

ORDINANCE NO. 20-06-04-01

AN ORDINANCE OF THE CITY COUNCIL OF LAGO VISTA, TEXAS, AMENDING SECTION 20 OF CHAPTER 14, THE ZONING ORDINANCE, REGARDING THE TREE PRESERVATION AND LANDSCAPING REQUIREMENTS APPLICABLE TO ALL PROPERTY WITHIN THE MUNICIPAL LIMITS; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City of Lago Vista, Texas is a Home Rule City; and

WHEREAS, the City Council of the City of Lago Vista has previously established requirements for tree preservation and landscaping within Chapter 14, the Zoning Ordinance; and

WHEREAS, the recent volume of development has exposed the need for increased tree preservation measures and more detailed landscaping requirements; and

WHEREAS, the proposed changes should yield results that are more consistent with the expectations of our residents that we zealously protect the scenic character of our community; and

WHEREAS, the Planning and Zoning Commission of the City of Lago Vista has undertaken a review of those regulations and subsequently conducted a public hearing concerning those regulations at their regular meeting of April 9, 2020; and

WHEREAS, the Planning and Zoning Commission of the City of Lago Vista has forwarded a recommendation to the City Council to amend those requirements contained within Section 20 of Chapter 14 of the Lago Vista Code of Ordinances as described below; and

WHEREAS, the City Council at its public hearing to consider this ordinance amendment held on June 4, 2020, reviewed the recommendation and found the changes to be warranted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

SECTION 1. FINDINGS OF FACT. All of the above and foregoing recitals are hereby found to be true and correct legislative findings of the City and are incorporated herein as findings of fact.

SECTION 2. AMENDMENT. The City Council of the City of Lago Vista, Texas, does hereby amend Section 20 of Chapter 14 of the Lago Vista Code of Ordinances as shown in **Exhibit "A."**

SECTION 3. REPEALER. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of Lago Vista, Texas, are hereby repealed to the extent said ordinances, orders or resolutions or parts thereof are in conflict herewith.

SECTION 4. SEVERABILITY CLAUSE. If any section, subsection, article, paragraph, sentence, clause, phrase or word in this Ordinance is for any reason held to be invalid or

unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.


SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

SECTION 6. OPEN MEETINGS. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

AND, IT IS SO ORDERED.

PASSED AND APPROVED this 4th day of June 2020.





Ed Tidwell, Mayor

ATTEST:



Sandra Barton, City Secretary

On a motion by Councilman Robbins, seconded by Mayor Pro Tem Weatherly, the above and foregoing ordinance was passed and approved.

EXHIBIT "A"

CHAPTER 14

ZONING

Section 20 Tree Preservation And Landscaping Requirements

(a) Definitions. The following definitions shall apply to this section:

“Allowable Building Area” shall mean the area below and extending thirteen (13) feet beyond the building foundation, including any patios or porches.

“Clear cutting” shall mean the removal of substantially all trees from any property by any means other than a flood, tornado or other natural disaster.

“Native Tree” means any Live Oak, Spanish Oak, Cedar Elm, Shin Oak, Bald Cypress, Post Oak, Pecan, Bur Oak or other such tree indigenous to Central Texas.

“Permeable Surface” shall mean any ground surface that allows for the absorption of water and is not covered by a structure or materials that would prevent the absorption of water.

“Protected Tree” shall mean any tree, except an ashe juniper with a main trunk diameter of ten (10) inches or larger measured at forty (40) inches above ground.

“Shrub” shall mean a self-supporting perennial plant which has leaves.

“Small Native Tree” means Texas Madrone, Black Cherry, Texas Mountain Laurel, Evergreen Sumac, Mexican Buckeye, Flameleaf Sumac, or Texas Persimmon.

“Tree” shall mean any self-supporting woody perennial plant which has a trunk and branches. It may appear to have several stems or trunks as in several varieties of oak and ashe juniper. A tree has a more or less definitely formed crown, usually attaining a mature height of at least eight (8) feet.

“Tree Survey” shall mean a diagram or drawing, prepared by a registered professional land surveyor unless specifically exempted below, which accurately depicts the location and approximate size of all protected trees on a lot and shall include a legend that identifies and differentiates protected trees to be removed and those to be retained.

“Yard Area” shall mean the front, side and rear-yard areas as required under the zoning ordinance and the zoning district requirements applicable thereto.

(b) Clear cutting of trees and replacement of trees. Clear cutting of all trees from any property shall be restricted based upon the requirements of this section.

(c) Removal of protected trees. Permit required.

- (1) No person shall remove or cause the removal of any protected trees without first securing a separate permit or a construction permit that includes the removal of such tree or trees except as follows:
 - (A) within the “allowable building area” as noted in subsection (e)(7) below, and
 - (B) as provided for in subsection (m) below.
 - (2) All permits that include the removal and/or replacement of a protected tree or trees shall be issued by the City of Lago Vista through its Development Services Department. The council City staff, Planning and Zoning Commission and the City Council may consider tree removal and replacement as an element of any application for development approval over which they have authority.
 - (3) Applications for the tree removal and/or replacement permit that are distinct from other construction permit applications must be made in the format designated by the City and shall be signed by the owner of the affected property or their designated representative. All tree removal and/or replacement permit applications shall include a current tree survey depicting the location of all protected trees on the property on which the tree or trees to be removed are located. Subject to prior written documentation from the Development Services Department verifying the size of no more than three protected trees proposed for removal, a registered professional land surveyor shall not be required to certify the required tree survey. The fees charged for the issuance of the permit and the removal and/or replacement of protected trees shall be established by the Lago Vista City Council through its Fee Ordinance.
 - (4) The approval of a site development plan or building permit for a particular tract of property may serve as the Protected Tree Removal Permit so long as the required tree survey is included along with the site development plan or the building permit application and the removal of specific protected trees is appropriately identified. All removal and/or replacement fees shall be paid prior to the issuance of either a temporary or permanent certificate of occupancy.
 - (5) A Protected Tree Removal Permit may include authorization for the removal of one or more protected trees on a particular lot.
 - (6) A Protected Tree Removal Permit shall not be required in those instances in which the City of Lago Vista has determined that removal of the protected tree is necessary in order to prevent the spread of Oak Wilt or other disease in accordance with Subsection (m)(1) below, and/or to eliminate a hazard to public health or safety as deemed necessary by any federal, state or local authority.
 - (7) The permit authority may approve the tree removal, deny the removal, approve removal with replacement, require a fee for removal in accordance with subsection (e)(6) below, or any combination thereof.
- (d) Nonpoint Pollution Permit Required. In any case of tree removal involving the disturbance of soil, such as with the use of heavy equipment, stump removal, or removal/clearing of ground cover, a nonpoint source pollution permit in accordance with the Highland Lakes Watershed Ordinance adopted by the City is required.

(e) Replacement of Protected Trees Required.

- (1) Every effort shall be made to allow for as many protected trees, native trees and small native trees to remain on the property as possible. During the building design phase, courtyards, alcoves, and innovative shapes shall be considered. Winding sidewalks and driveways shall also be employed to preserve protected trees when possible. Parking lots shall be designed to incorporate and preserve as many protected trees as possible. Patios and decks shall be designed and located to avoid protected trees.
- (2) Any person removing or causing the removal of a protected tree or trees from any property within the City of Lago Vista without a permit issued in accordance with this chapter shall be required to provide for the replacement of the protected trees or otherwise comply with the provisions of this section.
- (3) Selection of replacement trees shall include trees listed in subsection (k) of this section and shall be a minimum of two (2) inches caliper measured forty (40) inches above ground level.
- (4) The cumulative total caliper inches of replacement trees shall be required to meet or exceed the cumulative total caliper inches of any and all protected trees removed from a tract or property- as follows:
 - (A) Caliper inches of protected trees in the allowable building area shall be replaced or assessed fees at a ratio of 1:1;
 - (B) Caliper inches of protected trees between 10 inches and 36 inches in diameter measured at forty inches above the ground shall be replaced or assessed fees at a ratio of 1.5:1, reduced to 1:1 if minimum 3-inch caliper replacement trees are provided; and
 - (C) Caliper inches of protected trees larger than 36 inches in diameter measured at forty inches above the ground shall be replaced or assessed fees at a ratio of 2:1, reduced to 1.5:1 if minimum 3-inch caliper replacement trees are provided.
- (5) The placement of replacement trees shall not be allowed within any public utility or drainage easements, natural drainage ways or in any location which limits site distances for vehicular traffic along roadways, rights-of-way, or driveway/roadway intersections.
- (6) Replacement trees for nonresidential and multifamily development shall be located as follows:
 - (A) within a buffer area between the development and one- or two-family zoned property or residences;
 - (B) in an area between parking lots and a street;
 - (C) in an area between building(s) and a street; and/or
 - (D) within parking lots.
- (7) If it is not possible or feasible to provide for the replacement of the total number of inches of protected trees to be removed, the owner or controlling agent of the property shall pay a fee to the City of Lago Vista in lieu of tree replacement in accordance with Appendix A, Fee

Schedule. Any such fees collected by the City shall be placed in a special fund and the use of these funds shall be restricted for the planting of trees on City property or other areas as determined by the City Council.

- (8) In addition to the required tree survey, all protected trees to be removed shall be depicted on the site plan for the project, including those in the allowable building area. The fee for any removed protected tree that can be detected on aerial or other available imagery, but not documented on the required tree survey shall be assessed as if 36 caliper inches, measured 40 inches above the ground.
- (e) Multifamily and Nonresidential Development. All multifamily and nonresidential developments within the City are required to submit a Landscape Plan as part of the Site Development Plan and Design Review required for obtaining a permit. While the City encourages the use of native vegetation, xeriscaping and other forms of landscaping to promote water conservation and to retain the natural appearance of the community, all landscape plans and the resulting landscape shall meet the minimum standards of this section.
- (1) Landscaping in multifamily and nonresidential areas shall be in compliance with the landscape plan approved by the City of Lago Vista and in accordance with this section.
 - (2) Areas of permeable surface, except the areas of retention and/or detention ponds, shall be landscaped with areas designated as lawn, rock garden or plant bedding area. All such areas shall have sufficient topsoil to support indicated plant life and comply with the erosion control requirements within Chapter 3. The City encourages the use of grasses such as buffalo grass to promote water conservation. Areas designated plant bedding shall have sufficient topsoil and other required materials to support the scheduled plants. The landscaped areas shall be separated from parking and other paved areas by concrete, stone or brick curbing.
 - (3) A minimum number of trees and their location shall be according to the following:
 - (A) Within parking lots: One shade (not ornamental) tree for every eight parking spaces. Trees may be clustered and uniform planting is not required.
 - (B) Within areas between a parking lot and a street: One tree for every 40 linear feet of street. Planted trees shall be at least 20 feet from another tree. Trees under existing power lines shall be ornamental trees.
 - (C) Within residential buffers: Where the development adjoins land used or zoned for one- or two-family development, one shade (not ornamental) tree for every 25 linear feet uniformly spaced.
 - (D) Planted trees shall be in planting area of at least 64 square feet and no dimension shall be less than eight feet.
 - (2) Trees required by this section shall be a minimum caliper of two (2) inches measured forty (40) inches from the ground and six (6) feet in height when planted, and shall be one of the species listed in subsection (k), or any other ornamental trees approved by the City.

- (3) Retention and Detention Ponds. Exterior walls of retention and/or detention ponds above grade level shall be faced with stone, brick or similar decorative facing, or screening by planting of shrubbery or vines of a type suitable for this area, and as approved by the City.
- (4) An owner shall maintain required landscaped areas in a healthy condition, free from diseases, pests, weeds and litter in accordance with generally accepted horticultural practices. An owner who receives notification from the City that plants on site are dead, diseased or severely damaged shall remove the plants within sixty (60) days from receipt of such notification and shall replace the plants within six (6) months after notification or within the next planting season whichever comes first. Any owner who is required to replace plants must use the same species and size of plants shown on the approved landscaping plan or equivalent quality and size.

(g) Landscaping in One- and Two-Family Residential Areas.

- (1) Prior to the issuance of a Certificate of Occupancy, areas of permeable surface within the boundaries of a one- or two-family residential property shall be landscaped with front and side areas designated as lawn, rock garden or plant bedding area. All such areas shall have sufficient topsoil to support indicated plant life and comply with the erosion control requirements within Chapter 3. The City encourages the use of grasses such as buffalo grass in order to promote water conservation. The areas designated plant bedding shall have sufficient topsoil and other required materials to support the provided plants. At least six (6) shrubs will be required to be located on the property preferably in the plant bedding area.
- (2) A minimum number of trees per lot are required as provided in the following:

Lot Size	Number of trees required
1–8000 square feet	2
8,001–10,000 square feet	3
10,001–14,000 square feet	4
14,001–18,000 square feet	5
18,001 square feet or more	6

- (3) An owner shall maintain:
 - (A) required landscaped areas in a healthy condition, free from diseases, pests, weeds and litter in accordance with generally accepted horticultural practices;
 - (B) the required number of shrubs and trees; and
 - (C) required accessory building screening and landscaping.
- (4) An owner who receives notification from the City that plants on site are dead, diseased or severely damaged or missing shall remove the plants within sixty (60) days from receipt of such notification and/or shall replace required plants within six (6) months after notification or within the next planting season whichever comes first. Any owner who is required to replace plants must use the same species and size of plants shown on the approved landscaping plan of equivalent quality and size.
- (h) Alternative Landscape Plan. In lieu of meeting the requirements of this section, an applicant may submit an alternative landscape plan to the approving authority. The plan should be superior to what could be achieved from following the specifications of this section.
- (i) Certificate of Occupancy. Prior to the issuance of a Certificate of Occupancy, properties will be inspected to ensure compliance with any approved landscape plan for the development and with this section. Failure to comply with the approved landscape plan and/or the provisions of this section may result in a denial of the Certificate of Occupancy by the City.
- (j) Tree Protection During Construction and Tree Protection Zone.
 - (1) During any construction or land development, the developer or property owner shall take reasonable care to avoid damaging any trees that are to remain on the lot or site. The developer or property owner shall not allow any cleaning of equipment or tools nor the disposal of any waste material such as, but not limited to, paint, oil, solvents, asphalt, concrete, mortar, etc, under the canopy of any tree or groups of trees. Trees to remain after construction is complete should be protected from possible injury during construction. Tree protection measures shall be shown on the required landscape plan.
 - (2) For trees that are to be preserved, a root protection zone according to the following shall be established. The area of the root protection zone shall be at least an area with a radius of six inches for each inch of main trunk measured 40 inches above the ground. The area need not be uniform and can be at no point closer than five feet from the trunk. There shall be no disturbance in the root protection zone. The root protection zone of more than one tree may overlap. The maximum size of the root protection zone shall be 1,000 sq. ft.
- (k) Preferred Trees. Replacement trees required by the provisions above and any new required trees to be planted shall be a minimum of two (2) inches caliper measured forty (40) inches from the ground and six (6) feet in height when planted, and shall be one of the following species of tree or any other ornamental trees approved by the City. Planting shall be completed in accordance with best practices established in the Tree Care Kit published by the Texas A&M AgriLife Extension Service and the Native Tree Growing Guide for Central Texas available from the City of Austin.

American Elm	American Smoketree	Bald Cypress
Big tooth Maple	Blanco crab apple (ornamental)	Bur Oak
Carolina Buckthorn	Cedar Elm	Chinese Flame
Chinese Pistachio	Chinquapin Oak	Crape Myrtle (ornamental)
Chitalpa	Deciduous Holly (ornamental)	Desert Willow (ornamental)
Elm	Flame leaf Sumac	Lacebark
Live Oak	Mexican Buckeye	Mexican Plum
Monterey Oak	Montezuma Cypress	Pecan
Rough Leaf Dogwood	Texas Persimmon	Texas Red Bud (ornamental)
Western Soapberry		

(l) Removal/Eradication of stumps required.

- (1) In the event that any trees of any kind are cut on a lot, the owner of the lot or the owner's agent will be required to remove, grind or otherwise eradicate the stump of the cut trees in a manner in which the stump will not be noticeable from surrounding properties or the street right-of-way. Stump removal shall occur within 60 days of cutting.
- (2) For purposes of this section, a stump will not be considered visible if the top of the stump does not exceed two (2) inches above the surface of the lot at location of the stump.
- (3) Removal of one or more stumps from a lot through excavation or bulldozing will require the installation of temporary and permanent erosion and sedimentation controls as deemed necessary by the City of Lago Vista and compliant with the requirements within Chapter 3. Re-vegetation of any area disturbed by the removal of trees or stumps must be accomplished with sixty (60) days of the removal absent the express written permission of the permitting authority. Erosion and sedimentation controls must be maintained in an appropriate manner to ensure their effectiveness and aesthetic appearance until such time as new vegetation is permanently established in the disturbed area(s).

(m) Exceptions. The following shall be exemptions to this section.

- (1) Trees certified as dead or diseased by an arborist or registered landscape architect at the time of a tree survey required by any permit shall not result in a replacement obligation under the provisions of this section. In addition, any or all trees on a property that are infested with a contagious disease, such as oak wilt, shall be promptly removed in accordance with the requirements of other chapters within the Lago Vista Code of Ordinances. When certified by an arborist or registered landscape architect, removal of trees with a contagious disease shall not result in a replacement obligation. However, any dead or dying tree not caused by a contagious disease but required as a result of permitted improvements shall be replaced as specified herein. The City may require certification by an arborist or licensed landscape architect to verify that a tree is dying.

- (2) During the state of an emergency, as declared by the City, the requirements of this chapter may be temporarily waived for a period of time as may be deemed necessary by the City.
- (3) All licensed plant or tree nurseries shall be exempt from the terms and provisions of this chapter only in relation to those trees planted and growing on the premises of said licensee, which are so planted and growing for the sale or intended sale to the general public in the ordinary course of said licensee's business.
- (4) Utility companies franchised by the City may not remove trees without a permit, except in emergency situations which endanger public safety and welfare by interfering with utility service that is contained within rights-of-way or easements.
- (5) Fire department personnel actively engaged in fighting a fire may remove as many trees as necessary to aid in containment or suppression of the fire.
- (6) Any lot which does not have, as of the effective date of this chapter, the minimum number of required trees or shrubs shall be exempt from any requirement to add trees or shrubs unless a building permit, design review or site development plan review is requested for that property. However, this exception shall not exempt a property owner from the requirement to replace dead or diseased trees under the provisions of (m)(1) above.

(n) Failure to Comply.

- (1) Failure to obtain a permit prior to the removal of a protected tree will result in a permit fee which is double the fee per caliper inch as the fee established in the Fee Ordinance for the City of Lago Vista.
- (2) Failure to comply with this chapter may result in the imposition of additional fees and penalties as contained in this section.
- (3) In those cases in which a tree is removed without permit and that tree may have been a protected tree under this chapter, the City will rely on and all available evidence to determine if a violation of this chapter has occurred. For enforcement purposes the City will consider that any stump remaining on the property which is ten (10) inches or more in diameter measured at ground level or higher was a stump of a protected tree as defined by this chapter. See also Section (e)(7) above.
- (4) Failure to install landscaping as required by this chapter shall be considered a violation of the building permit and a violation of this chapter. The construction shall not be considered complete until all landscaping is installed as required.
