

ORDINANCE NO. 2021 - _____

AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS AMENDING CHAPTER 66, HISTORIC PRESERVATION, OF THE NEW BRAUNFELS CODE OF ORDINANCES, BY INSERTING SECTION 66-69, FOR THE PURPOSE OF PROTECTING HISTORIC AND HERITAGE TREES OF PROPERTIES AND/OR STRUCTURES DESIGNATED AS HISTORIC LANDMARK STRUCTURES, OR LOCATED WITHIN THE BOUNDARIES OF AN ESTABLISHED HISTORIC DISTRICT, BY THE CITY OF NEW BRAUNFELS; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, The State of Texas has enacted legislation empowering municipalities to preserve and protect historic places, structures, buildings, and areas of historical and cultural importance and significance; and

WHEREAS, the City Council of the City of New Braunfels, Texas is aware of the numerous places, structures, buildings, and areas having historical and cultural importance and significance which reflect the heritage of the City, State and its people; and

WHEREAS, the City Council is committed to promoting and protecting the heritage of New Braunfels for the future; and

WHEREAS, the City Council feels that the promotion and protection of such a rich heritage can be encouraged and accomplished by creating and adopting a tree protection ordinance for its designated historic landmarks and historic districts; and

WHEREAS, the Comprehensive Plan, Envision New Braunfels, has multiple action items supporting the regulation of tree preservation and promoting our historic and cultural districts, including Action Item 1.11: Update policies and codes to achieve development patterns that implement the goals of this plan. Action Item 1.2: Create plans for neighborhoods and transitional areas to maintain quality of life. Action Item 2.2: Prioritize areas that are best suited for conservation and preservation. Action Item 2.25: Increase resources for historic preservation. Action Item 5.17: Review and update Tree and

Landscape ordinances to ensure New Braunfels remains a green city and expands its tree canopy. Action 7.14: Increase tree canopy for increased shade to encourage walking.; and

WHEREAS, the Historic Landmark Commission encourages stabilization, restoration, and improvements of such properties and their values; and

WHEREAS, the Historic Landmark Commission feels that historic and heritage trees are character defining assets that are unique to designated historic landmarks and historic districts and are worthy of preservation; and

WHEREAS, the preservation of our city's cultural and historic resources is vital to our community's heritage; and

WHEREAS, the Historic Landmark Commission on December 12, 2020, recommended the following amendments to Chapter 66 Historic Preservation;

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

SECTION 1

THAT, Section 66, Historic Preservation, of the New Braunfels Code of Ordinances, City of New Braunfels, Texas is hereby amended by adding the following thereto:

Section 66-69 Tree Preservation and Protection within Designated Historic Districts and Historic Landmarks

Section 66-69.1 Purpose

The purpose of this section is to encourage the protection and preservation of existing protected, heritage, and historic trees located within the boundaries of designated local historic districts and local historic landmarks. In addition to the numerous benefits trees provide to the urban landscape, trees provide signification contributions to the unique character of historic districts and properties. Protection and preservation of historic assets within historic districts and historic landmarks is essential to preserving the character of the local community.

Section 66-69.2 Jurisdiction

The terms and provisions of this article shall apply to all properties within designated local historic districts and designated local historic landmarks within the city limits of the City of New Braunfels.

Section 66-69.3 Definitions

For the purposed of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Diameter at breast height or DBH generally means the diameter in inches of a tree as measured through the main trunk at four and a half feet above the ground level. If there are multiple trunks, diameter at breast height is calculated as the diameter of the largest trunk plus one-half the sum of all subsequent trunks. If there is branching that creates a widening of the trunk at four and a half feet above the ground level, measure diameter at the narrowest point directly below the branching.

Heritage Tree means any tree that is unique to the individual historic district or landmark because of its size, age, or historic association as determined by the City Horticulturist/Arborist/Forester, Historic Preservation Officer and/or Historic Landmark Commission.

Historic Tree means any tree which has reached a DBH of 35 inches or is 75 years of age or older.

Protected Tree means any tree which is found within Appendix A Approved Plant List of Section 144-5.3 Landscaping, tree preservation, public trees and screening.

Qualified Arborist means any individual that has obtained the necessary education, experience, and qualification and is familiar with local fauna to accurately identify, assess, and provide recommendations on trees in the New Braunfels area.

Unprotected or Undesirable Tree means any tree that is found in Appendix B of Chapter 144-5.3-1 Landscaping, Tree Preservation, Public Trees, Screening, Fences, Buffering and Lighting.

Section 66-69.4 General Provisions

- (1) It shall be unlawful for any person or corporation to recklessly remove, or cause the removal of any protected, heritage, or historic tree without first submitting the appropriate application for a permit and securing approval in the form and manner specified by this chapter. An approved tree removal

permit is required prior to any person conducting activities.

