

# Development Plat Regulations

## ORDINANCE NO. 2013-26

**AN ORDINANCE ADOPTING PROVISIONS RELATING TO DEVELOPMENT PLAT REGULATIONS AND CRITERIA IN THE CITY LIMITS AND THE EXTRATERRITORIAL JURISDICTION (ETJ) OF THE CITY OF BOERNE; ESTABLISHING DEFINITIONS; GENERAL PROHIBITIONS; PROVIDING FOR A PENALTY NOT TO EXCEED \$200; PROVIDING FOR A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, this ordinance is adopted under the provisions of the Constitution and laws of the State of Texas, including particularly Chapter 212 of the Local Government Code, as heretofore or hereafter amended, which allows the City to require that the owner of a tract of land within the limits or in the ETJ of the City of Boerne who wishes to develop his or her property must have a development plat of the development; and

WHEREAS, the City Council of the City of Boerne has found that the following regulations will promote the health, safety and welfare of the citizens and persons within the City Limits and its ETJ;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:

### **DEVELOPMENT PLATS**

- Section 01. Purpose
  - Section 02. Definitions
  - Section 03. Applicability
  - Section 04. Prohibitions
  - Section 05. Pre-Application Conference
  - Section 06. Procedures for Development Plat
  - Section 07. Procedures for Administrative Plat
  - Section 08. Adoption of Subdivision Regulations
  - Section 09. Amendments
  - Section 10. Variances
  - Section 11. Penalty
  - Section 12. Effective Date
-

# Development Plat Regulations

## SECTION 01. PURPOSE

The following regulations shall control the platting of land within the corporate limits of the City of Boerne, Texas, and within the extraterritorial jurisdiction thereof which has not been previously platted, in order to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality, as established in the Boerne Master Plan, and the vision, goals, and future development policies in the plan.

## SECTION 02. DEFINITIONS:

**City:** The City of Boerne, Texas.

**City Manager:** The City Manager and/or his/her duly authorized representative.

**Clear Cutting:** The indiscriminate cutting of trees and vegetation.

**Commission:** The Planning and Zoning Commission.

**Developer:** Any person or any agent thereof, proposing to develop land as defined in Section 212.043 of the Texas Local Government Code. In any event, the term "developer" shall be restricted to include only the owner, equitable owner or authorized agent of such owner or equitable owner, of land sought to be developed. Also referred to as Applicant.

**Development:** Any new construction or the enlargement of any exterior dimension of any building, structure, or improvement.

**ETJ:** A municipality's extraterritorial jurisdiction as determined under Chapter 42.021 of the Texas Local Government Code.

**Heritage Tree:** A Legacy tree species that has a trunk circumference (TC) larger than 75 inches.

**Legacy Tree:** The following species of trees. Cottonwood, Sycamore, and all species of Cypress, Elm, Maple and Oak (with the exception of all varieties of red oaks), Pecan and Texas Ash.

**P&Z:** The City of Boerne's Planning and Zoning Commission.

**Slope Map:** A map depicting native slopes of 15–25%, 25–35%, and over 35%. Slopes shall be calculated for each two-foot contour interval over 50 horizontal feet and shall be established by measurement of distance

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perpendicular to the contour of the slope (rise in feet per horizontal distance in feet).

**Standard Tree:** A Legacy tree species that has a trunk circumference between 37 and 75 inches.

**Steep Slope:** Land area where the inclination of the land's surface from the horizontal plane is fifteen percent (15%) or greater. Slope is determined from on-site topographic surveys prepared with two-foot contour interval or topography taken from controlled aerial photography at two foot contour intervals. The percent of slope shall be calculated for each two-foot contour interval and shall be established by measurement of distance perpendicular to the contour of the slope (rise in feet per horizontal distance in feet). Man-made slopes (such as a quarry or retaining wall) constructed prior to 2013 shall not be considered steep slopes.

**Steep Slope Area:** That part of the lot that encompasses the steep slope.

### SECTION 03. APPLICABILITY

#### **A. Development Plat Required if:**

1. The tract of land being developed is not part of a subdivision plat currently on file in the real estate records of the Kendall County and;
2. The development of a tract of land is for a single family residence on a tract of more than 90,000 sq. ft. or;
3. The development of a tract of land is a commercial development or;
4. The tract of land has previously been platted and is being developed in lots or tracts smaller than those indicated on the original subdivision plat and no action is taken to replat or vacate and file a new subdivision plat.

#### **B. Development Plat Not Required if:**

If the developer or applicant is required to file a subdivision plat under an ordinance of the City of Boerne or Subchapter A of Section 212 of the Texas Local Government Code.

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## **SECTION 04. PROHIBITIONS**

New development may not begin on the property until the development plat is filed with and approved by the P&Z or the Planning and Community Development Director.

## **SECTION 05. PRE-APPLICATION CONFERENCE**

Before submitting a development plat, the developer shall request a conference with the City Manager or his designee and designated City staff. At this conference, the developer shall present the proposed development plat for advice on the procedures, specifications and standards required by the City. Specific topics of the conference may include:

- A. General conformance with the official Master Plan of the City, and any specific area plan prepared under the guidance of that plan;
- B. Introductory discussions of applicable standards from these regulations, according to the guidance of the Master Plan;
- C. General plans for improvements and correspondence with any City capital improvement plans; and
- D. The type of application and submittal requirements, specifically other requirements determined by utility providers, Kendall County requirements for road improvements or setbacks.

## **SECTION 06. PROCEDURES FOR DEVELOPMENT PLAT**

Following a pre-application conference, the developer may submit a development plat to the City Manager. In order to be prepared for submission, the developer shall deliver the following at least 30 calendar days prior to the date the plat is to be considered.

### **A. Submittal.**

- 1. Five separate blue or black line 18" x 24" copies of the development plat for staff review meeting the requirements of sub-section B, one black and white copy 8.5" by 11" suitable for making overhead copies and a pdf.
- 2. Formal application and appropriate filing fee established by the City Council. No action shall be taken by the staff or Commission until the filing fee has been paid. The fee shall not be refunded should the developer fail to make formal

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filing of the development plat, or should the plat be disapproved.

3. Two copies of a Traffic Impact Analysis meeting the requirements of the City's TIA ordinance.
4. Letters/memos/emails from all the following agencies that either have jurisdiction over improvements required or desired in the development plat or that need to be notified that development is occurring, including:
  - a. City of Boerne Fire Code Official (if in the city limits);
  - b. Bandera Electric Co-op and/or Pedernales Electric Co-op;
  - c. Texas Department of Transportation (if any state right-of-way is involved in streets or access points);
  - d. Cow Creek Ground Water Conservation District (if in the county);
  - e. Cable and telephone wire services;
  - f. Kendall County (if any county right-of-way is involved in streets or access points);
  - g. Kendall County Development office verifying approval of the On-site sewage facilities (OSSF) design for the intended use (if in the county);
  - h. any other State or public agency approval with jurisdiction over improvements desired in the subdivision.
5. An illumination Plan (Appendix A).
6. An Open Space System Plan meeting the requirements of the Subdivision Ordinance, Article 3, Section 3.03, and showing the location, Open Space Types, and proposed area of all public or common open space, including a table of requirements based on the proposed development and typical service areas for each Type.
7. Identify on the plat the location and species of all Legacy trees that are one half the TC for that species as listed in the Texas Forest Services <http://txforestservation.tamu.edu> Champion List in the Texas Big Tree Registry; or a Live Oak tree that has 113 TC inches or larger.
8. A tree survey for all property subject to the application that documents the presence of all Legacy Standard and Heritage Trees (Appendix B).

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9. Three complete bound sets of design and construction documents required by Subdivision Ordinance, Article 2, Section 2.03 each bound with a copy of the plat (deliver to Public Works).
10. A minimum of two (2) copies of the drainage study per the Subdivision Ordinance, Article 6, Section 02.
11. If in the city limits and a steep slope is present on the site, provide a Slope Map.

### **B. Form and Content of Plat.**

The development plat shall be prepared by a registered public surveyor and bear his/her seal. The plat shall show or be accompanied by the following information:

1. The plat shall be drawn to a scale of one inch to 100 feet or one inch to 50 feet. The development plat shall generally include the entire tract intended to be developed at one time. When more than one sheet is necessary, an index sheet showing the entire subdivision at a scale of one inch to 400 feet shall be attached to the plat.
2. Each existing or proposed building, structure, or improvement or proposed modification of the external configuration of the building, structure, or improvement involving a change of the building, structure, or improvement;
3. The name of the development, which shall be approved by the City Manager or his designee.
4. The names and addresses of owners of record.
5. A location map showing the relation of the development to well known streets in all directions.
6. North point, with north to the top of the sheet if possible, and the bearing of record.
7. Name and location of adjacent subdivisions, watercourses on or adjacent to the proposed development, and the property lines and names of the property owners in all adjoining unsubdivided tracts.

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8. The total acreage in the proposed development.
9. The location, right-of-way width, name and description of all existing or recorded streets, alleys, or other transportation features or similar reservations which are adjacent to the development, as determined from existing records.
10. Two-foot contour interval surveys tied to City Control Monuments or USGS Bench Marks. Where conditions exist that make the use of two-foot contours impractical, alternate intervals may be used upon approval of the City Manager or his designee.
11. The location of the City limit lines and the outer border of the City's ETJ if either traverse the development or are contiguous to the development boundary.
12. If the property is a commercial development, the location of all setback lines shall be demonstrated, shown by dashed lines.
14. The centerline of watercourses, creeks and existing drainage structures within and adjacent to the development. Pertinent drainage data and the limits of areas subject to flooding shall be shown, delineating the 25-year and the 100-year flood limits if applicable.
15. A note as to whether any part of the development is located within a drainage basin which is upstream from a City water supply lake, and if so, a map at a convenient scale showing the location of the entire development in relation to the drainage basin.
16. If the development is located within a drainage basin which is upstream from a City water supply lake, calculations showing the maximum allowable area covered by impervious surfaces in the area of the subdivision.
17. The locations, dimensions and purposes of all recorded and proposed easements to include necessary sanitary control easement (100') required by Kendall County.
18. The total acreage of open space required by the City's Subdivision Ordinance.

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19. If applicable, areas identified as steep slope with a slope of 15% or greater
20. Applicable Notes required under Exhibit A of the Subdivision Ordinance.

### **Notice of Administratively Complete Application.**

Within 7 calendar days of submittal of the development plat, the City staff will notify the developer or engineer of record via email or formal letter if the submittal is administratively complete per, Section 6. Any deficiencies in the submittal shall be specifically identified in the notice. If the developer or engineer of record is notified that a submittal is incomplete, the time requirements are suspended until the submittal is deemed complete by City staff. If the submittal is not complete or approved within one year of the initial submittal date, the submitted plat is void.

### **Formal Filing with the Planning and Zoning Commission.**

A minimum of 14 days prior to the Planning and Zoning Commission meeting, and upon receipt of the review comments by staff, or upon failure of the City to provide written comments, the developer may make formal filing to the Planning and Zoning Commission, or after completion and acceptance of the submittal including any revisions or corrections suggested by staff. The formal filing shall contain the following:

- A. Twenty (20) folded copies of the final plat plus one 8½ x 11 black and white copy suitable for making overheads.
- B. At least three (3) original signed and sealed Mylars of the final plat for recording, plus an original, notarized affidavit showing the taxes have been paid, including copies of the paid tax statement from the Kendall County Appraisal District.
- C. A check for recording fees as determined by Kendall County.
- D. Two copies of the digital file of the final plat in a format specified by the City Manager, and one copy of the final plat in .pdf format.

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## Planning and Zoning Commission Review.

The Planning and Zoning Commission shall review the development plat at the scheduled meeting for the following criteria.

- A. It conforms to the Master Plan of the City and its current and future streets, alleys, parks, playgrounds and public utility facilities.
- B. It conforms with any general plans of the municipality or other public entity for extension of roads, streets, and public highways, taking into account access to and extension of sewer, water, gas and electric mains and the instrumentalities of public utilities.
- C. It meets all requirements and design standards of this ordinance.
- D. The construction plans and specifications (if applicable) meet all city standards.

Based on these criteria, the Planning and Zoning Commission shall approve or disapprove the development plat within 30 days of the official filing to the Planning and Zoning Commission. Should the plat as submitted fail to meet the conditions of this ordinance, the Commission shall disapprove the plat and note its disapproval in the minutes of the Commission meeting.

## Plat Approval Options.

The developer or engineer of record may seek unconditional or conditional approval of the development plat by the Planning and Zoning Commission. If conditional approval is sought, the development plat will not be recorded until the condition of approval is satisfied.

- A. **Unconditional Approval.** At least 10 days prior to final plat approval by the Planning and Zoning Commission, the financial guarantee as described below, shall be submitted to the Department of Public Works and approved by the City Attorney. The final plat shall be recorded within 14 days of unconditional approval by the Planning and Zoning Commission.
  - 1. *Required Guarantee.* The developer shall submit an irrevocable letter of credit, a cash deposit, certificate of deposit, a savings assignment, or a performance bond, in an amount equal to the engineer's estimated cost of the utility and street improvements to be made in the development by the developer, including the cost of erosion control during

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construction. Such bond or other shall be for the faithful performance, installation and completion of such improvements.

2. *Adjustment of Guarantee.* As soon as possible after approval of the plat, but prior to the start of construction, the developer shall provide the City Manager an executed copy of the utility and street construction contracts or a notarized statement certifying the final contracts so that the City may substantiate the engineer's estimated cost of improvements. The financial guarantee shall be adjusted to reflect the actual construction costs.
3. *Reduction and Expiration of Guarantee.* The financial guarantee may be reduced from time to time as portions of the improvements are completed and accepted. The financial guarantee shall bear an expiration date of one year from the date of final plat approval and shall be retained by the City Manager until all improvements have been completed and accepted by the City.
4. *Payment of Guarantee.* If all improvements have not been completed and accepted by the City 30 days prior to the expiration of the financial guarantee, the City Manager may either present the financial guarantee for immediate payment or allow for a six (6) month extension of the financial guarantee by the subdivider.
5. *Return of Guarantee.* If the plat is withdrawn prior to consideration by the Planning and Zoning Commission or the plat is denied by the Planning and Zoning Commission, the financial guarantee will be returned by the City of Boerne to the issuer within 30 days.

B. **Conditional Approval.** The development plat may be approved conditionally by the Planning and Zoning Commission if one of the following conditions are met. The condition of approval shall be stated by the Planning and Zoning Commission at plat approval.

1. The plat will not be recorded until such time as the infrastructure is completed and accepted by the City, thereby negating the requirement for a financial guarantee or the financial guarantee for the entire cost of infrastructure is received and approved by the City Attorney. All infrastructure construction shall be inspected while in progress by the City, and upon completion must be approved by the Director of Public Works or his duly

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authorized representative. A memo or letter by the Director of Public Works stating that the construction is complete and conforms to the specifications and standards contained in or referred to in this ordinance must be presented to the Planning Department.

### **Scope of Approval**

The developer shall not proceed with infrastructure improvements until the development plat is either conditionally or unconditionally approved. No building permits may be issued and no infrastructure improvements shall be considered accepted by the City except as provided in the Subdivision Ordinance, Article 8 as applicable.

The final approval of a development plat is not considered an acceptance of any proposed dedication for public use or use by persons other than the owner of the property covered by the plat and does not impose on the City any duty regarding the maintenance or improvement of any purportedly dedicated parts until the City's governing body makes an actual appropriation of the dedicated parts by formal acceptance, entry, use, or improvement.

### **Filing for Record.**

The City shall file the approved development plat for record and provide the developer with one reproducible recorded tracing of the final plat within 14 calendar days of unconditional approval by the Planning and Zoning Commission or satisfaction of the conditional approval as identified by the Planning and Zoning Commission.

## **SECTION 07. PROCEDURES FOR ADMINISTRATIVE PLAT**

### **Eligibility.**

A plat that meets the following criteria may be determined to be an administrative plat and is eligible for an abbreviated administrative review as an alternative to the procedures in Section 06:

- A. Development Plat that meets all of the following requirements.
  1. Any infrastructure improvements required by these regulations are routine in design and in conformance with all other plans and specifications of the City.

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2. The proposed lot and lot configurations will comply with this ordinance and the zoning ordinance, or if not subject to zoning is in conformance with the Master Plan.
3. The development does not necessitate widening of streets or the extension of any municipal utilities, other than the installation of service lines to the individual lots, because either existing mains of adequate capacity are accessible or the subdivision is suitable for on-site water supply and wastewater disposal.

### Procedures.

The submittal of an application for an administrative plat shall be made to the Director of Planning, after a pre-application conference.

- A. Upon a determination of eligibility for an administrative plat, the developer shall submit a plat with all information required of development plats in Section 06. The Director shall submit the proposed plat to other City departments or agencies for review and comment.
- B. Within 21 calendar days after the date of application, an administrative plat shall be returned to the developer with written comments. If changes are requested by staff, the application shall not be considered officially filed with the City until such changes are made and the application re-submitted to the City.
- C. Upon completion of plat review by City staff and corrections by the developer, the applicant shall submit the items listed below within 14 calendar days after receiving staff comments:
  1. Three original, signed Mylars of the plat;
  2. Original tax certificates and affidavit stating that no taxes are delinquent against the property; and
  3. The appropriate filing fees for final plats as specified by the City Council.

If the items listed above are not submitted within 14 calendar working days after receipt of staff comments, the administrative plat application will be considered null and void.

- D. The City Manager or designee may approve an administrative plat provided it meets the eligibility criteria in Section 07 and all

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requirements of this ordinance. The City Manager or designee may elect to forward the application to the Planning and Zoning Commission at any time in the review process. The City Manager or designee's decision on the administrative plat, or inaction by the City Manager or designee may be appealed to the Planning and Zoning Commission for action within thirty (30) days after the date of application and shall be considered in the same manner and procedures as preliminary plat.

### **Effect of Approval.**

Following the approval of an administrative plat, the developer may proceed with construction of infrastructure improvements subject to the provisions of Article 8 of the Subdivision ordinance when applicable. No building permits may be issued and no infrastructure improvements shall be considered accepted by the City except as provided in Article 8 of the Subdivision ordinance as applicable.

### **Filing for Record.**

The City shall file the approved administrative plat for record and provide the developer with one reproducible recorded tracing of the administrative plat within 14 calendar days of approval.

## **SECTION 08. ADOPTION OF SUBDIVISION REGULATIONS**

The following sections of the City's Subdivision Ordinance are hereby adopted for development plats pursuant to Section 212.044 of the Texas Local Government Code and any applicant for a development plat should comply with each provision cited herein as if it stated "**development**" wherever the word "subdivision" was used:

- Article 3 – Planning and Community Design Standards**
- Article 5 – Street Specification and Construction Standards**
- Article 6 – Drainage and Flood Hazards**
- Article 7 – Water and Sewers**
- Article 8 – Utility Extensions and General Subdivision Improvements**

The attached Appendices are hereby adopted for development plats pursuant to Section 212.044 of the Texas Local Government Code and any applicant for a development plat should comply with each provision cited herein:

- Appendix A – Illumination Plan**
- Appendix B – Tree Preservation Requirements**

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## **Section 09. AMENDMENTS.**

Amendments to a development plat shall be required when development in addition to what was originally approved are made. Amendments to a development plat shall be approved in the same manner as the original plat.

## **SECTION 10. VARIANCES.**

### **A. Applicability.**

This section shall apply to any application for a variance from an applicable provision of Section 8, P&Z Review, for a development plat. Variances to development plats, and any required information shall be granted by the P&Z.

### **B. Initiation.**

The developer shall submit to the City Manager or his designee, a written application for each variance which is requested, along with the appropriate filing fee established by City Council. The P&Z shall not consider any action on the variance request until the appropriate fee is paid.

### **C. Completeness Review.**

The City Manager or his designee shall review an application for a development plat variance, and forward the variance application to the P&Z for action.

### **D. Decision.**

The City Manager or his designee shall review the facts and distribute the letter to the appropriate departments/agencies who shall, within fifteen (15) days of the receipt of the letter, respond in writing to applicant and to the City Manager or his designee to the following:

1. The section, specific regulation, and the respect in which the item being considered does not comply.
2. An evaluation of the specific facts submitted by the applicant and the factors indicated above for use by the P&Z in making its findings.
3. A specific recommendation of either approval or denial and any conditions which the P&Z may wish to impose in considering the variance.

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The City Manager or his designee shall review the variance application and forward his or her recommendations to the P&Z.

### **E. Approval Criteria.**

In making the findings herein required, the Commission shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed development, and the probable effect of such variance upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity. No variance shall be granted unless the Commission makes affirmative findings as to all of the following:

1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this ordinance would deprive the applicant of the reasonable use of his/her land;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
4. That the granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this ordinance.

The findings of the Commission, together with the specific facts upon which such findings are based, shall be incorporated into the minutes of the Commission meeting at which the variance is granted.

### **F. Subsequent Applications.**

The following time limitations shall be imposed so that no application for a variance shall be received or filed with the P&Z.

1. If within the previous twelve (12) months an application for a variance or exception was received, considered and denied on the same lot, lots or blocks of land.
2. If within the previous six-month period an application for a variance or exception was withdrawn from consideration by the applicant or his representative before the P&Z.

The aforementioned time limitations may be waived if new substantial evidence is presented to the P&Z and only after receiving five (5)

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affirmative votes shall the time limitation be waived. If granted, a new application shall be filed in the office of the City Manager or his designee the procedures outlined above.

### **G. Scope of Approval.**

Where a variance is granted by the P&Z and no building permit is granted within six (6) months after the date of the hearing thereon, the variance becomes null and void and of no force or effect. The P&Z may extend this time period for a successive six-month period, for a total time period not exceeding two (2) years, if the applicant files a request for an extension prior to the expiration thereof.

### **SECTION 11. PENALTY.**

A. Any person violating any provision of this Ordinance shall be fined not more than two hundred dollars (\$200.00) for each offense. Each day or portion thereof, in which any violation shall occur, shall constitute a separate offense.

B. Enforcement hereunder shall not require the pleading or proving of any culpable mental state.

All other ordinances or parts of ordinances in conflict herewith repealed to the extent that they are in conflict.

That if any of the provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other part of the same which are not held void or unconstitutional shall remain in full force and effect.

### **SECTION 12. EFFECTIVE DATE.**

This ordinance will take effect upon its passage and publication in accordance with the law.

APPROVED ON FIRST READING THE 13th DAY OF August 2013.

PASSED AND APPROVED AND ADOPTED THE 13th DAY OF August 2013.

**APPROVED:**

/s/ Mike Schultz  
Mayor

ATTEST:  
/s/ Linda S. Zartler  
City Secretary

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## APPENDIX A TO DEVELOPMENT PLAT REGULATIONS

### ILLUMINATION PLAN

#### OUTDOOR LIGHTING.

##### **3.02.001            Applicability.**

All public and private outdoor lighting installed in the City of Boerne or the ETJ after the effective date of this ordinance shall be in conformance with the requirements established by this ordinance.

##### **3.02.002.        Creation of Lighting Districts.**

Lighting districts established in these regulations allow for uniform lighting from one district to the other. The lighting districts are generally defined below.

- A        ***District 1:*** Commercial properties contiguous to the IH-10 right-of-way, US 87 (Main Street) from the south exchange to the intersection of HWY 46 (Bandera Rd.), HWY 46 or West Bandera Rd west US 87 (Main Street) to city limits and, from the intersection of US 87 at N. School Street to the north exchange for the depth of the property, or 350 feet whichever is greater.
  
- B.        ***District 2:*** Properties contiguous to US 87 North from HWY 46 (Bandera Rd.). The intersection of US 87 and N. School Street and from the intersection of FM 474 and US 87 East to the City limits, and from the intersection of HWY 46 E and US 87 East along River Road to the City limits.
  
- C.        ***District 3:*** River Rd from US 87 to the west side of Esser/Herff Road intersection and the remainder of the City of Boerne.

##### **3.02.003.        Lighting Classification.**

- A.        ***Class 1 Lighting.*** shall apply to all outdoor lighting where color rendition is required to preserve the effectiveness of the application. Designation of lighting as Class 1 requires an express finding of the City Manager that color rendition is an essential function of the application.

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1. *Design Plan.* All luminaires used for Class 1 Lighting facilities which are installed after the effective date of this ordinance shall be fully shielded as defined herein, or be designed or provided with sharp cut-off capability, so as to minimize up-lighting, spill lighting, or glare.
2. *Recreational Facilities.* Any light source permitted by this ordinance may be used for lighting of outdoor recreational facilities (public or private), including, but not limited to, sports fields or courts, amphitheaters, and similar applications, provided the following conditions are met:
  - a. A secondary low-level lighting system that complies with Class 2 Lighting shall be installed to facilitate security, cleanup, maintenance, and exit from the facility. The low-level lighting system shall provide an average horizontal illumination, at grade level, of no more than three (3) foot-candles.
  - b. Recreational facilities located in Lighting District 3 shall turn off Class 1 lighting within thirty (30) minutes of the end of an event.
3. *Outdoor Sales.* Any light source permitted by this ordinance may be used for lighting of outdoor sales located in Lighting District 1, provided the following conditions are met:
  - a. The primary outdoor lighting of the primary facility shall be turned off at 11:00 p.m. or thirty (30) minutes after closing, whichever is later, but in no event shall the main outdoor lighting be illuminated after 12:00 a.m. unless there is a scheduled "special event" i.e. an all night sale.
  - b. A secondary low-level lighting system that complies with Class 2 Lighting lamps may be metal Haliad if the property owner desires shall be installed to facilitate security, cleanup, maintenance, and exit from the facility. The low-level lighting system shall provide an average horizontal illumination, at grade level, of no more than six (6) foot-candles.
  - c. Lighting Levels - During operating hours:
    - i. Feature display area (the area within 200 ft. of the main building) the average horizontal illumination level shall not exceed fifty (50) foot-candles. These areas shall not be located within 100 feet of a residentially zoned areas.



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- b. Luminaires used for parking lot lighting installed after the effective date of this ordinance may be installed at a maximum height of thirty (30) feet and may be positioned at that height up to the edge of any bordering property unless the abutting property is a residence or is a residential district, then the luminaries bordering the property shall be installed at a maximum height of twenty (20) feet from finished grade and shall be shielded to minimize the amount of luminance that crosses the property line.
  - c. Only yellow high pressure sodium or LED (with approval of the City Manager) lighting fixtures may be installed after the effective date of this ordinance.
  - d. Luminaires used for parking lot lighting that are installed after the effective date of this ordinance that abut a residence or a residential district shall limit the luminaires bordering the property. They shall be fully shielded, and shall be Full Cut-Off Fixtures. The perimeter luminaires in a parking lot that abut a residential district or residence shall automatically be turned off by 9:00 p.m. unless there is a special event.
  - e. In the River Road and River Corridor zoning districts, parking lot lights shall be fully shielded, decorative, high pressure sodium lights (bulbs not to exceed 100 watts), or LED (with approval of the City Manager), that do not exceed twelve (12) feet in height measured from grade.
2. *Street Lighting.* Street lighting shall be designed to provide minimum lighting necessary to ensure adequate vision, security and comfort in public and private streets, and to not cause glare or direct illumination more than five (5) feet beyond the right of way. Any light source permitted by this ordinance may be used for street lighting in any Lighting District, provided the following conditions are met:
- a. Luminaires used for public/private street lighting that are installed after the effective date of this ordinance shall be installed using Full Cut-Off Fixtures or shall otherwise be fully shielded, as that term is defined herein. Design levels shall correspond to the appropriate IES (Illuminating Engineering Society) minimum requirements for illumination. City Council authorizes the use of the Granville series luminaire with the Leaf Style Casting and Lunar Optics as manufactured by Holophane.

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- b. Only high pressure sodium lighting fixtures shall be installed after the effective date of this ordinance with the exception of decorative lights which have been approved for street lighting uses by the City Council. The City Manager may approve the use of LED lighting fixtures for street lighting.
2. *Security Lighting.* For the purposes of this section, security lighting is defined as lighting intended to reduce the risk (real or perceived) of personal attack, or lighting intended to discourage intruders, vandals, or burglars, and to protect property. Any light source permitted by this ordinance may be used for security lighting in any Lighting District, provided the following conditions are met :
    - a. All security lighting fixtures installed after the effective date of this ordinance shall be fully shielded and aimed so that illumination is directed only within the owner's property boundaries and not cast on other areas. The use of general floodlighting fixtures shall be prohibited.
    - b. Security lighting may illuminate vertical surfaces (e.g. building facades and walls) up to a level eight (8) feet above grade or eight (8) feet above the bottoms of doorways or entries, whichever is greater. The use of up-lighting luminaires shall be prohibited.
    - c. Security lighting fixtures may be mounted on poles located no less than ten (10) feet from the perimeter of the property boundary.
    - d. Security lights intended to illuminate a perimeter (such as a fence line) shall include motion sensors and be designed to be off unless triggered by an intruder located within five (5) feet of the perimeter. The zone of activation sensors must be within the property boundaries of the property wishing to be illuminated.
    - e. The use of **partially shielded** period light fixtures that are mounted on a pole of ten (10) feet in height or less, the illumination shall be directed only within the owner's property boundaries and not cast on other areas, and light bulbs shall not rated for more than 3000 **lumens** is permitted.
    - f. In the River Road and River Corridor zoning districts, security lights shall be fully shielded, decorative, high pressure sodium lights (bulbs not to exceed 100

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watts), or LED (with approval of the City Manager), that do not exceed twelve (12) feet in height measured from grade.

4. *Lighting of Canopies and Service Islands.* Lighting levels on service islands and under canopies shall be adequate to facilitate the activities taking place in such locations.
  - a. Areas on the apron away from the service islands used for parking or vehicle storage shall be illuminated in accordance with the requirements for parking areas set forth elsewhere in ordinance.
  - b. Areas around the service islands and under canopies shall be illuminated so that the minimum horizontal illuminance at grade level is at least 1.0 foot candles and no more than forty (40) foot candles in District 1 and twenty (20) foot candles in District 2.
  - c. Light fixtures mounted on canopies shall be fully shielded, or recessed so that the lens cover is recessed or flush with the bottom surface (ceiling) of the canopy.
  - d. Lights shall not be mounted on top, or sides (fascias) of the canopy, and the sides (fascias) of the canopy shall not be illuminated.
  
