

**TOWN OF HICKORY CREEK, TEXAS
ORDINANCE NO. 2023-05-929**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HICKORY CREEK, TEXAS AMENDING THE CODE OF ORDINANCES OF THE TOWN OF HICKORY CREEK, TEXAS, CHAPTER 10 SUBDIVISION REGULATIONS BY AMENDING THE TOWN’S TREE PRESERVATION ORDINANCE; PROVIDING FOR INCORPORATION OF PREMISES; PROVIDING FOR FINDINGS; PROVIDING FOR AMENDMENTS; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR SAVINGS; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES AND INCLUDING PROVISIONS FOR THE AUTHORIZATION TO SEEK INJUNCTIVE RELIEF TO ENJOIN VIOLATIONS; PROVIDING A PUBLICATION CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Hickory Creek, Texas, is a Type A General Law Municipality located in Denton County, Texas, created in accordance with provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the Town of Hickory Creek, Texas is a general law municipality empowered under the Texas Local Government Code, Section 51.001, to adopt an ordinance or rule that is for the good government of the Town; and

WHEREAS, the Town Council does hereby find and determine that the adoption of this Ordinance is in the best interest of the public health, safety, morals and general welfare of the Town to adopt the construction and related codes as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HICKORY CREEK, TEXAS:

**SECTION 1
INCORPORATION OF PREMISES**

That all of the above premises are true and correct and are hereby incorporated in the body of this Ordinance as if fully set forth herein.

**SECTION 2
FINDINGS**

After due deliberations the Town Council has concluded that the adoption of this Ordinance is in the best interests of the Town of Hickory Creek, Texas, and of the public health, safety and welfare.

**SECTION 3
AMENDMENTS**

3.01 That the Code of Ordinances, Town of Hickory Creek, Texas, Chapter 10: Subdivision Regulations, Article 10.02: Tree Preservation, Section 10.02.003 - Guidelines for landscaping, Subsection (b) Definitions, subpart *Tree restoration fund* is hereby amended to read as follows:

“*Tree restoration fund* means a reserve fund within the general fund set aside for purchasing and planting of trees and other landscaping and to support the administration and enforcement of the Town’s tree preservation regulations.”

- 3.02 That the Code of Ordinances, Town of Hickory Creek, Texas, Chapter 10: Subdivision Regulations, Article 10.02: Tree Preservation, Section 10.02.004 - Requirements generally, Subsection (h)(3) is hereby amended to read as follows:

“Replacement trees required. It shall be the responsibility of any person obtaining a tree removal permit for a protected tree to provide replacement with trees having a total caliper width equivalent to one and one-half times that of the trees to be removed. Total caliper width for replacement trees shall be measured as follows: For single-trunk trees, the width shall be measured at four feet above ground level; for multitrunk trees, total caliper width shall be calculated by combining the caliper width of the largest stem or branch with one-half of the caliper width of each additional stem or branch, all measured at four feet above ground level. An example: If a six-inch protected tree is removed, then that tree must be replaced by trees with a total caliper width of nine inches. This total caliper width could be satisfied by one nine-inch-caliper replacement tree, or three three-inch-caliper width replacement trees, or any other combination providing a total caliper width of nine inches. Such replacement trees shall be container-grown and have a minimum caliper width of two and one-half inches to three inches, measured at six inches above ground level. Alternatively, container-grown replacement trees may have a minimum caliper width of four inches measured at 12 inches above ground level. In any event, replacement trees shall have a minimum height of at least six feet and shall be planted in locations approved by the tree preservation and enforcement officer or his authorized designee. At the discretion of the building official or authorized designee, money may be paid to the town instead of providing the replacement trees required by this subsection. Any such payments shall be deposited in the Tree Restoration Fund. A per-caliper-inch cash value for replacement trees shall be set annually by the town council. The building official or authorized designee shall maintain a record of the current per-caliper-inch cash value of replacement trees.”

- 3.03 That the Code of Ordinances, Town of Hickory Creek, Texas, Chapter 10: Subdivision Regulations, Article 10.02: Tree Preservation, Section 10.02.004 - Requirements generally, Subsection (h)(5) is hereby amended to read as follows:

“Penalties for unauthorized removal. If any protected trees are removed from any real property without a tree removal permit, or if a protected tree is injured because of failure to follow required tree protection measures such that the tree dies or may reasonably be expected to die, the town shall have the authority to enact one or more of the following administrative and civil penalties on the developer and/or owner of the property:

(A) A monetary penalty of \$500.00 per caliper inch of width of the protected trees removed, payable to the town. Funds paid to the town as tree removal penalties shall be deposited in the Tree Restoration Fund.

(B) Replacement with new trees having a total tree caliper width equivalent to five times that of the removed trees. Such replacement trees shall be container-grown and have a minimum caliper width of two and one-half inches to three inches, measured at six inches above ground level. Alternatively, container-grown replacement trees may have a minimum caliper width of four inches measured at 12 inches above ground level. In any event, replacement trees shall have a minimum height of at least six feet and shall be planted in locations as approved by the tree preservation and enforcement officer or authorized designee.”

- 3.04 All other articles, chapters, sections, subsections, paragraphs, sentences, phrases and words are not amended but are hereby ratified and affirmed.

SECTION 4
CUMULATIVE REPEALER CLAUSE

That this Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated or has arisen under or pursuant to prior adopted uniform codes on the date of adoption of this Ordinance shall continue to be governed by the provisions of such Article and for that purpose shall remain in full force and effect.

SECTION 5
SEVERABILITY CLAUSE

If any section, article, paragraph, sentence, clause, phrase or work in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the Town Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 6
SAVINGS CLAUSE

All rights and remedies of the Town of Hickory Creek, Texas, are expressly saved as to any and all violations of the provisions of any other Ordinances of the Town affecting tree preservation, which have secured at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 7
PENALTY CLAUSE

It shall be unlawful for any person to violate any provision of this Ordinance, and any person violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount not more than Five Hundred Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

If the governing body of the Town of Hickory Creek determines that a violation of this Ordinance has occurred, the Town of Hickory Creek may bring suit in district court to enjoin the person, firm, partnership, corporation, or association from engaging in the prohibited activity.

SECTION 8
PUBLICATION CLAUSE

The Town Secretary of the Town of Hickory Creek is hereby directed to publish, the Caption, Penalty Clause and Effective Date of this Ordinance as required by Section 52.011 of the Texas Local Government Code.

SECTION 9
ENGROSSMENT AND ENROLLMENT CLAUSE

The Town Secretary of the Town of Hickory Creek is hereby directed to engross and enroll this Ordinance by copying the exact Caption, Penalty and Effective Date in the minutes of the Town Council and by filing this Ordinance in the ordinance records of the Town.

SECTION 10
EFFECTIVE DATE CLAUSE

That this Ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect from the date of passage and publication in the official newspaper.

IT IS SO ORDAINED.

PASSED AND APPROVED by the Town Council of the Town of Hickory Creek, Texas, this the 15th day of May, 2023.

Lynn C. Clark, Mayor
Town of Hickory Creek, Texas

ATTEST:

Kristi Rogers, Town Secretary
Town of Hickory Creek, Texas

APPROVED AS TO FORM:

Dorwin L. Sargent, III, Town Attorney
Town of Hickory Creek, Texas