

5/12

ORDINANCE NUMBER 2013-0026

State of Texas

City of New Berlin

**AN ORDINANCE ESTABLISHING THE RULES AND REGULATIONS
FOR PROPER DEVELOPMENT OF PROPERTY ADJOINING RECOGNIZED**

HISTORIC PROPERTIES 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 is necessary, protecting Designated Historical Resources, deemed worthy of preservation by the Texas Historical Commission and/or The United States Department of the Interior. The four historical designations are: National Register of Historic Places (NR), Recorded Texas Historic Landmark (RTHL), State Archeological Landmark (SAL), and Historic Texas Cemetery (HTC). For the remainder of this document this group of four designations will be referred to as Designated Historical Resources. This ordinance will regulate the proper development of property adjoining properties holding any of the four aforementioned historical designations and 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 historic preservation ordinance regulating the proper development of property adjoining Designated Historical Resources is necessary to abide by city development requirements set forth in the Texas Constitution, and the Texas Local Government Code and the guidelines of the State of Texas Historical Commission; and

WHEREAS, The City of New Berlin, Texas has determined that historic property development regulations are necessary in order to retain the City's historic resources, cultural heritage, country atmosphere and ranch style living that the community has been accustomed to and which the citizens wish to preserve by the inclusion of a minimum distance requirement from the Designated Historical Resources; and

WHEREAS, Since the city's incorporation over 30 years ago it has retained the historic, rural setting and The Board of Aldermen believes the regulations and this ordinance will maintain that for the citizens of New Berlin.

*After recording, please
return to:
→ City of New Berlin
New Berlin Town
245 FM 2538
Sequim, TX 78155*

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, morals, 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 by setting minimum set-back distances from Designated Historical Resources .

SECTION 2. APPLICATION

- A. This ordinance shall apply to all persons and businesses within the City of New Berlin and wherever situated in order to preserve the cultural heritage of Texas and the New Berlin Community.
- B. The Board of Aldermen is hereby requiring the owner of a tract of land located within the City limits of the city who develops a tract or erects a building for human habitation, establishes a temporary living structure (mobile home), to erect the structure or place the structure, no closer than 500 feet from Designated Historical Resources.
- C. The minimum required distance insures that a National Register property or a Recorded Texas Historical Landmark maintains the State of Texas guidelines for preservation including location, design, setting, materials, workmanship, feeling and association. Construction immediately adjacent to a Recorded Texas Historical Landmark would threaten the integrity of the Recorded Landmark's rural setting.
- D. This ordinance shall have the further purpose of repealing any other ordinance or section of an ordinance in conflict with minimum set back requirements from National Register properties or Recorded Texas Historical Landmarks.

SECTION 3. DEFINITIONS

- A. **National Register of Historic Places (NR):** The nation's inventory of properties deemed worthy of preservation. Properties of state and local, as well as national, significance, providing a comprehensive index of the diversity of our American heritage.
- B. **Recorded Texas Historical Landmark (RTHL):** A Building, property or place recognized by the State of Texas as having unusual merit in the history of the state in the contribution of development of State architecture, community or social significance.
- C. **State Archeological Landmark (SAL):** Prehistoric and historic archeological sites. Designation under Antiquities Code of Texas.
- D. **Historic Texas Cemetery (HTC):** Historic cemeteries and gravesites.
- E. **Building Set-back Line:** The line within a property defining the minimum horizontal distance (500 feet) between a structure designed for human habitation and the Designated Historical Resource.

- F. City: The City of New Berlin, Texas. Any office referred to in this Ordinance by title means the person employed or appointed by the City in that position or his duly authorized representative.
- G. Lot: An undivided tract or parcel of land having frontage on a street and that is, or in the future may be offered for sale, conveyance, transfer, or improvement; that is designated as a distinct and separate tract, and that is identified by a tract or plot number that has been properly filed for record.
- H. Person: Any individual, association, firm, corporation, governmental agency, or political subdivision.
- I. In the interpretation and application of the provisions of this chapter, it is the intention of the Board of Aldermen that the principles, standards, and requirements provided herein shall be minimum requirements for the building, erection or placement of a permanent or temporary structure from a Designated Historical Resource in the city.
- J. All property not currently constructed prior to the effective date of this Ordinance, shall hereafter be required under the direction of the Board of Aldermen, to maintain required minimum spacing from a Designated Historical Resource in the city.
- K. Shall; May: The word "shall" is always mandatory. The word "may" is merely directory.
- L. Street: A right of way, however designated, that provided vehicular traffic to adjacent land.
- M. Definitions not expressly set forth are to be construed in accordance with customary usage in municipal planning and engineering practices.

SECTION 4. PENALTY

- A. Any person violating any provision of this Ordinance within the corporate limits or extraterritorial jurisdiction 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). Each day that such a violation continues shall be a separate offense. 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 5. 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. In making the findings herein below required, the Board of Aldermen shall take into account the nature of the proposed use of the structure involved, existing uses of land in the vicinity, and the type and size of proposed structures. No variance shall be granted unless the Board of Aldermen finds:

- A. That there are special circumstances or conditions affecting the land involved such that strict application of the provisions of this Ordinance would deprive the reasonable use of his land; and
- B. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and there are no alternative sites on the property that would allow the placement of the structure to meet the required minimum set-back; and
- C. That the variance would be in keeping with the guidelines and property integrity in a rural setting stated by the State Historical Commission ; and
- D. That the granting of the variance would not be detrimental to the public health, safety or welfare, or injurious to the value of other property in the area; and
- E. 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 6. 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~~ day of ^{gpm}
 2013.

PASSED AND APPROVED this 16th day of September 2013, with an effective date of 9/16, 2013.

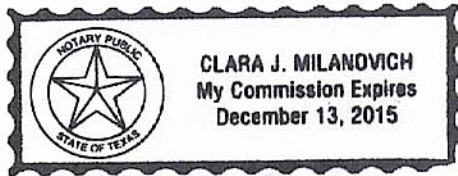

MAYOR
GILBERT MERKLE

STATE OF TEXAS }
 }
COUNTY OF GUADALUPE }

Before me, Clara Joan Milanovich, Notary Public, on this day personally appeared

Gilbert R. 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 16th day of September, 2013.




Notary Seal

Clara Joan Milanovich

Signature of Notarizing Officer

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TERESA KIEL, COUNTY CLERK
GUADALUPE COUNTY, TEXAS

 *Teresa Kiel*



Certificate of Acknowledgment
(Ordinance # 2013-0026)