

ORDER NO. O-14-2021

AN ORDER OF THE COMMISSIONERS COURT OF THE COUNTY OF ARANSAS, TEXAS, REPEALING ORDINANCE 1-2010, AND ESTABLISHING REGULATIONS THROUGH THIS ORDER ENTITLED “REGULATIONS FOR THE CUTTING OF LIVE OAK TREES IN THE UNINCORPORATED AREAS OF ARANSAS COUNTY,” FOR THE PROTECTION OF LIVE OAK TREES; CREATING THE ARANSAS COUNTY TREE COMMITTEE; SETTING FORTH COUNTY REQUIREMENTS AND PROCEDURES, ENFORCEMENT, VIOLATIONS, PENALTIES, MITIGATION GUIDELINES, AND FEE SCHEDULE; PROVIDING FOR SEVERABILITY, REPEALER AND SAVINGS, AND EFFECTIVE DATE.

WHEREAS, the Texas Local Government Code, Section 240.909 provides that certain counties may prohibit or restrict the cutting of live oak trees in the unincorporated areas of the county; and,

WHEREAS, the Commissioners Court of Aransas County previously adopted Ordinance 1-2010 establishing restrictions related to the removal of live oak trees in the unincorporated areas of Aransas County; and,

WHEREAS, the Commissioners Court of Aransas County revised Ordinance 1-2010 on March 14, 2011, which revisions became effective on April 1, 2011, and which the Commissioners Court of Aransas County desires to repeal and replace; and,

WHEREAS, the Commissioners Court of Aransas County desires to establish this Order to regulate the removal of live oak trees in the unincorporated area of Aransas County.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF ARANSAS COUNTY, TEXAS:

Section 1. Repeal of Ordinance No. 1-2010

The Commissioners Court of Aransas County previously adopted Ordinance 1-2010 establishing restrictions related to the removal of live oak trees in the unincorporated areas of Aransas County and revised Ordinance 1-2010 on March 14, 2011. Ordinance 1-2010 is hereby repealed; and,

Section 2. Purpose and Scope.

This Order entitled “Regulation of the Cutting of Live Oak Trees in the Unincorporated Areas of Aransas County,” is hereby created and establishes protections for live oak trees from clear-cutting, as defined herein, throughout the unincorporated areas of Aransas County Texas.

Many local live oak trees have been bent by coastal winds and are often referred to as windswept live oak trees. Live oak trees are considered a special natural resource to this area, shaped and created by forces of nature, and are remarkable. They provide character and enhance

the beauty of the County, and the special preservation of such trees benefits the County. Live oak trees are deserving of extra protection and that was recognized by the Texas Legislative when it established Section 240.909 of the Texas Local Government Code, in 2009.

Section 3. Applicability.

- (a) The terms and provisions of this Order apply to every legally defined property in the unincorporated areas of Aransas County that are one (1) acre or larger, which has any live oak tree, or live oak trees, that are six inches (6") or more in diameter, when measuring diameter at four feet (4') above ground level.
- (b) This Order shall apply to each property owner, tenant, developer, contractor, subcontractor, or any other person or party identified as a responsible party related to pre-development activity, development activity, or other actions that involve removing live oak trees in a manner that does not comply with this Order.
- (c) This Order shall not apply to any land under the ownership or jurisdiction of state or federal agencies or other governmental body, or when prohibited by statute.
- (d) This Order does not apply to the facilities or operations of an electric utility as defined by Section 31.002 of the Texas Utilities Code or to a gas utility as defined by Section 101.003 of the Texas Utilities Code.

Section 4. Definitions.

The following terms, phrases, and words contained in this Order shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in plural shall include the singular, works 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.