- C. ***Class 3 Lighting.*** Class 3 Lighting shall apply to all outdoor lighting for primarily decorative effect where safety and security of grounds is not the primary concern and color rendition is not required to preserve the effectiveness of the application. Class 3 Lighting includes, but is not limited to, architectural illumination, flag and monument lighting, landscape illumination, and seasonal holiday lighting.
  1. *Lighting of Building Facades and Landscaping.* Any light source permitted by this ordinance may be used for lighting of building facades and landscaping in any Lighting District, provided the following conditions are met:
    - a. The maximum illumination on any vertical surface or angular roof surface shall not exceed three (3) foot-candles.
    - b. Lighting fixtures shall be at least partially shielded, as defined herein, and aimed so that no light is directed onto adjacent streets or roads.
    - c. The use of up-lighting luminaires shall be prohibited, unless such luminaires are fully shielded, and directed

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in such a way that no light is aimed beyond the building or landscaping directly into the night sky with the exception the illumination of governmental flags.

2. *Ornamental Lights.* Ornamental lights May be used in any Lighting District, provided the following conditions are met:
  - a. Decorative strings of lamps/bulbs must not create glare on adjacent streets or property.
  - b. Lighting (including strings of lamps/bulbs) for parties, celebrations, and other social gatherings is allowed.
3. *Lighting of Walkways, Bikeways, Sidewalks.* Any light source permitted by this ordinance may be used for lighting walkways, bikeways and sidewalks in any Lighting District, provided the following conditions are met:
  - a. Where special lighting is to be provided for walkways, bikeways, sidewalks or parks, the following requirements shall apply.
    - (1) The walkway, pathway, sidewalk, or ground area may be illuminated with bollards.
    - (2) Lighting fixtures shall be fully shielded, or otherwise designed to direct light downward, and light sources shall have an initial output of no more than 2000 lumens.
4. *Outdoor Advertising Signs.* Any light source permitted by this ordinance may be used for lighting of outdoor advertising signs located in any Lighting District, provided the following conditions are met. In the event of a conflict, the City of Boerne's Sign Ordinance shall control:
  - a. All legally installed externally illuminated signs shall have top-mounted luminaires which meet the shielding and grandfathering requirements contained herein.
  - b. Bottom-mounted luminaires on externally illuminated signs shall be prohibited.
  - c. Legally installed internally illuminated signs, to the degree same are permitted by the Boerne Sign Ordinance, shall be constructed of translucent materials, and the source of internal illumination shall not be directly visible through said material. Internally illuminated signs are prohibited in Lighting District 3.

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5. *Residential Area Lighting.* While fully shielded lights are preferred, individual lamps are limited to 2950 lumens or less.

### **3.02.004. Illumination Plan Requirements for Development Projects.**

The submission shall contain, but shall not be limited to the following, all or part of which may be part or in addition to the information required elsewhere in the ordinances of the City of Boerne upon application for the required permit.

- A. Two copies of an illumination plan shall be submitted with the building permit for review for compliance with this section.
- B. A site plan, drawn to a scale of one-inch equaling twenty (20) feet, showing buildings, landscaping, parking area, and all proposed exterior fixtures including lamps, supports, reflectors and other devices.
- C. Specifications for all proposed lighting fixtures including photometric data designation as IESNA full cut-off fixtures where required, and other descriptive information on the fixtures. Photometric data need not be submitted when the full cut-off performance of the fixture is obvious to the reviewing official.
- D. When a submittal includes a statement by a registered design professional that the existing site lighting is being modified less than 10%, it shall not be necessary to comply with paragraph 5 below in this section.
- E. When the lighting plan includes a statement by a registered design professional that the design is accordance with this ordinance the requirements of paragraph 2 above shall not apply.
- F. A schedule on the plans to confirm compliance with Table 1. The schedule shall include the following information:
  1. Each exterior luminaire type with the mean lumens for that type, the quantity of each type.
  2. The total of mean lumens for the parcel.
  3. A statement of the Lighting District, the size of the permitted parcel, and the maximum allowed mean lumens.

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## 3.02.005. Total Outdoor Light Output and Shielding Requirements.

Table 1 gives requirements of the total light output permitted per acre for the different lighting areas for class of lighting, lamp type and lighting area. These requirements shall be met for all lighting installations subject to this section.

- A. *Total Outdoor Light Output.* Total outdoor light output shall not exceed the lumen limits given in Table 1. In the table, Total means the sum of shielded. For determining compliance with this section the total lumens is the sum of the following:
1. One hundred percent of the lumens from outdoor light fixtures installed on grade, on poles, on the top or sides of buildings or other structures.
  2. Outdoor lighting fixtures shall not be counted in determining the total light output when they are full cut-off light fixtures under canopies, building overhangs or roof eaves.

<b>Table 1 Maximum Total Outdoor Light Output Requirements</b>			
<b>Lumen Caps: Mean Lumens per Net Acre (2)</b>			
<b>Lighting Districts (Defined in Subsection 3.02.002)</b>			
	1	2	3
<b>Commercial, Industrial and Multifamily</b>			
All lighting must be FCO	225,000	100,000	50,000

Notes to Table 1:

1. Lumens resulting from the lighting of recreational facilities i.e. tennis/football/baseball facilities and primary lighting for outdoor sales facilities shall not be included in the determination of the Lumen Cap per acre.
2. Mean lumens per acre equals total outdoor light output divided by net acres.

## 3.02.006. Nonconforming Luminaires and Establishments

- A. All grandfathered luminaires legally in place prior to the effective date of this ordinance shall be considered lawful non-conforming outdoor lighting.
- B. All grandfathered luminaires shall come into compliance as follows:
1. Any luminaire that replaces a grandfathered luminaire for any reason shall be replaced with a luminaire that complies with this ordinance.

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2. Any grandfathered luminaire that is moved, remodeled or otherwise structurally altered, shall be in compliance with the requirements established by this ordinance.

### **3.02.007. Exemptions.**

- A. Emergency lighting utilized during natural or man-made disasters, but only for the duration of the emergency may be exempted.
- B. Non-conforming lighting fixtures located in the Historic District which are consistent with the character of the Historic District may be exempted with approval of the Historic Landmark Commission. Approved fixtures shall be consistent with the architectural period and design style of the Historic District.
- C. Lighting elements, such as shades with perforated patterns and opaque diffusers, shall be exempted from the fully shielded requirement provided they do not exceed 100 watts.
- D. Ornamental lights that are string lighting.
- E. If a proposed lighting plan or fixture does not meet the requirements of this ordinance, but is of demonstrable community benefit, City Council may approve a permanent exemption. The applicant requesting a permanent exemption under this ordinance shall submit sufficient information so that City Council may adequately consider the proposed community benefit. All requests for permanent exemptions must comply with the zoning variance request procedures contained in the City of Boerne's Zoning Ordinance. Any appeals related to decisions regarding permanent exemptions shall comply with the appeals process as contained in the City of Boerne's Zoning Ordinance.
- F. The provisions of this code do not prevent the replacement of an existing grandfathered luminaire with an alternate fixture, or the use of bottom-mounted luminaires on externally illuminated signs if it can be shown that the luminaire(s) to be used improve the view of the night sky consistent with the intent of this code. A person may request, and the City Manager may approve an exemption if the following information is provided:
  1. the location of the luminaire to be installed or replaced;
  2. the purpose of the luminaire;
  3. the total wattage of the grandfathered and the replacement luminaire, if applicable;

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4. the type of luminaire to be installed, and if applicable, the type of replacement;
5. if the luminaire is a replacement, through manufacturer's literature or otherwise, that the replacement luminaire will reduce light pollution, glare, or Total Outdoor Light Output; or,
6. when the luminaire is bottom-mounted, through the use of manufacturer's literature or otherwise, that its use is superior in reducing light pollution, glare, or Total Outdoor Light Output as compared to a top-mounted luminaire.
7. any other information deemed relevant.