(2) A tree removal permit is not needed if:

- a. The protected, heritage, or historic tree(s) is diseased or sustained damage, which was not recklessly inflicted by the owner, his agents or employees, in the form of a broken trunk, broken limbs or uprooting. Additionally a tree removal permit is not required if the tree creates a hazard to life or property.
 - i. Evidence showing that the tree is diseased, damaged, or is a hazard to life property shall be submitted to the Historic Preservation Officer for the removal of such trees. For these types of situations, no review by the Historic Landmark Commission is required.
- b. The tree to be removed is an unprotected or undesirable tree as found in Appendix B of Section 144-5.3 Landscaping, tree preservation, public trees and screening

Section 66-69.5 Tree Removal Permit Approval Authority and Appeal

- (1) The Historic Landmark Commission shall have the authority to approve a tree removal permit as it pertains to this ordinance.**
- (2) If a request to remove a protected, heritage, or historic tree(s) is denied by the Historic Landmark Commission, the applicant may appeal the denial to the Zoning Board of Adjustment, by filing written notice of such appeal, along with a nonrefundable fee of \$75.00, with the Planning and Development Services Department, within 60 days of the notice of denial. Hearings shall be conducted in compliance with the Texas Open Meetings Act.**
- (3) The Historic Landmark Commission and the Zoning Board of Adjustment may seek the testimony of a qualified arborist. If such expert testimony is requested by the Commission, it shall be provided by the City.**

Section 66-69.6 Application and Process for Tree Removal Permit

- (1) Prior to the commencement of any work that directly impacts or causes the removal or of a heritage, protected, or historic tree, the owner/applicant shall file an application for tree removal with the Historic Preservation Office.**
- (2) An application for tree removal permit must provide the following information:**
 - a. A survey indication of the location of the tree(s)

- b. A tree inventory including:
 - i. The diameter of the tree as measured at DBH
 - ii. The approximate drip-line area of the tree
 - iii. The species/common name of the tree
 - iv. If trees are to be preserved or removed, the reason for removal
 - c. A certified arborist report is highly recommended to verify condition of all trees and ensure viability and protection of preserved trees.
 - d. In the case of a Historic Tree, removal or impacts that may severely damage the tree will not be approved without a hardship provision. Evidence of a hardship provision must be provided by the application based on the following factors:
 - i. Whether there is a unique physical circumstance that requires the removal of the Historic Tree.
 - ii. Whether the preservation or mitigation of a Historic Tree unduly burdens the property.
 - iii. Whether the removal of a Historic Tree is necessary to preserve a historic dwelling, building, or other historic asset of the property or district in question.
- (3) Where practical, an application for the removal of a heritage, historic, or protected tree shall be combined with any other applications applicable to review by Chapter 66.
- (4) Upon receipt of an application to remove a heritage, protected, or historic tree the Historic Landmark Commission shall review the application at a regularly scheduled meeting within 45 days from the date the completed application is received. An application cannot be considered until it has been deemed complete by the Historic Preservation Office. The Commission has the authority to approve, deny, or approve with modifications the application, after a public hearing and testimony from the applicant and the public on the request. In the event the commission does not move to consider the application within 90 days of its receipt, the application shall be granted.
- (5) All decisions of the Commission shall be in writing and a copy shall be sent to the applicant.

Section 66-69.7 Heritage, Protected, and Historic Tree Replacement

Removal of any protected, heritage, or historic tree(s) will require a tree removal permit and replacing or replanting of the tree(s) on site, or within a Historic District or at a Historic Landmark.

- 1) As much as is feasible, replanting shall be made to restore the natural landscape of the area
 - a) Removed Protected Trees shall be replanted at a replacement ratio of one half inch (1/2) DBH for each one inch DBH of the removed tree.
 - b) Removed Heritage Trees shall be replanted at a replacement ratio of one half inch (1/2) DBH for each one inch DBH of the removed tree.
 - i. Heritage trees must be of the same species or another tree species predominant in the district.
 - c) Historic trees shall be preserved and cannot be removed without a hardship provision as defined in Section 66-69.6-f is applied for and the tree removal permit is approved by the Historic Landmark Commission.
 - d) In the case of removal, Historic Trees shall be replanted at a ratio of one inch DBH for each one inch DBH of removed tree.
- 2) Protected, heritage, or historic tree(s) can be transplanted on the subject site, within a designated historic district, or at a historic landmark as a condition of the tree removal permit approval. Transplanting trees requires a transplanting and tree care plan as part of the application packet provided by a Certified Arborist.
- 3) Tree replacement must occur at the completion of construction projects or within 6 months of the removal of a protected, heritage, or historic tree. The Historic Preservation Officer may grant extensions up to 6 months at a time upon request of the applicant, for issues such as construction delays.
- 4) Replacement trees that do not survive for a period of at least 24 months shall be replaced by the original applicant for removal until they survive a 24-month period.
- (1) Tree Replacement Mitigation Fund. In the event that a protected, heritage, or historic tree cannot be replanted, a payment in lieu of replacement can be reviewed and approved by the Historic Landmark Commission. The funds shall be used for the purchasing, planting, and maintenance of trees on site, within a historic district, or within an approved location such as open space or a city park.
 - a. The amount of payment required shall be determined by the per caliper inch of tree being removed and the average cost of planting the tree as determined by the City Arborist or City Forester. A payment schedule of fees shall be published by the Parks and Recreation department every 3 years with the update of the Parks Ordinance.

- b. Should the replacement tree be located on city property or city park/open space, the city shall be responsible for the purchasing, planting, and maintenance of the tree(s) after the applicant has paid the required amount into the Tree Replacement Mitigation Fund.
- c. Tree replacement mitigation fees shall be paid prior to the issuance of a tree removal permit.

Section 66-69.8 Penalties. The violation of any provision of this Section shall be a misdemeanor and shall be punishable, upon conviction, by a fine of not more than \$2,000.

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 8th day of March, 2021.

PASSED AND APPROVED: Second reading this the 22nd day of March, 2021.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

Caitlin Krobot, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney