

**ORDINANCE NO. 2009-23**

**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 public hearing, before the Planning and Zoning Commission of the City of Boerne has additionally demonstrated a desire by the public for such basic regulations, 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. Definitions
  - Section 02. Applicability
  - Section 03. Pre-Application Conference
  - Section 04. Adoption of Subdivision Regulations
  - Section 05. Procedures for Development Plat
  - Section 06. P&Z Review
  - Section 07. Scope for Approval
  - Section 08. Filing for Record
  - Section 09. Amendments
  - Section 10. Variances
  - Section 11. Penalty
  - Section 12. Effective Date
-

**SECTION 01. DEFINITIONS:**

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

**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:** Term as defined in Section 212.043 of the Texas Local Government Code and any amendments thereto.

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

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

**SECTION 02. APPLICABILITY**

**A. Development Plat Not Required**

1. The tract of land being developed part of a subdivision plat currently on file in the real estate records of the county.
2. Proposes the development of a tract of land for a single family residence on a tract of less than 90,000 sq. ft. located in the ETJ of the City.

**B. Development Plat Required**

1. Pursuant to VTCA Local Government Code §212.041, the City hereby chooses by ordinance to be covered by Subchapter B of VTCA Local Government Code Chapter 212. A development plat in the form of a boundary survey is required:

If the development is located in the city limits or in the ETJ of the City and proposes development of the following:

- a. A tract of land for commercial use;
- b. a tract of land for a single family residence on a tract of more than 90,000 sq. ft.;

- c. either of the above (1.a or b) developments for a tract of land is not required to file a subdivision plat as required in the City's current Subdivision Ordinance; or
  - d. a tract of land which 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.
2. New development may not begin on the property until the development plat is filed with and approved by the P&Z.

### **SECTION 03. 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 04. 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 - Open Space System Plan**  
**Appendix C – Landscape Requirements**  
**Appendix D – Traffic Impact Analysis (TIA) Ordinance**

**SECTION 05. PROCEDURES FOR DEVELOPMENT PLAT**

**A. Preliminary Submission.**

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

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.
2. Three sets of preliminary erosion and construction sequencing plans and specifications for the construction of all utility and subdivision improvements required by the Subdivision Ordinance, including detailed cost estimates for the construction of all subdivision improvements prepared by designers of the improvements.
3. Letters/memos from all necessary review agencies having jurisdiction over improvements required or desired in the subdivision, including:
  - A. City of Boerne Public Works;
  - B. City of Boerne Utilities;
  - C. Bandera Electric Co-op and/or Pedernales Electric Co-op;
  - D. Texas Department of Transportation, if any state right-of-way is involved in streets or access points;
  - E. Cow Creek Ground Water Conservation District;
  - F. Cable and telephone wire services;
  - G. Kendall County, if any county right-of-way is involved in streets or access points;
  - H. any other State or public agency approval with jurisdiction over improvements desired in the subdivision.

3. 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 filing of the plat or should the plat be disapproved.
4. An Illumination Plan submission (Appendix A).
5. A letter from the Kendall County Engineers office verifying the right-of-way width of any adjacent county road.
6. If applicable, a letter from the Kendall County Development office verifying approval of the On-site Sewage Facilities (OSSF) design for the intended use.
7. An Open Space System Plan meeting the requirements of the City's Subdivision Ordinance, Article 3, Section 3.03 (Appendix B).
8. A tree survey for all property subject to the application that documents the presence of all Signature Trees and Heritage Trees (Appendix C).
9. A Traffic Impact Analysis (TIA) meeting the requirements of the City's TIA ordinance (Appendix D).
10. A development 10 acres or larger shall also include a written inventory of existing natural features reflective of the Hill Country character, which corresponds the Preliminary Plat and proposed Open Space System Plan. The inventory shall include historical or archeological areas, significant stands of mature trees and special designation of Heritage Trees, areas of habitat for endangered or threatened species of plants and animals, distinctive geological and topographical features, and important scenic view corridors or areas.
11. A check for recording fees in the amount of \$45.00 per page.

**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.
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 front building setback lines shall be demonstrated, including, if applicable rear and side setback lines, 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.
19. Plat note pertaining to the presence of Heritage Trees located within the property represented by the plat.
20. The location of Signature and Heritage Trees on the property represented by the plat.

**C. Notice of Administratively Complete Application.**

Within 7 calendar days of submittal of a development plat, the City staff shall notify the applicant if the application is administratively complete. Any deficiencies in the submittal requirements shall be specifically identified in the notice, including the methods to correct the deficiency. Any deficiency shall stay all time requirements of the application process until they have been cured by the developer and re-submitted to the City Manager or his designee.

**D. Staff Review and Comments.**

City staff shall review an administratively complete application for a development plat to see that it conforms with all requirements of this ordinance. City staff shall provide written comments or a notice of extension to the developer within 14 calendar days of submittal of an administratively complete application.

**E. Formal Filing and Final Submission.**

Upon receipt of the review comments by staff, or upon failure of the City to provide written comments or a notice of extension, and ten (10) days prior to the P&Z meeting, the developer may make formal filing to the P&Z, including any revisions or corrections suggested by staff. The formal filing shall contain the following:

1. Twenty (20) folded and stapled copies of the final plat plus one 8½ x 11 black and white copy suitable for making overheads.
2. At least three (3) Mylars of the final plat for recording, plus an original, notarized affidavit showing the taxes have been paid, including the paid tax statement from the Kendall County Appraisal District.
3. A check for recording fees in the amount of \$45.00 per page.
4. Two copies of the digital file of the final plat in a format specified by the City Manager or his designee, and one copy of the final plat in .pdf format.
5. If applicable, financial guarantees in an acceptable form according to the City's Subdivision Ordinance, Article 2, Section 2.03.003.

**SECTION 06. P&Z REVIEW.**

The P&Z shall review the development plat at the scheduled meeting for the following criteria.

- A. Compliance with the Master Plan of the City and its current Thoroughfare Plan for the extension of major thoroughfares, streets, and public highways within the City and in its ETJ, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;
- B. The rules and regulations contained within this ordinance; and
- C. Any general plans, rules, or ordinances adopted by the City which comply with the requirements of 212.047 of the Texas Local Government Code and any amendments.

Based on these criteria, the P&Z shall approve or disapprove the development plat within 30 days of the formal filing to the P&Z.

**SECTION 07. SCOPE OF APPROVAL**

**A. Final approval does not constitute dedication**

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.

**B. Impact Fees**

New development may not begin on the property until all impact fees have been paid as required by the City's Impact Fee Ordinance in effect at the time of development.

**C. Building Permits/Septic Tank Approval**

The City, a county, or an official of another governmental entity may not issue a building permit or any other type of permit for development on lots or tracts subject to this section until a development plat is filed with and approved by the P&Z. Applicants for development plat approval may also require approval by Kendall County for septic facilities.

**SECTION 08. FILING FOR RECORD.**

The City shall file the approved development plat for record and provide the developer with one reproducible recorded tracing of the development plat within 14 calendar days of the Commission meeting at which the plat is approved.

**Section 09. AMENDMENTS.**

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 06 of this chapter 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 in accordance with Section 10.E, 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.

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) 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 \_\_\_\_ DAY OF \_\_\_\_\_  
2009.

PASSED AND APPROVED AND ADOPTED THE 28th DAY OF JULY  
2009.

**APPROVED:**

/s/ Dan Heckler  
Mayor

ATTEST:  
/s/ Linda S. Zartler  
City Secretary

APPENDIX A TO DEVELOPMENT PLAT REGULATIONS

ILLUMINATION PLAN

SECTION 02. OUTDOOR LIGHTING.

3.02.001 **Applicability.**

All public and private outdoor lighting installed in the City of Boerne 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:*** 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.
  - 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 p.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.

B. **Class 2 Lighting.** Class 2 Lighting shall apply to all outdoor lighting where general illumination for safety and security of grounds is the primary concern and color rendition is not required to preserve the effectiveness of the application.

1. **Parking Lots.** Parking lot lighting shall be designed to provide the minimum lighting necessary to ensure adequate vision, security and comfort in parking areas, and to not cause glare or direct illumination onto adjacent properties or streets. Any light source permitted by this ordinance may be used for parking lots located in any Lighting District, provided the following conditions are met:
  - a. Luminaires used for parking lot 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.
  - 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.
  - c. Only high pressure sodium or LED (with approval of the City Manager) lighting fixtures may be installed after the effective date of this ordinance.
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.
  - 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.
3. **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.
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 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 shall 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.
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 else where 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.

**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.
  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.

## Development Plat Regulations 2009

- 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 variance request procedures contained in the City of Boerne's Development Plat Regulations. 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, nor 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;
  - 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, or low intensity neon, 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) 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 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 Development Plat Regulations.

APPENDIX B TO DEVELOPMENT PLAT REGULATIONS

OPEN SPACE SYSTEMS PLAN

SECTION 03. OPEN SPACE SYSTEMS.

3.03.001 Specific Intent.

It is the specific intent of this Section to:

- A. Value the design, function, appropriate application, and perceptual impact of different types of open space, rather than solely the quantity of space.
- B. Recognize open space, whether public, common, or private, as an important element of the civic infrastructure of the City and the primary determinant of the Hill Country character.
- C. Consider the context and multiple functions that open spaces can serve to support development.
- D. Develop a greater perceived impact from open space by coordinating the design and location of open spaces among adjacent sites and within a coordinated system, and develop a community-wide Civic Open Space System.
- E. Create meaningful connections between people and open space, and increase citizens' access to a wider variety of quality open spaces to meet recreation and social needs of the community.
- F. Relate constructed elements on streets, blocks, and lots, to the open space and create focal points for the community, neighborhood, district, or development site where these systems intersect.
- G. Integrate natural systems into the design of common or public open spaces to allow open space to serve multiple aesthetic, recreational, and ecological functions.

3.03.002 Required Open Space.

Minimum required open space shall be provided according to Table 3-10. This space shall be in addition to any setback, landscape requirements, or other site design requirements of any individual lot or site required by the development plat regulations. No land shall be reserved by the applicant or included in the plat as open space unless the land is of sufficient size and shape and topographically suitable to be of some practical use or service as part of a complete Civic Open Space System to support the development, as determined by the City. The City shall use the description, recommended size, and applicability guidance in Table 3-11: Open Space Design Types and Standards to make this determination. Required open space may be in private, common, or public ownership unless otherwise specified in these regulations.

- A. **Amount.** The amount of open space required shall be based upon the development pattern indicated in the Boerne Master Plan, and as specified in Table 3-10.

TABLE 3-10: REQUIRED OPEN SPACE	
CONTEXT / DEVELOPMENT PATTERN*	AMOUNT
RURAL RESIDENTIAL	No requirement; EXCEPT that Rural Cluster subdivisions shall meet the open space requirements of Article 4.
LOW-DENSITY RESIDENTIAL AND NEIGHBORHOOD RESIDENTIAL	20% of the gross area of the development parcel; EXCEPT that Rural Cluster subdivisions shall meet the open space requirements of Article 4.
CENTERS AND SPECIAL DISTRICTS	250 square feet per dwelling unit; AND 5% of all building footprints and areas of impervious surface dedicated to vehicle access and parking. [*NOTE: any parking lot design, buffer and landscape requirements are in addition to this Civic Open Space System requirement.]

\* Per Boerne Master Plan

- B. **Required Open Space.** Those areas identified in the City of Boerne Open Space/Greenbelt Master Plan as well as those areas identified in Section 2.02.001.F shall be part of the required Open Space.