- (a) *Aransas County Tree Committee*: The primary body responsible for implementation of this Order and an advisory board to the Commissioners Court, which is created herein in Section 4. It is sometimes referred to as the "Committee."
- (b) *Clear Cutting*: Removing or critically damaging more than fifty percent (50%) of all live oak trees on a property which are six inches (6") or more in diameter, when measuring diameter at four feet (4') above ground level. This percentage is cumulative for the entire property. If an area is developed in phases or otherwise separated in time, the previous percentage of removal shall be considered when determining the percentage allowed in future development.
- (c) *Commissioners Court of Aransas County*: In this Order, "Commissioners Court," "Aransas County Commissioners Court," and "Commissioners Court of Aransas County" may be used interchangeably to describe the Commissioners Court of Aransas County

which is the governing body of the County of Aransas, a political subdivision of the State of Texas.

(d) *County:* Aransas County, Texas

(e) *Critical Damage:* Any action which could cause a tree's death within three (3) years, which includes but is not necessarily limited to: 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 (3) cubic feet within the critical root zone, covering a substantial part of the critical root zone with an impermeable surface, or adding an excessive depth of soil in the critical root zone to constitute an impermeable surface.

(f) *Development or Construction Activity:* Activities that may be described as land disturbing activities which are normally undertaken for the development, construction, repair, renovation, rehabilitation, or conversion of buildings for residential or commercial use, which activities may overlap with those defined in Pre-Development Activities below.

(g) *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.

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

(i) *Live Oak Tree:* This term is used interchangeably with "windswept live oak trees," "windswept oaks," "oak trees," and other variations herein, and is used to describe certain oak trees native to Aransas County. Live oak trees are sometimes called "Southern Live Oaks" or "Coast Live Oaks." There are several species of trees included in this description with the *Quercus virginiana* being one of them. It may be described as a large, stately tree with an extensive and widespread root system. Live oak trees may exceed fifty feet (50') in height, have short and stout trunks, and are known for large twisting limbs that form a low dense crown.

(j) *Order:* The word "Order" refers to this Order of the Commissioners Court.

(k) *Pre-Development Activity:* Activities that may be described as land disturbing activities which includes, but is not necessarily limited to, 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.

(l) *Tree Plan:* A drawing showing actual location of all existing live oak trees, or in the case of site improvements, a site plan showing the location of all structures and parking areas proposed to be built, and those live oak trees proposed to be removed. If mitigation

measures are necessary under this Order, the Tree Plan shall also include a description of required measures.

Section 5. Aransas County Tree Committee

(a) The Aransas County Tree Committee is hereby created. This Committee is to function as the primary body responsible for implementation of this Order and serves as an advisory board to the Commissioners Court.

The Committee shall be composed of five (5) members:

(1) One (1) qualified voter appointed by each of the four (4) Aransas County Commissioners and the County Judge, for a total of five (5) voting members.

(2) One (1) County Commissioner shall serve as an ex-officio member of the Committee.

(b) Appointed members shall serve overlapping three (3) year terms. Beginning on the effective date of this Order, two (2) members will be appointed for three (3) years, two (2) members for two (2) years, and one (1) member for one (1) year. The initial terms shall be determined by the 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 thirty (30) days of the effective date of this Order and elect officers. The Committee shall elect from its members a chairperson, vice-chairperson, and a secretary to serve for one (1) year beginning at that meeting. No person may serve on the Committee more than two (2) consecutive terms.

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

(1) The Committee shall meet at least quarterly, but may need to meet more often 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 and shall maintain its records in accordance with Texas law.

(4) The Committee shall review this Order annually, consult with Aransas County Environmental Health Department and other such entities having germane knowledge concerning live oak trees and their peculiarities, and make recommendations for changes, if any, to the Commissioners Court.

(5) The Aransas County Tree Committee shall have the responsibility to promptly meet when a variance of this Order is requested and shall have the authority to grant or deny such variance. All other Committee actions are advisory

in nature and such recommendations shall be presented to the Commissioners Court.

(6) The Committee may deny any application for removal of a live 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 6. Protection of Live Oak Trees.

No clear cutting of live oak trees is allowed, unless specifically authorized by an approved Tree Plan.

(a) *Tree Plan Application.* Before the removal of any live oak tree or the initiation of any pre-development activity, a Tree Plan Application must be filed by the property owner, or an authorized designee, with the Aransas County Environmental Health Department.

