

**ORDINANCE 19.01.28.B**

**AN ORDINANCE AMENDING SECTION 66, ARTICLE II, ENTITLED "TREES" OF THE CODE OF ORDINANCES OF THE CITY OF PINEY POINT VILLAGE, BY ADOPTING A NEW SECTION 66, ARTICLE II, IMPOSING NEW REQUIREMENTS FOR THE MAINTENANCE, PROTECTION, AND REMOVAL OF TREES, AND ESTABLISHING PENALTIES FOR THE VIOLATION OF SUCH REQUIREMENTS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PINEY POINT VILLAGE, TEXAS:**

Section 1. The Code of Ordinances of the City of Piney Point Village, Texas, is hereby amended by deleting Chapter 66, Sections 66-31 through 66-83 and by substituting In lieu thereof the following new Sections to Chapter 66:

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**Article II. Trees**

**Division 1 General**

**Section 66-31. Purpose.**

It is the purpose of this ordinance to preserve the environmental, economic, health, and aesthetic value of our Trees, which includes: reduction of air pollution by particulates, CO<sub>2</sub>, and other gases, return of O<sub>2</sub> to the atmosphere, reduction of soil erosion and water runoff, climate control and resulting energy savings, acting as noise buffers and light shields, and increasing property values; and to enhance the desirability of our city by requiring careful site planning and the protection of Trees during construction, controlling unnecessary Tree removal, requiring Tree replacement, prohibiting indiscriminate cutting or clearing of Trees, and encouraging the increase of our canopy cover while preserving owners' rights to utilize and enjoy their property.

## Section 66-32 Criteria Manual

The standards and methods used to apply and comply with the requirements of this Ordinance will be found in the Criteria Manual on file at the City of Piney Point Village City Hall.

## Section 66-33. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meaning:

Caliper – diameter of Replacement Trees measured 6” from ground level.

Critical Root Zone – the area within a concentric circle centered on the trunk location, with a diameter equal in feet to the number of the Tree’s trunk diameter in inches.

Crown – the Tree’s branches and leaves.

Crown Clearance – the distance from the ground to the lower branches of the Tree.

Diameter at Breast Height (DBH) – diameter of the Tree 4.5 ft above the ground.

Drainage – Including but not only boxes, pipes, valves, inlets installed to prevent water flow from accumulating on adjoining lots.

Drip Line – a concentric circle reaching to the tips of the largest branches of the Tree.

Fiscal Security – a cash deposit to secure the cost of replacement Trees as set out herein.

Independent Forester – a Degreed Forester graduate of an accredited four-year College or University.

Lot - a parcel of land defined in Chapter 74, Section 74-1.

Low Impact Activity – projects such including but not limited to walkways; small Structures such as pool motors and filters, and re-roofing of Structures, which will not have any significant adverse effect upon any Protected Tree or RMD tree, as determined by an Independent Forester approved by the City Building Official.

Multiple-Trunk Tree – a Tree with two or more trunks visibly connected above the ground.

Qualified Tree – any Tree of a species that is included in Section 66-34 hereof.

Remodeling – alterations or modifications made to a Structure which would alter the footprint of said Structure.

Required Minimum Density (RMD) – one RMD Tree per 2000 ft<sup>2</sup> of Lot area.

Replacement Tree – A Qualified Tree of equal to or greater than 3” caliper.

RMD Tree – any tree of greater than or equal to 3” DBH named in the Qualified Tree List & rated as “good” by the Independent Forester’s Report & the City Forester

Public Right-of-Way (ROW) – the surface, air space above the surface, and area below the surface of any street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement, or similar property dedicated to the public within the City.

Root Pruning – a clean cut between the undisturbed and disturbed root zones within the Critical Root Zone of a Tree; commonly done with a rock saw or similar equipment to minimize root damage.

Setback Lines - Front, Side, Rear Yards as defined in Chapter 74-244 (c).

Shared Tree - a Tree the body of the trunk of which grows on the property line of different owners.

Structure - anything constructed or erected that requires location on the ground, or is attached to something having a location on the ground, including but not limited to signs, fences, walls, water fountains, ponds, air-conditioning/heating equipment, swimming pools, swimming pool motors and filters, gazebos, tennis/sports courts, driveways, walkways, poles, and buildings, whether of a temporary or permanent nature.

Tree – a self-supporting woody plant with a single trunk, un-branched for several feet above the ground, supporting a definitely formed Crown and having a mature height of at least 20 feet.

Tree Disposition Permit – a permit issued by the City of Piney Point Village allowing removal of, or damage to, any Protected Tree or RMD Tree.

Tree Disposition Plan – A written plan prepared by an Independent Forester indicating how all Protected Trees and RMD Trees and their Critical Root Zones on a Lot, and all Protected Trees and RMD Trees located elsewhere, which have 30% or more of their Critical Root Zone in a Lot, are to be protected pursuant to Section 66-48 hereof; and how replacement Trees and/or new Trees are to be maintained to encourage survival and sustained growth.

