

**ORDINANCE NO. 2002-07-01**

**AN ORDINANCE OF THE VILLAGE OF POINT VENTURE, TEXAS, ENACTING RESTRICTIONS ON THE CLEARING OF LAND AND REMOVAL OR CUTTING OF CERTAIN TREES, AND PROVIDING FOR THE FOLLOWING: SHORT TITLE; PURPOSE; DEFINITIONS; PERMITS REQUIRED; PROTECTION DURING CONSTRUCTION; EXCEPTIONS; VARIANCES; REMOVAL OF WASTE; ENFORCEMENT INCLUDING FINES AND PENALTIES NOT TO EXCEED \$500; A REPEALER; SEVERABILITY; AND PROPER NOTICE AND MEETING.**

**WHEREAS**, the Village Council of the Village of Point Venture (“Village Council”) seeks to provide for the safe and orderly development of property within its corporate limits; and

**WHEREAS**, the Village Council finds that trees, brush, foliage and natural vegetation provide a productive land use with significant water quality and wildlife habitat benefits and that natural vegetation diminishes air pollution, reduces noise, moderates temperature extremes, and increases property values; and

**WHEREAS**, the Village Council finds that certain trees and vegetation prevent soil erosion and prevent fertilizer and pesticide residue from polluting Lake Travis and the Colorado River; and

**WHEREAS**, the Village Council finds that inadequate attention during development to the ecological function of trees and natural vegetation can result in measurable environmental and economic damage to property and the cultural nature of a community; and

**WHEREAS**, the Village Council is committed to the maintenance of the wooded nature of the Village; and

**WHEREAS**, the Village Council seeks to provide for a diverse set of native vegetation that provides food and cover for native wildlife, such as song birds, yet can be maintained without extensive care and has resistance to drought and disease; and

**WHEREAS**, the Village Council finds it to be in the best interest of the public to provide for the uniform regulation of the clearing of lots and grading of land within the Village; and

**WHEREAS** the Village Council has the general authority to abate nuisances pursuant to the Texas Constitution, the Village’s police power, and state statutes, including but not limited to the Texas Local Government Code, Chapter 217; and

**WHEREAS**, pursuant to Chapter 51 of the Local Government Code, the Village Council has the

general authority to adopt an ordinance, rule or police regulation that is necessary for the good government of the municipality and that is proper for the Village;

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF POINT VENTURE, TEXAS:**

### **SECTION 1. SHORT TITLE**

This Ordinance shall be known and cited as the “Lot Clearing Ordinance.” Within this document it shall also be referred to as “this Ordinance.”

### **SECTION 2. PURPOSE**

This Ordinance is adopted so that the Village Council may promote the public health, safety, and general welfare within the Village through the establishment of standards of practice for the preservation of trees and native landscaping in development areas in order to better control soil erosion and the transport of sediment; preserve the environmental quality of surface and ground waters; screen noise; and protect and enhance scenic vistas and wildlife habitat. By and through this Ordinance, the Village Council seeks to allow construction while minimizing the impact to woodland areas and encouraging reforestation within the corporate boundaries of the Village.

### **SECTION 3. DEFINITIONS**

#### **A. General**

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases that are not defined in this Ordinance but are defined in other ordinances of the Village shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

#### **B. Specific**

- (1) “Building Official” means the person appointed by the Village Council to advise the Village Council and administer the Village’s construction codes and building regulations, including but not limited to Lot Clearing, tree trimming, landscaping, and drainage regulations. The Building Official serves as the administrative enforcer of this Ordinance.
  
- (2) “Clear” means to make a material change in the character of the land, including but not limited to the extraction of vegetation, removal of brush, cutting of trees, or modification of

the natural grade or slope of the land.

- (3) “Person” means any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.
- (4) “Protected tree” means a tree that warrants special consideration due to its environmental and aesthetic significance to the Lake Travis region. Specifically, the term includes:
  - (a) Any tree with a trunk having a diameter greater than four (4) inches measured one (1) foot above the base (ground elevation) of the tree; and
  - (b) Persimmon, Texas Redbud, Mountain Laurel, Texas Laurel, Yaupon, Madrone with a trunk having a diameter greater than one (1) inch measured one (1) foot above the base (ground elevation) of the tree.
- (5) “Vacant lot” means land that is undeveloped and unused; any area with significant amounts of land not covered by impervious surfaces; land suitable for development or infill.
- (6) “Village” means the Village of Point Venture, an incorporated municipality located in Travis County, Texas, its agents and employees.

## **SECTION 4. LOT CLEARING PERMIT**

### **A. Permit Required**

- (1) It shall be unlawful for any person to clear any vacant lot without first securing a Lot Clearing Permit issued by the Building Official.
- (2) It shall be unlawful for any person to cut, poison, or otherwise remove protected trees on any lot or other property within the village without first securing a Lot Clearing Permit issued by the Building Official.

### **B. Permit Application**

Permit applications must be submitted to the Building Official. Each application for a Lot Clearing Permit shall include a landscape and grading plan that at a minimum shall include:

- (1) A graphic and textual description of all vegetation and trees, regardless of size, currently

located within the legal boundaries of the property, noting all drip lines.

