

CITY OF LAKEWAY, TEXAS

ORDINANCE NO. 2018-10-15-05

AN ORDINANCE OF THE CITY OF LAKEWAY, TEXAS, AMENDING THE CODE OF ORDINANCES, TITLE II: BUILDING AND DEVELOPMENT REGULATIONS; CHAPTER 28: SUBDIVISIONS AND SITE DEVELOPMENT; ARTICLE 28.09: STANDARDS AND SPECIFICATIONS; SEC. 28.09.017: LANDSCAPING; AND PROVIDING FOR SEVERABILITY, REPEALER, AND AN EFFECTIVE DATE.

WHEREAS, the City Council seeks to promote orderly and safe use of property within the City of Lakeway, Texas (“City”); and

WHEREAS, pursuant to Texas Local Government Code Chapter 211 the City has general authority to regulate plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality; and

WHEREAS, pursuant to Texas Local Government Code Chapter 212 the City has general authority to regulate the location and use of buildings, other structures and land for business, industrial, residential, or other purposes; and

WHEREAS, pursuant to Section 2.04 of the Charter of the City of Lakeway, the City has the authority to promote the public health, morals, and general welfare through the use of zoning and land use regulation.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Lakeway, Texas:

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. AMENDMENT

Title II (Building and Development Regulations) Chapter 28 (Subdivisions and Site Development); Article 28.09 (Standards and Specifications), Sec. 28.09.017 (Landscaping) of the City of Lakeway Code of Ordinances is hereby amended as follows:

“(f) Landscaping in rights-of-way.

(1) No person, firm or corporation shall construct, erect or maintain any post, pillar, wall, fence or reflector, or plant or maintain any hedge, tree, shrub, or other growth (except grass and ground cover), or deposit any rocks, trash, dirt spoil, cuttings, or other material on the right-of-way of any street in the city, without first obtaining the written approval of the code official or the city building commission.

(2) Exception: At the property owner's risk, shrubs may be planted no closer than four (4) feet to the hard surface of the street to preclude damage to landscaping. Shrubs must be maintained so that they do not exceed two (2) feet in height. Plantings/grading shall not interfere with drainage or utilities. This applies to vegetation only. Landscape rocks must remain a minimum of eight (8) feet off the hard surface of the street unless otherwise approved by the city building commission.

(3) All landscaping within the city's rights-of-way requires the prior written approval of the code official or city building commission. No vegetation except lawn grass is permitted within eight (8) feet of the hard surface of a city street. Shrubs, bushes, etc., when mature, shall not encroach closer than eight (8) feet to the hard surface of a street. Gravel, stones, and rocks are not permitted in the city's rights-of-way without specific approval of the city building commission.

(4) Vegetation proposed for county or state rights-of-way must receive additional approvals from the appropriate authority.

(5) ~~While~~ Vegetation shall be irrigated to the hard surface of adjacent roadways, ~~no irrigation lines or sprinkler heads shall be installed in any right of way.~~

(6) In addition to the penalty provisions of this chapter, the city may remove, from the street rights-of-way, any of the structures, growth, and material prohibited by this chapter and in so doing, the city, its officers, agents, and employees shall not be liable to the owners thereof. Any expense incurred by the city for such removals will be charged to the property owner.

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(k) Credit for existing trees. Any existing hardwood tree remaining on the lot may be counted toward the required number of trees as long as the tree is a minimum of six (6) inches in diameter, measured four and one-half (4.5) feet above finished grade. One (1) inch of tree credit will be given for every ~~four (4) inches~~ inch of existing trees that remain on site. ~~Credit of existing trees may not be applied toward any approved protected tree removal permits.~~

(l) Tree regulations.

(1) Tree survey requirements. All hardwood trees 6-inches in diameter and greater ~~and all Texas Madrones~~ shall be identified with individual tree number tags and a

survey included in all site development and subdivision improvement plan sets. Trees are to be represented on plans by a concentric circle centered on the trunk location, with a critical root zone (CRZ) diameter equal in feet to twice the number of inches of the tree's trunk diameter. No disturbance is permitted within the critical root zone unless otherwise approved by the city.

For multi-trunk trees, the calculated size of the tree shall be equal to the caliper of the largest trunk between ground level and four and one-half (4.5) feet height plus 1/2 the sum of all remaining trunk diameters larger than 3 inches.

(2) Protected trees. A protected tree is any single hardwood tree or calculated multi-trunk tree that has a trunk sixteen (16) inches in diameter as measured four and one-half (4.5) feet above natural ground level. ~~At the discretion of the city, certain native, rare, and unusual trees and plant species may also be designated as protected regardless of size (such as the Texas Madrone).~~ The following species are not considered to be protected trees:

- (A) *Ailanthus altissima* (Tree of Heaven).
- (B) *Alibizzia julibrissen* (Mimosa).
- (C) *Maclura pomifera* (female only) Bois d'Arc.
- (D) *Melia azeoarach* (Chinaberry).
- (E) *Salix nigra* (Black Willow).
- (F) *Celtis occidentalis laevigata* (Hackberry).
- (G) Ashe Juniper.

(3) Tree removal permits.

(A) Unless otherwise specified by this chapter, a person must not, directly or indirectly, cut down, destroy, move, remove, or effectively destroy through damaging, any protected tree situated on property regulated by this chapter without first obtaining a tree removal permit.

(B) A tree removal permit shall not be required under the following circumstances:

- (i) Existing residential home. A tree removal permit shall not be required if the tree to be removed is on the property of a residential single-family home that is occupied on or before the effective date of this article.

(ii) Dead tree. A tree removal permit shall not be required if the tree is dead as agreed upon by an official of the city.

(iii) Public safety. A tree removal permit shall not be required if a tree endangers the public health, welfare or safety, and immediate removal is required as determined in writing by an official of the city.

(iv) Utility service disruption. A tree removal permit shall not be required if a tree has disrupted a public utility service due to a tornado, storm, flood or other act of God. Removal shall be limited to the portion of the tree reasonably necessary to establish or maintain reliable utility service.

(4) Tree replacement.

(A) Protected tree inches approved for removal shall be mitigated at a 1:1 ratio.

(B) Replacement trees shall be a minimum of three (3) inch caliper measured four and one-half (4.5) feet from the ground.

~~(C) Protected tree replacement trees do not count towards the standard landscaping requirements.~~

~~(C)(D)~~ Replacement trees shall be located on the subject site. If the city agrees that it is not feasible, the code official has the authority to allow the planting to take place on another property having the approval of its owner.

~~(D)(E)~~ Except when otherwise approved by the city, replacement trees shall not be planted in the following locations:

(i) Where the mature canopy of the tree will interfere with overhead utility lines.

(ii) Where the mature root zone of the tree will interfere with underground public utility lines.

(iii) Within ten (10) feet of a fire hydrant.

(iv) Within the public right-of-way.

(5) Tree removal permit procedures.

(A) A request for a tree removal permit must be submitted and approved prior to the removal of any protected tree in the city unless the tree is exempt under a provision of this chapter.

(B) All requests for tree removal permits must be accompanied by a tree removal application, a letter explaining the reason for the request, and an exhibit showing the location of the tree(s) in reference to the proposed site improvements.

(C) The city may take one of the following actions regarding the application:

(i) Deferral of decision. The code official may defer the approval of a tree removal permit to the city building commission for any reason. ~~All decisions made by the city building commission shall be final.~~

(ii) Approval. A tree removal permit may be issued if it is determined that:

a. The tree constitutes a hazard to life or property, which cannot be reasonably mitigated without removing the tree;

b. The tree is dying, dead, or diseased to the point that restoration is not practical; or

c. All reasonable efforts have been made to avoid removing the tree for the development and removal cannot be avoided.

(iii) Refusal. A tree removal permit shall not be issued if it is determined that:

a. Removal of the tree is not reasonably required in order to conduct anticipated activities; or

b. A reasonable accommodation can be made to preserve the tree.

(D) ~~Any~~ decision made by the code official may be appealed to the city building commission. ~~Decisions made by the city building commission shall be final.~~

(E) Tree removal permits issued in conjunction with a building permit, site development permit, subdivision improvement permit, or small project permit shall be valid for the period of that permit's validity. Permit(s) for tree removal not issued in connection with a building permit, site development permit, subdivision improvement permit, or small project permit shall become void one hundred eighty (180) days after the issue date on the permit.

(6) Tree protection. Trees not approved for removal within the limits of construction shall be provided with tree protection approved by the city.”

3. SEVERABILITY

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Ordinance.

4. REPEALER

All Ordinances, 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.

5. EFFECTIVE DATE


This Ordinance shall be effective immediately upon passage and publication as provided for by law.

6. PROPER NOTICE & MEETING

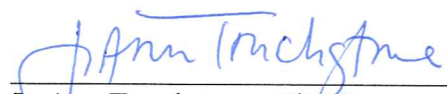
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, and Chapter 551. Notice was also provided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

PASSED & APPROVED this, the 15th day of October, 2018, by the City Council of Lakeway, Texas.

CITY OF LAKEWAY:

By: 
Sandra L. Cox, Mayor

ATTEST:


Jo Ann Touchstone, City Secretary

