

Ordinance 1-2010

Restricting Clear Cutting of Live Oak Trees

Section 1. Purpose and Scope.

This order establishes protections for oak trees from clear-cutting, as defined herein, throughout the unincorporated area of Aransas County Texas, for the purpose of implementing Texas Local Government Code §240.909.

Windswept Oak Trees are considered a special natural resource to this area, shaped and created by forces of nature, and are irreplaceable. Windswept Trees provide character and beauty to the community, and the special preservation of such trees benefit the community. Windswept Oak Trees are deserving of extra protection by the Committee. The Committee may deny any application for removal of a Windswept Oak Tree unless the Committee finds, by clear and convincing evidence, that the reasons for removal exist in fact and the removal is eminently necessary to accomplish the applicant's stated reasons.

Section 2. Applicability.

(a) The terms and provisions of this order apply to every owner of every legally defined property greater than one acre and which has oak trees 6" (six inches) or more in diameter, determined at 4' (four feet) above ground level.

(b) This order shall not apply to any land under the ownership or jurisdiction of state or federal agencies or other governmental body, when prohibited by statute, or to any property for which any required government permit related to development has been applied for or submitted prior to the effective date of this ordinance.

Section 3. Definitions.

The following terms, phrases, and words shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in plural shall include the singular, words used in the singular shall include the plural, words used in the masculine include the feminine, and words used in the feminine include the masculine. The word "shall" is mandatory and not merely directory.

Clear cutting: Removing or critically damaging more than 50% (fifty percent) of all oak trees covered in Section 2(a) above.

County: Aransas County, Texas.

Critical Damage: Any action which could cause a tree's death within 3 years; e.g., severing the main trunk or large branches or large roots, girdling, poisoning, carving, mutilating, touching with live wires, crushing or exposing roots, digging or drilling a hole or trench larger than three cubic feet within the critical root zone, covering a substantial part of the critical root zone with an impermeable surface, adding an excessive depth of soil to the critical root zone or compacting a substantial part of the soil in the critical root zone to constitute an impermeable surface. The above are examples and are not intended to limit this definition.

Ex-officio member: The County Commissioner designated to serve as liaison to the Aransas County Tree Committee. This person takes part in the deliberations of the Committee but shall have no vote.

Legally Defined Property: As recorded in the records of the County Clerk of Aransas County, Texas.

Pre-development activity: Construction activity which includes demolition, moving of buildings, site clearing (*not to include those activities associated with minimal understory clearing as required for a tree survey*), grubbing, grading and any other activity which disturbs the surface of land

and is actually undertaken, or customarily undertaken, as preparation for development.

Tree Plan: A drawing showing actual location of all existing oak trees as described in Section 2 (a) above, or in case of site improvements, a site plan showing the location of all structures and parking areas proposed to be built and those oak trees proposed to be removed.

Section 4. Protection of Oak Trees

No clear cutting is allowed, unless specifically authorized by an approved tree plan.

(1) Before the removal of any oak tree or the initiation of any pre-development activity, a tree plan application must be filed with and approved by the Aransas County Environmental Department. The Environmental Department is authorized to approve the tree plan if there is no violation of this order.

(2) If the tree plan is in conflict with this order, the tree plan shall be forwarded to the Aransas County Tree Committee for consideration of a variance. A variance may be obtained from the Aransas County Tree Committee based upon the following criteria:

(a) Oak trees may be removed with approval of the Committee for the following reasons:

(1) Oak trees that are hazardous or in decline, which determination to be made by Aransas County Environmental Department;

(2) Oak trees, or their root systems, causing visible damage, or which are likely to cause damage in the foreseeable future, to structures, utilities or areas used for pedestrian or vehicular traffic;

(3) Oak trees within power line easements which cannot be properly pruned.

(4) Oak trees which, after proper pruning, cause safety related problems;

(5) Oak trees to be removed in order to relocate a structure from or onto a property, but only such oak trees as may be necessary to accommodate such structure's movement and only if no other reasonable alternative to move the structure exists. Oak trees removed under this procedure must be replaced according to the mitigation requirement provided in Section 9 below.

(b) In addition to the above listed criteria, the Aransas County Tree Committee shall determine which other live oak trees may be removed as necessary in order to develop the property in a reasonable and prudent manner in accordance with this order.

(3) Termination/Completion.

Any tree plan approved shall contain a definite date of expiration not to exceed 180 days. Any tree plan approval shall be void if its terms are violated. Within 5 days after tree removal, notice of completion shall be provided to the Environmental Department.

Section 5. Aransas County Tree Committee

(a) The Aransas County Tree Committee is hereby created. This Committee is to function as the primary implementing structure in regard to this order and an advisory board to the Commissioner's Court. The Committee shall be composed of five members:

(1) One qualified voter appointed by each County Commissioner and the County Judge.

(2) One County Commissioner shall serve as an ex-officio member of the Committee.

(b) Appointed members shall serve overlapping three year terms.

Beginning on the effective date of this order, two members will be

appointed for three years, two members for two years, and one member for one year. The initial terms shall be determined by drawing of lots. Any vacancy during the unexpired term of a member shall be filled by the Commissioners Court for the remainder of the unexpired term. The Committee shall meet within 30 days of the effective date of this order and elect officers. The Committee shall elect from its members a chairperson, vice-chairperson, and secretary to serve for one year beginning at that meeting. No person may serve on the Committee more than two consecutive terms.

