

ORDINANCE NO. 725

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS AMENDING CHAPTER 53, ZONING ARTICLE V- LANDSCAPING AND SCREENING REQUIREMENTS TO AMEND AND ESTABLISH SECTION 53-995 TREE ORDINANCE; AUTHORIZING THE CITY SECRETARY TO AMEND ORDINANCE 438 OF THE CITY OF KYLE SO AS TO REFLECT THIS CHANGE; PROVIDING FOR PUBLICATION DATE; PROVIDING FOR SEVERABILITY; AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED AS OPEN TO THE PUBLIC AS REQUIRED BY LAW

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

Section 1. Authority. This Ordinance is adopted pursuant to the police powers of the City of Kyle and under the authority of the City Charter of the City, and the Constitution and general laws of the State of Texas, including particularly Chapter 211, Tex. Loc. Gov't. Code

Section 2. Amendment of Chapter 53, Article V. The City of Kyle Zoning Ordinance is hereby modified and amended to amend and establish a tree ordinance which establishes requirements for clearing of natural vegetation, removal/mitigation of trees, exceptions to mitigation and permits, tree protection standards on construction sites, incentives for retaining trees, and penalties for not adhering to the ordinance as established in Exhibit A.

Section 3. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the City of Kyle Code.

Section 4. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

Section 5. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on First Reading this 16 day of April, 2013.

FINALLY PASSED AND APPROVED on this 8th day of May, 2013.

ATTEST:


Amelia Sanchez, City Secretary

CITY OF KYLE, TEXAS



Lucy Johnson, Mayor

EXHIBIT A- Section 53-995 TREE ORDINANCE

(a) Purpose.

The purpose of this Article is to conserve, protect and enhance existing trees and natural landscape that are healthy and contribute to a safe and livable community. It is recognized that the preservation of existing trees contributes to the overall quality of life and environment of the City. Trees play a vital role in water and air quality. They protect the health of aquifers and creek watersheds, function in storm water management as well as erosion and dust control, abatement of noise, provision of wildlife habitat and enhancement of property values. This section establishes requirements for the following:

- Clearing of natural vegetation
- Removal/mitigation of trees
- Exception to mitigation/permits
- Tree protection standards on construction sites
- Incentives for retaining trees
- Penalties

(b) Applicability.

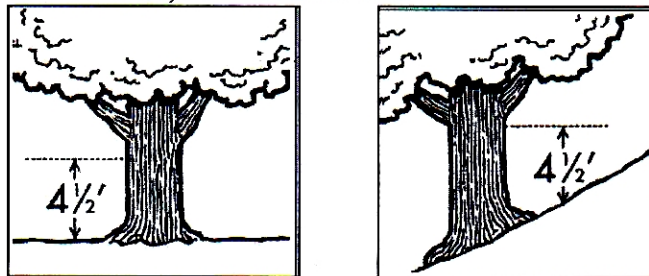
The provisions of this section are applicable to the following:

- All new residential and nonresidential development within the City.
- Redevelopment of any residential or nonresidential property within the city limits that results in an increase in building footprint or total destruction and reconstruction (not applicable to existing development wanting to remove a tree)

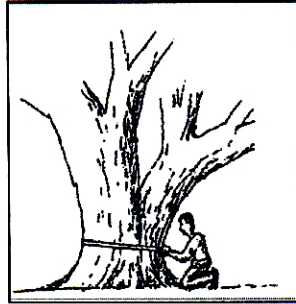
(c) Definitions.

For the purposes of this code, the following definitions will be used:

- (1) Caliper- shall mean the American Association of Nursemeymen standard for trunk measurement (diameter) for nursery stock. Caliper of the trunk shall be measured six (6) inches above the root ball for four-inch caliper size and smaller, and twelve (12) inches above the root ball for larger sizes.
- (2) Circumference –Is measured 4 ½ feet from the ground's level surface or directly below the first branches, whichever is lower.

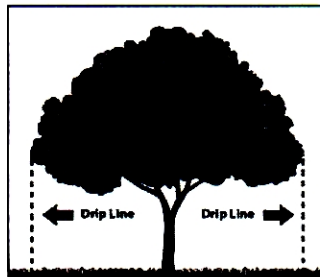


* If the tree is on a slope, measure from the high side of the slope

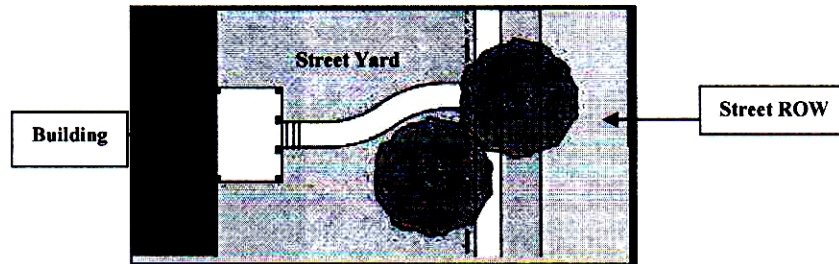


For multiple trunk trees, the circumference is deemed to equal the circumference of the largest trunk plus half the circumference of each additional trunk. For example, a tree that has three trunks with circumferences of 22", 18", and 12" you would have a circumference of 37 "(22" + (1/2 x 18") + (1/2 x 12")).

- (3) Clearing – means the act of cutting down, removing all or a substantial part of, or damaging a tree or other vegetation that will cause the tree to decline and/or die (which includes but is not limited to chemical, physical, compaction or grading damage).
- (4) Critical Root Zone- The root protection zone is an area with a radius of one-half foot for each inch of trunk measured four and one-half feet above the ground, or if branching occurs at four and one-half feet, the diameter is measured at the point where the smallest diameter closest to the branching occurs. The zone need not be exactly centered around the tree or circular in shape, but it should be positioned so that no disturbance occurs closer to the tree than one-half of the radius of the zone or within five feet of the tree, whichever is more.
- (5) Drip Line- A vertical line extending from the outermost portion of the tree canopy to the ground.



- (6) Protected Tree- Trees with a circumference of twenty-eight (28) inch or greater
- (7) Public Tree- All trees partially or completely resting on public property.
- (8) Removal of Tree – means an act that causes or may be reasonably expected to cause a tree to die, including, but not limited to: uprooting, severing the main trunk, damaging the root system by machinery, storage of materials or soil compaction; substantially changing the natural grade above the root system or around the trunk; paving with concrete, asphalt, or other impervious materials in a manner which may reasonably be expected to kill the tree
- (9) Specimen Tree- Trees with a circumference of seventy-five (75) inch or greater
- (10) Street Yard- The area behind the street right-of-way (ROW), and in front of any building on private property is known as the street yard.



(d) Requirements

- (1) Clearing or stripping of natural vegetation on a lot is expressly prohibited. Any part of a site not used for buildings, parking, driveways, walkways, utilities, on-site septic facilities (OSSF) and approved storage areas shall be retained in a natural state, or reclaimed to its natural state.
- (2) The following trees are exempt from mitigation requirements of this section:
 - Celtis Occidentalis (hackberry)
 - Juniperus Virginiana, Juniperis Ashei (Common Cedar)
 - Chinaberry
 - Mesquite
 - Ligustrum
- (3) The removal of any tree with a circumference of twenty-eight (28) inches or larger must be specifically requested by the applicant and approved in writing by the Director of Planning prior to any action being taken to remove the tree or to damage or disturb the tree in any way. The location of all trees over twenty-eight (28) inches in circumference to be preserved or removed within the area proposed for development shall be designated at one of the following steps in the development process:
 - On an application for a site plan for non-residential and multi-family developments;
 - On a tree survey at the time of platting for development seeking to install infrastructure; or
 - At the time of building permit for residential lots already platted and seeking to develop or redevelop

Removal of any such trees without City approval is expressly prohibited. Such trees shall be tagged and numbered, and numbers shall be graphically depicted on the applicable plan submitted. The tags and related numbers shall remain on the trees until the Certificate of Occupancy is issued.
- (4) Trees over twenty-eight (28) inches in circumference but less than seventy-five (75) inches in circumference that are not located in one of the following areas shall be replaced on-site at a ratio of two-and-one-half trees per tree removed and shall be credited toward the number of trees required for site development:
 - within a building footprint
 - within 10 feet of a building footprint
 - within the area over the septic system
 - within areas necessary for reasonable site access

- within areas designated for the construction or installation of public facilities such as streets or utilities, that the property owner requests and receives approval to remove may be removed

Replacement trees shall have a minimum circumference of twelve (12) inches (4 inch caliper tree). If 2 inch caliper trees are utilized for mitigation then trees must be replaced at a ratio of five trees per tree removed.

- (5) The removal of specimen trees, which for the purposes of these requirements are trees with seventy-five (75) inch circumference or greater, must be specifically approved by the Planning and Zoning Commission prior to any action being taken to remove the tree or to damage or disturb the tree in any way. Any specimen tree that is removed shall be replaced circumference-for-circumference (a ratio of one-to-one) regardless of the location of the specimen tree (even if the tree is within the building footprint).
- (6) Trees must be planted prior to the issuance of a Certificate of Occupancy unless a bond for the cost of the trees is posted with the City. If a bond is posted the property owner shall have up to 12 months to plant the required trees. Trees may be donated or a fee-in-lieu of planting the required trees may be paid to the City of Kyle if the following conditions exist:
 - a. There is not adequate space on the site for all of the required trees to be planted on the site in which the tree(s) were removed.
 - b. Weather conditions are such that do not make it favorable for the required planted trees to survive and thrive.

Species, size, quantity, and delivery date of trees shall be approved by the Director of Parks and Recreation.

(e) Exemptions to Mitigation

- (1) Trees over twenty-eight (28) inches in circumference but less than seventy-five (75) inches in circumference that are located within a building footprint or within ten (10) feet of a building footprint, within the area over the septic system, or within areas necessary for reasonable site access (but not including parking areas), such as a driveway, shall not be required to be replaced.
- (2) Trees over twenty-eight (28) inches in circumference but less than seventy-five (75) inches in circumference that are located within areas designated for the construction or installation of public facilities such as streets or utilities, shall not be required to be replaced, but must still submit a formal request for removal with the submittal of public improvement construction plans.

(f) Tree Removal Permit

(1) The removal of an existing tree(s) from a development site must be in accordance with this and all other applicable ordinances of the City. Prior to the removal of any protected or specimen tree, as defined within this section, the property owner must first submit a letter detailing the following:

- Which tree(s) will be removed (as shown on a Site Plan)
- How the removal will be performed (and machinery and equipment needed), and the date and time when the anticipated removal will occur.
- If a specimen or protected tree proposed for removal is within or not within the following:
 - a building footprint or within ten (10) feet of a building footprint,
 - within the area over the septic system
 - within an area necessary for reasonable site access
 - within an area designated for the construction or installation of public facilities such as streets or utilities

(g) Onsite Tree Protection Requirements

(1) All protected trees within or next to an excavation site or construction site for any building, structure, or street work, shall be guarded with a good substantial protective fence, frame, or box not less than four (4) feet high and surrounding the drip line of the tree. In addition, (3) inches of mulch or compost shall be spread beneath the drip line of the tree when the drip line is completely fenced off and 8-12 inches of mulch if there will be any encroachment within the area under the drip line of the tree.

(2)The barriers other than what is required per this ordinance shall be approved by the Building Official and shall be in place before any site clearance or other site-disturbing act commences.

(3) All building material, dirt, excavation or fill materials, chemicals, construction vehicles or equipment, debris, and other materials shall be kept outside the barrier.

(4)Barriers shall remain in place until the final building and landscape site inspections are satisfactorily completed for the issuance of the Certificate of Occupancy.

(5)Activities hazardous to the health of any protected tree being preserved are prohibited, including but not limited to the following:

- Physical damage
- Equipment cleaning and liquid disposal. Cleaning equipment, depositing or allowing harmful liquids to flow overland within the limits of the critical root zone. This includes paint, oil, solvents, asphalt, concrete, mortar, tar or similar materials.
- Grade changes. Grade changes (cut or fill) within the limits of the critical root zone.
- Material storage. Storing materials intended for use in construction or allowing waste materials due to excavation or demolition to accumulate within the limits of the drip line.
- Tree attachments. Attaching to a tree any signs, wires, or other items, other than those of a protective nature.
- Vehicular traffic. Vehicular and/or construction equipment traffic, parking, or storage within the limits of the drip line, other than on pre-existing or approved pavement. This restriction does not apply

to single incident access within the drip line for purposes of clearing underbrush, vehicular access necessary for emergency services, routine utility maintenance, emergency restoration of utility service, or routine mowing operations.

- Utility encroachment. Installation of utilities and appurtenances within the drip line.
- Excavation and trenching. Excavation and trenching within the limits of the drip line.

(h) *Incentives for Retaining Trees*

1. *Application.* The provisions of this Section apply to all new nonresidential and Multi-family Development within the City of Kyle limits.
2. *Incentives to Retain Existing Trees.* As an incentive to retain existing trees in the street yard, existing trees shall receive credit against the landscaping requirements according to the following schedule:
 - a. Greater than 28-inch circumference: credit for two required trees.
 - b. Greater than 12-inch but less than 28-inch circumference: credit for one-and-one-half trees.
 - c. Any existing tree in the street yard which is at least 18 inches in circumference and at least 15 feet tall shall be considered as two-and-one-half trees for the purposes of satisfying the requirements of landscaping code.
 - d. Any existing specimen tree (75-inch circumference or greater) shall be considered as a circumference-for-circumference match for the purposes of satisfying the requirements of the landscaping ordinance. For example, a 75 inch circumference tree can be counted for up to 12 trees each that have a six-inch circumference.

(i) *Penalty.*

Any person who shall violate any provision of this ordinance or technical codes adopted herein, or shall fail to comply therewith, or with any of the requirements thereof shall be liable for a fine not to exceed the sum of two thousand dollars (\$2,000.00). Each tree removed and each day the violation exists shall constitute a separate offense.