C. **Eligibility Exclusions.** In calculating the area of open space, the following shall be excluded from the open space:

1. Any parking areas and vehicle access areas necessary to serve the open space, unless an approved porous surface is used.
2. Any required rights-of-way, except that where additional civic amenities are provided in the right-of-way in addition to those specified in the typical street cross-sections of Section 3.02. Elements of the right-of-way where a civic amenity may be increased and counted towards Civic Open Space are designated by “(+)” in Appendix A. For example, where a street is platted with a *Neighborhood Parkway Design Type*, and a 30-foot median is used instead of the minimum 12-feet, the additional area may count towards the open space requirement.
3. Storm water system facilities required by Article 6, except the following may be considered in the Civic Open Space System:
  - a. Areas for natural drainage systems used for storm water facilities may be included in Natural Areas, Greenways, Parks or Greens which meet the Design Type and Standards in Table 3-11;
  - b. Areas for detention designed and engineered as a permanent aesthetic and recreation amenity within one of the other open space types, and where the permanent surface water areas do not exceed 25% of the open space area; or
  - c. Areas for retention designed and engineered to serve some other primary purpose as one of the open space types specified in this section, and the frequency and duration of standing water does not restrict the areas primary use on a regular basis.
4. Utility easements required by Section 3.04.005., and Articles 5, 6, and 7, except where they are primarily designed as one of the open space types specified in Table 3-11, and the utilities are located under ground and the easement acknowledges the primary design and use of the area as part of the Civic Open Space System.
5. Land lying in the floodway or flood plain may only be included if it is left in a natural state subject to the stands for Natural Areas in Table 3-11, and shall only count towards a maximum of 75% of the open space requirements of Table 3-10.

D. **Exceptions.** The following are exceptions to the open space requirement in Table 3-10.

1. *Small Infill Subdivision.* Any residential subdivision in the City Limits at the date of adoption of this ordinance, and which is less than 10 acres total shall be exempt from the open space requirements of Table 3-10.
2. *Existing Public Open Space Credit:* Any application within the service areas specified in Table 3-11 of any existing public opens space may receive a credit for this open space provided the City determines that it is of a sufficient capacity and design standard to serve the additional proposed development.
3. *Existing Shared Common Open Space Credit:* Any application within the service areas specified in Table 3-11 of any existing common open space may receive a credit for this open space provided documentation is shown granting legal access to the open space and the open space has excess capacity according to the open space requirements in Table 3-10, considering all existing development with legal access to the common open space.

**3.03.003            Design Types and Standards.**

In meeting the requirements for Civic Open Space System, open space shall be designed and located based upon the standards and guidance in Table 3-11:

<b>TABLE 3-11: OPEN SPACE DESIGN TYPES AND STANDARDS</b>
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## Development Plat Regulations 2009

	<b>DESCRIPTION</b>	<b>RECOMMENDED SIZE</b>	<b>APPLICABILITY</b>
<b>NATURAL AREA</b>	An undeveloped area that contains significant natural features or habitat worthy of preservation, and which provide environmental, aesthetic, and recreational benefits. Features such as large stands of trees, water elements, or prominent topography characterize Natural Areas. It contains little or no constructed improvements or maintained landscape other than trails to access the Natural Area.	The size of a Natural Area should be based on the site characteristics and potential continuity of similar natural features in the area, along with the potential to connect to adjacent natural areas.	<ul style="list-style-type: none"> <li>▪ Rural Residential areas</li> <li>▪ Low-Density Residential areas</li> <li>▪ Any Rural Cluster subdivisions</li> <li>▪ Any other area of natural amenity with regional significance.</li> </ul> <p><i>Service Area:</i> N/A, dependant on area of natural features</p>
<b>GREENWAY</b>	An undeveloped area of continuous linear natural features, often following a stream, floodplain, or road corridor. A Greenway should be usable for recreation and non-motorized transportation through pedestrian multi-use trails. It includes few constructed improvements except for those to enhance travel or recreational use.	Greenways should be at least 1 linear mile but sized and located based on opportunity to provide greater significant continuity throughout a development and to areas beyond the development area. Greenways should be at least 30 feet wide at all locations, and wider where natural features warrant.	<ul style="list-style-type: none"> <li>▪ Rural areas</li> <li>▪ Alternative (off-street) transportation routes between neighborhoods and centers.</li> <li>▪ Along major streets in the network as expanded ROW;</li> <li>▪ Used to preserve linear natural features in more densely developed Neighborhoods and Centers.</li> </ul> <p><i>Service Area:</i> N/A, dependant on linear features</p>
<b>PARK</b>	An undeveloped area for unstructured recreation. A Park has a predominantly natural landscape although small portions may be designed and constructed for aesthetic purposes, formal gatherings, and structured recreation purpose.	1 to 5 acres within neighborhoods; Larger for community or regional parks.	<ul style="list-style-type: none"> <li>▪ Low-density Residential</li> <li>▪ Neighborhood Residential</li> <li>▪ Centers</li> <li>▪ Special districts</li> </ul> <p><i>Service Area:</i> Neighborhood Parks (1 to 5 acres) = ¼ mile Community Parks (more than 5 acres) = 1 mile</p>
<b>GREEN</b>	An open space for unstructured recreation or aesthetic landscaping. A Green is bordered by public right-of-ways on at least 3 sides. Front building facades and/or formal edge landscaped elements define any boundaries of the Green not bordered by public rights-of-way. Generally there are few constructed elements except for small gathering places created as a focal point for the Green.	½ acre to 3 acres	<ul style="list-style-type: none"> <li>▪ Neighborhood Residential</li> <li>▪ Centers</li> <li>▪ Special districts</li> </ul> <p><i>Service Area:</i> within two blocks and no more than 1000 feet.</p>
<b>PLAZA</b>	An open space for civic purposes and formal gathering. A Plaza is bordered by public right-of-ways on at least 2 sides. Building facades define any boundaries of a Plaza not bordered by public rights of way. A Plaza is largely comprised of constructed of materials to withstand heavy pedestrian traffic and gathering, but contains intermittent lawns, landscape beds, or trees in a formal ornamental pattern.	500 square feet to ¼ acre	<ul style="list-style-type: none"> <li>▪ Centers</li> <li>▪ Special districts</li> </ul> <p><i>Service Area:</i> within the same block or immediately adjacent block and no more than 600 feet.</p>
<b>COURTYARD</b>	A small open space accessible to the public streets but generally serving one or a few surrounding buildings. Courtyards are primarily bordered by building facades, but have at least one side fully or partially boarded by a public right-of-way. A Courtyard contains a balance of formal landscape features and constructed materials to withstand heavy pedestrian traffic and gathering.	400 square feet to 5000 square feet	<ul style="list-style-type: none"> <li>▪ Neighborhood Residential</li> <li>▪ Centers</li> <li>▪ Special Districts</li> </ul> <p><i>Service Area:</i> within the same block and no more than 300 feet.</p>
<b>POCKET PARK / GATEWAY</b>	A small open space with pedestrian access used for aesthetic landscaping, small informal	400 square feet to 3000 square feet	<ul style="list-style-type: none"> <li>▪ Low-density Residential</li> <li>▪ Neighborhood Residential</li> </ul>

<b>TABLE 3-11: OPEN SPACE DESIGN TYPES AND STANDARDS</b>			
	<b>DESCRIPTION</b>	<b>RECOMMENDED SIZE</b>	<b>APPLICABILITY</b>
	gathering and recreation. A Pocket Park / Gateway includes identifying architectural or public art features to establish a sense of entry or arrival. Pocket Parks / Gateways are often designed within or in close association of the right-of-way to emphasize transitions along a corridor, at entrances to a neighborhood or district, or to create a focal point on a block.		<ul style="list-style-type: none"> <li>▪ Centers</li> <li>▪ Special Districts</li> </ul> <p><i>Service Area:</i> within the same block and no more than 300 feet.</p>

**3.03.004            Location Criteria.**

The following location criteria shall be used in determining the most appropriate locations and characteristics of land to be designated as required open space within subdivisions of land.

- A. Priority should be given to areas that provided the most visible impact.
  - 1. Formal open space (Greens, Plazas, Courtyards, Pocket Parks/Gateways) should be located at prominent focal points within a subdivision or development site, and included in or designed as an effective extension of the public rights-of-way, or other common areas.
  - 2. Natural open space (Natural Areas, Greenways, Parks) should be located along prominent ridges, valleys and view corridors.
  
- B. Open space should be located to provide the greatest connectivity of open space systems with adjacent and future development sites.
  - 1. Formal open space (Greens, Plazas, Courtyards, Pocket Parks/Gateways) should be located according to an overall urban design theme for the area, considering where planned future transportation systems, block patterns, and key building and site entrances will be located for the site and for adjacent areas.
  - 2. Natural open spaces (Natural Areas, Greenways, Parks) should be located in areas that have the greatest potential for future expansion and connectivity to land areas with similar physical features and ecological characteristics on adjacent sites.
  
- C. Open space shall be located in areas that maximize its functional characteristics.
  - 1. Formal open space (Greens, Plazas, Courtyards, Pocket Parks/Gateways) shall be centered in areas that will have the greatest population density or development intensity in order to provide the greatest pedestrian accessibility possible.
  - 2. Natural open spaces (Natural Areas, Greenways, Parks) shall be located in areas where it's ecological, aesthetic, and recreational impact will be the greatest.

**3.03.005            Ownership and Management.**

Required open space shall require specific designation on the final plat, including the ownership and management disposition. Options for ownership and management of preserved area include:

- A. Dedication to the City or other public entity subject to acceptance by and at the sole discretion of the City or other public entity.
  
- B. Creation of or dedication to a non-profit entity capable of carrying out the ownership and management.
  
- C. Creation of a Homeowners and/or Leaseholders Association capable of carrying out the ownership and management.
  
- D. Private ownership provided the open space is platted as part of a defined lot in the subdivision, and includes covenants and other restrictions that will maintain the area as private open space.

**APPENDIX C TO DEVELOPMENT PLAT REGULATIONS**

**LANDSCAPE REQUIREMENTS**

- SECTION 01. PURPOSE
  - SECTION 02. APPLICABILITY OF LANDSCAPE REQUIREMENTS
  - SECTION 03. LANDSCAPE PLAN PROCEDURE
  - SECTION 04. REQUIREMENTS FOR PERMITS AND INSPECTIONS
  - SECTION 05. MINIMUM LANDSCAPE REQUIREMENTS
  - SECTION 06. PROTECTION DURING GRADING AND CONSTRUCTION
  - SECTION 07. PROTECTED TREES
  - SECTION 08. HERITAGE TREES
- 

**SECTION 01. PURPOSE.**

It is the purpose of this Article to establish requirements for landscape design and tree conservation to enhance the environmental and ecological performance and aesthetic quality of commercial and high density residential developments. This Article does not preclude the removal of any tree from either a proposed building site or the only practicable sites for ingress and egress from parking areas. This Article does not preclude the removal from parking areas of trees which are not protected trees; however, this does not relieve the owner from the requirement of a minimum ratio of trees to lot frontage stated in Subsection 4.05.003 of this Article.

**SECTION 02. APPLICABILITY OF LANDSCAPE REQUIREMENTS.**

**4.02.001. Uses and Zoning Districts Affected.**

Except as provided in Subsections 4.02.002 and 4.02.003 of this Section, all new construction, reconstruction or structural alteration of a building, structure or use in the following zoning districts and in the ETJ shall comply with the landscape plan review procedure in Section 4.03 of this Article:

R-4	Multi family residential districts
B-1	High density residential and neighborhood commercial districts
B-2/B-2R	Highway commercial districts
B-3	Central business district, except those lots which front U.S. Highway 87
O	Office District
MU-1	Mixed-use Neighborhood Center
MU-2	Mixed-use Community Center
RC	River Corridor district
I	Industrial districts
EC	Entrance Corridor Overlay district

In addition, all governmental uses shall comply with the landscape plan review procedure regardless of the zoning district in which they are located.

**4.02.002. Exceptions for Certain Buildings and Lots.**

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

- A. 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.

**4.02.003. Exception for Certain Small Lots.**

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Lots with an area of less than 10,000 square feet which were platted prior to January 1, 1987 shall be exempt from the requirements of Subsection 4.05.004 of this Article.

### **SECTION 03. LANDSCAPE PLAN REVIEW PROCEDURE.**

#### **4.03.001. Application and Fee Required.**

Prior to applying for a building permit, the applicant shall present to the City Manager a landscape plan for any lot or lots affected by Subsection 4.02 of this Article, and pay the fee established by City Council for review of the landscape plan.