### 3.02.008. Prohibitions.

- A. The installation of any mercury vapor fixture or lamp, krypton, or argon discharge tubes intended for use as an architectural highlight to attract attention is prohibited.
- B. The use of laser source light or any similar high-intensity light (such as a strobe light.) is prohibited.
- C. The operation of searchlights is prohibited.
- D. The use of unshielded lights or floodlights that are not installed with a 45-degree downward tilt.
- E. Outdoor lighting that interferes with the safe operation of a motor vehicle is prohibited.
- F. Up-lighting is prohibited, except as otherwise provided in this ordinance.
- G. It shall be unlawful for any outdoor lighting fixture to cause glare, as defined herein and determined by the City Manager or his designee, of sufficient intensity as to create an unsafe condition on public or private streets between the hours of midnight (12:00 a.m.) and 6:00 a.m.

### 3.02.009. Illumination Measurement.

- A. ***Metering equipment.*** Lighting levels of outdoor lighting shall be measured in foot candles with a direct reading portable light meter with a color and cosine corrected sensor with multiple scales. The meter shall read within an accuracy of plus or minus five (5)

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percent. It shall have been tested and calibrated by an independent commercial photometric laboratory or the manufacturer within one (1) year of the date of use as attested by a certificate issued by such laboratory.

- B. ***Horizontal method of measurement.*** The meter sensor shall be mounted not more than six (6) inches above ground level in a horizontal position. Readings shall be taken only after the cell has been exposed to provide a constant reading. Measurements shall be made when the meteorological optical range is six (6) miles or further such that measurements will not be adversely affected by atmospheric scatter. Measurements shall be made after dark with the existing questioned light sources on, then with the same light sources off. The difference between the two (2) readings shall be compared to the foot candle ratings listed Table 1. This procedure eliminates the effects of moonlight and other ambient light.
- C. ***Vertical method of measurement.*** The meter sensor shall be mounted at least five (5) feet above ground in a vertical position, perpendicular to the property line and facing the outdoor lighting in question.
- D. ***Computation of illumination.*** Illumination at a point may be computed in lieu of measurement. Computation methods shall consist of generally accepted IESNA standards, using certified photometric data furnished by the fixture manufacturer, lamp manufacturer, photometric laboratory, or other reliable authority satisfactory to the City Manager. Computations shall be based on new, properly seasoned lamps, new and clean fixtures, and at rated voltage and wattage, with ballasts, lenses, shields, diffusers, and other appurtenances in place, with proper regard taken for mounting height, relative elevation, natural and manmade objects.

### **3.02.010. Temporary Lighting for Sports Practices.**

- A. Where temporary lighting is to be provided for sports practices that are not located in City Parks, or schools the following requirements shall apply.
  - 1. The field to be illuminated shall be a minimum of fifty (50) feet from a residential property line or a residential district.
  - 2. Luminaires used for sports practices shall be at a maximum height of twenty (20) feet and may be positioned at that height up to the edge of the property on which the practice is being held.

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3. The Luminaires shall be turned off at 9:00 p.m. or thirty (30) minutes after the practice is over, but in no event shall the field be illuminated after 9:30 p.m.

### 3.02.011. Temporary Exemption.

- A. Any person may submit a written request, to the City Manager or his designee for a temporary exemption from the requirements of this section. The Request for Temporary Exemption shall contain the following information:
  1. Specific exemption or exemptions requested;
  2. Type and use of outdoor fixture involved;
  3. Duration of time for requested exemption;
  4. Total wattage of lamp or lamps;
  5. Proposed location on premises (if any) and addresses of premises;
  6. Physical size of outdoor light fixture(s) and type of shielding provided;
  7. Such other data and information as may be required by the Building Official.
- B. **Approval; Duration.** The City Manager or his designee shall have five (5) business days from the date of submission of the Request for Temporary Exemption to act in writing on the request. If approved, the exemption shall be valid for not more than thirty (30) days from the date of issuance of the approval. The approval shall be renewable at the discretion of the City Manager or his designee upon a consideration of all the circumstances. Each such renewed exemption shall be valid for not more than thirty (30) days.
- C. **Disapproval, Appeal.** If the Request for Temporary Exemption is disapproved, the person making the request will have the appeal rights as provided in the City of Boerne's Zoning Ordinance.

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## APPENDIX B TO DEVELOPMENT PLAT REGULATIONS

### TREE PRESERVATION REQUIREMENTS.

- SECTION 01. IN GENERAL
- SECTION 02. PURPOSE
- SECTION 03. APPLICABILITY OF TREE PRESERVATION REQUIREMENTS
- SECTION 04. TREE PRESERVATION
- SECTION 05. REQUIREMENTS FOR PERMITS AND INSPECTIONS
- SECTION 06. MINIMUM COMMERCIAL LANDSCAPE STANDARDS
- SECTION 07. MITIGATION FOR STANDARD AND HERITAGE  
TREE REMOVAL
  
- SECTION 08. LEGACY STANDARD OR HERITAGE TREE PRESERVATION AND  
PROTECTION
- SECTION 09. WAIVER FROM TREE PRESERVATION REQUIREMENTS
- SECTION 10. VIOLATIONS AND PENALTIES

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#### **SECTION 01. IN GENERAL**

No tree shall be removed unless such removal meets all the provisions of this or any other applicable ordinance adopted by the City Council of the City of Boerne, Texas.

#### **SECTION 02. PURPOSE**

It is the purpose of this Ordinance to ensure environmental sensitive site planning to facilitate site design and construction, to contribute to the long term viability of existing trees, to control the removal of trees when necessary, specifically, preservation of the trees defined as Legacy Trees, to enhance the environmental and ecological performance and aesthetic quality of commercial and residential developments, and to prohibit the indiscriminate clear cutting of property.

This Ordinance does not preclude the removal of any tree from a proposed building foot print or the only practicable sites for ingress and egress from parking areas

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## SECTION 03. APPLICABILITY OF TREE PRESERVATION REQUIREMENTS.

### 4.03.001. Applicability.

This Ordinance shall regulate all activities that result or may result in the removal of tree(s) in the City limits or ETJ of Boerne Texas. Said activities include any of the following conducted on property to which the section applies:

1. All residentially zoned property for which a subdivision is accepted by the City after the effective date of this ordinance
2. Industrial, commercial, office, multi-family, institutional development and schools, including all new construction and any additions greater than 2500 square feet.
3. Construction of a new parking lot or expansion of an existing parking lot.
4. Any grading, filling or clearing of land.
5. Chemical or biological treatment of tree(s) that may result in the death or destruction of any tree(s) as defined.
6. Trenching or excavating that may damage or destroy Legacy as defined.
7. All governmental development shall comply with the tree preservation plan review procedure regardless of the zoning district in which they are located.
8. Detached and attached dwelling lots platted after the effective date of this ordinance.

### 4.03.002. Exceptions for Certain Buildings and Lots.

The following shall be exempt from the requirements of this Ordinance:

1. Lots on which buildings were constructed prior to the adoption of this ordinance and subsequently damaged by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind, provided a building Permit is issued for restoration within 12 months after the damage occurs and additional square footage is not proposed.

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2. All residentially zoned lots of one half (1/2) acre or less whether platted prior to or after the effective date of this ordinance.

### **SECTION 04. TREE PRESERVATION**

#### **4.04.001. Minimum Tree Preservation Requirements:**

No Legacy tree shall be removed from any real property within the City of Boerne without following the provisions as stated below. Exceptions are identified in Section 4.03.002.