(c) Meetings and duties of the Aransas County Tree Committee:

- (1) The Committee shall meet at least quarterly or more often as needed to conduct business.
- (2) The Committee shall make recommendations as necessary for the removal, replacement, and protection of live oak trees.
- (3) The Committee shall conduct its business in accordance with the Open Meetings Act.
- (4) The Committee shall review this order annually, consult with the Aransas County Environmental Department and other such entities having germane knowledge concerning oak trees and their peculiarities, and make recommendations for changes to the Commissioners' Court.
- (5) The Aransas County Tree Committee shall have the responsibility to promptly meet when a variance of this ordinance is requested and shall have the authority to grant such variance.

Section 6. Appeals.

Should the Aransas County Tree Committee deny a request for a tree permit variance, the applicant may appeal such action to Commissioners' Court for further review and final action. Such appeal must be in writing and within ten days of the action of the Committee. Commissioners' Court shall have the discretionary authority, on a case by case basis, to determine whether or not just cause exists to overturn the decision of the Aransas County Tree Committee. The Commissioners' Court shall consider the purpose of this ordinance as well as the unique features of the land in question and the proposed use of the land. An appeal shall be considered at the first regularly scheduled Commissioner's Court meeting subsequent to an appeal being filed, for which an Open Meetings Act notice requirement can be met.

Section 7. Actions Unlawful.

Any action taken contrary to this order shall be an offense under Texas Local Government Code §240.909 and shall constitute a Class C Misdemeanor, punishable by fine not to exceed \$500.00. Each act in violation of this order shall be a separate offense; specifically, each time an oak tree is removed or critically damaged in violation of this order, a separate offense will have occurred.

Section 8. Enforcement.

(a)The Commissioners' Court shall decline to approve any plat, re-plat, subdivision or re-subdivision unless such request is accompanied by an approved tree plan.

(b) The Aransas County Environmental Department shall enforce the provisions of this order. If any person proceeds to remove or damage oak trees in violation of this order or an approved tree plan, the following actions may be taken by the Environmental Department:

- (1) Refuse to issue septic system permits until the tree plan is made to conform or a sufficient plan is provided and approved.
- (2) Issue a stop work order.
- (3) Issue a citation in accordance with Sec. 7 above.

Section 9. Replacement Tree Criteria

All live oak trees removed in violation of this ordinance, or removed in accordance with a variance granted by the Aransas County Tree Committee will be replaced, wood-for-wood. All removed tree(s) shall be mitigated by the following method(s):

(a) Replacement trees must be planted in the same location or as near as possible to the removed trees (unless imposing an unreasonable hazard) and be maintained in good health.

(b) Replacement shall be on an equivalent basis to the removed tree(s), e.g., if an eight (8) inch tree is removed, four (4) two-inch trees must be planted and maintained in accordance with Section 9 (c) and (f) below. If a twelve inch, or larger, tree is removed, a replacement tree of not less than three inches is to be used as basis for equivalency and the total mitigation must equal or exceed the removed tree.

(c) Replacement trees shall be healthy oak trees of the same species as the removed tree.

(d) When it is found impractical by the Committee to relocate or replace on the same property, replacement may be made upon public property, parks, and within rights-of-way under authority of the county.

(e) No mitigation is required for the removal of protected trees by a utility company during the normal course of maintaining easements or county rights-of-way.

(f) Replaced trees must survive for three (3) years or the requirements for mitigation are reinstated.

Section 10. Fees

Commissioners Court shall establish a fee payable to the County for each tree plan or amended tree plan submitted to the Environmental Department for review.

Section 11. Severability

If any provision of this Ordinance is held by a court to be unenforceable or invalid then such provisions shall be unenforceable or inoperative as declared by such court and to this end the provisions of this ordinance are declared to be severable.

Commissioner Smith to table request of Environmental Health Director to fill a budgeted vacant part-time cashier for the Transfer Station.

Question. Motion carried unanimously.

It is so ordered.

BACKHOE - TRANSFER STATION

Motion was made by Commissioner Smith and seconded by Commissioner Casterline to approve request of Environmental Health Director to purchase a backhoe for the Transfer Station at a cost not to exceed \$54,000.00 from approved certificate of obligation funds.

Question. Motion carried unanimously.

It is so ordered.

RESOLUTION - SUPPORT OF LEGISLATURE

Motion was made by Commissioner Chaney and seconded by Commissioner Murph to approve Resolution #R11-2011 in support of passage of HJR 56/SJR 17, a constitutional amendment that would "restrict the power of the Legislature to mandate requirements upon certain local governments" including counties.

Question. Motion carried unanimously.

It is so ordered.

(Resolution inserted)

LIVE OAK TREE ORDINANCE #01-2010 - AMENDMENTS

Motion was made by Commissioner Murph and seconded by Commissioner Chaney to approve amended amendments to Live Oak Tree Ordinance #01-2010.

Question. Motion carried unanimously.

It is so ordered.

(Amended Ordinance inserted)

LIVE OAK TREE ORDINANCE - EFFECTIVE DATE

Motion was made by Commissioner Chaney and seconded by Commissioner Murph to approve setting April 1, 2011 as effective date for the Live Oak Tree Ordinance #01-2010.

Question. Motion carried unanimously.

It is so ordered.

OFFICIAL BONDS

Motion was made by Commissioner Casterline and seconded by Commissioner Murph to approve public bond continuation certificates on R. Eugene Johnson, Airport Manager, and Betty Lou Watson, Deputy District Clerk.