

ORDINANCE NUMBER 15-003

State of Texas

City of New Berlin

**AN ORDINANCE ESTABLISHING THE RULES AND REGULATIONS
FOR PROPER DEVELOPMENT AND MANAGEMENT OF TREES
IN THE CITY OF NEW BERLIN
AND PROVIDING A PENALTY FOR VIOLATIONS.**

WHEREAS, The governing body of the City of New Berlin, Texas has determined that the passage of a new ordinance regulating the proper development and management of trees is necessary to promote the safe, orderly and healthful development of the community for the citizens of the City of New Berlin, Texas; and

WHEREAS, The governing body of the City of New Berlin, Texas has determined that the passage of a tree protection ordinance regulating the proper development of property is necessary to abide by city development requirements set forth in the Texas Constitution, and the Texas Local Government Code; and

WHEREAS, The City of New Berlin, Texas has determined that tree management regulations are necessary in order to retain the country atmosphere and ranch- style living that the community has been accustomed to which the citizens wish to preserve by regulations to protect existing heritage trees, other trees, and the planting of new trees; and

WHEREAS, Since the city's incorporation over 30 years ago it has retained the rural setting and Board of Aldermen believes the regulations and this ordinance will maintain the unique and desirable characteristics of a natural environment for the citizens of New Berlin.

NOW, THEREFORE:

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERLIN, TEXAS:

SECTION 1. AUTHORIZATION

The Mayor or his designee is hereby authorized and directed to implement the applicable provisions of this ordinance in order to provide for the orderly, safe and healthful development within the City of New Berlin. This ordinance will help promote the health, safety, community heritage and general welfare of the citizens of New Berlin. It is also the purpose of this ordinance to retain the country atmosphere and heritage of our rural community setting by setting minimum requirements for maintenance of heritage trees and suggested management of other trees in the New Berlin community in order to safeguard and enhance property values and to protect public and private investment and to preserve and protect the unique identity and environment of the City of New Berlin and preserve the economic base.

SECTION 2. APPLICATION

This ordinance shall apply to all persons and businesses within the City of New Berlin to preserve and provide visual buffering and enhance the beautification of the New Berlin Community.

Commercial and residential subdivision developments within the City's corporate limits are subject to the landscaping and irrigation requirements established within this Article.

A common commercial or residential subdivision development that includes more than one lot shall be treated as one lot for the purposes of satisfying the landscaping requirements of this Ordinance. Split ownership, planning in phases, construction in stages, and/or multiple building permits for a project (i.e. apartments) shall not prevent it from being a common development as referred to above. Each phase of a project shall comply with the requirements of this Ordinance.

Applicability.

- (a) Commercial and residential subdivision developments within the City's corporate limits are subject to the tree removal, preservation, and / or pruning restrictions and permitting requirements established within this ordinance.
- (b) Oak Wilt restrictions and permit requirements contained within *Tree Pruning Restrictions* shall apply to all real property within the City's corporate limits.
- (c) All professional tree care or landscaping companies shall obtain a permit from the City prior to any tree trimming, de-mossing, or tree removal within the City's corporate limits.

Exceptions.

The following authorized exceptions from the terms and provisions of this Ordinance shall apply:

- (1) In the event that any Heritage Tree is determined by the City to be in a hazardous or dangerous condition so as to endanger the public health, welfare, or safety, written authorization for removal may be given by the City and such Heritage Tree may then be removed.
- (2) During the period of an emergency, such as a tornado, storm, flood, or other act of God, the requirements of this Ordinance may be waived by the City Board of Aldermen for the affected area or areas.
- (3) All licensed plant or tree nurseries shall be exempt from the terms and provisions of this Ordinance only in relation to those trees planted and growing on the premises of said licensee, that are so planted

Tree Ordinance Revision 3---08102015

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

(4) Utility companies franchised or otherwise authorized to provide utility service may prune or remove Heritage Trees that endanger public health, safety, and welfare by interfering with utility service, provided that the removal is the minimum necessary for the utilities to function properly and no other alternative is available.

(5) The mowing, clearing, and grubbing of brush located within or under the drip lines of Heritage trees shall be allowed, provided such mowing, clearing, or grubbing is not implemented by use of the bulldozers, loaders, or other construction or earth moving equipment.

(6) Areas contained within public and private rights-of-way or utility or drainage easements, provided that the applicant demonstrates that the removal is necessary for the rights-of way and easements to function properly.

(7) All municipal functions and activities of the City of New Berlin are exempt from the application, terms, and provisions of this Chapter.

SECTION 3. DEFINITIONS

For the purposes of this Ordinance, the following phrases, terms, words, and their derivation shall have the meanings given in this Section.

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 should be measured and the result divided by 3.14 to determine the diameter.

Categories of Tree Preservation. The designations "Large Tree Species," "Small Tree Species," and "Heritage" are established for the purposes of applying the requirements of this Ordinance. See Table 1.0 for tree preservation categories and preservation rates.

Commercial Development. All commercial (industrial, office, multifamily, institutional, and retail) property to be developed or redeveloped, including additions and alterations to the structure or outdoor areas, such as parking lots or driveways.

Covered Species. Any existing living tree of any species or type, as defined in Table 1.0 "Protected Tree Preservation Categories and Preservation Rates."

Drip line. The area of ground surrounding the trunk of a tree considered essential to protecting the root structure of a tree. For the purposes of this Ordinance, the drip line shall be calculated at one foot (1') for every one inch (1") of caliper width measured at four feet (4') above natural grade level. Construction may encroach into the drip line area of a tree, provided that alternative construction methods for protecting a tree are approved by the City.

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

Protected Tree. Trees that, by virtue of their size or species, are protected by this Ordinance.

Large Tree Species. Trees of a covered species that are six-inch (6") caliper or greater. See Table 1.0.

Small Tree Species. Trees of designated small tree species that are five- inch (5") caliper or greater. See Table 1.0.

Tree Ordinance Revision 3---08102015

Heritage Tree. Any Protected Large Tree Species that is greater than a twenty-four-inch (24") caliper trunk and any Protected Small Tree Species that is greater than an eight-inch (8") caliper trunk. See Table 1.0.

Non-Protected Tree. Any living tree that the City certifies in writing is injured, dying, diseased, or infested with harmful insects; that is in danger of falling, interferes with utility service, or creates unsafe vision clearance; or, in any manner, creates a hazardous or dangerous condition so as to endanger the public health, welfare, or safety, is not a Protected Tree.

Residential Subdivision Development Project. Any and all real property meeting the definition of Subdivision which has been platted for single-family home construction.

Root Protection Zone (RPZ). The area around the base of a tree in which limited construction may take place.

Shall; May: The word "shall" is always mandatory. The word "may" is merely directory.

Street: A right of way, however designated, that provided vehicular traffic to adjacent land.

Definitions not expressly set forth are to be construed in accordance with customary usage in municipal planning and engineering practices.

TABLE 1.0

PROTECTED TREE PRESERVATION CATEGORIES

The following species of trees are suggested for protection by the Texas Forest Service. The City of New Berlin strongly encourages all residents to *voluntarily* protect these species, as they are part of our overall tree canopy.

Covered Species

<p>Large Tree Species" are any existing living tree of any species or type, excluding the following:</p> <p>Ashe Juniper (Cedar) Athel Tamarisk Brazilian Peppertree Chinaberry Chinese Elm Chinese Tallow Cottonwood Desert Willows Five Stamen Tamarisk French Tamarisk</p>	<p>Hackberry Japanese Ligustrum Salt Cedar Tamarisk Siberian Elm Tallowtree Tree of Heaven Willow Species other than Desert Willows</p>	<p>Texas Crab Apple Downy Hawthorn Texas Persimmon Texas Redbud</p>
	<p>"Small Tree Species" are as follows:</p> <p>Condalia Mexican Redbud Mountain Laurel Possomhaw</p>	<p>Protected Category (Encouraged)</p> <p>Large Tree Species that are: 6" to 24" caliper</p> <p>Small Tree Species that are: 5" to 8" caliper</p>

Heritage Category

Mandatory protection through enforcement of this Ordinance will be afforded only to Heritage Live Oak and Heritage Pecan Trees. Protection of all remaining species of Heritage Category trees is strongly encouraged.

Caliper determines designation as a Heritage tree.

Large Tree Species that are: Greater than 24" caliper

Small Tree Species that are: Greater than 8" cal

SECTION 4. PERMIT FOR TREE PRESERVATION AND REMOVAL

(a) *Purpose.* The purpose of this Ordinance is to provide a review process to preserve the existing natural environment, whenever possible, and to encourage the preservation of trees throughout construction and / or development. Commercial and residential subdivision developments within the City's corporate limits are subject to the tree removal, preservation, and / or pruning restrictions and permit requirements established within this Ordinance.

(b) *Permit Information.* The information required for a Tree Preservation and Removal Permit is located on the Tree Preservation and Removal Permit application.

SECTION 5. TREE PRUNING RESTRICTIONS

(a) *Applicability.* Tree pruning restrictions shall apply to all real property within the City's corporate limits.

(b) *Required Pruning.* The City shall have the right to prune overhanging trees which interfere with the visibility of any traffic control device, sign, or roadway, as necessary, to preserve the public safety.

(c) *Tree Topping.* It shall be unlawful for any commercial or residential subdivision development or utility company 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.

(d) *Branch / Root Pruning and Wounded Trees.* All broken branches and exposed roots one half inch (1/2") in diameter or greater of any Heritage Tree shall be cut cleanly. In the case of oak species susceptible to Oak Wilt, wounds must be painted with an acceptable wound dressing within thirty (30) minutes from the time of cutting, even if the tree is below the caliper measurement to be designated a Heritage Oak.

(e) *Oak Wilt.* Trimming or cutting of any oak tree susceptible to Oak Wilt is prohibited within the corporate limits of the City of New Berlin from the first day of February to the last day of May. Permission, however, may be granted to any entity wishing to trim or cut an oak tree susceptible to Oak Wilt during the prohibited months, provided that the entity contracts with a licensed professional tree care or landscaping company. The professional tree care or landscaping company shall obtain a permit from the City prior to any tree trimming, de-mossing, or removal in the City. In the case of oak species susceptible to Oak Wilt, wounds must be painted with an acceptable wound dressing within thirty (30) minutes from the time of cutting. All trimming tools shall be cleaned with a disinfectant after each use to prevent spreading of the disease.