(b) *Tree Plan Application Review.* The Aransas County Environmental Health Department is responsible for reviewing Tree Plan Applications to ensure that the proposed plan complies with the requirements in this Order. The Environmental Health Department is authorized to approve the tree plan as long as it is in compliance with this Order and this Order has not been violated in any way.

(c) *Tree Plan Application in Conflict with this Order.* If the Tree Plan is in conflict with this Order, or if the Order has been violated prior to the submittal of the Tree Plan Application, the Aransas County Environmental Health Department will not make any decision on the Tree Plan Application. Instead, the Aransas County Environmental Health Department will forward the Tree Plan Application to the Aransas County Tree Committee for review.

(d) *Request for a Variance.* If the Aransas County Environmental Health Department and the Aransas County Tree Committee determine that a Tree Plan Application does not comply with this Order, the applicant may request a variance from the Aransas County Tree Committee for the following reasons:

(1) Some or all of the live oak trees in the Tree Plan Application are hazardous, unhealthy, or on decline, which determination to be made by Aransas County Environmental Health Department or a professional arborist;

(2) Some or all of the live oak trees in the Tree Plan Application, or their root systems, are causing visible damage, or are likely to cause damage in the foreseeable future, to structures, utilities or areas used for pedestrian or vehicular traffic;

(3) Some or all of the live oak trees in the Tree Plan Application are located within power line easements and the trees cannot be properly pruned;

(4) Some or all of the live oak trees in the Tree Plan Application are, after proper pruning, causing safety-related problems;

(5) Some or all of the live oak trees in the Tree Plan Application need to be removed in order to relocate a structure from or onto a property. The applicant understands that the Committee may only permit applicant to remove such live oak trees as may be necessary to accommodate such structure's movement and such permission may be granted only if no other reasonable alternative to move the structure exists. Live oak trees removed under this procedure must be replaced according to the mitigation requirements provided herein;

(6) 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 property in a reasonable and prudent manner in accordance with this Order.

(e) *Termination/Completion.*

Any Tree Plan approved shall contain a definite date of expiration not to exceed One Hundred Eighty (180) days. Any Tree Plan approval shall be void and of no legal effect if its terms are violated. Within five (5) days after tree removal, a notice of completion shall be provided to the Environmental Health Department.

Section 7. Appeals

Should the Aransas County Tree Committee deny a request for a tree permit variance, the applicant may appeal such action to the Commissioners Court for further review and final action. Such appeal must be in writing and shall be delivered to the County Judge's office within ten (10) days of the action of the Committee. The 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 Order as well as the unique features of the land in question and the proposed use of the land. Any appeal shall be considered at the first regularly scheduled Commissioners Court meeting subsequent to an appeal being filed, for which an Open Meetings Act notice requirement can be met. The decision of the Commissioners Court shall be final.

Section 8. Unlawful Actions

(a) Any action, or omission, 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 Five Hundred Dollars (\$500.00) plus court costs.

(b) Violations of this Order include, but are not limited to, the removal or critical damage to a live oak tree without an approved tree plan, contrary to an approved tree plan, or failing to meet the mitigation requirements for replacing live oak trees.

(c) Each act, or omission, in violation of this Order shall be a separate offense. For example, for each live oak tree that is removed in violation of this Order, a separate offense will have occurred.

(d) The defendant charged with violating this Order may be the property owner, tenant, developer, contractor, subcontractor, or any other person or party identified as a party responsible for the violation.

Section 9. 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 Health Department shall enforce the provisions of this Order. If any person proceeds to remove or damage live oak trees in violation of this Order, or an approved Tree Plan, or fails to meet the mitigation requirements for replacing live oak trees, the following actions may be taken by the Environmental Health Department:

- (1) Refusal to issue septic system permits until the Tree Plan is made to conform with County requirements or a sufficient plan is provided and approved; or
- (2) Issuance of a stop work order; or
- (3) Issuance of a citation or citations in accordance with Sec. 7 above.

Section 10. Injunction.

The County Attorney or an attorney representing the County may file an action in the Aransas County District Court to enjoin a violation or threatened violation of this Order. The respondent in such an action will be the property owner, tenant, developer, contractor, subcontractor, or any other person or party identified as a responsible party. The court may grant appropriate relief.

Section 11. Mitigation and Replacement Tree Criteria

All live oak trees removed in violation of this Order, 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), with no replacement tree being smaller than two inches (2") in diameter, *e.g.*, if a tree with an eight

inch (8”) diameter is removed, four (4) two inch (2”) trees must be planted and maintained in accordance with Section 10 (c) and (f) below. In the alternative, the eight inch (8”) tree could be replaced with two (2) trees with a diameter of three inches (3”) or more and one (1) tree with a diameter of at least two inches (2”). If a tree that is twelve inches (12”) in diameter, or larger, is removed, a replacement tree with a diameter of not less than three inches (3”) is to be used as basis for equivalency and the total mitigation must equal or exceed the removed tree. In this example, four (4) trees with a diameter of at least three inches (3”) would be required. The following table is being provided to illustrate how the replacement requirements are determined:

Table of Examples for Mitigation:

Tree Diameter (being replaced)	Examples of Number and Required Size of Replacement Trees <i>*a minimum diameter of 2” is always required, but when the tree being replaced is 12” in diameter or greater, the minimum diameter of replacement trees is 3.”</i>
2”	1 tree that is at least 2” in diameter
4”	2 trees that are at least 2” in diameter; or 1 tree that is at least 4” in diameter
6”	3 trees that are at least 2” in diameter; or 2 trees with a diameter of 3” inches or more
8”	4 trees with a diameter of 2” or more; or 2 trees with a diameter of 3” and 1 tree with a diameter of 2” or more
10”	5 trees that are at least 2” in diameter; or 2 trees with a diameter of at least 3” and 2 trees with a diameter of 2” or more
12”	<i>***replacements must be at least 3” in diameter</i> 4 trees that are at least 3” in diameter; or 2 trees that are at least 6” in diameter; or 3 trees that are at least 4”

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

(d) When it is found impractical by the Committee to relocate or replace trees on the same property, the Committee may recommend approval for the replacement being made upon public property, parks, and within rights-of-way under the 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 live oak trees must survive for three (3) years or the requirements for mitigation are reinstated.

Section 12. Fee Schedule.

The Aransas County Environmental Health Department shall collect administrative fees associated with this Order. The Commissioners Court has established the following fee schedule:

Fee for Pre-Inspection for Tree Plan	\$50.00
Fee for Post-Inspection for compliance with Tree Plan	\$50.00
Fee for Permit to Remove Trees	\$55.00 and \$25/acre
Fee for Permit to Remove Trees after Illegal Removal on Property	\$355.00 and \$25/acre in addition to any required mitigation measures

Section 13. Severability Clause.

If any article, section, paragraph, subdivision, clause, phrase, or provision of this Order shall be declared invalid or found to be unconstitutional by a court of competent jurisdiction, it is expressly the same shall not affect the validity of the remainder of this Order as a whole, or any part of provisions thereof, other than the part so declared to be invalid or unconstitutional.

Section 14. Repealer and Savings Clause for Conflicting Ordinances, Regulations, or Orders.

All provisions of any County ordinance, order, or other regulation, in conflict with this Order are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the appealed ordinance, order, or regulation, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance, order, or regulation. Any remaining portions of said ordinances, orders, or other regulations shall remain in full force and effect.

Section 15: Effective Date

This Order shall become effective from and after its date of approval as required by law.

Signature Page Follows

AND IT IS SO ORDERED.

PASSED AND APPROVED ON THIS _____ DAY OF _____, 2021.

C.H. "Burt" Mills, Jr., County Judge

Jack Chaney, Precinct 1-1A

Leslie Casterline, Precinct 2

Pat Rousseau, Precinct 3

Wendy Laubach, Precinct 4

(SEAL)

ATTEST:

Carrie Arrington, County Clerk