AN ORDINANCE 2014-01-13-03

REMOVING THE CITY'S TREE PRESERVATION REGULATIONS FROM THE CITY'S ZONING REGULATIONS AND CREATING CHAPTER 15, "TREE PRESERVATION; PROVIDING FOR A CUMLUATIVE CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City has previously deemed it necessary and desirable to adopt tree preservation standards to provide for the orderly development and the proper environmental stewardship of properties within the City in order to promote the public health, safety, morals and general welfare of the residents of the City, and

WHEREAS, the City's current tree preservation standards are located within the City's zoning regulations; and

WHEREAS, a public hearing was held by the Zoning Commission on the 7th day of January, 2014 and on such date all persons were given an opportunity to appear and express their opinion concerning the proposed amendment to remove the "tree preservation" regulations from Chapter 14, "Zoning," and make them a stand alone document by creating Chapter 15, "Tree Preservation" and after consideration of all such testimony, the Zoning Commission made a final report recommending the amending of the Zoning Regulations; and

WHEREAS, the Zoning Commission of the City of Leon Valley has recommended approval of the zoning amendment to remove the "tree preservation" regulations from Chapter 14, "Zoning," and make them a stand alone document by creating Chapter 15, "Tree Preservation"; and

WHEREAS, the City Council of the City of Leon Valley held a public hearing on the 13th day of January, 2014 at which all persons were given an opportunity to appear and express their opinion concerning the proposed amendment to remove the "tree preservation" regulations from Chapter 14, "Zoning," and make them a stand alone document by creating Chapter 15, "Tree Preservation"; and

WHEREAS, this City Council, after consideration of the testimony received at the public hearing; the report received from the Zoning Commission, the recommendations of City Staff, and due deliberation finds that the amendment removing the "Tree Preservation" regulations from the City's zoning will not adversely affect the character or spirit of the City's zoning regulations and will still adequately address the Tree Preservation regulations in a separate Chapter of the Code of Ordinances which will promote the general health, safety and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS:

1. **That the City's Code of Ordinances Chapter 14 Zoning is amended by deleting Section 14.02.501, "Landscaping," Subsection (j), "Tree Preservation.**

2. **That the City's Code of Ordinances is amended by adding Chapter 15, Tree Preservation to read as follows:**

CHAPTER 15

TREE PRESERVATION

ARTICLE 15.01 GENERAL PROVISIONS[*]

(Reserved)

ARTICLE 15.02 TREE PRESERVATION ORDINANCE[†]

Division 1. Generally

Sec. 15.02.001 Title

These regulations shall be known as article 15.02 of the city code of Leon Valley, Texas and will be referred to herein as "this article." (1972 Code, sec. 30.101)

Sec. 15.02.002 Purpose and effect

(1) Purpose. It is the policy of the City of Leon Valley to preserve existing trees and habitat to the greatest extent possible and add to the tree population of the city, while allowing reasonable development of land. The terms and provisions of this section are intended to accomplish the following public purposes:

(A) Establish rules and regulations governing the protection and preservation of native and established trees within the City of Leon Valley and achieve the maximum preservation of trees;

(B) Preserve trees as an important public resource that enhances the quality of life, protects habitat and the general welfare of the city, its unique character and physical, historical and aesthetic environment;

(C) Protect healthy trees and provide for the replacement and/or replanting of trees that are necessarily removed during construction, development or redevelopment; and

(Ordinance 07-034, sec. 3, adopted 8/8/07)

(D) Prevent the clear-cutting of land; and

(E) Address oak wilt disease and its prevention.

(i) Purpose and scope. The purpose of the oak wilt prevention ordinance is to identify measures that city staff, hired contractors and their sub-contractors and property owners who remove or trim trees shall take to prevent the spread of oak wilt.

(ii) Definition.

Oak wilt disease. A tree disease caused by the fungus, Ceratocystis fagacearum. The fungus infects the vascular system of a tree. The vascular system contains vessels which transport moisture throughout the tree. The vessels of an infected tree effectively become blocked by the infection of the fungus and cannot transport adequate moisture to sustain a healthy or living tree and the end result is often the death of the tree.

(iii) Prevention policy.

a. Anyone causing a wound to an oak tree, whether from ground maintenance equipment, trimming, cutting or pruning at any time of the year shall paint the wounded tree with permanent sealant or non-phytotoxic tree wound dressing within thirty (30) minutes to prevent contact with contaminated nitidulid beetles. Any wound to an oak tree caused by weather conditions, such as a windstorm, is also to be painted with permanent sealant or non-phytotoxic tree wound dressing as soon as possible after a weather incident.

b. Any person who discovers or suspects the presence of oak wilt should report the infected oak tree to the community development department to be examined by a member of the Texas Forest Service for proper diagnosis and subsequent care.

c. Whenever possible, persons should avoid trimming or pruning live oaks and red oaks (Spanish, Shumard, Texas Red and Blackjack oaks) from March 1 to June 1.

d. An annual permit with proof of liability insurance and two (2) hours of professional training is required for

commercial contractors providing tree cutting or pruning services. See section 15.02.501(j), tree preservation, for additional permit requirements, tree removal guidelines and any applicable exemptions.

(iv) Disposal [of] oak trees.

a. Red oak tree disposal. Removal or disposal of red oaks with oak wilt disease must be taken more seriously because they can form highly contagious fungal mats. Their quick and proper disposal is important and necessary to prevent other oaks from being exposed or infected.

If a red oak tree is diagnosed with oak wilt, the diseased red oak tree shall be promptly removed and disposed as recommended by the Texas Forest Service.

b. Other oaks do not require special disposal (i.e. live oaks and white oaks).

(v) Education and management program.

a. The tree advisory board (TAB) is directed to implement, as resources permit, measures aimed at education and prevention of oak wilt.

b. The tree advisory board shall use the "Eight Step Program to Oak Wilt Management" by the Texas Forest Service to promote oak wilt prevention.

c. The code enforcement officer shall be responsible for enforcement of this article and for checking all tree trimming and/or cutting performed in the city.

(Ordinance 10-013, sec. 1, adopted 4/20/10)

Sec. 15.02.003 Scope

(a) The provisions of this article shall apply to the construction, alteration, moving, repair and use of any building or parcel of land within this jurisdiction.

(b) Where, in any specific case, different sections of this article specify different requirements, the more restrictive shall govern. Where there is conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

(c) The provisions of this article shall not apply to property belonging to the city; or to property used to provide public utilities; or work located primarily in or on a public way, public utility towers and poles, or public utility easements, unless specifically mentioned in this article; provided that in the erection of buildings or other structures, the city and utility companies shall attempt to conform in architectural design or otherwise as nearly as possible to the buildings permitted in the district in which they are being erected.

(d) If any portion of this article is held invalid for any reason, the remaining portions herein shall not be thereby affected.

(1972 Code, sec. 30.103)

Sec. 15.02.004 Compliance

Except as provided in this article, no building shall be erected, reconstructed or structurally altered, nor shall any building or land be used for any purpose other than is permitted in the district in which such building or land is located; no building shall be erected, reconstructed or structurally altered to exceed the height or bulk limit herein established for the district in which such building is located; no lot area shall be so reduced or diminished that the yards or other open spaces shall be smaller than prescribed by this article, nor shall the yard or open spaces provided about any building for the purpose of complying with the provisions of this article be considered as providing a yard or open spaces for any other building. (1972 Code, sec. 30.104)

Sec. 15.02.005 Penalties for violations

Each violation of this article shall be punishable by a fine of not less than five dollars ($5.00), nor more than two thousand dollars ($2,000.00), unless some other fine is specifically prescribed for a particular violation. Each day any violation occurs or continues to occur shall be considered a separate offense. (1972 Code, sec. 30.105)

Secs. 15.02.007–15.02.050 Reserved

Division 2. Rules of Construction, Definitions and Administration

Sec. 15.02.051 Words and phrases, rules of construction

(a) Words, phrases and terms defined in this article shall be given the defined meaning.

(b) Words, phrases and terms not defined in this article but defined in the building code found in chapter 3 of the Leon Valley City Code ("this code"), shall be construed as defined in the building code.

(c) Words, phrases and terms defined neither in this article nor in the building code adopted in chapter 3, shall be given their usual and customary meanings except where the context clearly indicates a different meaning.

(d) The text of this article shall control captions, titles and maps.

(e) The word "shall" is mandatory and not permissive; the word "may" is permissive and not mandatory.

(f) Words used in the singular include the plural, and words used in the plural include the singular.

(g) Words used in the present tense include the future tense, and words used in the future tense include the present tense.

(1972 Code, sec. 30.201)

Sec. 15.02.052 Definitions

Arborist, certified. An individual who has a current and valid designation of "ISA Certified Arborist" by the International Society of Arboriculture. (Ordinance 07-034, sec. 1, adopted 8/8/07)

Boundary street. A public street which is adjacent to and abutting one or more sides of the proposed site.

Buffer zone. An area zoned so as to separate conflicting uses by zoning such property with a use which is compatible with both. For example, an office district might reasonably separate a single-family residential district from a commercial district. Dedicated park lands may shield a planned office development from nearby residential areas.

(1972 Code, sec. 30.202)

Buildable area. The area of a lot remaining after the minimum yard and open space requirements of this code and article 10.02 (subdivision ordinance) have been met. For recreational property or uses such as golf courses and baseball, soccer, football or similar athletic facilities, and public works projects such as water or wastewater treatment plants, pump stations, storage tanks, and public streets and drainage improvements, the buildable area of the property shall include that portion of the property necessary for the construction of such recreational and public works improvements, including sufficient adjacent area to allow the normal operation of construction equipment. (Ordinance 07-034, sec. 1, adopted 8/8/07)

Building. Any structure used or intended for supporting or sheltering any use or occupancy. The word "building" includes the word "structure."

Building code. Article 3.02, division 2 of the Leon Valley City Code, which incorporates the International Building Code.

Building code. The International Building Code, promulgated by the International Code Council and adopted by the City of Leon Valley.

Building, construction. A building used temporarily for the storage of construction materials and equipment incidental and necessary to on-site permitted construction of utilities, or other community facilities, or used temporarily in conjunction with the sale of property within a subdivision under construction.

Building, front of. That part of a building nearest the front property line.

Building height. The vertical distance above the average existing grade measured to the highest point of the building. The height of a stepped or terraced building is the maximum height of any segment of the building.

Building line, front. A line established under this article or article 3.02, division 2 of the Leon Valley City Code measured from the perimeter of that portion of a building nearest the front property line to the curbline or edge of the sidewalk and parallel thereto, or in the case of a corner lot, the side of such building if also parallel to a curbline or edge of a sidewalk, but in any case such measurement shall exclude open steps, terraces, cornices and other ornamental features projecting from the wall of the building.

Building line, rear. A line established under this article or article 3.02, division 2 of the Leon Valley City Code measured from the perimeter of that portion of a building nearest the rear property line of such property. Such measurement shall exclude open steps, terraces, cornices and other ornamental features projecting from the wall of the building.

Building line, side. A line established under this article or article 3.02, division 2 of the Leon Valley City Code measured from the perimeter of that portion of a building nearest the side property line of such property. Such measurement shall exclude open steps, terraces, cornices and other ornamental features projecting from the wall of the building.

Building, main. A building in which the principal use of the site is conducted.

Building permit. Authorization required for erection, construction, enlargement, alteration, repair, movement, improvement, removal, conversion, or demolition of any building.

Building restrictions. Regulations or restrictions under this article or article 3.02, division 2 of the Leon Valley City Code upon the materials allowed in the construction of buildings and any provisions of federal or state law, or other City of Leon Valley ordinances implanting [implementing] the federal emergency management act or the duties of the city for floodplain regulation, applicable to the property.

Building specialty store. Any retail facility, the primary use of which is the sale or lease of specialized building materials; such as roofing, tile, or doors.

Building, temporary. A structure which is designed or intended to be used on a nonpermanent basis, authorized for a specific period of time through a specific use permit. Includes prefabricated structures and manufactured/mobile housing which are not used for living space.

(1972 Code, sec. 30.202)

Caliper. The diameter of a tree four feet (4') above the natural grade measured with a tree caliper instrument or a flexible tape. If a tape is used, the circumference of the tree is measured and the result divided by 3.14 to determine diameter.

Caliper of multi-trunk trees. The caliper of the largest trunk at a point four feet (4') above the natural grade added to half of the sum of the calipers of the remaining trunks measured at the same height. If branching occurs less than four feet (4') above the natural grade, the diameter of the trunk may be measured below the branching for a single measurement.

(Ordinance 07-034, sec. 1, adopted 8/8/07)

Canopy. A roofed structure constructed of fabric or other material supported by the building or by support extending to the ground directly under the canopy placed so as to extend outward from the building providing a protective shield for doors, windows and other openings.

Canopy tree. A self-supporting woody plant with one (1) well-defined trunk and a distinct and definite formed crown, which attains a height of at least twenty-five (25) feet.

City. The City of Leon Valley, Bexar County, Texas.

Commercial. Relates to or is connected with trade and traffic or commerce in general; occupied with business and commerce.

Curb. A stone or concrete or alternative edge asphalt boundary usually marking the edge of a roadway or paved area. Refer to article 10.02 (subdivision ordinance) for further details.

Curbline. A line differentiating between the street and the edge of real property, marking the edge of the roadway, and contiguous to the roadway, not intended for normal vehicular traffic. Such property may include a berm, but may or may not be built up or raised.

Density. The number of dwelling units which are allowed on an area of land or the number of persons allowed in a specific unit.

Depth of the lot. The linear measurement from the front property line to the rear property line of a lot.

Dripline. The area of ground surrounding the trunk of the tree considered essential to protecting the root structure of a tree. For the purposes of this ordinance, the dripline shall be calculated at one foot (1') for every one inch (1") of caliper width measured at four feet (4') above natural grade level, i.e., a twelve-inch (12") tree would require a dripline with a twelve-foot (12') radius (producing an area twenty-four feet (24') in diameter). (Ordinance 07-034, sec. 1, adopted 8/8/07)

Driveway. A private road giving access from a public way to a building on abutting grounds.

Easement. That portion of a lot or lots reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement may be for use under, on, or above said lot or lots.

Encroachment, landscape. Any protrusion of a vehicle into a landscaped area from a parking space, display area or accessway.

Extended drip line. An imaginary line on the ground equal to one point three (1.3) times the distance from the tree trunk to the drip line. In no case shall the drip line be less than fifteen (15) feet from the trunk of the tree.

Fence. A hedge, structure, or partition, erected for the purpose of enclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two (2) contiguous properties. An enclosure around a field or other space, or around any object; especially an enclosing structure of wood, iron or other materials, intended to prevent intrusion from without or straying from within. See article 3.05 of the Leon Valley City Code for other specific regulations.

Frontage. The width of a lot or parcel abutting a public right-of-way measured at the front property line.

Grade. The average elevation of the land around a building, or the percent rise or descent of a sloping surface.

Grade, finished. The final elevation of the average ground level adjoining a building at all exterior walls after development.

Grade, level. Roads, buildings, or structures built on the ground.

Grade, natural. The elevation of the ground level in its natural state, before construction, filling or excavation.

Gross floor area (GFA). The gross floor area of a building or lease space. The sum of the horizontal areas of floors of a building measured from the exterior face of exterior walls or, if appropriate, from the centerline of dividing walls; this includes courts and decks or porches when covered by a roof.

Gross leasable area (GLA). The gross leasable area is the total floor area designed for both tenant occupancy and exclusive use, including both owned and leased areas.

Ground cover. Plants, other than turf grass, normally reaching an average maximum height of not more than twenty-four (24) inches at maturity.

Horticulture. The science of growing fruits, vegetables, flowers or ornamental plants.

(s).

Landscaped area. Areas of a lot, land parcel or building site devoted to and consisting of plant material, including but not limited to turf grasses, grasses-bunch, trees, shrub forms, flowers, vines and other ground cover, native plant materials, planters, brick pavers, stone, natural forms, water forms, public art forms, stone aggregate and other landscape features, but excluding smooth concrete, asphalt or paving for vehicular traffic; provided that the use of brick, stone aggregate or other inorganic materials shall not be greater in total area than that of organic plant material.

Landscaping. The modification or ornamentation of a natural landscape by altering the plant cover. Landscaping shall consist of any of the following, or combination thereof: material such as, but not limited to, grass, ground covers, shrubs, vines, hedges, trees, or palms; and nonliving durable material commonly used in landscaping, such as, but not limited to, rocks, pebbles, sand, walls or fences - but excluding paving.

Lot. Any portion, piece, division or parcel of land, fractional part or subdivision of block, according to plat or survey. A single parcel of land. A measured parcel of land having fixed boundaries. The word "lot" includes the word "plot."

Lot, corner. A lot abutting on two (2) intersecting or intercepting streets, where the interior angle of intersection or interception does not exceed 135 degrees.

Lot frontage. The length of the front lot line, measured at the street right-of-way line, from one corner of the property to the other.

Lot, interior. A lot other than a corner lot.

Lot, irregular. A lot whose opposing property lines are generally not parallel, such as a pie-shaped lot on a cul-de-sac, or where the side property lines are not parallel to each other.

Lot of record. A lot which is part of a subdivision, the plat of which has been recorded in the office of the county clerk of Bexar County, or a parcel of land, the deed for which was recorded in the office of the county clerk of Bexar County prior to the original adoption of this article on September 21, 1965.

Lot width. The distance between the side lot lines, measured at right angles to the lot depth at the minimum front building (setback) line.

Maintenance. To preserve from failure or decline.

Native plant. A plant species with a geographic distribution indigenous to the Bexar County region which is capable of sustaining growth and reproduction under local climatic conditions.

Naturalized plant. A plant species introduced to the region which is capable of sustaining growth and reproduction under local climatic conditions.

Open space. A land area that is not occupied by a building, structure, parking area, street, alley or required yard.

Park. A public or private area of land, with or without buildings, intended for outdoor active or passive recreational uses.

Park and ride facilities. Parking lots or structures located along public transit routes designed to encourage transfer from private automobile to mass transit or to encourage carpooling for purposes of commuting, or for access to recreation areas.

Planter. A raised area containing plant material defined by a hard edge such as walls, large pots and other similar physical containment design.

Plat/plot. A plat of a lot, drawn to scale, showing the actual measurements, the size and location of any existing buildings or buildings to be erected, the location of the lot in relation to abutting streets, and other such information.

Primary use. The primary or predominant use of any lot or parcel.

Public trees. Any trees, shrubs, bushes and all woody vegetation on city-owned property and rights-of-way, city parks, and in all areas owned by the city to which the public has access. (Ordinance 10-048, sec. 1, adopted 11/16/10)

Public way. Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

Quorum. The number of member(s) or alternate(s) of a body that when duly assembled, is legally competent to transact business.

Screening. A method of visually shielding or obscuring one abutting or nearby structure or use from another by a barrier or device constructed of metal, wood, brick, stone, block, or other suitable materials, singly or in combination. See also article 3.05 of the Leon Valley City Code.

Setback. See "building line."

Site plan. A plan which outlines the use and development of any tract of land.

Street. Any street, avenue, boulevard, road, parkway, viaduct, drive, or other roadway in a city, town, or village, generally paved, and lined or intended to be lined by structures on each side. It includes all urban ways which can be and are generally used for travel, but does not normally include service entrances or driveways leading off from the street onto adjoining premises.

Street presumption. The condition of a street (classification and carrying capacity) as it will exit [exist] after final improvement as proposed by the city's major thoroughfare plan or the capacity indicated by the right-of-way acquired by city on any boundary street.

Street, private. A right-of-way or easement in private ownership not dedicated or maintained as a public street, which affords the principal means of access to two (2) or more sites.

Street yard area. The area of a lot which lies between the property line at a dedicated street right-of-way and the actual front wall line of the building, or, if no building, to the rear property line. Such building wall lines extend from the outward corners of the buildings as illustrated in "Appendix A" [Appendix B] of this article.

Structure. Any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner. That which is built or constructed; an edifice or building of any kind.

Study area boundary. The limits of the area in which analysis is conducted or for which information is provided. This area is determined by the property owner or its representative based on the size of the development and the peak hour trips projected to be generated by the proposed development. In the case of a Level 1 or 2 traffic impact analysis, this area may include the site, and the area within a distance no greater than 1/4 mile along the boundary streets from the boundary of the site. In the case of a Level 3 traffic impact analysis, this area will be determined by the property owner based on sound engineering judgment and agreed to by the city, but in all cases shall be less than the area contained in a one-mile radius from the site. In those instances where the property owner has neither submitted preliminary plans nor applied for an initial development permit prior to the effective date of this ordinance; the determination of the area to be studied by the property owner must be approved by the city engineer for all levels of traffic impact analyses; and before granting approval of a Level 2 traffic impact analysis, the city engineer may require the area of the study to exceed the maximum area prescribed above by 1/4 mile.

Subdivision. The division of a tract, lot or parcel of land into two (2) or more lots, plats, sites or other divisions of land.

Tree, heritage. Any tree that has been designated by the city council, after public hearing and due notice to the owner of the tree, as a tree of notable interest and value to the City of Leon Valley because of its location, size, age, or historical association with the community or having a diameter of twenty-four inches (24") or greater.

Tree, large. Trees of any species that are twelve inches (12") or larger in diameter.

Tree, living. Trees having at least fifty percent (50%) of the total normal canopy intact and in a healthy condition.

Tree, medium. Trees that are eight inches (8") in diameter or larger, up to twelve inches (12").

Tree, multi-trunk. A tree having two (2) or more trunks arising from the root collar or main trunk.

Tree, small. Trees that are four to seven inches (4 to 7") in diameter, sometimes providing an underlying layer of tree canopy for medium to large and heritage trees.

(Ordinance 07-034, sec. 1, adopted 8/8/07)

Trees, shrub forms, vines, ground covers, turf grasses and grasses-bunch. Shall be defined as any of the above, such as those listed within this article. Tree is additionally defined. In order to qualify under the provisions of this code as a tree, said tree, when planted, must be at least two (2) inches in diameter at a height no less than twelve (12) inches above the ground. The tree diameter must be determined from a single trunk.

Turf. Continuous plant coverage consisting of grass species such as bermuda, buffalo, zoysia or any other native species of grass, designed to be drought tolerant to the South Texas area.

Understory tree. A self-supporting wood plant with one (1) or more trunks which attains a height of no taller than fifteen (15) feet.

Unnecessary hardship. Special circumstances applicable to a piece of property, whereby a property owner may be deprived of privileges commonly enjoyed by other properties in the same vicinity and zone, and which may result in a disparity of privileges. Also known as "undue hardship."

Use. The activity occurring on a lot or parcel for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied, including all accessory uses.

Variance. An authorization to a property owner to depart from literal requirements of code regulations in utilization of his property in cases in which strict enforcement of the code regulations would cause undue hardship because of special circumstances applicable

to it, where the property owner is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone, and which adjustment remedies disparity in privileges.

Xeriscape. A landscaping method that employs drought-resistant plants and landscaping arrangements in an effort to conserve resources, especially water. (Ordinance 07-034, sec. 1, adopted 8/8/07)

Yard. An open, unoccupied space on a lot, other than a court, which is unobstructed from the ground upward by buildings or structures except as otherwise provided in this article.

Yard, front. A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto.

Yard, rear. A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and a line parallel thereto.

Yard, side. An open, unoccupied space on the same lot with the building and between the building line and the side lot line.

Secs. 15.02.053–15.02.100 Reserved

Sec. 15.02.101 Permits, pruning, processes and restrictions

(1) Permit required.

(A) The removal or replanting of any trees shall require the issuance of an approved tree removal or planting permit, with the exception of the following:

(i) In the event that any tree is determined by the city to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and requires immediate removal without delay, written authorization for removal may be given by the zoning administrator, and such tree may then be removed without obtaining a written permit as herein required.

(ii) With the recommendation of a certified arborist, a tree determined by the city to be diseased, dying or dead may be removed.

(iii) During the period of an emergency, such as a tornado, storm, flood or other act of God, the requirements of this section may be waived as may be deemed necessary by the city council.

(iv) All licensed plant or tree nurseries shall be exempt from the terms and provisions of this section only in relation to those trees planted and growing on the premises of said licensee, that are so planted and growing

for the sale or intended sale to the general public in the ordinary course of said licensed business.

(v) Utility companies franchised or otherwise authorized to provide utility service may remove trees that endanger public safety and welfare by interfering with utility service provided that the applicant demonstrates to the zoning administrator and public works director that the removal is the minimum necessary for the utilities to function properly and no other alternative is available.

(vi) The partial mowing, clearing and grubbing of brush located within or under the drip lines of trees shall be allowed, provided such mowing, clearing or grubbing is accomplished by hand or by mowers. The use of bulldozers, loaders or other construction or earth-moving equipment for this purpose shall not be allowed.

(vii) The zoning administrator may exempt certain easements and rights-of-way included on an approved plat, provided that the applicant, or city engineer in the case of a city project, demonstrates that the removal is necessary for the rights-of-way and easements to function properly and no other alternative is available.

(viii) Platted lots occupied by an occupied single-family residence designated as a homestead and located in an area zoned residential are exempted from these requirements except for provisions pertaining to the protection of heritage trees. However, builders, contractors and owners are subject to all requirements established herein for all new construction prior to any person moving into and living on the homestead.

(ix) The regulations in this division shall not apply to the clearing of understory necessary to perform boundary surveying of real property or to conduct tree surveys or inventories. Clearing for surveying may not exceed a width of two (2) feet for general survey (i.e. of easement boundary, etc.) and eight (8) feet for survey of property boundary lines. Except for surveys done in connection with residential development, no tree ten (10) inches or larger may be removed in any manner during such boundary or general surveying.

(B) Trees to be removed, replanted or planted in a right–of–way and/or easement shall require prior approval from the city, state or utility agency having authority of or in said right-of-way or easement.

(C) Permit fees shall be as set forth in Leon Valley City Code, appendix A, Fee Schedule.

(2) Tree removal or planting permit process.

(A) The permit application for tree removal or planting shall state or depict the following information:

(i) Location of all existing or proposed structures, improvements such as streets, alleyways, etc. and site uses, properly dimensioned and referenced to property lines, setback and yard requirements.

(ii) Date, scale, north point, and the names, addresses and telephone numbers of both property owner and the person preparing the plan.

(iii) Location of existing and proposed utility easements and drainage easements on the lot.

(iv) Location and dimensions of visibility triangles on the lot.

(v) Point of contact information/responsible party information to include address, telephone number and any state registration or license numbers in the event of a violation (i.e., P.E. RPLS).

(vi) A survey identifying the building footprint, buildable area, existing topographical information, easements, rights-of-way, setbacks, property lines and all trees over four inches (4") in diameter shall be submitted. Trees to remain shall be designated by a circle. Trees to be removed shall be designated by an "X". Each tree shall be numbered referencing a legend specifying the caliper or diameter, common name, and whether it is small, medium, large or "heritage." Drip lines shall be indicated for trees to remain. The number of small trees shall be provided at the end of the legend by species. Tree information required above shall be summarized in legend form on the plan and shall include the reason for any removals.

(vii) Tree relocation plan. The plan shall exhibit the current location of all small, medium, large and heritage trees proposed for replanting and indicate the proposed replanting location for each. The plan shall include the proposed building footprint, driveways, parking lots, topographical information, easements, rights-of-way, setbacks, and property lines.

(viii) Tree replacement plan. The plan shall exhibit the location of proposed replacement trees and remaining small, medium, large and heritage trees. It shall include a legend indicating the common name, caliper or diameter size and height of proposed replacement trees. Replacement trees shall be designated by a square. Remaining small, medium, large and heritage trees shall be designated by a circle. Species to be removed and/or remain shall be designated with the same symbols. The plan shall include the proposed building footprint, driveways, parking lots, topographical information, easements, rights-of-way, setbacks, and property lines.

(B) Application review. Upon receipt of proper application, the Community Development Director shall review for compliance with the provisions of this division. Said review will include a field inspection of the site by the zoning administrator prior to the issuance of a permit. The application may be referred to the city engineer and/or city manager as deemed appropriate for review and recommendations.

(i) An application for a tree planting or removal permit will not be accepted until the following is submitted, with the application, to the zoning administrator:

a. Application fee; and

b. An amount sufficient to recover all of the city's costs for the services of a contract professional, that are directly incurred by the city for review of the application.

c. The original tree survey for a tract that is provided with the original application for a tree removal permit shall be the reference by which all subsequent tree removal permits for the tract or portions of the tract shall be considered. An applicant may not circumvent the minimum preservation requirements set forth in this ordinance for the tract through the filing of multiple tree removal applications.

(3) Tree pruning restrictions.

(A) No tree shall be pruned in such a manner that would reasonably lead to the death of the tree.

(B) The city may approve pruning of a large or heritage tree in cases where it must be strategically pruned to allow construction or demolition of a structure. All pruning of trees by franchise utility companies to insure the safe operation of utility services shall be allowed. When allowed, all pruning shall be by approved arboricultural techniques. This section is not intended to require a permit for reasonable pruning performed by the owner of the tree when unrelated to construction activity.

(C) The city shall have the right to prune trees overhanging which interfere with visibility of any traffic-control device or sign or as necessary to preserve the public safety.

(D) It shall be unlawful as a normal practice for any person, firm or city department to severely cut back limbs to stubs larger than three inches (3") in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other acts of

God, or certain trees under obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Community Development Director.

(E) All broken branches and exposed roots one-half inch (1/2") in diameter or greater of small, medium, large, heritage and relocated and replacement trees shall be cut cleanly. In the case of oak species, in order to prevent infection by oak wilt spores, wounds must be painted with an acceptable wound dressing within thirty (30) minutes of any cutting.

(F) When roots of a tree planted within the planting area damage city curbs, gutters and sidewalks (including driveway ramps), the city shall be responsible for appropriate corrective measures which are least damaging to the tree.

(G) Where sidewalk or curb damage due to tree roots occurs, every effort shall be made to correct the problem without removing or damaging the tree. The public works director shall be responsible for developing or approving corrective measures in consultation with the city engineer. Corrective actions taken shall be reported to the Community Development Director.

(Ordinance 07-034, sec. 3, adopted 8/8/07)

(H) The city and/or its designee(s) shall have the responsibility, to plant, prune, maintain and remove trees, plants and shrubs within the public right-of-way of all streets, alleys, avenues, lanes, squares, parks, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.

(I) Every owner of any tree or shrub overhanging any street or right-of-way within the city shall, in accordance with the tree pruning restrictions, will be responsible for the pruning of branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection; will not obstruct the passage of pedestrians on sidewalks; will not obstruct vision of traffic signs; and will not obstruct the view of any street or alley intersection. If the property owner fails to do so, the city and/or its designee(s) shall have the right to remove or prune any tree or shrub on private property which threatens the safety of those who may use a city street or city park.

(Ordinance 10-048, sec. 2, adopted 11/16/10)

(4) Preservation requirements.

The minimum tree preservation requirements below establishes the minimum diameter inches of small, medium, large and heritage trees that must be preserved or

mitigated. For single-family dwellings, developers and builders may elect to preserve trees at the platting or permitting stage; if a developer or builder elects to preserve at the platting stage, this method must be used throughout completion of the project. Exceptions, where authorized, may be granted and variances to the city's development regulations may be recommended to maximize the preservation of existing trees.

Type of Tree	**Regulation**
Small trees	For each tree removed, at least two trees of three (3") or more inches in diameter must be planted within each platted lot, excluding street rights-of-way and easements.
Medium trees	For each tree removed, at least two trees of six (6) or more inches in diameter must be planted within each platted lot, excluding rights-of-way and easements.
Large trees	For each tree removed, at least three trees of eight (8") inches or more in diameter must be planted within each platted lot, excluding rights-of-way and easements.
Heritage trees	None can be removed.
100-year floodplain(s)	50% of small, medium and large trees and 100% of all heritage trees within the floodplain must be preserved, which shall not apply toward preservation requirements on the remainder of the lot.
Mitigation maximum	Up to 20% of medium and large trees may be mitigated rather than preserved. Up to 25% of small trees may be mitigated.

(Ordinance 07-034, sec. 3, adopted 8/8/07)

(5) Removal, replacement, relocation of small, medium, and large trees.

(A) Residential properties are exempted from these requirements except for provisions pertaining to the protection of heritage trees and letter "(C)" and "(D)" as specified hereafter in this subsection (6). However, builders, contractors and owners are subject to all requirements established herein for all new construction prior to any person moving into and living on the homestead.

(B) No person, directly or indirectly, shall cut down, destroy, remove or effectively destroy through damaging, any small, medium or large tree on any real property within the City of Leon Valley without first obtaining a permit, except as permitted herein.

(C) Under no circumstances shall the clear-cutting of small, medium or large trees on any real property within the City of Leon Valley be allowed prior to the issuance of a tree removal permit for said tree(s). Clear-cutting is herein defined as the indiscriminate cutting or removal of more than 25 percent of all living trees on the subject property. The definition does not include dead trees or oak trees with severe oak wilt disease or other readily discernable diseased trees. Notwithstanding the foregoing percentages, property owners may remove up to two trees which are not heritage trees on the subject property without permit as long as the subject property remains in compliance with the two tree minimum.

(D) No more than 20% of small, medium or large trees may be removed in the 100-year floodplain as defined by FEMA.

(E) Site plans should accommodate medium and large trees six inches (6") in diameter or greater by: providing islands in parking lots; grading and landscaping to allow preservation of more such trees; and, reasonable revision of the location of planned structures, driveways and parking lots so as to preserve as many trees of this size as possible.

(Ordinance 08-006, sec. 1, adopted 2/5/08)

(6) Replacement trees required.

It shall be the responsibility of any person obtaining a tree removal permit for a tree to provide replacement tree(s).

(A) Such replacement trees shall:

(i) Have a minimum diameter of three inches (3");

(ii) Have a minimum height of at least four feet (4') when planted;

(iii) When mature shall have a crown of at least fifteen feet (15') in diameter or substituted by a grouping of smaller species so as to create at maturity a crown of at least fifteen feet (15'); and,

(iv) Be planted in locations shown on the approved tree replacement plan.

(B) No more than thirty-five (35%) percent of replacement trees may be of the same species.

(C) A replacement tree that dies within two (2) years of the date it was planted must be replaced by another tree in compliance with this ordinance. A new two-year warranty period starts for a tree used to replace a dead replacement tree.

(D) Replacement trees shall be dispersed throughout the site, particularly in parking lots.

(E) Small trees that meet the specifications of replacement trees may and are encouraged to be used in lieu of new plantings.

(F) Only those tree species found on in appendix "A" of this article shall satisfy the tree planting and replacement standards and requirements of this section.

(7) Mitigation in lieu of replacement.

Money may be paid to the City of Leon Valley instead of providing the replacement trees required by this section.

(A) This provision is limited to twenty percent (20%) of the required tree replacement.

(B) Any such payments shall be deposited to the tree mitigation and replacement fund.

(C) The per-diameter-inch cash value for replacement trees and planting is $50.00 per caliper inch tree. The city shall maintain a record of the current cash value of replacement trees and planting.

(8) Penalties for unauthorized removal of small, medium and large trees.

If any small, medium, or large trees are removed from any real property, or injured due to failure to follow required tree protection measures such that the tree(s) die or may reasonably be expected to die, the city shall have the authority to enact any or all of the following administrative and civil penalties on the developer and/or owner of the property:

(A) A monetary penalty of one hundred dollars ($100.00) per diameter inch of tree removed, payable to the City of Leon Valley. Funds paid to the City of Leon Valley as tree removal penalties shall be deposited in the tree mitigation and replacement fund.

(B) Requirement to replace trees. Replacement trees shall have a minimum of at least a diameter width of three inches (3") and a

minimum height of five feet (5'). All other replacement requirements for medium and large trees shall apply.

(C) If the precise diameter of a tree cannot be determined, the cost of replacement shall be established by a certified arborist based on the arborist's estimate of the caliper of the removed or damaged tree.

(9) Replanting of protected trees.

No person, directly or indirectly, shall replant, relocate, transfer or move from one location to another any tree on any real property within the City of Leon Valley without first obtaining a permit, except as otherwise provided herein.

(A) Only trees that meet and are replanted in compliance with appendix A of this article and the American National Standards Institute A300 guidelines, shall satisfy the tree replanting requirements contained herein.

(B) Any person replanting, relocating, transferring or moving from one location to another any trees on any real property within the City of Leon Valley, without first obtaining a permit, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in this ordinance.

(10) Heritage tree removal not allowed.

No person, directly or indirectly, shall cut down, destroy, remove or effectively destroy through damaging a heritage tree on any real property within the City of Leon Valley.

(A) Penalties for removal of heritage trees. If any heritage trees are removed from any real property, or if a heritage tree is injured because of failure to follow required tree protection measures such that the tree dies or may reasonably be expected to die, the city shall have the authority to enact the following administrative and civil penalties on the developer and/or owner of the property:

(i) A monetary penalty of one hundred dollars ($100.00) per caliper inch of heritage tree(s) removed, payable to the City of Leon Valley. Funds paid to the City of Leon Valley as tree removal penalties shall be deposited in the tree mitigation and replacement fund; and/or

(ii) Replacement with tree(s) having a total tree caliper equal to that of the removed tree(s). Such replacement trees shall have a minimum diameter of three inches (3") and a minimum height of at

least five feet (5'). All other replacement requirements for trees shall apply.

(11) Tree protection measures.

The following tree protection measures shall be required:

(A) Prior to construction or land development, the developer shall establish and maintain a root protection zone and install four-foot-high (4') plastic (or equivalent) safety fencing outside the drip line of existing and replacement trees for the duration of the construction and development. Warranty for the survival of the trees may not be accepted in lieu of a root zone that is less than the area within the dripline. Trees may not be pruned to reduce the root zone.

(B) During construction, the developer shall prohibit the cleaning of equipment or materials and/or the disposal of any waste material, including, but not limited to, paint, oil, solvents, asphalt, concrete, mortar, etc., under the canopy or drip line of any existing or replacement tree or group thereof.

(C) No attachments or wires of any kind, other than those of a protective nature, shall be attached to any tree.

(D) With major grade changes of six inches (6") or greater, a retaining wall or tree well of rock, brick, landscape timbers or other approved materials shall be constructed around the tree no closer than the drip line of the tree. The top of the retaining wall or tree well shall be constructed at the new grade. The area contained within the first one thousand five hundred feet (1500') of the root zone must be left in a pervious condition after construction and development is completed.

(E) Unless otherwise approved by the city, no construction or construction-related activity shall occur under the drip line of any existing or replacement tree or group thereof. Furthermore, if a foundation, street or alley pavement, utility line, on-site sewerage facility, pool, tennis court, patio, sidewalk, drive or parking lot must be constructed within the drip line of said trees, it shall be constructed no closer than five feet (5') from the trunk of such trees; and, provided further, that the portion of any driveway or parking lot constructed within the drip line of any existing or replacement tree or group thereof shall be constructed of pervious materials, such as pervious pavestone or ecocrete, approved by both the Community Development Director and city engineer.

(F) Any trees removed during land development, construction, or construction-related activities are encouraged to be chipped or hauled off-site.

(Ordinance 07-034, sec. 3, adopted 8/8/07)

(G) No person shall remove, destroy, damage or cause the removal or destruction of a tree on city property or in any city park without first having obtained written permission for such removal or destruction from the community development department. City work crews are excepted from the requirement of obtaining written permission. (Ordinance 10-048, sec. 3, adopted 11/16/10)

(12) Approved tree lists.

Appendix A, "Landscape Plantings" attached hereto, will be periodically updated. The list shall be maintained and distributed to the public as guides for the identification and selection of tree species that meet the various standards and requirements of this section. Trees included on these tree species lists are selected on the basis of one or more of the following criteria or factors: hardiness, resistance to disease, suitability relative to local climate and soil conditions, adaptability for transplantation, longevity, adaptability to various landscape conditions, resistance to drought, aesthetic qualities, shade provision, windbreak provision, screening qualities, improvement of the city tree canopy, and/or contribution to the diversity of the city forest.

(13) Enforcement.

The Community Development Director is hereby charged with the responsibility for the enforcement of this ordinance and may serve notice to any person in violation thereof or institute legal proceedings as may be required, and the city attorney is hereby authorized to institute appropriate proceedings to that end.

(14) Tree mitigation/replacement fund.

(A) The city manager will maintain a dedicated account to be entitled tree mitigation and replacement fund (hereinafter the "fund"). Civil penalties collected pursuant to these regulations shall be recorded in the fund created pursuant to this section, unless expressly prohibited by law. Likewise, all funds received from the payment of mitigation fees pursuant to these regulations shall be recorded in the fund.

(B) Use of funds. The funds collected from civil penalties and mitigation fees in the fund shall be utilized solely to pay for the planting and maintenance of trees, the funding of tree preservation and planting programs within the City of Leon Valley and/or to support supplemental landscape plantings in public areas of Leon Valley and/or acquiring

wooded property that shall remain in a naturalistic state in perpetuity, to be administered by the public works director who shall report annually to the city council with respect to the balance of the fund and the expenditures that have been made from the fund.

(C) Funds to be kept separate. The balance of this fund shall not be transferred to the general fund at the end of each budget year, but rather, the balance remaining in the fund at the close of the city's fiscal year shall roll over and become the beginning balance for the next fiscal year. The balance within the fund shall be recorded and accounted for in a manner that distinguishes them from other general funds of the city and shall be disbursed in a manner that is consistent with the purposes for which this fund has been established.

(15) Variances, appeals and special exceptions.

(A) Variances to the terms of this ordinance may be granted after consideration and recommendation by the Tree Advisory Board to the City Council for final determination where a literal enforcement of the provisions of this ordinance will result in unnecessary hardship. A variance request must be submitted to the Community Development Director in writing setting out the basis for the request along with the payment as set forth in L.V.C.C., appendix A, Fee Schedule. No variance can be granted unless:

(i) Such variance will not be contrary to public interest;

(ii) Such variance will be in harmony with the spirit and purposes of this ordinance;

(iii) The variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial; and

(iv) The variance will not substantially weaken the general purposes of this ordinance.

(16) Liability.

(A) Nothing in this ordinance shall be deemed to impose any liability for damages or a duty of care and maintenance upon the city or upon any of its officers or employees. The person in possession of public property or the owner of any private property shall have a duty to keep the trees upon the property and under their control in a safe, healthy condition. Any person who feels a tree located on property possessed, owned or

controlled by them is a danger to the safety of themselves, others or structural improvements on-site or off-site shall have an obligation to secure the area around the tree or support the tree, as appropriate to safeguard both persons and improvements from harm.

(17) Informational assistance.

(A) In furtherance of the purposes and provisions hereof, the city may develop, distribute to persons making application for permits, and make available to the general public an informational pamphlet identifying appropriate the spirit and purposes of this ordinance; and useful facts, guidelines and how-to information relative to the preservation, protection and replanting of trees, on the Leon Valley city website.

(B) The city may also develop, maintain and make available to applicants for permits and to the general public a tree species reference book to provide more detailed information concerning tree care in general and the characteristics, soil and growth requirements and other traits of specific tree species identified in appendix A.

(C) A current edition of the American Standard for Nursery Stock as published by the American Nursery and Landscape Association, as applicable to the tree species in appendix A, shall be maintained by the city and made available to applicants for building permits, tree removal permits or tree replanting permits and to the general public, as only those trees meeting and planted or replanted compliance with the American Nursery and Landscape Association, "American Standard for Nursery Stock" and ANSI Z60.1-2004 and ANSI A300 "Tree Care Standards" guidelines shall satisfy the tree planting, replanting and/or replacement standards and requirements contained herein.

Secs. 15.02.502–15.02.550 Reserved

3. **This Ordinance shall be cumulative of all provisions of ordinances of the City except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Nothing contained in this Ordinance generally or this chapter specifically shall be construed to allow the violation of any residential deed restriction.**

4. **Should any part, sentence or phrase of this Ordinance be determined to be unlawful, void or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.**

5. **That all rights and privileges of the City of Leon Valley are expressly saved as to any and all violations of the provision of any Ordinances effected by this Ordinance; and any such accrual of said ordinances at the time of the effective date of this Ordinance; and, as to such accrued violation and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.**

6. **This ordinance shall become effective on and after its passage, approval and publication as prescribed by law.**

PASSED and **APPROVED** this 13th day of January, 2014.

Chris Riley
Mayor

ATTEST:

Leticia Callanen
City Secretary

CITY OF LEON VALLEY
TEXAS

APPROVED AS TO FORM:

City Attorney