#### **4.03.002. Plan Requirements.**

The landscape plan shall include the following:

- A. The date, scale, north point, project title, and name of property owner.
- B. The location of existing lot lines, setback lines, dimensions of the lot, and location of all proposed buildings and parking areas on the lot.
- C.. The location and size of existing and proposed streets and alleys and existing and proposed easements on or adjacent to the lot.
- D. 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.
- E. The location and species of all existing shade trees having a caliper of 8 inches or more and ornamental trees having a caliper of 4 inches or more.
- F. The following trees shall be marked on the landscape plan:
  1. *Protected Trees*
    - a. Ornamental trees with a caliper of 4 inches,
    - b. Shade trees with a caliper of 12 inches (Shade Tree is defined as a tree which is indigenous or adapted to this region of Texas, such as American Elm, Cedar Elm, Pecan, Cottonwood, Sycamore, and all varieties of Oak and Cypress, and which normally reaches a height at maturity of more than 20 feet)
    - c. Shade trees with a caliper of 8 inches located in the front yard or side yard setbacks.
  2. Signature trees (A shade tree having a caliper of 24 inches or more, that does not qualify as a Heritage Tree)
  3. Heritage trees (A tree that is one half the caliper for that species as listed in the Texas Forest Service (<http://txforestservice.tamu.edu>) Champion list for species native or naturalized to Texas in the Texas Big Tree Registry; or a Live Oak Tree that has 36 inches or larger caliper)
- G. The total number of existing and proposed On-site parking spaces, and a statement of the minimum number of On-site parking spaces required by this ordinance.
- H. 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.

## Development Plat Regulations 2009

- I. A description of the proposed watering methods for each part of the landscaped area.

### **4.03.003. Review by City Manager.**

The City Manager shall review the landscape plan within 10 working days to determine whether it meets the requirements of this Article. Upon completion of this review, the City Manager shall approve or disapprove the landscape plan, and notify the applicant of his/her determination. Upon receipt of notice that the landscape plan is approved, the applicant may then apply for a building permit.

### **4.03.004. Relief from Front Yard Requirements on Certain Lots.**

In submitting a landscape plan for review, an applicant in the ETJ or in the city limits of Boerne applying for a building permit for a project located in an R-3 or less restrictive zoning district may request relief from the requirements of Subsection 4.05 below by filing with the City Manager a written request that the landscape plan be reviewed by the Planning and Zoning Commission. The Planning and Zoning Commission shall then review the landscape plan at its next regularly scheduled meeting and determine what relief from the provisions of Subsection 4.05, 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 Subsection 4.05 should be granted, it shall grant the minimum relief which it considers necessary in order to achieve the purpose and preserve the essential spirit of this ordinance, and the record of the Commission's action shall state the rationale which justifies the relief which is granted. The City Manager shall then approve the landscape plan, provided that it complies with all other applicable requirements of this ordinance. Such approval shall be good for a period of 12 months.

## **SECTION 04. REQUIREMENTS FOR PERMITS AND INSPECTIONS.**

### **4.04.001. Building Permits.**

When an application is made for a building permit on any land where the requirements of this Article are applicable, such application shall be accompanied by a letter of landscape plan approval from the City Manager before the permit may be issued.

### **4.04.002. Inspections.**

The City Manager shall inspect each site for compliance with the approved landscape plan prior to the issuance of a certificate of occupancy.

## **SECTION 05. MINIMUM LANDSCAPE STANDARDS.**

### **4.05.001. Applicability of Standards.**

The following standards shall apply to the front yards of all lots on which a building permit is sought and new construction begins after the effective date of this ordinance in the ETJ or in the following districts: I, RC, B3 (except those lots which front on U.S. Highway 87), B2, B1, MU-1, MU-2, R4, and to the side yards of lots in the aforementioned districts located across a street or alley from an R2, RN-1, R1, RE, RE-1 or more restricted residential district.

### **4.05.002. Existing Shade and Ornamental Trees to be Protected.**

Existing shade trees with a caliper of 8 inches, and ornamental trees with a caliper of 4 inches, in the front yard or side yard, shall not be cut or otherwise damaged or destroyed except for On-site parking areas and driveways where no other reasonable location or design for the parking area or driveway is possible. Clearing or stripping of the trees in the front yard or in a side yard across a street or alley from an R-2 or more restrictive residential district is prohibited.

**4.05.003. 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 shade tree for every 40 linear feet of lot frontage (including a fraction above 20 feet). In order to be counted toward the achievement of this ratio, a shade tree must have a caliper of at least three inches. A newly planted shade 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.

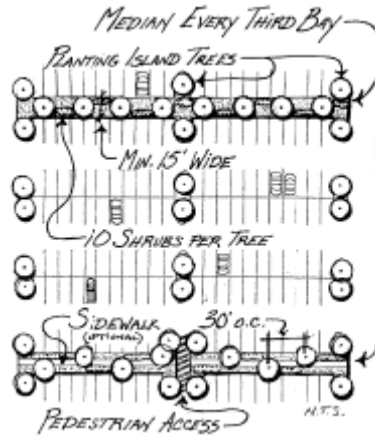
**4.05.004. Landscaping of Parking Areas.**

A. Parking for *Under 100 vehicles*: There shall be at least one 3" caliper shade tree planted for each 12 parking spaces, and a minimum of 100 square feet for each 12 parking spaces shall be devoted to landscaping islands, peninsulas or medians. A minimum of one shade tree of at least 3" caliper shall be planted in each such landscaped area. If a shade tree of 3" caliper or larger already exists in the landscaped area, there shall be no requirement to plant an additional shade tree. The location, size and shape of these islands, peninsulas, and medians shall be at the discretion of the owner within the following guidelines: They shall be more or less evenly distributed throughout the parking areas; however, their individual size, shape and location may be adjusted to accommodate existing trees or other natural features so long as the total area and tree requirements are satisfied. All landscaping which is in required landscaped areas adjacent to pavement shall be protected with concrete curbing or equivalent barriers such as car bumpers or railroad ties. Alternatively, the islands may be designed with a curbless or perforated curb system provided they are engineered to infiltrate run-off from the parking lot, such as a rain garden or bioswale.

B. Parking area for *Over 100 vehicles*:

A planting median shall be placed between every third parking bay of adjacent parking bays, at a minimum, to prevent traffic movement across parking isles.

1. The planting median shall be a minimum of 15 feet wide and may include a sidewalk, where necessary for pedestrian circulation.
2. The planting median shall contain the following vegetation, at a minimum:
  - a. One shade tree of at least 3" caliper, planted 35 feet on center, in a continuous or staggered row.
  - b. Ten shrubs for every tree required, planted in rows or clustered groups.
  - c. The planting median shall contain defined breaks, as necessary, to provide pedestrian circulation between bays of parking. The breaks shall allow for handicap accessibility from one side of the planting median to the other and onto the sidewalk within the planting median if a sidewalk is located within the median.



3. In addition to any other required plantings, all parking lot planting areas shall be planted with drought tolerant species normally grown as permanent lawns, such as Bermuda, Zoysia, or Buffalo. Grass areas shall be solid sodded. Mulch, stone, or similar materials may be used sparingly.

**4.05.005. Xeriscaping and Irrigation Requirements.**

Property owners are encouraged, but not required, to choose for all landscaped areas those plant species which are indigenous or adapted to this region and which have relatively low watering requirements, and to reduce the watering requirements of landscaped areas through shading, mulch beds and other design elements. If an irrigation system is not installed, a hose bib shall be provided within 100 feet of every landscaped area.

**4.05.006. Traffic and Safety Requirements.**

Landscaping shall not obstruct the view between the street and access drives and parking aisles near the front yard entries and exits, nor shall any landscaping which creates an obstruction of view be located in the radius of any curb return. The provisions of this Section shall be subordinate to the regulations of the City pertaining to traffic and pedestrian safety.

**4.05.007. Maintenance Requirements .**

All of the plants and landscaped areas which are components of an approved landscape plan shall be maintained in a healthy condition at all times. The property owner shall weed, mow, water, fertilize, prune and perform such other maintenance of the plants and landscaped areas as needed. Any plant in a landscaped area that dies shall be replaced with another living plant that is compatible with the approved landscape plan within 90 days after notification of the owner by the City Manager, except that the City Manager may extend this time limit up to an additional 90 days due to weather conditions. If the plants have not been replaced within 90 days after the appropriate notification, or within an extension of this time limit, the owner shall be in violation of this ordinance.

**SECTION 06. PROTECTION DURING GRADING AND CONSTRUCTION.**

All trees to be retained as part of an approved landscape 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.

**SECTION 07. PROTECTED TREES.**

**4.07.001. Unauthorized Removal Prohibited.**

No person shall remove or cause removal of any protected tree without first submitting an application for removal of the protected tree and obtaining approval of the application by the City Manager, unless said tree is located on the site of a proposed building or structure, or on the only acceptable site for a driveway, as depicted on an approved landscape plan.

**4.07.002. Application for Permission to Remove.**

An application for the removal of a protected tree may be made by the owner of the property on which such tree is located. The application shall be accompanied by the appropriate fee established by the City Council and shall contain the following information:

- A. The approximate location of the tree as shown on an approved landscape plan.
- B. The caliper of the tree.
- C. The species and/or common name of the tree.
- D. The reason for the proposed removal.
- E. Such other information as may be reasonably required by the City Manager.

**4.07.003. Review of Application for Permission to Remove.**

Upon receipt of an application for permission to remove a protected tree, the City Manager shall promptly inspect the subject tree and issue or deny the application in accordance with the provisions of this Article. An application is automatically granted 10 working days after application if not denied during such interval.

**4.07.004. Appeals to City Council.**

If an application for permission to remove a protected tree is denied by the City Manager, the applicant may appeal such action to the City Council by filing written notice of such appeal with the City Secretary within 15 days of the notice to the applicant of the denial of the application by the City Manager. The City Council shall consider the appeal within 30 days of the filing of the appeal by the applicant, and it may either affirm or reverse the decision of the City Manager. If the City Council fails to act on the appeal within 45 days, the appeal shall be automatically granted and permission shall be issued per the original application.

**4.07.005. Replacement of Trees Removed.**

All protected, heritage or signature trees which are removed shall be replaced by new trees which are planted on the same lot according to an approved landscape plan. The minimum caliper of replacement tree shall be three inches. The replacement trees may be of any shade tree species, provided that their aggregate trunk caliper in inches shall be equal to the aggregate trunk caliper of the trees removed multiplied by the corresponding multiplier for the classification of tree removed as found below.

<b><u>Tree Classification</u></b>	<b><u>Multiplier</u></b>
Protected	1
Signature	2
Heritage	3

Replacement trees shall not count toward the number of trees which are required to be planted by other provisions of this article.

Development Plat Regulations 2009

If there is not a suitable location for the replacement trees as determined by the City Manager or his designee on the subject site, payment may be made into the Tree Restoration Fund in the following amounts:

<u>Size of tree removed as a % of Heritage Tree caliper</u>	<u>Amount per Inch</u>
25%	\$50
50%	\$75
75%	\$100
100% or more	\$200

- A. A minimum of five different species of trees must be planted if more than 100 caliper inches of trees are required. This requirement is meant to prevent large monocultures from being planted on sites, which increases chances of disease epidemics.
- B. 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.

**SECTION 08. HERITAGE TREES.**

**4.08.001. Affidavit of No Heritage Tree.**

All preliminary plats and development plats submitted to the Planning and Zoning Commission for approval will have all heritage trees identified on the plat or an affidavit signed by the engineer/surveyor preparing the plat that no heritage trees are located in the area being subdivided or platted.

**4.08.002. Heritage Tree Preservation and Protection.**

Heritage trees shall be protected under the following conditions:

- A. No clear cutting is permitted.
- B. 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.
- C. 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 heritage tree. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.
- D. No signs, wires or other objects, other than those of a protective nature, shall be attached to any heritage tree. However, lighting of a decorative nature may be attached to a heritage tree. The lighting shall be attached in a manner so as not to damage the heritage tree.
- E. No vehicular and/or construction traffic or parking shall take place within the limits of the root protection zone of a 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.
- F. Grade changes shall not be allowed within the limits of the root protection zone of any heritage tree, except upon approval by the City.
- G. No paving with asphalt, concrete or other impervious materials shall be placed within the root protection zone of a heritage tree.
- H. In those situations where a heritage 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 heritage tree or tree group.