- A. The following shall apply to Legacy trees:
  1. Commercial and Multi-family – A minimum of 30% of Standard trees exclusive of Heritage trees shall be preserved on a lot.
  2. Subdivision Development of Single-family and other residentially zoned areas – The removal of trees for the purpose of clearing and installation for infrastructure (roads, utilities, etc.) and lot lines is allowed.
  3. Commercial, Industrial and Multi-family – Heritage trees shall be preserved and shall not be removed without mitigation.
  4. Single-family and other residentially zoned areas – Heritage trees shall be identified on the plat and shall be preserved.
  5. Steep slopes – Standard and Heritage trees shall not be removed from a Steep Slope area.
  6. Stream Setback zones -

No trees shall be removed without following the procedures set forth in Section 05 to include the limitations identified below:

Stream Setback Zone 1 – Legacy trees shall be preserved as follows:  
Standard trees – 80%  
Heritage trees – 100%

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Stream Setback Zone 2 – Legacy trees shall be preserved as follows:

Standard trees – 50%

Heritage trees – 100%

## **SECTION 05. REQUIREMENTS FOR PERMITS AND INSPECTION**

### **4.05.001. Permits and Inspection**

Permits are required prior to the removal of any trees from a tract of land with the exceptions of those parcels covered in Section 4.03.002. The Permit shall be either A or B and C as identified below:

- A. A Building Permit (Section 4.05.002)
- B. A Standard or Heritage Tree Removal Permit (Section 4.05.003)
- C. A Tree Removal Permit (Section 4.05.004)

The Permit application and required attachments shall be submitted with the fee established by City Council to the Code Enforcement office for review.

Prior to issuance of any Permit the property shall be inspected by either a representative of the Planning Department or Code Enforcement department.

### **4.05.002. Building Permits.**

A. **Commercial:** A property/developer shall submit a Tree Preservation Plan (TPP) at such time they submit a building permit application for a commercial, industrial or multi-family development on any real property in the City of Boerne. **If the property is located in the ETJ, a TPP shall be submitted with the development plat submittal.**

- 4. The building Permit shall not be issued until such time as the City Manager has approved the TPP, the Code Enforcement Department has been notified and the required tree protection (Section 4.07.001) is in place and approved by the Code Enforcement department. If, prior to completion of construction, the tree protection is removed, a Stop Work Order will be imposed until the tree protection has been replaced and approved.

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2. Tree Removal Permit shall be applied for and approved before removal of any Standard or Heritage tree.

**B. Residential:** A property owner who plans to construct a residence on any real property shall apply for a Building Permit. The Permit application shall include a plot plan, in lieu of a TPP, the plot plan will include the identification of Standard or Heritage trees located on the lot. Movement of the proposed structure on the lot within the building envelope may be adjusted by the City Manager taking into consideration the location of the Standard trees on the lot. Mitigation of Standard trees removed on residential lots is not required.

1. Heritage trees shall be preserved if it was identified on the final subdivision plat that contains the lot.

### **4.05.003. Standard or Heritage Tree Removal Permit.**

A Standard or Heritage Tree Removal Permit shall be applied for and approved before removal of any Standard or Heritage tree from any real property within the City. An application for the removal of a Standard or Heritage tree shall be made by the owner/developer of the property on which such tree is located.

4. When an applicant submits a Standard or Heritage Tree Removal Permit application, they shall present either a TPP (Section 4.05.006) or, if a TPP is not required, a survey or plot plan identifying the Standard and Heritage trees and trees to be removed to the City Manager.
2. A valid reason for removal of a Standard or Heritage tree shall be submitted to the City Manager in writing.
3. If on-site Legacy trees are to be used for mitigation for removal of Standard or Heritage trees (Section 4.06.001), the mitigating trees shall be identified on the Plan.
4. If mitigation includes replacement trees (Section 4.06.001), the Permit shall include a tree replacement plan that reflects the location, circumference and placement of replacement trees. If payment shall be made in lieu of replacement trees, a statement of such shall be attached.
5. The Standard or Heritage Tree Removal Permit shall not be issued until such time as a City Manager approval has been

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received by the Code Enforcement department and the required tree protection (Section 4.07.001), if necessary, is in place and approved by the Code Enforcement department.

6. Such other information as may be reasonably required by the City Manager.

Standard and or Heritage Tree Removal Permit Approval:

The City Manager may approve an application to remove a Standard or Heritage tree after determining that the tree:

- a. Prevents reasonable access to the property; or
- b. Prevents a reasonable use of the property; or
- c. Is a hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree; or
- d. Is dying or dead;
  - a. the restoration to sound condition is not practicable; or
  - b. disease may be transmitted to other trees and endanger their health; or
- e. For a tree located on public property or a public street or easement:
  - a. prevents the opening of necessary vehicular traffic lanes in a street or alley; or
  - b. prevents the construction of utility or drainage facilities that may not feasibly be rerouted.

### **4.05.004. Tree Removal Permit.**

If a property owner desires to selectively remove non-Legacy trees or Legacy trees that are smaller than 37 TC inches from any real property that does not require a Building Permit (is not being developed), they shall be required to obtain a Tree Removal Permit. The removal of trees that are dead or dying (as identified by an arborist or landscape architect) and cannot practicably be restored to sound condition do not require a Tree Removal Permit.

1. A valid Tree Removal Permit application must be filed with the City Manager and approved by the Planning Department before a property owner begins to remove trees.
2. The TPP (Section 4.05.006) shall be prepared without items (3), (10), and (11) unless they are existing on the lot.

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3. The property shall be inspected by either a representative of the Planning Department or the Code Enforcement department. After said inspection the Tree Removal Permit shall be issued if the trees marked on the site correspond to the submitted on the TRP at which time the appropriate trees can be removed.

### **4.05.005. Inspections.**

The Code Enforcement department shall inspect each site for conformance with the approved Tree Preservation Plan prior to the issuance of a Certificate of Occupancy.

### **4.05.006. Tree Preservation Plan Requirements.**

The Tree Preservation Plan (TPP) shall be prepared by a Certified Arborist or Landscape Architect and shall include the following:

1. The date, scale, north point, project title, and name of property owner.
2. The location of existing lot lines, setback lines and dimensions of the lot.
3. The location of all proposed buildings and parking areas on the lot/tract of land.
4. The location and size of existing and proposed streets and alleys and existing and proposed easements on or adjacent to the lot.
5. The approximate center lines of existing water courses, the location of the 100 year flood plain, and the approximate location of significant drainage features on the lot.
6. All Standard or Heritage trees as defined by this ordinance shall be numbered, marked with a metal tag and enumerated by species on the site as well as on the plan.
7. The plan shall identify those Legacy trees for which a removal Permit shall be requested (Section 4.05.004) as well as and a mitigation plan based on Section 4.06.001.
8. The trees shall be measured using trunk circumference (TC).

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9. The following information shall be submitted with the TPP:
  - a. A list of Standard or Heritage trees that show the species, classification, and the TC of the tree;
  - b. A list of those Standard or Heritage trees that may have been identified for removal on the plan by species and TC;
  - c. If on-site trees are to be used for mitigation for the removal of a Standard or Heritage tree the TPP shall include a list of trees that are to be suggested for mitigation by species and TC;
  - d. If replacement trees are to be planted on-site for the removal of a Standard or Heritage tree, the TPP shall contain a list of those trees by species and TC.
10. Approximate delineation of the root protection zones and notes indicating how the applicant plans to protect from damage during grading and construction the existing trees which are proposed to be retained.
11. A description of the proposed watering methods for each part of a landscaped area.
12. Other proposed landscape plants and features.

### **4.05.007. Plan Review by City Manager.**

The City Manager shall review the Tree Preservation Plan (TPP) within 10 working days to determine whether it meets the requirements of this Ordinance. Upon completion of this review, the City Manager shall approve or disapprove the Tree Preservation Plan, and shall notify the Code Enforcement office of such.

## **SECTION 06. MINIMUM COMMERCIAL LANDSCAPE STANDARDS**

### **4.06.001. Applicability of Standards.**

In addition to the preservation requirements stated in this ordinance, the following standards shall apply to the front yards of all commercial lots.

### **4.06.002. Minimum Ratio of Trees to Lot Frontage.**

In the front yard, at least one tree shall be preserved, planted or replaced as necessary to maintain a minimum ratio of either one tree (at least 9 TC) for every 40 linear feet of lot frontage (including a fraction above 20 feet).

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A newly planted tree shall be planted in an area with a minimum of 100 square feet of permeable surface area, except that this area may be reduced to 50 square feet if an irrigation system and an internal drainage mechanism are incorporated into the planting area. Each newly planted tree shall be located at least 30 inches from any paved area.

### **SECTION 07. MITIGATION FOR STANDARD OR HERITAGE TREE REMOVAL**

#### **4.07.001. Replacement of Trees Removed.**

- A. Standard or Heritage trees which are removed and require mitigation shall be 1) mitigated with existing Legacy trees, and/or 2) replaced by new Legacy trees or other indigenous tree species deemed acceptable by the City Manager, and/or 3) mitigated by paying into the Tree Restoration Fund. Any combination of the three options is acceptable.
1. The preservation of Legacy trees on-site is encouraged and may be used as mitigation to offset the removal of Standard or Heritage trees. The mitigating trees may be of any Legacy tree or species with an aggregate TC in inches of one the trees removed (1:1).
  2. Replacement trees shall be planted on the same lot according to an approved TPP or another site as be determined by the City Manager. The replacement trees may be of any Legacy tree species or other indigenous tree species deemed acceptable by the City Manager with an aggregate TC in inches of one and a half the trees removed (1:1 ½) with a minimum circumference of nine inches (9”).
  3. If there is not a suitable location as determined by the City Manager for the replacement trees on the subject site or another site, payment shall be made into the Tree Restoration Fund in the following amounts:

**Standard or Heritage Trees**  
\$50 p/TC of Standard or  
Heritage tree removed

If it is necessary to convert circumference to caliper when purchasing replacement trees, use the following equation - caliper inch = TC/3.1415.

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- B. A minimum of five different Legacy tree species must be planted if more than 300 inches in trunk circumference of trees are required. The City Manager may approve other indigenous tree species as acceptable replacement trees if it is determined the trees are indigenous, live longer than 35 years and grow to a height of at least 35 feet. This requirement is meant to prevent large monocultures from being planted on sites, which increases chances of disease epidemics.
- C. The planting of Spanish Oak (*quercus shumardii*), Texas Red Oak (*quercus texana*) and similar thin bark red oaks is prohibited. These trees are potential sources of inoculum for the Oak Wilt fungus, *Ceratocystis fagacearum*. Fungal spore mats formed on these types of trees are attractive to insect vectors, which results in long range dissemination of the fungus.

### **4.07.002. Penalties for Unauthorized Removal or for Intentional Death of a Tree.**

If any Standard or Heritage trees are removed from any real property without an approved permit, or if such trees are injured because of failure to follow required tree protection measures such that the tree dies or may reasonably be expected to die, the City shall have the authority to enact one or more of the following administrative and civil penalties on the developer and/or owner of the property.

1. A monetary penalty of \$250.00 per TC of the Standard or Heritage trees removed payable to the City and replace with trees as stated in subsection (2) below.
2. Replacement with Legacy trees having an aggregate TC which is five times the aggregate TC of the Legacy trees that were removed or killed.

# Development Plat Regulations

## **SECTION 08. LEGACY STANDARD OR HERITAGE TREE PRESERVATION AND PROTECTION.**

### **4.08.001. Tree Preservation and Protection.**

Legacy Standard or Heritage trees shall be protected under the following conditions:

1. No clear cutting is Permitted.
2. No materials intended for the use in construction or waste materials accumulated due to excavations or demolition shall be placed within the limits of the trees' root protection zone.
3. Neither substances used to clean equipment nor other foreign materials shall be deposited or allowed to flow overland within the root protection zone of a Legacy Standard or Heritage tree. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.
4. No signs, wires or other objects, other than those of a protective nature, shall be attached to any Legacy tree. However, lighting of a decorative nature may be attached to a Legacy tree. The lighting shall be attached in a manner so as not to damage the Legacy Standard or Heritage tree.
5. No vehicular and/or construction traffic or parking shall take place within the limits of the root protection zone of a Legacy Standard or Heritage tree other than on an existing paved surface. This restriction does not apply to access within the root protection zone for purposes of clearing underbrush.
6. All trees to be retained as part of an approved Tree Preservation Plan shall be protected during grading and construction. A protective barrier shall be erected around the root protection zone before the beginning of grading and construction, and the barrier shall be maintained until construction is completed. During grading and construction, no excess soil, additional fill, equipment, liquids or construction debris shall be placed inside the protective barrier, and no soil shall be removed from within the barrier. The proposed finished grade of the land within the root protection zone shall not be raised or lowered by more than six inches, but welling and retaining methods may be used to protect the area outside the root protection zone. The root protection zone shall remain unpaved. If wells are used to a

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preserve a Legacy Standard or Heritage tree the wells shall have a drain installed or a pump shall be installed to insure that the well does not hold water.

7. No paving with asphalt, concrete or other impervious materials shall be placed within the root protection zone of a heritage tree.
8. In those situations where a Legacy tree is within 50 feet of a construction area, a protective fence, minimum of four feet in height, shall be erected and maintained outside of the root protection zone of each Legacy Standard or Heritage tree or tree group.

### **SECTION 09. WAIVER FROM TREE PRESERVATION REQUIREMENTS.**

#### **4.09.001. Waiver.**

Waivers to the terms and requirements of this Article may be granted by the City Manager where a literal enforcement of the provisions of this Article will result in an unnecessary hardship. No waiver may be granted unless:

1. Such waiver will be in harmony with the spirit and purpose of this ordinance; and
2. The waiver will not substantially weaken the general purposes of this Article or the regulations herein established for the preservation/protection of trees; and
3. The waiver granted is limited in scope of relief to only that which is necessary to relieve the hardship condition.

#### **4.09.002. Procedure to Request a Waiver**

- A. A person who feels they qualify for a waiver, under the conditions outlined in Section 4.08.001 above, from the literal application of this section to their property may request a waiver from such application of one or more of the provisions of this Article. All requests for waivers shall be made in writing to the City Manager and shall include:

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1. The subject of the requested waiver; and
2. The justification for granting a waiver.
  - a. Burden. The party requesting a waiver has the burden of demonstrating that sufficient evidence exists for the granting of a waiver to application of this Article. The City Manager shall consider and provide a written response to all such requests for waiver as quickly as possible but not more than fifteen (15) working days from the date a valid request for waiver is received.
  - b. If Granted. If a waiver is granted as requested, or with modification, the recipient of the waiver may develop their property according to all applicable provisions of this Article; to the extent such provisions have not been waived or modified by the waiver.

### **4.09.003. Appeals to Waiver Denial**

Appeals to waiver denial: A property owner who requests a waiver pursuant to this section and objects to the decision of the City Manager which denies all or part of the relief requested may appeal such denial to the Planning and Zoning Commission by filing a written request with the City Manager requesting the Planning and Zoning Commission to review the waiver request.

The Planning and Zoning Commission shall then review the waiver request at its next regularly scheduled meeting and determine what relief from the provisions of this ordinance, if any, should be granted. In making this determination, the Commission shall consider the nature of the use which is proposed on the lot, the size, shape and topography of the lot, the size and location of proposed buildings and structures on the lot, the nature and extent of other landscaping which is proposed as part of the landscape plan, the practical requirements of vehicular access to the lot, and the relationship between the proposed project and existing uses on adjacent lots. If the Commission determines that some relief from the provisions of this Article should be granted, it shall grant the minimum relief which it considers necessary in order to achieve the purpose and preserve the essential spirit and purpose of this Article, and the record of the Commission's action shall state the rationale which justifies this decision.

### **SECTION 10. VIOLATIONS AND PENALTIES.**

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Wherever by the provisions of this Article the performance of any act is required or the performance of any act is prohibited, or wherever any regulation is imposed, a failure to comply with the provisions of this Article shall constitute a violation of this Article. The City Manager may institute any appropriate action or proceedings to prevent the unlawful removal or destruction of trees, and to restrain, correct or abate such violation. Every day on which a violation exists shall constitute a separate violation and a separate offense. The penalty for each offense shall not exceed one thousand dollars (\$1,000.00).