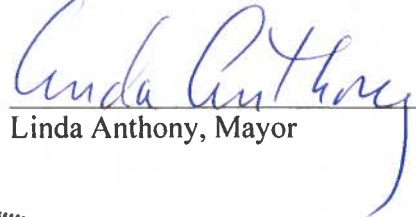
SECTION VIII. NOTICE AND MEETING CLAUSE. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION IX. PENALTY. Any person who violates any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined as provided in Chapter 1. General Provisions, Article 1.01 Code of Ordinances, Section 1.01.013 General penalty for violations of code: continuing violations of the City of West Lake Hills Code, and/or applicable state law.

SECTION X. EFFECTIVE DATE. That this Ordinance shall take effect immediately from and after its passage as required by law.

DULY PASSED by the City Council of the City of West Lake Hills, Texas, on the 13th day of September, 2023.

CITY OF WEST LAKE HILLS, TEXAS


Linda Anthony, Mayor

ATTEST:


Terry Blanchard, City Secretary

[SEAL]



APPROVED AS TO FORM:


Patty L. Akers, City Attorney