- (2) A topographical description of the lot indicating the natural drainage patterns and waterways.
- (3) A graphic and textual description of the proposed final elevations and slopes of the property and the location of all vegetation and trees to be replaced under this Ordinance and areas proposed for landscaping.
- (4) The layout of proposed buffer areas (if any).
- (5) Other relevant information as may be required by other Village regulations.

### **C. Permit Standards**

Approval or denial of a Lot Clearing Permit by the Building Official will be based on all of the provisions of this Ordinance and the following relevant factors:

- (1) The danger to life and property due to the potential flooding or erosion damage reasonably expected to be caused by the proposed landscape and grading plan;
- (2) The need for physical separation between buildings and cedar trees for fire protection purposes;
- (3) The compatibility of the proposed landscape and grading plan with existing and anticipated land development;
- (4) The anticipated impact of the proposed landscape and grading plan on the maintenance and repair of streets, drainage facilities, and public utilities such as sewer, gas, electrical, water, and wastewater systems;
- (5) Whether the landscape and grading plan will materially comply with the comprehensive plan, landscaping scheme and aesthetic theme of the Village;
- (6) Whether the landscape and grading plan will materially interfere with natural drainage patterns or the migratory patterns of native wildlife;
- (7) Whether the proposed landscape and grading plan will divert water across the property of the Village or another person in a manner or place or greater velocity than the ordinary and natural flow of such water;
- (8) Whether the landscape and grading plan would negatively impact any protected trees;

- (9) The availability of reasonable alternatives to the proposed landscape and grading plan;
- (10) The need to remove damaged or diseased trees; and
- (11) The applicability of other Village, county, state and federal regulations.

#### **D. Fees**

The Village Council may by ordinance establish reasonable permit fees to cover the costs of administration of this Ordinance.

### **SECTION 5. PROTECTION DURING CONSTRUCTION**

During construction and grading, reasonable steps should be taken to protect all vegetation and trees. Steps must be taken to protect all vegetation and trees selected for preservation pursuant to the terms of a Lot Clearing Permit.

### **SECTION 6. EXCEPTIONS**

#### **A. Routine Trimming**

A Lot Clearing Permit is not required for trimming of trees less than four inches (4”) in diameter with the exception of those protected trees in 3.4.b which can be trimmed if the diameter is less than one inch (1”). For a protected tree, a lot clearing permit is not required for routine trimming of tree branches that have a diameter less than fifty percent (50%) of the diameter of the trunk. The diameter of tree branches must be measured at the attachment point to the trunk or the lateral stem.

#### **Emergencies**

A Lot Clearing Permit is not required in emergency situations. Emergency situations are defined as those in which the grade of the land or conditions of the trees pose an imminent threat to public health, safety or welfare; are an immediate hindrance to vehicular or pedestrian traffic; block public access to roadways or driveways; or endanger public utility facilities. Emergency actions conducted without a permit must be reported to the Village within seven (7) calendar days.

## SECTION 7. VARIANCES

### A. Variances

The Building Official may grant variances to the specific terms of this Ordinance by issuing a permit pursuant to this section. Variances may only be granted in instances where the Building Official makes written findings regarding the following:

- (1) the variance is not contrary to the public interest; and
- (2) due to special conditions, a literal enforcement of the regulation would result in an unnecessary hardship; and
- (3) the spirit of the ordinance is observed and substantial justice is done.

Financial hardship alone does not necessarily qualify as undue hardship for purposes of granting a variance.

### B. Remediation & Mitigation

As a specific condition of receiving a variance, the applicant must submit for approval a remediation or mitigation plan for addressing any damage to the native vegetation or trees impacted by the variance. The plan is to be submitted to the Building Official.

## SECTION 8. REMOVAL OF WASTE

All vegetation, trees, and tree stumps in or on the ground that have been cut, poisoned, or otherwise removed must be taken from the site or ground into chips within fifteen (15) days of the completion of the clearing activities. Chipped brush and wood waste must either be:

- (a) spread upon the ground in a layer not exceeding one and one half inches (1 ½") deep; or
- (b) properly disposed at a waste disposal or recycling facility.

Variances to this section will be considered by the Building Official upon receipt of a written request from the property owner. Variances may be granted if the Building Official determines that strict compliance with this provision would result in a hardship and that substantial compliance can be achieved under alternate terms.

## **SECTION 9. ENFORCEMENT**

### **A. Civil and Criminal Penalties**

The Village shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

### **B. Criminal Prosecution**

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding \$500.00. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

### **C. Civil Remedies**

Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

1. injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance, including but not limited to remediation and/or mitigation; and
2. a civil penalty up to \$500.00 a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
3. other available relief.

## **SECTION 10. REPEALER**

All Ordinances or parts of Ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

**SECTION 11. SEVERABILITY**

It is hereby declared to be the intention of the Village Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section 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 phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

**SECTION 12. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**PASSED AND APPROVED** this 1<sup>st</sup> day of July 2002, by a vote of \_\_\_\_\_(ayes) to \_\_\_\_\_(nays) to \_\_\_\_\_ (abstentions) of the Village Council of the Village of Point Venture, Texas.

**VILLAGE OF POINT VENTURE**

BY: \_\_\_\_\_  
TERRY HICKMAN, Mayor

**ATTEST:**

\_\_\_\_\_  
CHARLOTTE BANASIK, Village Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
ALAN J. BOJORQUEZ, Village Attorney