

ORDINANCE NO. 432

AN ORDINANCE CREATING CHAPTER 95 OF THE CODE OF ORDINANCES "NUISANCES - GENERAL" TO ADD A NEW CHAPTER "DEAD TREES" TO DECLARE CERTAIN DEAD OR DAMAGED TREES TO BE A PUBLIC NUISANCE AND TO REQUIRE THEIR REMOVAL; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Lakeside, Texas, is a Type A general-law municipality located in Tarrant County, Texas, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City Council has determined that the presence of dead or damaged trees in certain locations can pose a risk of injury to life and property; and

WHEREAS, pursuant to Texas Health & Safety Code Section 342.004, the City Council hereby declares such dead or damaged trees to be a public nuisance; and

WHEREAS, the City Council had determined that the owners of real property on which such trees are located should be responsible for the prompt removal of any dead tree.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF LAKESIDE, TEXAS:

SECTION 1.

That Chapter 95, "Nuisances; Generally" of the Lakeside Code of Ordinances is hereby amended to add a new Chapter 95.00 "Dead Trees" to read as follows:

CHAPTER 95 DEAD TREES

95.01 Nuisance declared

Any dead tree in excess of ten (10) feet in height, or any dead or damaged portion of a tree in excess of ten (10) feet in height, which poses a threat to life or property on the premises, adjacent premises, or adjacent right-of-way in the following locations are declared to be a public nuisance:

1. Dead or damaged trees which are hazardous to public facilities, including City buildings, sidewalks, easements and street right-of-way;
2. Dead or damaged trees which are hazardous to power lines, light poles and utility appurtenances; and
3. Dead or damaged trees which are hazardous to surrounding houses and structures or present an immediate danger to residents of the property or adjacent property.

Height shall be measured from ground level adjacent to the trunk to the top of the highest branch.

95.02 Owner responsibility to remove

The owner of the real property where such dead or damaged tree is located commits an offense if, after receipt of notice from the city that the city code enforcement officer or his designee has determined that a tree is dead or damaged and poses a threat to life or property and that this Article requires its removal, the owner fails to remove or cause the removal of such dead tree, or the removal of the damaged portion of the tree, within 10 days of receipt of such notice.

95.03 Appeal to city council

(a) If the owner of the real property disagrees with the decision of the code enforcement officer that the tree is dead or damaged, or constitutes a public nuisance, the owner may appeal the decision to the City Council. The appeal shall be in writing and shall be transmitted to the City Secretary within 10 days after receipt of notification from the code enforcement officer.

(b) If the owner of the real property where such dead or damaged tree is located is unable to remove or cause the removal of such dead or damaged tree due to financial hardship, the owner shall contact the City Secretary within 10 days after receipt of notification from the code enforcement officer, provide reasonable proof of such financial hardship, and request an appeal to the City Council on the basis of financial hardship. If approved by the City Council, the City shall attempt to contact vendors and/or volunteer organizations who may be willing to remove the dead or damaged tree at no cost or a reduced cost to the owner in exchange for the wood, or organizations which assist the elderly or indigent. The City cannot guarantee that such efforts will be successful, and the owner remains responsible to remove the dead or damaged tree as required by this Article.

(c) The appeal shall be considered by the City Council within 30 days after the appeal is received by the City Secretary, unless the owner requests a later hearing and provides good cause for the delay. The City Council shall not release the owner from the requirements of this Chapter, unless the owner first presents credible evidence from a certified arborist from

which the City Council can reasonably conclude that the tree is not dead or damaged, does not constitute a public nuisance, and that the application of this Article to the owner would be likely to deprive the owner of rights protected by law.

- (d) The City Council may take the following actions on an appeal:
 - (1) Deny the appeal and uphold the decision of the code enforcement officer, in which case the dead or damaged tree shall be removed; or
 - (2) Grant the appeal subject to such provisions, conditions, or limitations as deemed appropriate by the City Council.

95.04 Notice of violation prior to abatement by city

- (a) Method of notice. The notice required by chapter 95.02 shall be given:
 - (1) Personally to the owner in writing; or
 - (2) Sent by certified mail, return receipt requested, addressed to the owner at the owner's address as recorded in the appraisal district records of the county appraisal district; or
 - (3) If personal service cannot be obtained or the owner's address is unknown:
 - (A) By publication in the city's official newspaper once;
 - (B) By posting the notice on or near the front door of each building on the property to which the violation relates; or
 - (C) If the property contains no buildings, post the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- (b) Unclaimed notice. If notice is mailed to a property owner in accordance with subsection
 - (a) above, and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.
- (c) Work to be performed . If the owner does not remove the dead or damaged tree within 10 days of the notice, the city may go on such property or authorize another to go on such property and do or cause the work to be done and charge the expenses incurred to the owner of the property and assess the expenses against the real estate on which the work is done. The remedy provided in this section is in addition to any criminal penalties or other remedies authorized by this article or other law.

