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STATE OF TEXAS  
CITY OF NEW BERLIN

ORDINANCE NO. 2025-001

**ORDINANCE PROPER DEVELOPMENT AND MANAGEMENT OF TREES**

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

*(This Ordinance updates and replaces ORDINANCE NUMBER 2015-003, adopted 17<sup>th</sup> day of August 2015.)*

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 the city development requirements set forth in the Texas Constitution and the Texas Local Government Code; and

WHEREAS, The governing body of 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 regulation to protect existing Heritage Trees, Significant Trees, other trees, and the planting of new trees; and

WHEREAS, Since the City's incorporation over 40 years ago, it has retained the rural setting, and the Board of Aldermen believes the adoption of updated regulations in 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 rural character and heritage of our community by setting minimum requirements for the maintenance and preservation of Heritage and Significant trees and suggested management of other trees in the New Berlin community in order to safeguard and enhance the quality of life, 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 to preserve its economic base.

## **SECTION 2. APPLICATION**

This Ordinance will apply to all persons and commercial entities 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 and applicable mitigation requirements established within this Article.

A common Commercial or Residential subdivision development that includes more than one lot will be treated as one lot for the purpose of satisfying the landscaping requirements of this Ordinance. Split ownership, phased planning, staged construction and/or multiple building permits for a project (i.e. apartment developments) shall not prevent it from being a common development as referred to above. Each phase of the project will 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, mitigation and/or pruning requirements established within this Ordinance.
- (b) Oak Wilt restrictions and permit requirements contained within the Tree Pruning Restrictions shall apply to all real property within the City's corporate limits.
- (c) All professional tree care or landscape companies will 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 will apply:

- (a) In the event that any Heritage Tree or designated preserved Significant Tree is determined by the City to be in a hazardous or dangerous condition or in natural decline so as to endanger the public health, welfare or safety. A written authorization for removal may be given by the City, and such Heritage Tree or designated preserved Significant Tree may then be removed.
- (b) 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.
- (c) All licensed plant or tree nurseries will 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 and growing for the sale or intended sale to the general public in the ordinary course of said licensed business.
- (d) Utility companies franchised or otherwise authorized to provide utility service may prune or remove Heritage or Significant 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.

- (e) The mowing, clearing and grubbing of brush located within and under the drip lines of Heritage Trees and designated protected Significant Trees will be allowed, provided such mowing, clearing or grubbing is not implemented by use of bulldozers, loaders or other earth moving equipment. Work performed under the drip lines of protected trees will not adversely affect supportive root systems that will compromise the structural integrity or long-term viability for the tree's survival.
- (f) 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 or easements to function properly.
- (g) All municipal functions and activities of the City of New Berlin are exempt from this application, terms and provisions of this Chapter.

### SECTION 3. DEFINITIONS

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

Caliper: The trunk diameter of a tree measured four feet (4') above natural grade with a caliper instrument or flexible tape. If a non-specialty tape for caliper measurement is used, the caliper shall be determined by the measurement of the tree trunk circumference and the result divided by a factor of 3.14 to determine the diameter.

Categories for Tree Preservation: The designations "Large Tree Species," "Small Tree Species," "Heritage Trees" and "Significant Trees" are established for the purposes of applying the requirements of this Ordinance. The designation "Mitigation Tree" refers to any tree planted as a replacement for any protected tree that has been removed beyond the minimum preservation requirements of this Ordinance.

Commercial Development: All commercial (industrial, office, multi-family, institutional or retail) property to be developed or redeveloped, including additions and alterations to a 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.

Drip Line: The area of ground surrounding the trunk of a tree is considered essential to protecting the root structure of the tree. For the purposes of this Ordinance, the drip line shall be calculated at one foot (1') for every one inch (1") of caliper measurement at four feet (4') above natural grade. Construction may encroach into the dripline area of a tree provided that alternative construction methods for protecting the tree are approved by the City and a minimum of 75% of the calculated dripline area of the tree remains undisturbed.

Heritage Tree: Any Protected Large Tree Species with a trunk greater than twenty-four-inch (24") caliper and any Protected Small Tree Species with a combined trunk greater than eight-inch (8") caliper as defined in TABLE 1.0: PROTECTED TREE PRESERVATION CATEGORIES. Heritage Trees are to be preserved at a rate of 100% of the total caliper inches as documented in the Tree Survey unless approved by variance or replaced through Mitigation at a 2:1 rate for each removed caliper inch.

**Large Tree Species:** Trees of a Covered Species that are measured at six-inch (6") minimum caliper as defined in TABLE 1.0: PROTECTED TREE PRESERVATION CATEGORIES and documented in the surveyed Tree Inventory included in the proposed site plans.

**Mitigation Tree:** Any newly planted Tree that is intended to replace removed Heritage or Significant Trees to meet the minimum preservation requirements of the designated species included in TABLE 1.0: PROTECTED TREE PRESERVATION CATEGORIES. Mitigation Trees will be replaced at a rate of 2:1 for each caliper inch of removed Heritage Trees not meeting the 100% preservation requirement and a rate of 1:1 for each caliper inch of removed Significant Trees not meeting the 50% minimum preservation requirement. Mitigation Trees will be provided a minimum of 150 square feet of planting area with a minimum width of 8 feet (*i.e. 10 feet x 15 feet = 150 square feet*). Mitigation Trees will be maintained for an establishment period of 1 year by the Owner/Developer following acceptance of the project.

**Multi-trunk Tree:** A tree having two (2) or more trunks arising from the root collar or main trunk. Multi-trunk tree caliper will be based on the caliper of the largest trunk and half of the total caliper inches of the remaining trunks added together.

**Non-Protected Tree:** Any living tree that the City certifies in writing as injured, dying, diseased, infested with harmful insect or other form of decline that is in danger of falling, interferes with utility service or creates an 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. In addition, tree species, unless specifically defined in TABLE 1.0: PROTECTED TREE PRESERVATION CATEGORIES, are not considered to be Protected and will not be considered as part of the Mitigation requirements.

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

**Residential Subdivision Development:** 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 of ground around the base of a tree in which limited construction may take place as defined by the calculated Drip Line of the tree.

**Small Tree Species:** Trees of a Covered Species that are measured at five-inch (5") minimum caliper as defined in TABLE 1.0: PROTECTED TREE PRESERVATION CATEGORIES and documented in the surveyed Tree Inventory included in the proposed site plans.

**Significant Tree:** Any Protected Large Tree Species with a trunk greater than ten-inch (10") caliper but less than twenty-four-inch (<24") caliper and any Protected Small Tree Species with a combined trunk greater than five-inch (5") caliper but less than eight-inch (<8") caliper as defined in TABLE 1.0: PROTECTED TREE PRESERVATION CATEGORIES. Significant Trees are to be preserved at a rate of 50% of the total caliper inches as documented in the Tree Survey unless approved by variance or replaced through Mitigation at a 1:1 rate for each removed caliper inch. (*Preserved Significant Trees in excess of the minimum 50% requirement can be applied toward Mitigation calculation requirements.*)



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

Tree Inventory: An inventory of existing trees within the boundary or limits of construction of any proposed Commercial or Residential Subdivision Development compiled from the Tree Survey that indicates the size and species of Heritage or Significant Trees to be preserved or removed as part of the proposed site development.

Tree Survey: A survey of existing trees located within the boundary or limits of construction of any proposed Commercial or Residential Subdivision Development that documents the size, species, assigned number as applicable and surveyed locations of Protected Tree Species as defined in TABLE 1.0: PROTECTED TREE PRESERVATION CATEGORIES for the purposes of site plan development. Tree Survey information should be represented on submitted site plans for plan review.

'Will' versus 'May': The word "will" is always mandatory. The word "may" is merely directory.

Definitions not expressly set forth in this section 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, and the City of New Berlin strongly encourages all residents to voluntarily protect these species as they are a part of our overall tree canopy.**

##### **Protected Species:**

###### **Large Trees Species: measured at 10" min. caliper**

Oak (*Quercus sp.*) including Live, Red, Post & Bur Oaks.

Pecan (*Carya sp.*) including native & improved varieties.

Cedar Elm (*Ulmus sp.*) including native, but not introduced varieties.

###### **Small Trees Species: measured at 5" min. caliper**

Redbud (*Cercis sp.*) including Texas, Mexican & Eastern varieties.

