

Ordinance 1-2010

Restricting Clear Cutting Of Live Oak Trees

CHM

Sec. 1. Purpose and Scope.

This order establishes protections for Live Oak (*Quercus virginiana*) 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.

Sec. 2. Applicability.

(a) The terms and provisions of this order apply to every legally defined property greater than one acre and live oak trees 6" or more in diameter determined at 4' 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.

Sec. 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: (1) Removing or critically damaging all live oak trees in a space creating a one fourth acre of space void of live oak trees.

(2) Removing or critically damaging any live oak tree within 30' of any property perimeter.

County: Aransas County, Texas.

Critical Damage: Any action which could cause a tree's death within 3 years.

Examples: 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 Live Oak Tree Committee. This person takes part in the deliberations of the Committee but shall have no vote.

Pre-development activity: Construction activity which includes demolition, moving of buildings, site clearing, 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 live oak trees, or in 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. Such plans shall be drawn to scale in a manner that allows the identification of quarter acre tracts on the subject property.

Sec. 4. Protection of Live Oak Trees

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

(1) Before the removal of any live 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 Live Oak Tree Committee for consideration of a variance. A variance may be obtained from the Live Oak Tree Committee based upon the following criteria:

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

(1) Live oak trees that are hazardous or in decline to be determined by Environmental Department;

(2) Live 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) Live oak trees within power line easements that cannot be properly pruned by the County or a local utility company;

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

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

(b) In addition to the above listed criteria, the Live Oak 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 granted shall contain a definite date of expiration not to exceed 180 days. Any tree plan shall be void if its terms are violated. Within 5 days after tree removal, notice of completion shall be provided to the environmental department.

(4) Protection of Windswept Live Oak Trees.

(a) Windswept Live Oak Trees are considered a special natural resource to this area, shaped and created by forces of nature, and are irreplaceable. Windswept Live Oak Trees provide character and beauty to the community, and special preservation of such trees benefit the community. Windswept Live Oak Trees are deserving of extra protection by the Committee before any such tree is permitted to be removed.

(b) The Committee may deny any application for removal of a Windswept 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.

(5) Commercial Development Mitigation Policies.

Due to large areas usually being involved in commercial property development and the need to prevent stripping such areas of protected trees, such development shall retain as many Live Oaks within parking lot areas or within non-developed areas as possible.

Sec. 5. Live Oak Tree Committee

(a) The Live Oak 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 Commissioners 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 Live Oak 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 Environmental Department and make recommendations for changes to Commissioners' Court.

(5) The Live Oak 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.

Sec. 6. Appeals.

Should the Live Oak Tree Committee deny a request for a tree permit variance, the applicant may, in writing, within ten days of the action of the Committee, appeal such action to Commissioners' Court for further review and final action. 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 Live Oak 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 Commissioners' Court meeting subsequent to an appeal being filed for which Open Meetings Act notice requirements can be met. If Commissioners' Court takes no action within this time frame, the appeal is automatically rejected.

Sec. 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 offence. Specifically, each time a live oak tree is removed or critically damaged in violation of this order a separate offense will have occurred.

Sec. 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 live 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.

Sec. 9. Replacement Tree Criteria

(a) All live oak trees removed in accordance with a variance granted by the Live Oak Tree Committee shall be replaced in accordance with the following schedule:

Each [Existing] Tree	Will Be Replaced By . . .	Replacement size . . .
All tree sizes are determined at 4' from ground level.		
Over 6" up to 9"	2 trees	4" –each
Over 9" up to 12"	3 trees	6" –each
Over 12" up to 18"	4 trees	8" –each
Over 18"	5 trees	10" –each

(b) In the case of unusual circumstances where the above schedule can not feasibly be met, a removed tree(s) may be replaced wood-for-wood with approval of the Committee. 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.

(c) Replacement trees shall be healthy Live Oak Trees (*Quercus virginiana*).

(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 subject to approval from the county.

(e) No replacement trees are 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 replacement requirements start over.