

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2025-01

AN ORDINANCE AMENDING CHAPTER 46 “ENVIRONMENT” OF THE CITY’S CODE OF ORDINANCES BY ADDING A NEW ARTICLE II “TREE PRESERVATION”, WHICH ADOPTS REGULATIONS FOR THE PRESERVATION OF TREES; PROVIDING FOR PENALTIES NOT TO EXCEED \$2000.00; ORDERING PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City of Kerrville (City) is located within the scenic Texas hill country with its abundance of wildlife, scenic views, and natural beauty; and

WHEREAS, City Council of the City (City Council) recognizes the value that trees add to the community as beautiful iconic backdrops to the scenery, shady respites from the Texas heat, and ecological benefits that improve air quality while providing food and shelter for wildlife; and

WHEREAS, City Council seeks to promote the public health, safety, and general welfare of the City and the safe, orderly, and healthful development of the City, by prioritizing the preservation of trees; and

WHEREAS, pursuant to the City’s Comprehensive Plan (*Kerrville 2050*), Kerrville citizens and community members “voiced” their collective opinion that areas trees, particularly those considered significant specimen or heritage trees, should be valued, celebrated, and protected; and

WHEREAS, in addition, *Kerrville 2050* specifically provides that trees dotting the landscape of Kerrville and the surrounding Hill Country are an important community asset; contribute to the beauty of the surrounding landscape, reduce pollution and runoff, and enhance property values; and that trees can be cut down and cleared quickly, but they cannot be easily replaced; and

WHEREAS, with these views in mind, *Kerrville 2050* stated that a tree preservation strategy and a planting plan for City-owned property and public spaces should be considered; and

WHEREAS, *Kerrville 2050* also provided that the City should consider tree preservation in order to encourage limited tree removal as a way to ensure any removal is done thoughtfully and responsibly, thereby protecting property values and the natural beauty of the community; and

WHEREAS, on October 22, 2022, City Council adopted Resolution No. 67-2022, which adopted a *Tree Preservation Policy* for the City; and

WHEREAS, City Council finds that removing all or most of the trees on any property is not beneficial to the hill country environment; and

WHEREAS, City Council finds that regulating the removal of trees helps preserve the hill country landscape and water resources; and

WHEREAS, City Council has determined that reasonable rules and regulations governing tree preservation are necessary to maintain water quality, protect the region's livability, preserve property values, and reinforce Kerrville's significance within the Hill Country; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is 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 finds that it is necessary and proper for the good government, peace, or order of the City to adopt an ordinance regulating the removal of specified trees;

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

SECTION ONE. The facts, recitations, and findings contained in the preamble of this Ordinance are found to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim.

SECTION TWO. Chapter 46 "Environment" of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Article II "Tree Preservation", as provided for in **Exhibit A**, which is attached and hereby adopted.

SECTION THREE. 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, to correct typographical errors, and to index, format, number, and letter paragraphs to the existing Code as appropriate.

SECTION FOUR. The provisions of this Ordinance repeal and replace all previous ordinances concerning the subject matter provided herein.

SECTION FIVE. It is officially found and determined that the meetings at which this Ordinance is passed were open to the public as required and that public notice of the time, place, and purpose of said meetings was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION SIX. 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. 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 SEVEN. 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 and specifically a fine not exceeding TWO THOUSAND AND XX/100 DOLLARS (\$2000.00) per day for each violation hereof.

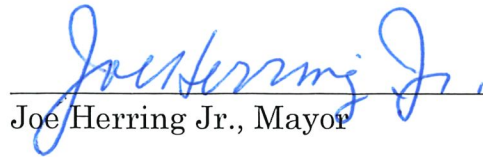
SECTION EIGHT. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is authorized and directed to publish the descriptive caption of this Ordinance in a newspaper of general circulation and in the manner and for the length of time prescribed by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

SECTION NINE. 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.

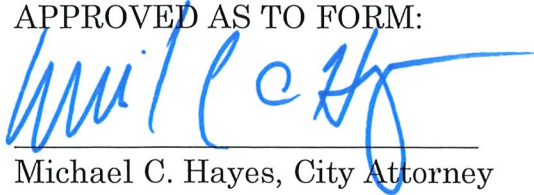
SECTION TEN. City Council directs the City Manager to report back to Council on or before the expiration of 180 days of the Effective Date of this Ordinance as to its implementation and whether any amendments need to be made.

PASSED AND APPROVED ON FIRST READING, this the 14 day of January, A.D., 2025.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the 28 day of January, A.D., 2025.


Joe Herring Jr., Mayor

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney

ATTEST:


Shelley McElhannon, City Secretary

EXHIBIT A

“CHAPTER 46 ENVIRONMENT

ARTICLE II. – TREE PRESERVATION

Sec. 104-1. - Purpose.

This article implements the following provisions of the Kerrville Comprehensive Plan (Kerrville 2050) and includes these goals as its purposes:

- (1) Preserve the neighborhood character of Kerrville;
- (2) Improve the quality of living for Kerrville citizens;
- (3) Preserve and enhance the rural atmosphere of Kerrville;
- (4) Responsibly protect the natural environmental resources of Kerrville;
- (5) Preserve the rugged beauty and natural environment that defines the Hill Country character of Kerrville and makes it a unique and desirable community; and
- (6) Prevent the clear-cutting of land as provided within this article.

Sec. 104-2. Definitions.

Caliper inch means the diameter, or width, of a tree measured at a height 4.5 feet above the natural grade.

City means the City of Kerrville, Texas.

City Council means the City Council of the City of Kerrville, Texas.

City Manager means the City's City Manager or designee.

Development means any development activity occurring on property subject to this article, to include construction activities and/or clearing, grading, excavating, or filling of land, or any other site work that may damage or destroy a protected tree.

Development Services means the City department designated by the City Manager for applying and enforcing these regulations.

Dripline means the area of ground surrounding the trunk of a tree considered essential to protecting the root structure of a tree. The dripline is calculated at 1 foot for every 1 caliper inch.

Heritage tree means any i) large tree species with a width greater than 24 caliper inches; or, ii) small tree species with a width greater than 8 caliper inches, such species as designated in **Table 1**.

Preservation rate means the caliper inches or area of trees to be preserved on a property as calculated for each tree preservation category, such rates found in **Table 2**. Examples are as follows:

Example: Preservation rate for “Large Tree Species” (see **Table 1**) where the caliper inches onsite = 10,000”; Preservation rate = 40% of total protected inches → $10,000 \text{ inches} \times 40\% = 4,000 \text{ caliper inches}$ of this tree type shall be preserved.

Example: Preservation rate for “Small Tree Species” (see **Table 1**) where the caliper inches onsite = 1,000”; Preservation rate = 40% of total protected inches → $1,000 \text{ inches} \times 40\% = 400 \text{ caliper inches}$ of this tree type shall be preserved.

Example: Preservation rate for “Heritage trees” (see **Table 1**) where the caliper inches onsite = 1,000”; Preservation rate = 60% of total protected inches → $1,000 \text{ inches} \times 60\% = 600 \text{ caliper inches}$ of this tree type shall be preserved.

Example: Preservation rate for protected trees located within the 100 year floodplain = 80% of total protected inches.

Protected tree means the following trees that by virtue of species and size are protected by this article and which are listed in **Table 1**, to be periodically reviewed by the City Manager:

(1) Standard tree;

(2) Heritage tree.

Standard tree means any i) large tree species with a width equal to or greater than 8.0 caliper inches but less than 24.0 caliper inches; or, ii) small tree species with a width equal to or greater than 6.0 caliper inches but less than 8.0 caliper inches, such species as designated in **Table 1**.

Tree survey means a plan or drawing to scale that identifies the exact size, location, condition (healthy, dead, or declining), and species of protected trees and the disposition of each protected tree during development. The plan shall indicate whether each protected tree is to be preserved or removed to comply with the preservation rate as described in Table 2. The plan shall indicate the location and types of treatments to be utilized to protect trees during development such as fencing, mulching, root pruning, and other measures.

TABLE 1* TREE PRESERVATION LIST

TABLE 2* PROTECTED TREES AND TREE PRESERVATION RATES

(NOTE: Tables are attached and included within Code of Ordinances.)*

Sec. 104-3. Applicability.

All new development within the City occurring on unplatted property greater than 1.0 acre, is subject to this article.

Sec. 104-4. Exceptions.

The following situations and actions are exempt from the provisions of this article:

- (1) Existing platted lots, whether developed or not, prior to the effective date of this article.
- (2) Regular maintenance of trees to include trimming and pruning, especially as it relates to oak wilt and other diseases or strategies to address pest control.
- (3) During the period of or following a significant weather event, such as a tornado, storm, flood, or other act of God, City Council may waive the requirements of this article for an affected area or areas and for a specified period.
- (4) Utility companies franchised or otherwise authorized to provide utility service may remove protected trees that endanger public health, safety, and welfare by interfering with utility service, provided that any removal is the minimum necessary for the utilities to function properly and no other alternative is available.
- (5) Mowing, clearing, and grubbing of brush located within or under the drip lines of protected trees is allowed, provided such mowing, clearing,

or grubbing is not conducted by use of 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 any removal is necessary for the rights-of-way and easements to function properly.

(7) All governmental functions and activities of the City and other governmental entities.

Sec. 104-5. Permit for tree removal.

(a) *Applicability.* An owner of property subject to this article shall submit a tree removal permit application and any associated permit application fees established by the City to Development Services in conformance with the requirements of this section. A permit is required even where an owner or applicant believes no protected trees exist on the subject property. The permit and the tree survey shall thereafter apply to a property.

(b) *Permit information.* Development Services shall maintain applications for a tree removal permit, such application to require the submission of a tree survey.

(c) *Protection of property.* An applicant shall not attempt to circumvent the preservation rate through the filing of multiple applications; and toward this end, the City may require an owner to protect trees located on the property through restrictive covenants, conservation easements, or equivalent methods.

Sec. 104-6. Protected trees: removal, replacement, and mitigation.

(a) *Removal of protected trees.* It is unlawful for any person, directly or indirectly, to cut down, destroy, remove, or perform any other action which effectively destroys through damaging, any protected tree within the City without first obtaining a tree removal permit from Development Services.

(b) *Replacement Trees.* **Table 2** specifies the required preservation rate that property owners shall maintain for the protection of trees. Should an owner seek a lower preservation rate than what this article requires based upon proposed development and construction plans, the tree removal permit shall require the owner to plant a replacement tree(s) as follows:

- (1) Standard tree(s) replacement having a caliper inch equal to that of the tree(s) to be removed (1:1 replacement) at least equal to the preservation rate.
 - (2) Heritage tree having a caliper inch equal to three times that of the tree(s) to be removed (3:1 replacement) at least equal to the preservation rate.
 - (3) Such replacement trees must have a minimum caliper inch of two inches and a minimum height of at least 8.0 feet when planted. In addition, no more than 30 percent of replacement trees may be of the same species.
 - (4) All replacement trees shall be planted and cared for to maintain a healthy growing condition and for which the tree(s) shall live for at least one year.
 - (5) After planting a replacement tree, a property owner shall replace such tree with another tree if the replacement tree dies within one year from the date of its planting and a new one year warranty period shall start for that tree.
 - (6) The City Manager may assess the value of established smaller trees or clumps of trees which individually do not meet the caliper inches applicable to a protected tree, but that taken together, meet the intent of this article so that the addition of replacement trees may not be required.
 - (7) Only those trees indicated in **Table 1**, as periodically and consistently reviewed and approved by the City Manager, shall satisfy the tree replanting requirements contained herein.
- (c) *Mitigation fee in lieu of replacement.* A person may pay a mitigation fee to the City instead of providing replacement trees required by this article as follows:
- (1) This provision is limited to 50 percent of the required protected tree replacement.
 - (2) The per-caliper-inch cash value for replacement trees and planting is set out in the City's fee schedule and applied per caliper inch. City Council will consider the appropriate fee amount during its adoption of the City's Fee Schedule.

- (3) The City shall deposit payments for the tree mitigation fee into its tree replacement fund, which the City will restrict to pay for replacement trees within City parks and other public spaces or the acquisition of land, to include easements, for conservation.

Sec. 104-7 Tree Preservation Incentives.

A person may apply for incentives for tree preservation as follows:

- (1) *Parking Space Reduction.* Upon application and verification by Development Services, an individual shall be entitled to a reduction in the minimum parking requirements to help meet the tree preservation rate. For the purpose of providing an incentive, the City Manager may reduce minimum parking requirements by 1 parking space for every 4 caliper inches of trees that have been protected or mitigated on a site. However, the City Manager may not waive more than 15 percent of required spaces.
- (2) *Sidewalks.* Upon application, the City's Planning and Zoning Commission may determine that preservation of trees warrants the elimination, reduction in width, alternative routing, or modification to the sidewalk and curb requirements in accordance with the tree preservation rates.

Sec. 104-8. Tree protection measures.

The following tree protection measures are required for a property subject to this article for which development is planned:

- (1) the property owner shall establish and maintain a root protection zone and install four-foot high plastic (or equivalent) safety fencing outside the drip line of protected trees for the duration of development. It is unlawful to prune any tree to reduce the root protection zone.
- (2) the property owner shall prohibit the cleaning of equipment or materials and/or the disposal of any waste material, including paint, oil, solvents, asphalt, concrete, mortar, and similar products under the canopy or within the drip line of any protected tree.
- (3) It is unlawful to attach any attachments or wires of any kind, other than those of a protective nature, to any protected tree during development.

(4) Where major grade changes of 6 inches or greater results from placement of fill material, the property owner shall construct a retaining wall or tree well of rock, brick, landscape timbers, or other approved materials around a protected tree no closer than 6 feet from the trunk of the trees. The top of the retaining wall or tree well will be considered the new finished grade.

(5) Unless otherwise approved by the City Manager, no development shall occur within the drip line of any protected tree.

(6) Any trees removed shall be chipped or hauled off-site within 30 days of the time the trees were removed.

Sec. 104-9. Penalty upon failure to comply.

(a) Any person violating or failing to comply with any provision of this article shall be fined a minimum of \$250.00 and a maximum of \$2000.00. Each tree illegally removed or damaged in violation of this article shall constitute a separate offense.

(b) Failure of any person to follow the procedures of this article shall constitute grounds for the City withholding or revoking site plan approval, building permits, occupancy permits, or any other approvals necessary to continue development. Such sanctions may be instituted immediately at the direction of the City Manager. In the case of emergency to prevent the unauthorized removal of a protected tree(s), the City Attorney may petition a court of competent jurisdiction for injunctive relief seeking compliance with this subsection.

(c) 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.

Sec. 104-10. Jurisdiction.

(a) To ensure compatibility with the City's comprehensive plan and this article, the City Manager has the authority to review and act on all tree removal permits for commercial and residential developments within the City. Plans shall be approved, approved with conditions, or denied. The City Manager shall provide comments to the property owner or designated representative as to the disposition of each tree removal permit application.

(b) Any applicant or party aggrieved by a decision of the City Manager may appeal such decision to the City's Planning and Zoning Commission. Such notice of appeal must be filed with the Development Services within ten working days of the decision in question. Such appeal shall stay the issuance of a building permit. Following a decision by the Planning and Zoning Commission, the applicant may appeal this decision to the City Council.

Sec. 104-11. Enforcement.

The City Manager is authorized to enforce this article and may serve notice to any person in violation thereof or institute legal proceedings, as may be required.

Sec. 104-12. Variances.

(a) Variances to the terms of this article may be granted by the City's Planning and Zoning Commission where a literal enforcement of the provisions of this article will result in unnecessary hardship. A variance request must be submitted to Development Services in writing setting out the basis for the request. No variance shall be granted unless:

(1) a variance will not be contrary to public interest;

(2) a 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) a variance will not substantially weaken the general purposes of this article.

(b) After review of the variance request, Planning and Zoning Commission may:

(1) approve the variance;

(2) deny the variance; or

(3) grant the variance with such conditions as may be necessary for the furtherance of the purposes of municipal tree preservation in keeping with the spirit and intent of the ordinance.

(c) An applicant may appeal a decision by the Planning and Zoning commission to City Council.

Sec. 104-13. Liability.

Nothing in this article shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees. The person in possession of public property or the owner of any private property shall have a duty to keep the trees and landscaping upon the property and under their control in a safe, healthy condition. Any person who feels a tree located on property possessed, owned, or controlled by them is a danger to the safety of themselves, others, or structural improvements on-site or off-site shall have an obligation to secure the area around the tree or support the tree, as appropriate to safeguard both persons and improvements from harm.”