Tree Survey - an on-the-ground survey of Protected Trees and RMD Trees on a Lot, showing the location, circumference, Crown Clearance, Crown area (Drip Line), Critical Root Zone (CRZ), types (species); and the same information on any Protected Tree or RMD Tree located elsewhere which has 30 % or more of its Crown or CRZ in such Lot.

#### Section 66-34. Qualified Trees

The list of Qualified Trees is found in the Criteria Manual Appendix A.

### **Division 2. Requirements for Compliance**

#### Section 66-40. Tree Survey Required

A Tree Survey is required in conjunction with any activity covered in Section 66-45. Specifications for the Tree Survey are listed in the Criteria Manual Section 66-40.

#### Section 66-45. Tree Disposition Plan Required

The Tree Disposition Plan shall include the Tree Survey and additional specifications that are listed in the Criteria Manual, Section 66-45.

#### Section 66-46. Tree Disposition Permit Required

- A. It shall be unlawful for any person to remove any Protected Tree or RMD Tree, or to damage or cause serious trauma to any Protected Tree or RMD Tree during any of the following activities, without having first obtained a Tree Disposition Permit, unless otherwise exempted by the provisions of this Section.
  1. A Shared Tree requires the written consent of each owner before any action can take place.
  2. Demolition/Remodeling/Drainage Installation/New Construction of any Structure requiring a Building Permit.
  3. Tree Removal of Protected Trees or RMD Trees, unless:  
Replacement Trees are provided to meet the Required Minimum Density as set out in Section 66-47.
  4. Drainage Installation Requirements:  
Approved Drainage Plans must be reviewed by the City Forester before drainage construction may begin.
  5. Trenching/Boring/Pruning for Utility Installation or Maintenance.

If utility installation or maintenance by a public utility requires trenching, boring, Root Pruning, or limb pruning, the owner and any public utility shall consult with the city to find least-damaging design alternatives such as trenching or boring where the minimum impact is made on Trees, stacking underground utilities to reduce number of trenches required, and hand-digging trenches to avoid cutting large roots. Permits issued subsequent to these negotiations shall be issued at no cost/reduced cost.

#### 6. Demolition-Only Building Permit

If a permit is issued for demolition only (without plans for new construction of a single family dwelling having been approved), a Tree Disposition Permit shall be issued for only such trees shown on the Tree Disposition Plan that are necessary to be removed or pruned for demolition to be accomplished, as determined by the City Forester and the City Building Official.

#### B. Exemptions from Tree Disposition Permit Requirements

1. Any utility installation or maintenance by a public utility or their authorized contractor on utility easements or public rights-of way.
2. Removal of all or part of a Tree(s) that has disrupted public utility service, the use of a public ROW, is dead, or is in imminent danger of causing harm to people or property.
3. Removal of any Qualified Tree of less than 3" DBH, or of any Tree not listed as qualified which is not an RMD Tree.
4. Low Impact Activity as defined under Section 66-32.

#### C. Transfer of permit

If the owner of a Tree Disposition Permit sells the property associated with said permit, such permit, together with any related Tree Survey and Tree Disposition Plan, shall be transferred to any or all subsequent owners, until the conditions of the Permit are satisfied.

#### Section 66-47. Replacement Trees Required.

- A. The methods for determining number, size, and location of Replacement Trees and time limit for planting Replacement Trees are listed in the Criteria Manual, Section 66-47.
- B. Transfer of liability for survival of replacement Trees. If the owner of a Tree Disposition Permit that involves Trees remaining on the property sells the property associated with said permit, liability for survival of remaining Protected Trees and RMD Trees shall transfer to any subsequent owners of the subject property until survival conditions are met.
- C. Escrow/maintenance time period for determining survival of remaining Trees. The permittee shall post Fiscal Security (Escrow) in an amount equal to the cost of replacement Trees, plus 15% to cover administrative costs, together with all necessary rights of entry. The maintenance time period for determining viability shall be one year from the time of planting.

## Section 66-48. Protection of Remaining Trees

### A. Liability for survival of remaining trees

1. Qualified trees on site named in the Qualifies Tree List and rated as good by the Independent Forester's report and the City Forester count as part of the Required Minimum Density of trees. (RMD)

2. Transfer of liability for survival of remaining Trees. If the owner of a Tree Disposition Permit that involves Trees remaining on the property sells the property associated with said permit, liability for survival of remaining Protected Trees and RMD Trees shall transfer to any subsequent owners of the subject property until survival conditions are met.

3. Escrow/maintenance time period for determining survival of remaining Trees. The permittee shall post Fiscal Security in an amount equal to the cost of replacement Trees, plus 15% to cover administrative costs, together with all necessary rights of entry.

## Section 66-49. Management of Vegetation located on Public Rights-of-Way or Other Public Property.

A. Vegetation located on Public Right-of-Way is hereby defined as trees, shrubs, bushes, and all other woody vegetation on land lying between the curb, pavement line, and the property lines of either side of all public streets, public avenues, or public ways included within the City.

B. The Public Works Officer or his designee shall be responsible for the management of vegetation on public rights-of-way, including but not limited to planting, pruning, maintaining, replacement, and removal of all trees located within the street rights-of-way. It shall be unlawful for any other person to perform any of the above actions or to damage or harms any vegetation on public rights-of-way unless a permit is issued by the Public Works Officer or his designee.

## Section 66-50. Removal of Pine Trees infested with pine bark beetles

A. Infested Trees declared nuisance. Any Tree within the city limits that is infested with a class of Engraver Beetles including but not limited to Southern Pine Beetles, Ips, and Black Turpentine Beetles, as determined by a representative of the City or a Certified Forester, is declared to be a public nuisance.

B. Abatement. It shall be unlawful for the owner of any Lot or parcel of land within the city to permit or maintain on any such Lot or parcel of land any Tree infested with a class of Engraver Beetles including but not limited to Southern Pine Beetles, Ips, and Black Turpentine Beetles. It shall be the duty of the owner of any such Lot or parcel of land upon which is situated a Tree infested with a class of Engraver Beetles including but not limited to Southern Pine Beetles, Ips, and Black Turpentine Beetles to abate such infestation and public nuisance by the felling of such Tree to ground level and subsequent removal of all parts of the felled Tree from the City.

C. Right of entry for inspection.

1. The City building official and such other officers, employees and agents of the City as may be designated by the City building official are authorized and empowered to enter upon any Lot or parcel of land within the City during regular business hours for the purpose of inspecting any Tree situated thereon and may remove or cause to be removed a portion of the bark to determine if such Tree is infested with a class of Engraver Beetles including but not limited to Southern

Pine Beetles, Ips, and Black Turpentine Beetles. Before entering upon any Lot or parcel of land for such purpose, the City building official or other representative of the City shall make reasonable effort to contact the owner of such Lot or parcel of land and advise such owner of the purpose and approximate time of such proposed entry and inspection. If entry is refused or otherwise not permitted by the owner, then the City building official or other such officers, employees or agents of the City shall seek a warrant from a court of competent jurisdiction to enter the lot or parcel.

2. If from an examination of a Tree or a bark sample removed from said Tree by the City building official or other person designated by the City building official it is determined that the Tree is infested with a class of Engraver Beetles including but not limited to Southern Pine Beetles, Ips, and Black Turpentine Beetles, the City building Official shall serve or cause to be served upon the owner of record of the Lot or parcel of land upon which such Tree is situated a written notice requiring such owner to comply with the provisions of this section. Such notice may be served in person or by regular mail or by registered or certified mail, return receipt requested. Such owner shall comply with the provisions of this section within ten days after receipt of such notice.
- D. Replacement Tree required. If the tree required to be removed is a Protected Tree or RMD Tree and if removal of such tree shall cause tree density on the Lot or parcel of land to be less than the Required Minimum Density, a replacement tree is required as provided under Section 66-47.

### **Division 3. Administration and Enforcement**

#### Section 66-81. Administration

This ordinance shall be administered by the City administrator, City building official, and/or their designee(s).

#### A. Interaction with Other Ordinances

1. Conflicts with other regulations. In any case where another City Ordinance, rule, or regulation would require the removal, damage, or death of a Protected Tree or RMD Tree, under circumstances where this Chapter would prohibit such action, it is the intent of the City Council that all of the applicable regulations, excluding the City's Zoning Ordinance, shall be read together and harmonized so that, if reasonably practicable, the Protected Tree or RMD Tree is not removed, damaged, or killed.
2. In addition to the requirements of item A.1. above the Drainage installation would be subject to revision and/or fines if there is failure to accurately identify the location and size of trees.

#### Section 66-82. Enforcement

#### A. Upon observation of a violation, the City building official or designee may:

1. Issue a citation

2. Stop the construction/demo/Remodeling or other job
3. Refuse to grant a Certificate of Occupancy
4. Require replacement of Trees as provided under Section 66-48.

B. Any person may report violations of this ordinance to the City administrator, City building official, and/or their designee(s).

#### Section 66-83. Fees, Fines and Penalties.

##### A. Violation

Any person who shall violate any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined as provided this section.

##### 1. Fees.

The City building official shall fix such fees for Tree Disposition Permits, Tree Surveys, and Tree Disposition Plans issued under this section as shall be necessary to cover the costs of administering and enforcing this section. The building official may waive any fees provided that: (1) the lot owner has resided on her/his property for one year prior to the fee event, and (2) the property meets the Required Minimum Density after the tree removal.

##### 2. Penalties.

Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount as provided by Section 1-11 of the City's Code of Ordinances. Each day of violation shall constitute a separate offense.

In addition to the above mentioned fines, Drainage installation would be subject to revision if there is failure to accurately identify the location of trees as specified on the Tree Survey.


3. All penalties collected by the Municipal Court of the City of Piney Point Village, Texas shall be deposited into a special fund to be utilized for education of the public on the value of Trees to our city, the purchase of Trees to be planted on City-owned property, and/or to defray administration and enforcement expenses of this Ordinance.

#### Section 66-84. Severability

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 Piney Point 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 AND APPROVED this 28<sup>th</sup> day of January 2019.

SIGNED:

  
Mark Kobelan, Mayor

ATTEST:

  
Karen Farris, City Secretary

