

**ORDINANCE NUMBER 672**

**AN ORDINANCE AMENDING CHAPTER 7 OFFENCES AND NUISANCE OF THE CODE OF ORDINANCES OF THE CITY OF HILSHIRE VILLAGE, TEXAS, BY ADDING ARTICLE NO. 7.700, ESTABLISHING RULES AND REGULATIONS CONCERNING TREE PRESERVATION; 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.**

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**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 adding a new Article 7.700 under Chapter 7 Offences and Nuisance, to provide as follows:

**“ARTICLE 7.700. - TREE PRESERVATION**

**Sec. 7.701. – Purpose and Definitions.**

It is the purpose of this Article to preserve the environmental, economic, health, and aesthetic value of our trees and to enhance the desirability of our City by requiring careful site planning and the protection of trees, 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.

**Sec. 7.702. – Definitions.**

As used in this Article, the following words, terms, and phrases shall have the meanings ascribed to them in this section, unless the context clearly indicates another meaning:

*Circumference* or *Diameter* of a tree shall mean 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 feet (4.5') feet, only the circumference or diameter of the larger bole or stem will be measured.

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

*Damage of a Tree* shall mean to take any action which will result in the tree's death, either immediately, or with a period of three (3) years. Without limiting this definition, some examples are: severing the main trunk or large branches or large roots, girding, 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 with the Critical Root Zone, covering with over three (3") inches of soil or compacting the soil in the Critical Root Zone.

*Person* shall mean any individual, entity, corporation, organization, unincorporated organization, partnership, or any other form of entity.

*Tree* means a long-lived, branching, woody plant, usually with one main stem.

*Tree Removal Permit* shall mean any permit issued for the removal of any tree.

#### **Sec. 7.703. – Minimum Tree Requirement.**

A person with an ownership interest in a lot within the City must maintain at least fifteen (15) trees, eight (8") inches in diameter, on such lot. If a person has less than fifteen (15) trees on a lot, then the Minimum Tree Requirement shall be the number of trees on such lot at the time a Tree Removal Permit is sought or the provisions of this Article are otherwise invoked.

#### **Sec. 7.704. –Preservation and Protection of Trees.**

It is unlawful for any person to remove or intentionally cause serious damage to any tree that is eight inches (8") in diameter or greater on any lot, unless exempted from the requirements of this Article under Section 7.706 below, without having first obtained from the city a Tree Removal Permit for each tree to be removed. A person may remove a tree that is less than eight inches (8") in diameter without first having to obtain a Tree Removal Permit. The Tree Removal Permit is an independent requirement and applies regardless of whether any building, demolition or other permit application has been made to the city. The city will issue the Tree Removal Permit if the lot owner:

- a. Completes and executes the city's form of Tree Removal Permit application, which application will include a certification by the applicant that upon removal of such tree, either the lot will continue to satisfy the Minimum Tree Requirement or the lot owner agrees to comply with Section 7.705 below regarding tree replacement (in the event concurrent tree removal permits are

sought, the Minimum Tree Requirement must be satisfied after all trees are removed); and

b. Pays an application fee as adopted and amended from time to time, by City Council. Such fee shall be waived by the city if the applicant provides substantial evidence that the tree to be removed is either diseased or dead.

Removal of a tree without a Tree Removal Permit will not constitute a violation of this Article if such removal was required due to an emergency situation, and because of such emergency, it was not possible for the lot owner to timely obtain the permit; provided, however, that as soon as reasonably possible after such tree removal, the lot owner must submit a Tree Removal Permit application without the fee and an explanation of the nature of the emergency.

**Sec. 7.705. –Replacement of Trees.**

If following removal of a tree, the lot does not satisfy the Minimum Tree Requirement as provided for in this Article, then as a condition to issuance of the tree removal permit, within thirty (30) days after removal of such tree, the lot owner will properly plant and maintain an Approved Tree, as such Approved Tree list is adopted by City Council, that is at least 3” in diameter measured at 6” above the grade for each removed tree.

**Sec. 7.706. –Exemptions from Requirements of this Article.**

The provisions of this Article shall not apply to trees removed or trimmed within an easement for public or private utilities, by the owner of the easement, employee of the owner, authorized contractor of the owner, or Public Utility Company or its authorized contractor, if the trimming or removal of such trees is required to properly use or maintain the easement. The provisions of this Article shall also not apply to trees removed or trimmed by the City, an authorized representative of the City, or Public Utility Company or its authorized contractor on any public property or within any public right-of-way, including, but not limited to, drainage easements and roadway easements.

**Sec. 7.707. –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. 7.708. –Appeal.**

Any person whose request for a Tree Removal Permit has been denied 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 is entitled to a Tree Removal Permit under the terms of this Article, and that the City erred in denying the permit. 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 Tree Removal Permit, it shall order the City to issue such a permit. Otherwise, the decision of the City to deny the permit 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:

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Susan Blevins, City Secretary

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Shannon Whiting, Mayor Pro Tem