SECTION 6. TREE PROTECTION MEASURES.

The following tree protection measures shall be required:

- (a) Prior to commercial or residential subdivision development, property owners shall establish and maintain a root protection zone and install four-foot high (4') plastic (or equivalent) safety fencing outside the drip line of Heritage trees for the duration of construction and development. Trees shall not be pruned to reduce the root protection zone.
- (b) During construction or development of commercial or residential subdivision developments, the property owner 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 within the drip line of any Heritage tree.
- (c) No attachments or wires of any kind, other than those of a protective nature, shall be attached to any tree during construction or development of commercial or residential subdivision developments.
- (d) With major grade changes of six inches (6") or greater resulting from placement of fill material, a retaining wall or tree well of rock, brick, landscape timbers, or other approved materials shall be constructed around the tree no closer than six (6) feet from the trunk of Protected or Heritage trees during construction or development of commercial or residential subdivision developments. The top of the retaining wall or tree well shall be at the new finished grade.
- (e) Unless otherwise approved by the City, no commercial or residential subdivision development construction or construction-related activity shall occur within the drip line of any Heritage Tree.
- (f) Any trees removed during commercial or residential subdivision development shall be chipped or hauled off-site within thirty (30) days of the time the trees were removed.

SECTION 7. PENALTY

Any person violating any provision of this Ordinance within the corporate limits or of the City of New Berlin, Texas, shall be guilty of a misdemeanor, and, upon conviction shall be fined any amount not exceeding two hundred dollars (\$200.00) and in addition, shall be liable for damages to include the replacement cost of the tree. Each tree illegally removed or damaged shall constitute a separate offense. If the precise caliper of a tree cannot be determined, the cost of replacement shall be established by the City based upon an estimate of the total caliper inches of the removed or damaged tree(s). Failure of any party to follow the procedures of this Ordinance shall constitute grounds for withholding or revoking site plan approval, building permits, occupancy permits, or any other appropriate approvals necessary to continue development. Such sanctions, however, may be instituted immediately at the direction of the City after consultation with the City Attorney. The Mayor will review all actions taken pursuant to this subsection and present the matter to the Board of Aldermen without delay. In the case of emergency to prevent the unauthorized removal of trees, the Mayor may direct the City Attorney to petition a court of competent jurisdiction for injunctive relief directing compliance with this subsection. In addition to any other remedies or penalties contained herein, the City may enforce the provisions of this Article pursuant to the applicable provisions of Chapter 54 of the Texas Local Government Code, which Chapter provides for the enforcement of municipal ordinances. On behalf of the City, the City Attorney shall, when directed by the Board of Aldermen, institute appropriate action in a court of competent jurisdiction to enforce the provisions of this Ordinance or the standards referred to herein with respect to any violation that occurs within the city, within the jurisdiction determined under the Municipal Annexation Act, or within any area subject to all or part of the provisions of this Ordinance. Prosecution or conviction under this provision shall never be a bar to any other remedy or

relief for violations of this ordinance, including those allowed under Tex. Loc. Gov't Code 212.018 and 54.012.etc. Seq.

SECTION 8. VARIANCES AND SPECIAL CIRCUMSTANCES

The Board of Aldermen may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the Board of Aldermen shall prescribe only conditions that it deems necessary to or desirable in the public interest. No variance shall be granted unless the Board of Aldermen finds:

- (1) such variance will not be contrary to public interest;
- (2) such variance will be in harmony with the spirit and purposes of this Article;
- (3) the plight of the owner of the property for which 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
- (4) the variance will not substantially weaken the general purposes of this Ordinance.

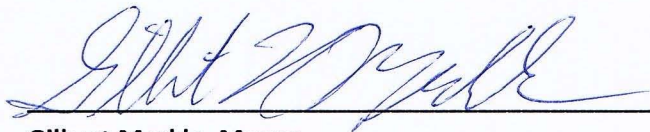
Such findings of the Board of Aldermen, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the Board of Aldermen meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of the Ordinance so that public, health, safety and welfare may be secure and substantial justice done. Pecuniary hardship to the petitioner, standing alone, shall not be deemed to constitute undue hardship.

SECTION 9. SEVERABILITY

If any provision in this Ordinance is adjudicated by a court of competent jurisdiction to be invalid or otherwise unenforceable, the rest of the provisions not so adjudicated shall remain in effect.

This Ordinance shall be effective from and after its passage or from and after the 30th day of August 2015.

PASSED AND APPROVED this 17th day of August 2015, with an effective date of August 30, 2015.



Gilbert Merkle, Mayor

STATE OF TEXAS }

}ss.

COUNTY OF GUADALUPE }

Before me, Clara Joan Milanovich, Notary Public, on this day personally appeared Gilbert Merkle, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 17th day of August, 2015.

Clara Joan Milanovich

(Seal of Notary)

Signature of Notarizing Officer