**4.08.003. Removal of Heritage Trees.**

## Development Plat Regulations 2009

- A. **Generally.** No person, directly or indirectly, shall cut down, destroy, remove or effectively destroy through damaging, any heritage tree or signature tree on any real property without first obtaining a tree removal permit.
- B. **Permit required.** Under no circumstances shall the removal of a heritage tree or signature tree from any real property be allowed prior to the issuance of a tree removal permit for such property. Such permit shall require a plot plan demonstrating the location of the tree, the caliper of the tree, the proposed plan of roads, driveways, building pads, etc. that demonstrates the compelling case for removal of the tree. The permit shall include a tree replacement plan that reflects the location, caliper and placement of replacement trees. If payment shall be made in lieu of replacement trees, a statement of such shall be attached.
- C. **Permit Approval.** The City Manager or his designee shall approve an application to remove a heritage tree or signature tree after determining that the tree:
1. Prevents reasonable access to the property;
  2. Prevents reasonable use of the property;
  3. Is a hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree;
  4. 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
  5. 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.
- D. **Compensation or Replacement.** Compensation or replacement of trees for removal of a heritage tree, or signature tree with an approved permit shall not be required for those trees that fall into the category in Subsection 4.08.003. C.3, 4. or 5.

### **4.08.004. Replacement trees required.**

It shall be the responsibility of any person obtaining a tree removal permit for a heritage tree, or signature tree to provide replacement with trees having a total caliper width as reflected in the chart found in Section 4.07. Such replacement trees shall have a minimum caliper width of three inches, measured at six inches above ground level. Replacement trees shall have a minimum height of at least six feet, and shall be planted in approved locations. At the discretion of the City Manager or his authorized designee, money may be paid to the City instead of providing replacement trees required by this section. Any such payments shall be deposited in the City's Tree Restoration Fund. A per-caliper-inch cash value for replacement trees is located in Section 4.07.005 above.

### **4.08.005. Mitigation for trees removed.**

The preservation of areas containing significant trees and other vegetation on the site may be an acceptable form of mitigation for trees removed which may be considered in lieu of replacing the trees or making a contribution to the tree restoration fund.

### **4.08.006. Penalties for Unauthorized Removal or for Intentional Death of a Heritage Tree or Signature Tree.**

If any heritage or signature trees are removed from any real property, 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.

- A. A monetary penalty of \$750.00 per caliper inch of width of the heritage or signature trees removed, payable to the City or replace with trees as follows:

## Development Plat Regulations 2009

- B. Replacement with shade trees having an aggregate caliper width which is five times the aggregate caliper width of the heritage trees or signature trees. The total caliper width of replacement trees shall have a total tree caliper width equivalent to five times that of the removed trees.

APPENDIX D TO DEVELOPMENT PLAT REGULATIONS

ORDINANCE NO. 2007-63

**AN ORDINANCE REQUIRING THE COMPLETION OF A TRAFFIC IMPACT ANALYSIS PRIOR TO THE APPROVAL OF CERTAIN DEVELOPMENT RELATED PROCESSES; CONTAINING CERTAIN DEFINITIONS; PROVIDING CRITERIA FOR VARIOUS TYPES OF ANALYSIS; SETTING FORTH MITIGATION PARAMETERS AND LIMITATIONS ON MITIGATION; SETTING MINIMUM VALUES FOR LEVEL OF SERVICE; AND PROVIDING FOR EXEMPTIONS; PROVIDING FOR A VARIANCE**

**WHEREAS**, the City Council finds that to protect the health, safety, property and welfare of the public it is necessary to determine the effect of proposed subdivisions, developments or proposed changes in zoning uses on the transportation system within the community;

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

Section 1: General

The specific intent of a Traffic Impact Analysis is to: Ensure that traffic impacts are identified early and incorporated into the development planning of sites at the earliest possible stage when the approximate potential full build-out of a development project is known. Determine the appropriate local transportation network in accordance with the Master Plan and the Major Thoroughfare Plan. Allow negative impacts from traffic to be avoided or mitigated through planning and design solutions for the development.

Section 2: Purposes

- (1) To ascertain the operational conditions on the adjacent roadway network with a proposed development is accommodated within the existing transportation infrastructure along with other proposed developments (as reflected in the Comprehensive Master Plan)
- (2) To identify transportation improvements required to maintain the existing operational conditions.
- (3) To determine whether access to the proposed development will impede traffic operations and safety near the site.
- (4) To identify present or future transportation system deficiencies with and without the new development.
- (5) To provide decision makers with a basis for assessing the transportation implications of approving proposed zoning changes and development applications.
- (6) To provide a basis for estimating the cost of proposed mitigating measures. Consequently, a traffic impact analysis can be used to determine the "fair share" of the improvement cost to be paid by the developer.

### Section 3: Definitions

Average Day - A Tuesday, Wednesday or Thursday for most uses. The average day may be a Saturday for uses that have higher peak-hour traffic volumes on a Saturday rather than mid-week.

Boundary Street - A public street that is adjacent to and/or abutting one or more sides of a proposed site.

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

Development - a site plan, subdivision or re-subdivision, condominium project, redevelopment, reuse or expansion of a use or building,

Impact Area - The limits of the area for which the analysis is to be conducted. This area shall be determined by the Engineering Firm conducting the study and City Manager prior to the start of the study.

Level of Service (LOS) - A measure of the level of congestion experienced on roadways. The acceptable methodologies for calculating level of service are:

- A. Operational Analysis from the transportation Research Board Special Report 209, Highway Capacity Manual, latest edition.
- B. PASSER 111-90 from the transportation Institute.
- C. The Texas Model, version 3.0, from the University of Texas.
- D. Other methodologies approved by the City Manager or his/her duly authorized representative

In addition, the following characteristics shall be addressed when evaluating levels of service:

- A. Physical Configuration - Intersection and roadway geometry
- B. Traffic Characteristics - peak hour factor
- C. Traffic Control - signalized and unsignalized control
- D. Environmental Condition - topography, sight distance and other safety hazards
- E. Capacity - as determined in the latest addition of the Highway Capacity Manual, Transportation Research Board.

Master Plan - The plan adopted by the City of Boerne which illustrates the intended future land use pattern and the Thoroughfare Plan which describe roadway functional classifications and intended improvements to the transportation system.

Peak Hour - A one hour period representing the highest hourly volume of traffic on the adjacent street system during the morning (a.m. peak hour), during the afternoon or evening (p.m. peak hour): or representing the hour of highest volume of traffic entering or exiting a site (peak hour of generator).

Peak Hour Trips (Generated) - PHTG -The number of vehicle trips generated by the proposed land use(s) in the development, during the peak hour of adjacent street traffic (defined as one hour between 7-9 AM or 4-6 PM, whichever is higher).

### Section 4: Traffic Impact Analysis (TIA)

- (a) Traffic Impact Analysis (TIA). No Subdivision, Development Plat, change in zoning, Planned Unit Development submission, Petition for Annexation, City Council approval of a use as required by the City of Boerne Zoning Ordinance, shall be approved unless a traffic impact analysis (TIA) or peak hour trip PHT generation form is completed and approved as provided for in this ordinance. A traffic impact analysis (TIA) or a PHT generation form shall be performed by the property owner (or its agent) according to the format established in Appendix "A".

The type of submittal shall be based upon the number of peak hour trips (PHT) generated by the proposed development, as set forth in Table 1.

**Table 1**

<b>Peak Hour Trips</b>	<b>Submittal Category (see Section 1)</b>
1,001 or more	Level 3 TIA
251-1,000	Level 2 TIA
101 -250	Level 1 TIA
75 or less	PHT Generation Form {no TIA is required}

When an activity on, or change to, property is proposed to occur that varies from the previous activity on the property, and the new activity generates an increase of at least 100 PHT relative to the previous use, the property owner (or its agent) shall perform and submit to the city a TIA (or an amended TIA, whichever applies) under the formats specified in Appendix "A", to determine if the increase in the PHT impacts capacity and requires additional mitigation as defined herein,

(b) Rezoning,

i. A TIA shall be required any time a property owner seeks to rezone property in a manner that would result in the PHT under the proposed zoning and use exceeding by more than 100 PHT the maximum PHT that could have been generated by uses permitted in the existing zoning, or results in a TIA level different from that derived from the existing zoning.

ii. The requirement to perform a TIA under this subsection shall not apply if the existing zoning is a temporary zoning resulting from annexation.

(c) Impact Area.

i. The impact area is the area within which any analysis is conducted in order to determine a compliance with the level of service standards. This area shall be based on the size of the development and the PHT projected to be generated by the proposed development. The impact area studied shall be determined by City Manager based on the points of access and key streets and intersections that may be affected by development of the subject tract. Table 2 shall be used to assist the City Manager in the determination of the impact area to be studied:

**Table 2**

Level 1 or 2 TIA	The site, and the area within a one-quarter (1/4) mile radius from the boundary of the site
Level 2 TIA	The city traffic engineer may require the area of the study to be extended up to a maximum area of one (1) mile radius
Level 3 TIA	The site, and the area within a two mile radius from the boundary of the site, this distance may be reduced to one mile as determined by the City Manager

**Section 5: Mitigation**

The applicant may propose mitigation measures as described in Section 7b as an alternative to deferral denial of approval of the activities.

Mitigation measures may be permitted which would allow the LOS to be achieved by permitting the transportation network to function more efficiently, or which advance the construction of necessary transportation facilities so that they are available concurrent with the impacts of the development.

Roadways and intersections, within the study area, that are expected to operate at level of service D, E, or F, under traffic conditions including projected traffic plus site-generated traffic must be identified and viable recommendations made for raising the traffic conditions to level of service C or better.

As depicted in Table 4, roadways and intersections within the project site and along its boundary streets which are projected to operate at level of service D, E, or F, without site-generated traffic, need not be brought up to level of service C by the proposed development. Such roadways and intersections, under conditions which include such site generated traffic, must be brought up to the projected level of service that would exist without the site-generated traffic, i.e. reducing the amount of traffic from the development so that the LOS is maintained at an acceptable level or by altering mitigation improvements within the project site and along its boundary streets so that the LOS is maintained.

Table 4 Minimum Acceptable Level of Service

Projected Level of Service	Level of Service Without development						
	A	B	C	D	E	F	
	NA	-	-	-	-	-	
	B	NA	-	-	-	-	
	C	C	NA	-	-	-	
	C	C	C	NA	-	-	
	C	C	C	D	NA	-	
	C	C	C	D	E	NA	

**Section 6: Implementation**

For phased construction projects, implementation of these traffic improvements must be accomplished no later than the completion of the project phase for which the capacity analyses show that they are required. Plats for project phases subsequent to a phase for which a traffic improvement is required may be approved only if the traffic improvements are completed or bonded.

**Section 7: Limitations on Traffic Impact Mitigation**

- A. Voluntary efforts. Beyond those herein required, to mitigate traffic impacts are encouraged as a means of providing enhanced traffic handling capabilities to users of the land development site as well as others.
- B. Traffic mitigation tools include, but are not limited to, pavement widening, turn lanes, median islands, access controls, curbs, sidewalks, traffic signalization, traffic signing, pavement markings, etc.

**Section 8: Exemptions**

- A. The city hereby finds that traffic patterns and infrastructure within the area identified on the attached map are established. Further, if the city finds that there is little opportunity to expand transportation capacity in this area, without destroying the city's historic built environment, the development may be exempt from certain provisions of this Ordinance.
- B. In addition, the City Manager may waive the requirement to submit a TIA. The City Manager must include the reason for the waiver in the City Managers decision on the PHT Generation Form, and the applicant must mitigate adverse effects of the traffic generated from the proposed development to qualify for the TIA waiver.

### **Section 9: Variances**

- A. Following the decision to deny a development by the appropriate authority, and the decision was solely based on the anticipated increase in traffic that cannot be mitigated the owner or agent may make application to the City Council for a variance. The application shall be filed with the City Manager, accompanied by the appropriate fee established by City Council.
- B. Conditions of Variances. The Variance application shall describe the rational why the variance should be granted and should be supported by empirical data. The City Council may grant a variance to this ordinance and direct that the development be approved by the appropriate authority if the Council determines the development is in the best interest of the community. The City Council may impose such conditions or requirements in a variance that in the City Council's judgment are necessary to protect the general health, safety and welfare of the public and the variance will not negatively impact efficient development of the land and surrounding areas based on sound planning principles.