

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-28**

AN ORDINANCE AMENDING CHAPTER 26 "BUILDING AND BUILDING REGULATIONS" OF THE CODE OF ORDINANCES, CITY OF KERRVILLE, TEXAS, BY ADDING A NEW ARTICLE XI "GRADING AND FILLING", TO CREATE REGULATIONS, INCLUDING A PERMIT REQUIREMENT FOR ANY ACTIVITY ASSOCIATED WITH THE DISTURBANCE OF LAND UNDER SPECIFIED CONDITIONS; PROVIDING FOR A PENALTY IN THE MAXIMUM AMOUNT OF \$2,000.00 FOR VIOLATIONS THEREOF; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, City Council seeks to promote reasonable, sound, and efficient land use and construction within the City of Kerrville ("City"); and

WHEREAS, City Council, as a duly-elected legislative body, finds that the City is facing significant land use challenges that existing regulations do not address; and

WHEREAS, Texas Local Government Code Section 51.001 authorizes the City to adopt regulations that are for the good government, peace, or order of the City, and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, City Council desires to protect the public welfare, property interests, and the physical environment by regulating grading on public and private property; and

WHEREAS, City Council seeks to ensure that any proposed grading results in the minimum possible disturbance of terrain and natural land features necessary to develop land or to conduct other legal land uses; to prevent and/or regulate grading which unnecessarily changes the physical character of terrain, hills, and natural features; and to help ensure that grading will not adversely affect natural topographic drainage features, result in excessive erosion, degrade natural drainage paths or other drainage features, or alter natural surface runoff creating flood problems or irreparable scars to the subject property or surrounding properties; and

WHEREAS, City Council finds that the regulations provided for by this Ordinance are reasonable, necessary, and for the public benefit;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Chapter 26 “*Buildings and Building Regulations*” of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Article XI “*Grading and Filling*”, which will add the language that is underlined (added) as follows:

“ARTICLE XI. – GRADING AND FILLING

Sec. 26-275. – Definitions.

Cut means the excavation and removal of soil and rock from an area.

Drainage plan means a plan for receiving, handling, and transporting surface water or groundwater runoff within the subject property.

Erosion control measure, structure, or device means physical devices constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, mulching, and similar items.

Fill means earthy material which is used to fill in a cut, depression, or hole in the ground or create mounds or otherwise change the grade or elevation of a property.

Land disturbance or the disturbance of land means any construction or other activity caused by a person, which disturbs the surface of the land, including clearing, grubbing, grading, excavating, embanking, and/or moving, depositing, stockpiling, or storing of soil, rock, or earth materials. This term does not mean agricultural plowing or tilling, timber harvesting activities, road maintenance activities, routine channel maintenance, or utility maintenance.

Water course means flowing water in a regular channel having a bed with banks and sides and generally discharging itself into some other body or stream of water. A water course generally has a well-defined and substantial existence but may not continually flow or never be dry.

Sec. 26-276. Permit required.

(a) It is unlawful for any person to commence with the disturbance of land without first receiving a grading permit, or an equivalent permit as provided below, for such activities from the City in compliance with this article. A permit is required where the disturbance of land is:

(1) equal to or greater than one acre (43,560 square feet);

(2) where the disturbance is greater than ¼ of one acre (10,890 square feet) and the property lies immediately adjacent to or includes a water course; or

(3) where stockpiling of dirt or fill material will occur;

(b) Any land disturbance which falls within any area of special flood hazard, as defined by Chapter 54 of the City's Code, to include any such disturbance within a floodplain, requires a Floodplain Development Permit from the City.

Sec. 26-277. Exception to grading permit requirement.

A grading permit is not required where land disturbance has not occurred, but will occur in conjunction with activities that the City is considering as part of approved:

a) civil construction plans pursuant to the submission of a plat;

b) floodplain permit; or

c) building permit.

Where a permit is not required under this section, the person responsible for the disturbance of land shall comply with this article.

Sec. 26-278. Application for a grading permit.

Any person seeking a grading permit shall submit an application to the Department of Development Services.

Sec. 26-279. Permit standards.

(a) An applicant for a grading permit shall submit a drainage plan to the City which indicates the impact of the proposed land disturbance on drainage patterns on the property, to adjacent property(s), and where applicable, the water course. Where applicable, the applicant shall submit a copy of its storm water pollution prevention plan (SWPPP).

(b) The applicant shall submit information describing the purpose of the land disturbance and/or the intended use of the property, where such use is known.

(c) Where the stockpiling of any material will occur, to include fill, such use is limited to a temporary period not to exceed 180 days.

(d) No grading shall exceed a maximum slope of 3 (horizontal): 1 (vertical) without a signed and sealed geotechnical and civil engineering report.

(e) No cut shall exceed four feet (4.0') in depth or height without a signed and sealed geotechnical and civil engineering report.

(f) A grading permit shall expire within 180 days of issuance. A permittee may request an extension from the City Manager or designee for a period not to exceed an additional 180 days. Following the expiration of the permit, including any extension, the fill shall be disposed of and/or graded out.

(g) All erosion control measures, structures, or devices must be installed prior to any land disturbance and thereafter maintained during such activities.

(h) Final stabilization shall be required, as required by the Texas Commission on Environmental Quality and its Texas Pollutant Discharge Elimination System (TPDES), for all grading and filling permits.

i) The City shall require evidence of full compliance with all other applicable local and state laws, to include regulations enforced by the Texas Commission on Environmental Quality and the payment of all applicable fees."

SECTION TWO. The City Secretary is authorized and directed to submit this Ordinance to the publisher of the City's Code of Ordinances and the publisher is authorized to amend said Code to reflect the provisions adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code as appropriate.

SECTION THREE. The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances in direct conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-7 of the Code

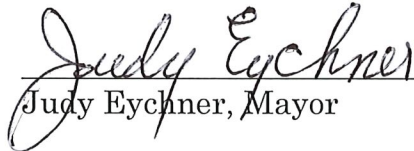
of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00) per day for each violation hereof.

SECTION SIX. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION SEVEN. This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the 12 day of SEPTEMBER, A.D., 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the 26 of SEPTEMBER, A.D., 2023.


Judy Eychner, Mayor

ATTEST:


Shelley McElhannon, City Secretary

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney