

ORDINANCE NO. 763

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEDWIG VILLAGE, TEXAS AMENDING CHAPTER 14, BUILDINGS AND BUILDING REGULATIONS, ARTICLE VII, TREES, OF THE HEDWIG VILLAGE CODE OF ORDINANCES, TO ADOPT TREE INDUSTRY STANDARD MEASUREMENTS, CLARIFY TREE RELATED DEFINITIONS, MODIFY THE TYPES OF ACCEPTABLE REPLACEMENT TREE, AND ENSURE CONFORMANCE WITH STATE LAW REGARDING TREE REGULATION WITHIN THE CITY OF HEDWIG VILLAGE, TEXAS

WHEREAS, an amendment to Chapter 14 of the Hedwig Village Code of Ordinances is necessary to clarify the tree provisions of the building code, resolve inconsistencies, adopt industry standard measurements, and ensure conformance with State Law in regard to the regulation of trees within the City of Hedwig Village, Texas (the "City"); and

WHEREAS, the City Council of Hedwig Village, Texas ("City Council") recognizes the importance of trees for the identity of the City; and

WHEREAS, the City Council recognizes the importance of trees for the enjoyment of residents, visitors, and businesses within the City;

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

Section 1. The Recitals set forth above are found to be true and correct and are adopted as the findings of fact of the City.

Section 2. Chapter 14, Buildings and Building Regulations, Article VII, Trees, of the Hedwig Village Code of Ordinances is amended to read as set out in Appendix A, attached hereto. All other portions of Chapter 14 not specifically amended hereby remain in full force and effect.

Section 3. All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of the conflict only.

Section 4. If any word, phrase, clause, sentence, paragraph, section or other part of this Ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this Ordinance, nor the application of such word, phrase, clause, sentence, paragraph, section or other part of this Ordinance to any other persons or circumstances, shall be affected thereby.

Section 5. The City Council officially finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this Ordinance was discussed, considered or acted upon was given in the manner

required by the Texas Open Meetings Act, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof.

Section 6. This Ordinance shall be effective immediately upon its passage, approval, and adoption by the City Council of the City of Hedwig Village, Texas.

PASSED, APPROVED and ADOPTED this, 21st the day of, November 2019.



Brian T. Muecke, Mayor
City of Hedwig Village, Texas

ATTEST:



Kelly Johnson, City Secretary
City of Hedwig Village, Texas

Appendix A

(addition shown by underline; deletion shown by strike-through)

CHAPTER 14 – BUILDINGS AND BUILDING REGULATIONS

Article VII. – TREES

Sec. 14-241 – Preservation and protection of trees; intent.

The intent of this Article VII - TREES is to encourage site planning which furthers the preservation of trees and natural areas by these methods: protecting trees during construction; facilitating site design and construction which contribute to the long-term viability of existing trees; controlling the unnecessary removal of larger trees; and requiring on-site replacement of larger trees that must be removed during development activities. It is the further intent of this article to achieve the following broader objectives:

- (1) Protect healthy trees and preserve the natural, ecological, environmental and aesthetic qualities of the City;
- (2) Protect and increase the value of properties within the City;
- (3) Prohibit the indiscriminate clearing or clear cutting of property;
- (4) Maintain and enhance a positive image toward the City;
- (5) Prevent the unnecessary removal of protected trees and provide for remediation where removal is unavoidable.

Sec. 14-242. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Caliper means the diameter of a tree as measured at a point on the tree that is 6 inches above the ambient grade. Caliper inches are utilized only for replacement or new trees.

Circumference means the circumference of the trunk of a tree measured at a height of four and one-half feet above the ground using an ordinary tape measure.

City Forester means the person described in section 14-244.

Critical Root Zone (CRZ) means 100 percent of the area within the drip-line of a tree.

Development activity means construction or preparation for construction, and includes grading, clearing and grubbing, and demolition of existing structures.