- (d) Contents of notice. The notice shall contain:
- (1) The name and address of the record owner;
 - (2) An identification, which is not required to be a legal description, of the property upon which the violation is located;
 - (3) A statement describing the violation and the work necessary to correct the violation;
 - (4) A statement advising the owner that if the work is not completed within 10 days, the city will complete the work and charge the expenses to the owner; and
 - (5) A statement that if the city performs the work and the owner fails to pay the expenses, a priority lien may be placed on the property.

95.05 Assessment of expenses; lien; appeal

(a) **Notice.** In assessing the expenses incurred against the property on which the work is done or improvements made, the city shall send the owner of the property upon which the work was done a notice that shall include:

- (1) Identification of the property;
- (2) A description of the violation;
- (3) A statement that the city abated the condition;
- (4) A statement of the city's expenses in abating the condition;
- (5) An explanation of the property owner's right to request a hearing within 10 days of the date of the letter; and
- (6) A statement that if the owner fails or refuses to pay the expenses within 30 days of the date of the notice, the city administrator shall place a lien against the property by filing with the county clerk a notice of lien and statement of expenses incurred.

(b) **Method.** The notice shall be sent in the same manner as provided above for notice of a violation prior to abatement.

(c) **Hearing.** The city administrator will conduct a hearing if the property owner submits a written request within 10 days of the date of the notice. At the hearing:

- (1) The owner and the city may testify, or present witnesses or written information related to the city's abatement of the condition.

- (2) The city has the burden of showing that a violation of this article existed, that notice was given in substantial compliance with this article, and that expenses were incurred to abate the violation.
- (3) At the close of the hearing, the city administrator may find, based upon a preponderance of the evidence, that the expenses are valid, or that they are erroneous, and he may adjust them.
- (d) Placement of lien. If no hearing is requested, or a hearing is held and the expenses are determined to be valid or are otherwise appropriately adjusted, and the owner fails or refuses to pay the expenses within 30 days after written notification to pay, the city administrator shall place a lien against the property by filing with the county clerk a notice of lien and statement of expenses incurred.
- (e) Security. The lien is security for the expenses and interest. Interest shall accrue at the rate of 10% per annum from the date the work was performed, or the expenses were incurred by the city.
- (f) Filing. When the statement is filed, the city shall have a privileged lien on that property, second only to tax liens and liens for street improvements.
- (g) Suit. The city may institute suit to recover the expenses, with interest, and may foreclose on the property. The original or a certified copy of the statement of expenses is prima facie proof of the expenses incurred by the city in doing the work or making the improvements."

SECTION 2.

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the Town of Lakeside, Texas, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, paragraph, sentence, clause, or phrase of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

SECTION 4.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety, or public health and sanitation, including dumping or refuse, and shall be fined Five Hundred Dollars (\$500.00) for all other violations of this ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

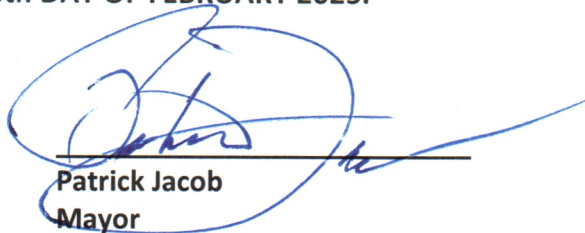
SECTION 5.

The City Secretary is hereby directed to publish the caption and penalty clause of this ordinance at least once in the official newspaper of the City, as required by Section 52.011 of the Local Government Code.

SECTION 6.

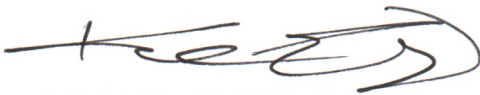
This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED ON THIS 13th DAY OF FEBRUARY 2025.

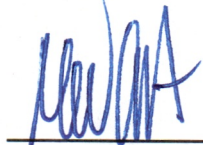


Patrick Jacob
Mayor

ATTEST:



Kenneth E. East
Attorney



Norman Craven
Town Administrator/City Secretary