

ORDINANCE NUMBER 673

AN ORDINANCE AMENDING CHAPTER 3 BUILDING AND CONSTRUCTION OF THE CODE OF ORDINANCES OF THE CITY OF HILSHIRE VILLAGE, TEXAS, BY DELETING ARTICLE NO. 3.700 AND PROVIDING A NEW ARTICLE NO. 3.700, ESTABLISHING RULES AND REGULATIONS CONCERNING TREE PROTECTION; PROVIDING A PENALTY IN AN AMOUNT PROVIDED FOR IN SECTION 1.106 OF THE CITY'S CODE OF ORDINANCES FOR ANY VIOLATION OF ANY PROVISION OF THIS ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HILSHIRE VILLAGE, TEXAS:

Section 1. The Code of Ordinances of the City of Hilshire Village, Texas (the "Code"), is hereby amended by deleting Article 3.700 and providing a new Article 3.700 under Chapter 3 Building and Construction, to provide as follows:

“ARTICLE 3.700. - TREE PROTECTION

Sec. 3.701. - Definitions.

As used in the Article the following terms shall have the meaning given below:

Circumference or Diameter of a tree. Circumference or diameter measured at a point on the tree four and one-half (4-½) feet above the surrounding ground level. The equivalent tree circumference or diameter may be used for measurement purposes. Tree diameter in inches X 3.14 = tree circumference in inches (for example: 8" diameter X 3.14 = 25.12" circumference). To measure a tree which forks or has two boles or stems at or below four and one-half (4-½) feet, only the circumference or diameter of the larger bole or stem will be measured.

Critical Root Zone of a tree. The area within a circle centered on the trunk location, the diameter of said circle being one-half the sum of the longest and shortest drip line diameters.

Damage of a Tree. To take any action which will result in a tree's death, either immediately or within a period of three (3) years, without limiting this definition, some examples of damages are: Severing the main trunk or large branches or large roots, poisoning, carving, mutilating, touching with live wires, piercing with nails or spikes, crushing or exposing the roots, digging or drilling any hole or trench larger than three (3) cubic feet within the Critical Root Zone, covering with over three (3) inches of soil or compacting the soil in the Critical Root Zone.

Permit. Any permit issued for the demolition or construction of any building or structure.

Person. Any individual, entity, corporation, organization, unincorporated organization, partnership, or any other form of entity.

Structure. That which is built or constructed, an edifice or building of any kind, or any place of work artificially build up or composed of parts joined together in some definite manner.

Subject Site. Any particular lot, tract or parcel of land that is subject to the building permit process or otherwise invokes the regulations established in this Article.

Tree. A long-lived, branching, woody plant, usually with one main stem.

Sec. 3.702. - Enforcement.

This Article shall be administered as a part of the building permit process. It is incumbent upon all building permit applicants in the City of Hilshire Village to obtain and complete the proper forms, available in the City office, to show compliance with this Article. No certificate of occupancy shall be issued unless and until certification of such compliance has been properly executed and submitted by the applicant.

Sec. 3.703. - Tree Survey Components.

(a) The tree survey shall be accurate and shall be prepared by a person with expertise to prepare such a document. For example, but not limited to: An architect, engineer, landscape or tree professional, surveyor, or urban forester.

(b) The tree survey shall include and contain as a minimum the following information:

- (1) The actual location (i.e. trunk location), diameter, type and Critical Root Zone of each tree on the Subject Site or tract which is eight (8) inches in diameter (25.12" in circumference) or larger.
- (2) Building or structure outlines, including driveways, parking areas or other paved surfaces, fences, utilities and other improvements and structural features to be constructed. Also show the location of the tree protection fence.
- (3) A scale, north arrow, name address, phone number an profession or occupation of the person who prepared it, and the name of the site owner and phone number and of the applicant for the building permit.
- (4) Shall also identify the development and provide a description of the Subject Site and its location.

Sec. 3.704. - Approval of Tree Survey.

Upon approval and acceptance of the tree survey as part of the building application and other permit applications, and before construction begins, the proper methods of protecting the trees during demolition or any construction must be in place. Proper protection shall be described as required at the minimum, a fence four (4) feet in height and composed of a material which is strong enough to prevent vehicles, materials, debris, dirt or other demolition or construction refuse from piling up within the Critical Root Zone. The fence shall be a minimum of six (6) feet away from the base of the tree at all points in order to prevent damage to the tree(s).

Sec. 3.705. - Tree Replacement.

The building permit holder will make every effort to maintain the distribution of existing trees. However, if the design, layout, plans, or construction of this proposed structure cannot avoid the removal or any tree(s) eight (8) inches in diameter (25.12" in circumference) or larger, according to the tree survey which is a part of a permit application, then the building permit holder shall be required to replace each such tree(s) in accordance with the Tree Preservation requirements established in Article 7.700 of the City's Code of Ordinances.

Sec. 3.706. - Destruction or Damage to Trees on Public Property.

In addition, to the violation of any criminal law dealing with destruction of public property, it shall be unlawful to put down, destroy, kill, or damage any tree located on any public property in the city, except when necessary in furtherance of the public health, safety and welfare. This section shall not prevent the City of Hilshire Village or any public utility from performing necessary maintenance and repair activities which may affect trees located within easements or on public property.

Sec. 3.707. –Enforcement.

Any person, firm, partnership, association, corporation, company or organization of any kind who or which intentionally, knowingly, recklessly, or with criminal negligence violates any of the provisions of the Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount as provided for in the general penalty provision found in Section 1.106. Each day during which such violation shall exist or occur shall constitute a separate offense. The owner or owners of any property or of premises where any violation of this Ordinance shall occur, and any agent, contractor, builder, architect, person, association, organization, or corporation who shall assist in the commission of such offense shall be guilty of a separate offense, and upon conviction thereof, shall be punished as above provided.

Sec. 3.708. –Appeal.

Any person whose request for a Permit has been denied due to a finding of noncompliance with this Article may appeal that decision to the City Council by filing a written notice of appeal with the City Secretary. The City Council shall schedule a hearing on the appeal for a date within sixty (60) days after the date the notice of appeal is received in the office of the City Secretary. At the hearing, the City Council shall provide the applicant an opportunity to present evidence and arguments demonstrating that the applicant has complied with this Article and is entitled to a Permit, and that the City erred in finding that the applicant was noncompliant with this Article. If, at the conclusion of the hearing, a majority of the City Council determines that the applicant has met the requirements of this Article and is entitled to a Permit, it shall order the City to issue such a Permit. Otherwise, the decision of the City to deny the Permit due to noncompliance with this Article shall be affirmed.”

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Hilshire Village, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED this 17th Day of April, 2012.

ATTEST:

Susan Blevins, City Secretary

Shannon Whiting, Mayor Pro Tem