

ORDINANCE NO. 2020-33

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 144 ZONING SECTION 5.3, LANDSCAPING, TREE PRESERVATION, PUBLIC TREES, SCREENING, FENCES, BUFFERING AND LIGHTING; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Chapter 211 of the Texas Local Government Code empowers a city to enact zoning regulations and provide for their administration, enforcement and amendment; and

WHEREAS, the City Council of the City of New Braunfels, Texas, deems it necessary and desirable to establish zoning regulations to provide for the orderly development of property within the City by governing the use of land in order to promote the public health, safety, morals and general welfare of the residents of the City; and

WHEREAS, the Comprehensive Plan, Envision New Braunfels, has multiple action items supporting tree preservation, including Action Item 1.11: Update policies and codes to achieve development patterns that implement the goals of Envision New Braunfels, Action Item 2.1: Sustain community livability for all ages and economic backgrounds. Action 3.2: Consider multiple factors for guiding community growth, such as our downtown and the natural environment. Action 3.6: Proactively provide a regulatory environment that remains business and resident friendly. Action 3.10: Change zoning/land use and platting rules and create tax and permit fee incentives in underutilized neighborhoods, nodes and corridors to encourage redevelopment. Action 4.26: Enhance community sense of place by creating spaces and facilities that reflect the community; and Action 5.17: Review and update the tree and landscape ordinances to ensure New Braunfels remains a green city and expands its tree canopy; and

WHEREAS, New Braunfels has existing mature tree canopy, the protection of which should supersede requirements to plant by new trees when new trees will be negatively impacted by the existing trees; and

WHEREAS, the City Council has directed that regulations dealing with the use and development of land be reviewed by the Planning Commission to make recommendations concerning improving those regulations; and

WHEREAS, the Planning Commission held a public hearing on April 7, 2020 and recommended approval of the proposed amendments; and

WHEREAS, the City Council held a public hearing on said amendments on April 13, 2020; and

WHEREAS, the City Council hereby finds and determines that updating the provisions to allow landscape credit for existing trees helps promote environmental sustainability, provides carbon sequestration and shade, and is in the best interest of the citizens of New Braunfels, Texas.

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

SECTION 1

THAT Chapter 144, Zoning, Sec. 144-5.3. Landscaping, tree preservation, public trees, screening, fences, buffering and lighting is hereby amended with additions as underlined and deletions as strikeouts as follows:

5.3-1. Landscaping, tree preservation, public trees and screening.

(a) *Jurisdiction.* The terms and provisions of these regulations shall apply to the city limits.

(b) *Landscaping.*

(1) *Purpose.* Landscaping is accepted as adding value to property and is in the interest of the general welfare of the city. The provision of landscaped areas also serves to increase the amount of a property that is devoted to pervious surface area which, in turn, helps to reduce the amount of impervious surface area, storm water runoff, and consequent non-point pollution in local waterways. Therefore, landscaping is hereafter required of new development as provided in this section, except landscaping is not required for single-family and two-family, and agricultural uses.

(2) *Scope and enforcement.*

(i) The standards and criteria contained within this article are deemed to be minimum standards and shall apply, as of the effective date of this section (August 29, 2005), to all new construction requiring a building permit (including uses such as schools, day care centers, and churches) as well as city and county uses occurring within the city, except that single-family or two-family dwellings shall be exempt. Additionally, any special use permit or a PD zoning application for those uses that are not single-family or two-family dwellings, must comply with these landscape standards unless special landscaping standards are otherwise provided for in the ordinance establishing the SUP or PD district.

(ii) The provisions of this article shall be administered by the planning ~~director~~ and development services department.

- (iii) For all landscaping installed as a requirement of this section, if at any time after the issuance of a certificate of occupancy, the approved landscaping is found to be not in conformance with the standards and criteria of this article, the **planning director code compliance division** shall issue notice to the owner, citing the violation and describing what action is required to comply with this article. The owner shall have 90 days from date of said notice to establish/restore the landscaping, as required. If the landscaping is not established/restored within the allotted time, then such person shall be in violation of this chapter.
 - (iv) Existing development.
 - 1. No additional landscaping shall be required when a building is enlarged on an existing tract **of land** or lot.
 - 2. Where a parking lot is being enlarged, only the parking lot area being added shall be required to meet the standards of this section. For instance, if a parking lot is expanded in an area not adjacent to a street, no street yard landscaping is required, and only the area being added would be subject to the parking lot shade standards.
- (3) *Permits and certificate of occupancy.*
- (i) Permits. No building permit shall be issued until a landscape plan, as provided for in subsection 144-5-3-1(a).~~2-1(e)(4)~~, is submitted and approved by the **planning and development services department** director **or his/her designee (hereinafter referred to as "director or designee")**. A landscape plan shall be required as part of the building permit application submission for all applicable properties.
 - (ii) Certificate of occupancy. Prior to the issuance of a certificate of occupancy for any applicable building or structure, all landscaping shall be in place in accordance with the landscape plan, unless a temporary certificate of occupancy is issued in accordance with the provisions of this article.
 - (iii) In any case in which a certificate⁰ of occupancy is sought in which the **planning director or designee** determines that it would be impractical (too wet, too dry, too hot or too cold) to plant trees, shrubs or groundcover, or to successfully establish turf areas, a temporary certificate of occupancy may be issued provided there is agreement between the property owner and the **planning director or designee** as to when installation will occur. All landscaping required by the approved landscape plan shall be installed within six months of the date of the issuance of the temporary certificate of occupancy.
- (4) *Approval procedures.*
- (i) *Approvals.* The **planning director, or his designee, and development services department** shall review and **the director or designee shall** approve or disapprove such landscape plan within ten days of the receipt of an application for a building permit and landscape plan. If the landscape plans are in accordance with the criteria of these regulations, the **planning**

director [or designee](#) shall approve same. If the plans are not in conformance, they shall be disapproved and shall be accompanied by a written statement setting forth the changes necessary for compliance.

(ii) *Alternate landscape plan.* The [planning](#) director [or designee](#) may approve an alternate landscape plan. The applicant shall demonstrate that the reasons for the reduction in landscaping or deviations from other provisions of this section are appropriate, why the alternative plan is appropriate, and why it is consistent with the purposes of this section. The [planning](#) director [or designee](#) for any reason may forward the alternate landscape plan to the zoning board of adjustment for its consideration.

(iii) *Appeal.*

1. If the [planning](#) director [or designee](#) disapproves the landscape plan or alternate landscape plan, appeal may be made in writing to the zoning board of adjustment. Such appeal must be made within 90 days of the [planning](#) director's [or designee's](#) denial. The zoning board of adjustment shall have the authority to approve the existing plan or to approve an alternate landscape plan. The applicant shall demonstrate reasons the reduction in landscaping or other site design features are appropriate. The zoning board of adjustment shall make a decision on all appeals within 60 days of the date of appeal application. A simple majority vote of the members present is necessary to approve or approve with conditions an alternate landscape plan.
2. Other appeals concerning the interpretation of this section by any city official shall be processed and considered in accordance with the zoning ordinance.

(iv) *Alternate landscape plan criteria.* The [planning](#) director [or designee](#) and the zoning board of adjustment shall use the following criteria and standards when considering an alternate landscape plan:

1. The landscape standards are not intended to be so specific as to inhibit creative development. Project conditions associated with individual sites may justify approval of alternative methods of compliance. Conditions may arise where normal compliance is impractical or where the aesthetic and environmental purposes of this section can be better achieved through alternative compliance.
2. Conditions which shall be considered when evaluating alternative compliance include:
 - i. Topography, soil, vegetation, drainage, and other site conditions are such that full compliance is impractical.

[ii Existing vegetation – Priority shall be given to protection of existing trees. Sites with significant stands of trees, including protected and/or heritage trees, may request an alternate landscape plan if that plan provides for superior protection of existing trees over standard landscaping compliance.](#)