Diameter at breast height (DBH) means the diameter of the trunk of a tree measured at a height of four and one-half feet above the ground using an ordinary tape measure or diameter tape. If the tree has unusual swells in the trunk at measurement height, measurement shall be taken either below or above the swell at the smallest trunk diameter as close to four and one-half feet as possible. DBH is utilized for identification and measurement of protected trees.

Drip-line means an imaginary circle drawn around a tree extending to the outer tips of the largest branches.

Impervious material means concrete, tar, asphalt, brick pavers or similar paving materials.

Minimum required density means, for a particular lot:

- (1) Seven (7) protected or replacement trees, of which at least three (3) must be located in the front yard, plus one additional protected or replacement tree for every 1,000 square feet of area in excess of 22,500 square feet, up to a maximum of seven additional protected or replacement trees per lot, provided, however, that where a lot contains areas that are not suitable for the location of trees because of topology or other natural features, those unsuitable areas shall not be included in calculating the number of additional protected or replacement trees required in addition to the first seven; and
- (2) A protected or replacement tree that is located within the public street right-of-way shall not be counted in determining whether a lot has the minimum required density of protected or replacement trees.

Property owner means the owner of a lot, tract, parcel or other site, and includes the owner's authorized agents.

Protected tree means any existing tree that has a DBH of 10-inches or more.

Protective fence means a physical barrier that is:

- (1) At least four feet in height;
- (2) Supported by metal or wood posts spaced no wider than eight feet apart; and
- (3) Constructed of wood, chain link fencing or similar material that is effective in preventing the passage of a person, machinery, trash, material or other items.

Replacement tree means a tree that is:

- (1) Has a caliper of four inches or more;
- (2) Is at least seven feet in height;
- (3) Is one of the species listed in section 14-249; and

(4) Is planted under the requirement of this article.

Root Prune means a clean cut between the undisturbed and disturbed root zones within the drip-line of a tree, commonly done with a rock saw or similar equipment to minimize root damage.

Serious damage means any damage to a tree that will, in reasonable probability, cause the death of the tree or seriously impair its health including:

- (1) Drainage plan impacts more than 50% of the Critical Root Zone of the tree;
- (2) More than 50% roots impacted from soil compaction or exposing the roots;
- (3) More than two inches or more of soil or other nonporous material or compacting a substantial part of the soil in the critical root zone (e.g., driving or parking a vehicle in the critical root zone, or otherwise placing heavy objects within the critical root zone);
- (4) Clearance prune that leaves branches stubbed off;
- (5) Poisoning (example-cleaning paint brushes) inside the drip-line of a tree; or
- (6) Defacing the tree trunk with nails or spikes.

Tree Disposition and Protection Plan means a written plan prepared by a Degreed Forester that shows how the protected trees and Critical Root Zones on the site, and trees that are located within 10 feet off of the site and/or have 30 percent or more of their critical root zones within the site, are to be protected.

Tree Removal Permit means a permit issued by the City pursuant to the conditions and requirements of Sec.14-243., granting permission and authority to remove protected trees from a site.

Tree survey means a survey of the protected trees on a site. A tree survey must be prepared by a professional and must include:

- (1) The location, size, and species of all existing protected trees on the site;
- (2) A designation, by species, size in DBH, drip-line and location, of all protected trees proposed to be removed or destroyed;
- (3) Outlines of all existing and proposed structures, paved surfaces, swimming pools, fences, sprinkler systems, utilities and other improvements and structural features on the site;
- (4) A scale, north arrow, name, address, phone number, and profession or occupation of the person who prepared the tree survey; and
- (5) The name of the owner of the site and/or the builder or developer of the site.

Sec. 14-243. - Permits.

(a) *Tree removal permit required.* It is unlawful for any person to remove or to intentionally, or with criminal negligence, cause serious damage to any protected tree within the City without having first obtained from the City a tree removal permit.

(1) Removal in connection with site development or construction.

a. *Generally.* A property owner who seeks a permit to remove one or more protected trees in order to develop or construct improvements on a site must submit to the building official a written application, together with any applicable fee, a current tree survey, and a tree disposition and protection plan by a degreed forester. The City shall grant a tree removal permit if the applicant demonstrates that, for each protected tree that is to be removed, the removal is necessary in order to make a reasonable use of the site.

b. *Restrictions on additional removals.*

1. If a permit is granted for the removal of trees for the construction of a proposed new residence and the property owner, or his successor in title, elects not to build that proposed residence, any new proposed residence on the site must be designed to fit within the area from which protected trees have been removed and cannot require the removal of additional protected trees.

(2) *Tree Removal Permit Non Construction* A property owner who otherwise seeks a permit to remove a protected tree must file a written application with the City describing the location, species, and size of the protected tree that is to be removed and explaining the reason that removal is desired. The City shall grant a removal permit if the applicant demonstrates that:

- a. The protected tree in question is severely damaged, diseased or dead. This includes a branch overhanging a structure, a severely leaning tree, or a tree with a seriously damaged root system that poses a reasonable threat of falling.
- b. The protected tree constitutes an unreasonable impediment to the use and enjoyment of the site because of its location or size;
- c. The protected tree is of an undesirable species that has characteristics that interfere with the property owner's use and enjoyment of the site. Examples of undesirable trees: Chinese Tallow, Camphor, Sugarberry (Hackberry), Golden Rain Tree, Arizona Ash;

(3) *Emergency removal.* Where the dangerous condition of a protected tree requires its immediate removal to protect against a serious and immediate risk to health, safety or property, a property owner may remove a protected tree without first obtaining a permit. However, within seven calendar days after removing the tree, the property owner must file with the building official a written statement describing the protected

tree by size, species, and location and explaining the emergency conditions that required its immediate removal.

(b) *Tree survey and tree disposition and protection plan required.* Except as provided in subsection (b)(1) or (b)(2) below, no permit shall be granted for any site work or construction activity in the City unless and until a current tree survey and tree disposition and protection plan for the subject lot, and any property within ten feet of the subject lot, has been submitted to the City and approved by the City Forester.

(1) *Small projects exception.* Neither a tree survey nor a tree disposition and protection plan is required for projects that meet the following requirements as determined by the building official:

- a. The construction work or other activity proposed by the permit is of a type and scope that presents no serious damage to any protected trees on the site; and
- b. The owner, or his authorized agent, has certified to the City in writing that no protected trees will be removed or seriously damaged during the construct work or other activity.

(2) *Single tree exception.* Neither a tree survey nor a tree disposition and protection plan is required where a property owner seeks to remove a protected tree for any of the reasons set out in subsection 14-243(a)(2). A tree removal permit must still be obtained.

(c) *Utility right-of-way maintenance.*

(1) An employee of a public utility, or an authorized contractor working in a dedicated public right-of-way or drainage or utility easement, may in the course of business, prune that portion of a tree, including a protected tree, that prohibits the safe construction, operation, repair or maintenance of a service line or facility. Trees must be pruned no more than is reasonably necessary for the construction, operation, repair or maintenance of the service line or facility, and any pruning shall be in accordance with the specifications set forth by the National Association of Arborists. No tree permit, tree survey or tree disposition and protection plan is required for work performed under these circumstances.

(2) Trees, including protected trees, that are outside the public right-of-way or utility easement, that are severely damaged, diseased or dead and that present a risk of damaging a public utility service line or facility may be removed by an employee or authorized contractor of the public utility whose service line or facility is at risk of damage, provided that utility has the consent of the tree owner. Such work will require a permit for removal, but no tree survey or tree disposition and protection plan is required. No permit fee shall be charged for issuance of a permit under this subsection.

(d) *Tree replacement.*

- (1) Required minimum density. Except as otherwise provided, a property owner must maintain the minimum required density of protected and replacement trees on the owner's lot at all times and, if the lot falls below the minimum required density because of the loss or removal of a tree or trees, regardless of cause, the property owner shall plant and maintain a sufficient number of replacement trees to meet the minimum required density. The property owner shall, within 30 days after the removal or loss, plant a sufficient number of replacement trees to restore the minimum required density.
- (2) *Special rule for removals related to driveway construction.* Where protected trees are removed from a front yard in order to relocate or expand a pre-existing driveway, the property owner must plant one replacement tree in the front yard for every protected tree that is removed from the front yard. Tree replacement is required under this provision regardless of whether replacement would have been required under subsection (d)(1), above.
- (3) *Time limit for planting replacement trees; performance guarantee.* No certificate of occupancy shall be issued for any building on a lot for which replacement tree(s) are required hereunder unless the replacement trees are planted or the applicant therefore files with the City a replacement tree extension application, stating the reasons for and period of the extension, a cash bond in an amount equal to a written estimated cost of labor and materials to acquire and plant all required replacement trees, such estimate provided by the applicant, together with a written authorization for the City to enter the property for such purpose should the applicant fail to plant such replacement trees on or before the expiration date set forth in the permit. No such extension shall be before the expiration date set forth in the permit. No extension shall be authorized for a period longer than is reasonably necessary under the circumstances, but in no event longer than thirty (30) days. Funds held by the City as a cash bond pursuant to this section shall be returned to the depositor immediately upon compliance with the respective replacement tree planting requirements.
- (4) *Transfer of liability for planting of replacement trees.* If the owner of property subject to a tree disposition permit is required to plant replacement tree(s), and such owner sells the subject property prior to planting such replacement trees, liability for such planting shall transfer to any or all subsequent owners of the subject property.
- (5) *Exceptions to replacement requirements.* No replacement tree shall be required if because of the topography or natural conditions of the lot, or the location of permitted structures and other improvements to the lot, it is not reasonably possible to plant and maintain a required replacement tree. A property owner who is excused from providing a replacement tree shall instead pay to the City the applicable tree replacement fee-as described in Sec. 14-249.
- (6) *Replacement of trees that die within five years after Certificate of Occupancy.* A property owner shall plant replacement trees for any protected trees that die within five years after the date of a Certificate of Occupancy of construction activity on the

property, regardless of whether the lot would have the minimum required density without the replacement.

(e) *Protection of trees during site preparation or construction activity.* Protected trees, whether located on the subject site or within ten feet of the subject site, must be protected from serious damage during construction activity in accordance with the following requirements; provided, unless the City Forester allows modification of the requirements after determining that unique hardship.

(1) *Prohibited activities.* The following activities are prohibited within the drip-line of any protected tree:

- a. *Material storage.* No materials intended for use in construction or accumulated due to excavation or demolition shall be placed within the limits of the drip-line of any protected tree.
- b. *Equipment cleaning; liquid disposal.* No equipment shall be cleaned, and no liquids other than clean water shall be deposited, within the limits of the drip-line of any protected tree. Prohibited liquids include, but are not limited to, paint, oil, solvents, asphalt, concrete, mortar or other materials.
- c. *Tree attachments.* No signs, wires or other attachments, other than those of a protective nature and that have been approved in the tree disposition and protection plan, shall be attached to any protected tree.
- d. *Vehicular traffic.* No vehicle, construction equipment or other parking shall be allowed within the limits of the drip-line of any protected tree.
- e. *Trespassing; trash.* Trespassing or throwing trash into a protective fence area is prohibited.

(2) *Required tree protection.* The following procedures shall be followed prior to and during any development activity on a site until a Certificate of Occupancy has been issued by the City:

- a. *Protective fencing; root protection.* Unless otherwise approved in the tree disposition plan, the critical root zone of each tree or group of trees to be preserved must be enclosed by a protective fence during all development activity and until a certificate of occupancy has been issued by the City. Each protective fence shall be marked with signs stating "OFF LIMITS" and "NO TRASH" (or equivalent) in both English and Spanish.
- b. *Mulch.* If development activity is to take place within the critical root zone of any tree, the protective fence shall cover the area in which no development activity is to take place, and the balance of the critical root zone for such tree or group of trees must be covered with at least six (6) inches of organic or wood chip mulch and covered with three-fourths-inch plywood or road boards in order to protect the roots from soil compaction.

- c. *Tree fence.* It shall be unlawful for any person to remove any portion of any protective fence or mulch and road boards for any period of time during any development activity, unless otherwise specified in the tree disposition plan.
 - d. *Tree flagging.* All protected trees to remain shall be flagged and numbered with green tape. All trees to be removed from the site shall be flagged with orange vinyl tape (flagging) wrapped around the main trunk at a height of four feet or more. After receipt of the tree removal permit, the owner of the site or his agent shall paint with orange paint and "X" on the tree approved for removal at a height of four feet or more so that the paint is visible to workers on foot or operating heavy equipment.
 - e. *Trunk protection.* In situations where a tree remains in the immediate area of intended development activity where tree protection fence is not feasible, the tree shall be protected by enclosing the entire circumference of the tree's trunk with fence pickets, at least six (6) feet high, banded by wire or other means that does not damage the tree.
 - f. *Construction pruning.* Protected trees should be pruned only for clearance, dead, or hazard branches. Corrective pruning should occur after construction is complete.
 - g. *Supplemental feeding, watering.* Protected trees should be watered especially during hot, dry weather. A hose bib should be installed at the water meter for the water source during construction.
- (3) *Design constraints.* Certain circumstances some protected trees will have some encroachment of their critical root zone. The following is the minimum design criteria allowed within the critical root zone of a protected tree:
- a. *Change of grade.* In the event that grade changes must be made around a protected tree, the following procedures shall be followed unless otherwise approved in the tree disposition plan:
 1. No cut or fill of the ambient grade greater than two inches shall be located close to the trunk of a protected tree if the cut or fill covers more than one-half of the radius of the critical root zone. If these provisions cannot be complied with, the City Forester should be consulted.
 2. If development activity causes standing water or wet soil conditions which are detrimental to a species of tree on a site or adjacent property, adequate drainage shall be provided in the tree disposition and protection plan in order to prevent suffocation and/or root rot of the affected tree.
 - b. *Underground utilities.* Boring for the installation of underground utilities is permitted under protected trees in certain circumstances. The minimum depth of the bore shall be 36 inches. In special circumstances approved by the City Forester, trenching for underground utilities may be permitted with respect to all such protected trees. If utility trenching is approved the following procedures must be adhered to:

1. Root pruning shall take place at least two weeks prior to any trenching;
 2. Root pruning shall be supervised by a professional;
 3. The utility trench must be backfilled less than 24 hours after it is dug; and
 4. A root remediation schedule must be discussed with the City Forester.
- c. *Irrigation systems.* Irrigation systems shall be designed to avoid trenching across the critical root zone of any protected tree. "Hand Dig" may be permitted provided no root greater than of one inch in diameter is cut.
- d. *Paving and impervious material.* A maximum of 25 percent of the critical root zone of a protected tree may be covered with impervious material.
- e. *Procedures when using impervious materials.* If the design plans for the site call for any impervious material over any part of the critical root zone of a protected tree, the following procedures shall be adhered to:
1. Root pruning shall be done six inches to one foot behind the proposed curb line and shall take place at least two weeks prior to any fill or cut;
 2. Root pruning and necessary limb pruning shall be supervised by a professional;
 3. A plastic vapor barrier of construction grade shall be installed between the roots of a protected tree and the impervious material so as to inhibit leaching of lime into the soil.

Sec. 14-244. – City Forester

(a) *Appointment.* The City council has the authority, but not the requirement, to hire a contract professional as the City Forester for the city, with such education and skills as the council determines are necessary for the appointment.

(b) *Duties.* The permit secretary or the building official of the City shall deliver to the City Forester all tree disposition and protection plans, tree surveys, applications for tree removal permits and other documents reasonably requested in connection with any or all of the requirements of this article.

Sec. 14-245. - Appeal of permit denials.

(a) An applicant whose request for a tree removal permit has been denied by the building official may appeal that decision to the board of adjustment by filing a written notice of appeal with the City Secretary.

(b) The board of adjustment shall schedule a hearing on the appeal for a date within 45 days after the date the notice of appeal is received in the office of the City Secretary. The hearing may be held at any regular meeting of the board of adjustment.

(c) At the hearing, the board of adjustment shall provide the applicant an opportunity to present evidence and arguments demonstrating that the applicant is entitled to a permit under the terms of this article and that the building official erred in denying the permit.

(d) The board of adjustment may hear and consider any other evidence relevant to the issue of whether the applicant is entitled to a permit.

(e) If, at the conclusion of the hearing, a majority of the board of adjustment determines that the applicant has met the requirements of this article and is entitled to a permit, it shall order the building official to issue a permit. Otherwise, the decision of the building official to deny the permit shall be affirmed.

Sec. 14-246. - Violations.

(a) It shall be unlawful for any person to fail or refuse to comply with the requirements of this article or any permit issued pursuant hereto.

(b) The City's Building Official or City Forester may withhold or withdraw (red flag) any permit issued or to be issued pursuant to this article if any condition or requirement of this article or such permit is not fulfilled.

Sec. 14-247. - Penalty.

Any person who violates any provision of this article shall be deemed guilty of a misdemeanor. The owner of a site where any violation of this article shall occur, and any agent, contractor, builder, architect or other person who shall assist in the commission of such offense, shall be guilty of a separate offense. Each day a violation occurs or continues shall constitute a separate offense.

Sec. 14-248. - Affirmative defenses.

It shall be an affirmative defense to prosecution, under this article, that immediate action to remove or seriously damage the tree in question was necessary to prevent harm to persons or property.

Sec. 14-249. - Species of trees approved for use as replacement trees.

The following species of trees are approved for use as replacement trees. The City Forester may approve the use of species that are not on this list if the City Forester determines that the species is suited to the local climate, likely to grow into a protected tree, and not likely to create nuisance conditions.

Approved Tree Replacement List for Hedwig Village

Large Trees

Cedar, Eastern Red	<i>Juniperus virginiana</i>
Cypress, Bald	<i>Taxodium distichum</i>
Cypress, Montezuma	<i>Taxodium mucronatum</i>
Elm, Cedar	<i>Ulmus crassifolia</i>
Elm, Lacebark	<i>Ulmus parvifolia</i>
Elm, Winged	<i>Ulmus alata</i>
Southern Magnolia	<i>Magnolia</i> spp.
Maple, Drummond	<i>Acer rubrum drumondii</i>
Maple, Japanese	<i>Acer</i> spp.
Maple, Trident	<i>Acer rubrum trilobum</i>
Gingko	<i>Gingko biloba</i>
Oak, Bur	<i>Quercus macrocarpa</i>
Oak, Chinkapin	<i>Quercus muhlenbergii</i>
Oak, Laurel	<i>Quercus laurifolia</i>
Oak, Live	<i>Quercus virginiana</i>
Oak, Nuttall	<i>Quercus nuttallii</i>
Oak, Mexican White	<i>Quercus polymorpha</i>
Oak, Overcup	<i>Quercus lyrata</i>
Oak, Shumard	<i>Quercus shumardii</i>
Oak, Swamp Chestnut	<i>Quercus michauxii</i>
Oak, White	<i>Quercus alba</i>
Pecan	<i>Carya illinoensis</i>
Pine, Loblolly	<i>Pinus taeda</i>
Mexican Sycamore	<i>Platanus mexicana</i>
Walnut, Black	<i>Jugans nigra</i>

Small Trees

Birch, River	<i>Betula nigra</i>
Buckeye, Mexican	<i>Ungnadia speciosa</i>
Fringe Tree	<i>Chionanthus</i>
Holly, Eagleston	<i>Ilex</i> spp.
Holly, East Palatka	<i>Ilex</i> spp.
Holly Savannah	<i>Ilex</i> spp.
Laurel, Cherry	<i>Prunus caroliniana</i>
Pistache, Chinese	<i>Pistacia chinensis</i>
Plum, Mexican	<i>Prunus Mexicana</i>
Redbud, Eastern	<i>Cercis anadensis</i>
Yew, Japanese	<i>Taxus cuspidate</i>