Texas Mountain Laurel

Texas Persimmon

Yaupon/Poosumhaw Holly

**Non-Protected Species:** *characterized as non-Native, introduced or invasive species that are not considered as part of the preservation requirements for site development and cannot be applied for mitigation credit.*

**Species include, but are not limited to:** *Ashe Juniper (Cedar), Chinaberry, Chinese Tallow, Cottonwood, Crape Myrtle, (non-Native) Elm species, Hackberry, Huisache, Japanese Ligustrum, Mesquite and Willow species.*

*\*Other species not included in this list may be presented in the Tree Inventory & Site Plans based on use or Native Range represented in the landscape.*

#### **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 the planning, construction and development phases. Commercial and Residential Subdivision Developments located within the City's corporate limits are subject to the Tree Preservation and Removal, Tree Pruning and Permit Requirements established in 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. All new and planned Commercial and Residential Subdivision Developments located within the City's corporate limits are subject to plan review and approval by the Board of Aldermen at the recommendation of the Planning & Zoning Committee prior to issuance of a Permit.
- (c) *Tree Mitigation:* Additional Tree Preservation or Mitigation planting may be applied to Protected Species that have been removed as part of a proposed Commercial or Residential Subdivision Development subject to approval by the Board of Aldermen. Heritage Trees are to be preserved at a rate of 100% of the existing caliper inches and will be mitigated at a rate of 2:1 for every caliper inch removed. Significant Trees are to be preserved at a rate of 50% of the existing caliper inches and will be mitigated at a rate of 1:1 for every caliper inch removed up to the minimum preservation requirement. Mitigation Trees, at a minimum 4" caliper size, can be planted to meet minimum Tree Preservation requirements for removed trees and any preserved Significant Tree caliper inches in excess of the required 50% preservation can be applied to offset mitigation requirements. Any Tree Removal in excess of minimum requirements, or removal of Heritage or Significant Trees without an approved permit, will be subject to a fee in lieu of or damage assessment at a rate of \$200/caliper inch of the mitigation value (i.e. \$400/Heritage Tree Caliper Inch at 2:1 rate & \$200/Significant Tree Caliper Inch at 1:1 rate) as determined by the City's Board of Aldermen.

#### **SECTION 5. TREE PRUNING RESTRICTIONS**

- (a) *Applicability:* Tree pruning restrictions will apply to all real property within the City's corporate limits.
- (b) *Required Pruning:* The City will 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 will 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 or disfigure the tree.
- (d) *Branch & Root Pruning and Wounded Trees*: All broken branches and exposed roots two-inch (2") diameter or greater of any Heritage or preserved Significant Tree will be cut cleanly and wounds must be treated with paint or other acceptable wound dressing within thirty (30) minutes to mitigate the spread of Oak Wilt or other disease.
- (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 will be required:

- (a) Prior to Commercial or Residential Subdivision Development, property owners will establish and maintain a root protection zone (RPZ) and install four-foot (4') high plastic (or equivalent) safety fence outside the dripline of all preserved Heritage or designated Significant Trees for the duration of construction or development. The RPZ shall be kept free of litter and any construction-generated debris for the duration of construction or development.
- (b) During construction or development of Commercial or Residential Subdivision Developments, the property owner will 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 dripline of all preserved Heritage or designated Significant Trees.
- (c) No attachments or wires of any kind, other than those of a protective nature, will 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 will be constructed around the tree no closer than half total circumference of the designated RPZ from the trunk of preserved Heritage or designated Significant Trees during construction or development of Commercial or Residential Subdivision Developments. The top of the retaining wall or tree well will be at the new finished grade.
- (e) Unless otherwise approved by the City, no Commercial or Residential Subdivision Development construction or construction-related activity will occur within the dripline of any Heritage Tree and a minimum of 75% of the calculated dripline area of the tree will remain undisturbed.

- (f) Any trees removed during Commercial or Residential Subdivision Development will 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 of the City of New Berlin, Texas, will be guilty of a misdemeanor, and upon conviction will be fined an amount not exceeding two hundred dollars (\$200.00) and in addition, will be liable for damages to include the replacement cost of the tree assessed at the mitigation value as determined by this Ordinance. Each tree illegally removed or damaged will 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 will 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, then City Attorney will, 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 will 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 will 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 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.


**SECTION 10. EFFECTIVE DATE**

This Ordinance shall be effective upon passage and approval.

PASSED AND APPROVED this, the 17<sup>th</sup> day of February, 2025.

  
WALTER WILLIAMS, MAYOR  
CITY OF NEW BERLIN, TEXAS

ATTEST:

  
ROXANN PULLIN, CITY SECRETARY  
CITY OF NEW BERLIN, TEXAS  
(Seal)



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I certify this instrument was FILED and RECORDED  
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TERESA KIEL, COUNTY CLERK