- ~~ii~~.iii Improved environmental quality would result from the alternative plan.
 - ~~iii~~.iv The land is unusually shaped or oddly configured.
 - ~~iv~~.v Public safety is a consideration.
 - ~~v~~.vi Conformity to and compatibility with the existing character of the surrounding or nearby area lend themselves to alternative compliance.
3. Landscaping required by this section may be evenly distributed throughout the site, except that the distribution and location of the landscaped area may accommodate existing trees or other natural vegetation and features if the design meets the intent of the landscape ordinance, and existing trees and vegetation preserved are in good health and can reasonably be expected to survive given the site layout proposed.
4. If proposed landscape plan calls for a reduction of the landscape requirements by more than 25 percent, the proposed plan shall not be considered an alternate plan but rather a variance. This will require application for a variance. An affirmative vote of four members of the zoning board of adjustment shall be required to approve a variance or a variance with conditions.
- (v) *Variances*. Variances to provisions of this section shall be processed and considered in accordance with the zoning ordinance.
- (5) *Landscape plan*. Landscaping plans shall contain the following minimum information:
- (i) Minimum scale of one inch equals 100 feet; show scale in both written and graphic form.
 - (ii) Location, size and common name of existing trees that are greater than or equal to an eight-inch diameter measured four and one-half feet above the ground, except those listed in Appendix B [to this subsection 144-5.3-1]. Any non-Appendix B tree which is proposed to be saved as credit for the landscaping requirements in this article shall also be shown, with its size and common name, and must be indicated on the plan as preserved. When "preserved" trees are included on the landscape plan, the protective tree measures detail must be shown on appropriate plan pages.
 - (iii) Location, size (container size, planted height, etc.) and common name of all trees and shrubs to be planted as part of the landscape plan.
 - (iv) Location and design of all landscaping materials to be used, including paving, screens, earthen berms and ponds.
 - (v) Spacing of plant material where appropriate.
 - (vi) Layout and description of irrigation, hose bibs, or water systems including location of water sources.
 - (vii) Description of maintenance provisions.

- (viii) Name and address of the person(s) responsible for the preparation of the landscape plan including the name and address of the project.
- (ix) North arrow/symbol.
- (x) A legible location map showing where the property is located.
- (xi) Dumpster and outside trash receptacle areas.
- (xii) Fences by height and material and any other screening devices or vegetation.
- (xiii) Date of the landscape plan.

~~(xiv) The planning director may waive any of this information.~~

(6) *General standards.* The following criteria and standards shall apply to landscape materials and installation:

- (i) Landscaping materials such as wood chips, mulch or gravel may be used under trees, shrubs and other plants.
- (ii) Plant materials shall conform to the standards of the current edition of the "American Standard for Nursery Stock" (as amended), published by the American Association of Nurserymen. Grass seed, sod and other material shall be clean and reasonably free of weeds and noxious pests and insects. All landscaping shall be selected from the approved plant list in Appendix A.
- (iii) Grass areas shall be sodded, plugged, sprigged, hydro-mulched and/or seeded, except that solid sod or other erosion control devices shall be used in swales, earthen berms or other areas subject to erosion.
- (iv) Ground covers shall be planted in such a manner as to present a finished appearance and reasonably completed coverage within one year of planting.
- (v) Preserved tree credit. Any healthy trees preserved on a site meeting the herein specifications may be credited toward meeting the total tree requirement of this article, except those undesirable species included in Appendix B of this chapter. Existing tree preservation credit shall be granted according to the following table:

Diameter of Existing <u>Shade</u> Tree measured 4.5' above ground *	Credit Toward Tree Requirement
0" to 2½"	No credit
2½" to 8"	One inch credit for every inch of diameter of existing tree

8" to 24"	Two inches of credit for every inch of diameter of existing tree
24" or more	Three inches of credit for every inch of diameter of existing tree
<u>Native Multi-trunk trees – all tree clusters with three or more trunks at least 2 inches in diameter, located within 10 feet of each other, measured at four feet above natural grade are considered multi-trunk trees available for landscaping tree credit. The diameter of a multi-trunk tree for landscape tree credit shall be determined by the total diameter of the two largest trunks, plus ½ diameter of each additional trunk.</u>	<u>Credit assigned based on total caliber inches of the cluster as indicated above</u>

* Applicant may submit an alternative landscape plan to request additional tree preservation credit for native understory trees, including but not limited to Texas Madrone, Texas Mountain Laurel, Redbuds, Yaupons, Buckeyes, Texas Persimmon, as these species will not achieve the size upon maturity as the shade trees, which may be appropriate based on site conditions.

Every two and one-half inches of tree credit shall equal one required tree. ~~However, in no case shall the number of required trees in the residential buffer be decreased below the minimum number as required in this article.~~ Should any required tree designated for preservation in the landscape plan die, the owner shall replace the tree with a one and one-half-inch minimum diameter tree measured six inches above the ground.

- (vi) Earthen berms shall have side slopes not to exceed 33 percent (three feet of horizontal distance for each one foot of vertical height). All berms shall contain necessary drainage provisions as may be required by the city's engineer.
 - (vii) Utilities. No trees or other landscaping may be planted on public or private property that will mature within ten lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, electric line or other utility. Ornamental trees as listed in Appendix A shall be installed in the affected landscaping areas as required, including street frontage trees and shrubs in accordance with subsection 144-5.2-1(c)(7)(A)2.
- (7) *Minimum landscaping requirements.*
- (A) *Parking lot screening and landscaping.* See Illustrations 9 and 10. Subject to the provisions of section 144-5.3-1, the following landscaping is required for parking lots:
 1. *Street frontage landscape buffer area.* Where a parking lot is adjacent to and within 50 feet of public street right-of-way, a minimum

five-foot landscape buffer adjacent to the right-of-way of any street is required. Lots adjacent to two streets or more shall be required to observe the five-foot buffer on all frontages. Trees within street rights-of-way shall not count toward the number of trees required for a development site, unless approved by the ~~planning~~ director [or designee](#).

2. *Street frontage trees and shrubs.* Where a parking lot is adjacent to and within 50 feet of public street right-of-way, a minimum of one minimum one and one-half-inch diameter tree and four five-gallon or three-foot tall shrubs for every 40 feet (or portion thereof) of street frontage shall be installed using trees from the approved plant list (Appendix A). Shade trees must be used, unless [under the canopy of an existing preserved tree, or](#) near utility lines where ornamental trees must be used, as required in subsection 144-5.3-1(b)(6)ii ~~2-1(c)(6)(vii)~~. Trees shall be planted no closer than 20 feet apart. In no event may trees other than ornamental trees listed in Appendix A be planted under overhead power lines. All new trees shall be provided with a permeable surface of 60 square feet per tree under the drip line. All planting areas shall be a minimum of five feet in width.
3. *Parking lot shading.* At least one minimum one and one-half-inch (1½") diameter tree per 14 parking spaces shall be planted in or adjacent to a parking lot. Shade trees must be used, unless [under the canopy of an existing preserved tree, or](#) near utility lines where ornamental trees must be used, as required in subsection 144-5.3-1(b)(6)(vii). All trees shall be planted in a minimum permeable area of 100 square feet per tree. These trees may be clustered for the purposes of existing tree preservation or to accommodate topographic constraints, but otherwise must be spread generally throughout the parking lot. Trees planted or preserved to meet this parking lot shading requirement are in addition to the required street frontage trees.
4. *Turf.* No more than 30 percent of the parking lot landscaped area, not including detention ponds, shall be turf grasses, except buffalo and prairie grasses may be planted. Xeriscaping is preferred.
5. *Residential buffer.* In addition to the masonry wall requirement in subsection 144-5.3-2(h), at least one tree per 25 linear feet of property, or part thereof, a minimum one and one-half inches (1½") in diameter, shall be planted along the common property line of the single-family or two-family property. Shade trees must be used, unless [under the canopy of an existing preserved tree, or](#) near utility lines where ornamental trees must be used, as required in subsection 144-5.3-1(b)(6)(vii). All new trees shall be provided with a permeable surface of 60 square feet per tree under the drip line. All planting areas shall be a minimum of five feet in width. [Existing trees can be credited toward meeting the residential buffer requirement, per section](#)

(5.3-1(b)(6)(v), so long as the location and number of required trees is satisfied, or alternate compliance is demonstrated.

SECTION 2

THAT, it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 3

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 4

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

SECTION 5

THAT in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

SECTION 6

THAT this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office.

PASSED AND APPROVED: First reading this the 13th day of April, 2020.

PASSED AND APPROVED: Second reading this the 27th day of April, 2020.

CITY OF NEW BRAUNFELS

BARRON CASTEEL, Mayor

ATTEST:

PATRICK D. ATEN, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney