

ORDINANCE NO. 2015-05

AN ORDINANCE OF THE CITY OF SEALY, TEXAS, AMENDING SEALY CITY CODE CHAPTER 14 – BUILDINGS AND BUILDING REGULATIONS BY REPEALING THE CURRENT ARTICLE VI. “LANDSCAPE REQUIREMENTS FOR RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, AND INDUSTRIAL DEVELOPMENT” AND ADOPTING AND NEW ARTICLE VI. “LANDSCAPE REQUIREMENTS FOR RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, AND INDUSTRIAL DEVELOPMENT”; PROVIDING FOR LANDSCAPING REQUIREMENTS WITHIN THE CITY AND EXTRA-TERRITORIAL JURISDICTION; PROVIDING A MEANS FOR VARIANCES THERETO; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

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WHEREAS, the City Council of the City of Sealy seeks to provide for the orderly development of land and use of property within its corporate limits and extraterritorial jurisdiction (“ETJ”); and

WHEREAS, the City Council seeks to maintain the value of the City’s natural resources through a comprehensive regulatory program that includes land use and development ordinances regulating landscaping; and

WHEREAS, the City Council finds it to be in the best interest of the public safety, health, and general welfare to regulate landscaping to assist in the orderly development of property within the city and maintain aesthetically pleasing development and improved property values; and

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

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. The current Chapter 14. *Buildings and Building Regulations*, Article VI. “Landscape Requirements for Residential, Commercial, Institutional and Industrial Development” of *the Code of Ordinances of the City of Sealy* is hereby repealed.

Section 3. Chapter 14. *Buildings and Building Regulations*, Article VI. “Landscape Requirements for Residential, Commercial, Institutional and Industrial Development” of *the Code of Ordinances of the City of Sealy* is hereby amended by adopting a new Article IV. to read and provide as follows:

“Chapter 14 - BUILDINGS AND BUILDING REGULATIONS

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ARTICLE VI. - LANDSCAPE REQUIREMENTS FOR RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, AND INDUSTRIAL DEVELOPMENT

Sec. 14-400. Purpose and Applicability.

1. **Purpose.** The purpose of this section is to establish requirements to enhance the community's ecological, environmental, and beautification efforts as well as its aesthetic qualities. It is the intent of this section to reduce the negative effects of glare, noise, erosion, and sedimentation caused by expanses of impervious and un-vegetated surfaces within the urban environment. It is the intent of this section to preserve and improve the natural and urban environment by recognizing that the use of landscaping elements can contribute to the processes of air purification, oxygen regeneration, groundwater recharge, noise abatement, glare and heat, provision of habitats for wildlife, and enhance the overall beauty of the City and the Extraterritorial Jurisdiction of the City. The City recognizes the value of creating attractive corridors through the city and for creating usable open spaces during the subdivision and site planning processes to provide opportunities hike and bikeways, greenbelts and the preservation of floodplains in a natural condition where practical to add community value. Retention areas shall be aerated and detention areas gently sloped so that each can function as a community open space or recreational amenity.
2. **Applicability.** Per Texas Local Government Code Chapter 212.002, the regulations contained in this article shall apply to all properties in the City of Sealy and the Sealy Extraterritorial Jurisdiction (ETJ).

Sec. 14-401. - Definitions.

Building site shall mean the tract, parcel, or lot of land area being developed.

DBH -Diameter-at-breast-height (caliper) is tree trunk diameter measured in inches at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the tree shall be measured in two places, the narrowest point beneath the split and ½ the sum of the calipers of the trunks immediately above the split. Whichever is the greater measurement is to be the measurement applied. If there is no single trunk above ground level to measure, the measurement shall be the sum of the main trunk, plus ½ of all other branches of the calipers of the various trunks at breast height.

Developed land shall mean that portion of real property that has been altered from its natural landscape by the construction or reconstruction of any structure, parking lot, or other improvement.

Diameter shall mean the measurement of a tree at 4½ feet above ground level.

Drip line shall mean the periphery of an area underneath a tree, which would be encompassed by the perpendicular line dropped from the outermost edges of the crown of the tree.

Government Entity - City of Sealy, Independent School Districts, State and County property; property owned by the United States of America or other federal agencies. Examples of this would include City Hall, public parks, Corps of Engineers property, State R.O.W., library, fire stations, water tower sites or similar properties.

Groundcover shall mean a spreading plant, including sods and grasses of less than 18 inches in height, which may be used for erosion control.

Ground cover plants—No minimum size shall be required, but the planting is to be performed so as to develop full coverage within 18 months.

Impervious surface shall mean any surface area that prevents infiltration of water into the soil. Impervious surface may include, but not be limited to, those surfaces covered by asphalt, concrete, crushed stone, clay, bedrock, limestone, and compacted soil.

Landscape development shall mean trees, shrubs, ground cover, vines, or grass installed in planting areas having a minimum of ten square feet of actual plantable area and a minimum inside dimension of 18 inches on any side.

Multi-Trunk Tree - Tree with more than one trunk arising at or near the ground.

Permeable area shall mean an area that is not covered with asphalt or concrete, or other impervious material.

Pervious - Water will permeate the surface.

Private property shall mean any industrial, commercial, business, multifamily, or townhouse site development.

Protective Fencing - Snow fencing, chain link fence, wire fence, orange vinyl construction fencing or other similar fencing with a four foot (4') approximate height.

Public property shall mean any land owned by ~~the city~~ any governmental entity, including street rights-of-way and yards around public buildings.

Protected tree shall mean a living tree with a trunk size of at least 12 inches DBH. Furthermore, the term "protected tree" shall applies to all types or varieties of oak trees and pecan trees.

Right-of-Way shall refer to any parcel of land occupied, or intended to be occupied, by a public road, street or alley or some other public purpose, such as drainage. Where appropriate, right-of-way may include other facilities and utilities such as sidewalks; electrical, communication, oil and natural gas lines and facilities; and water and sanitary and storm sewer facilities. The use of right-of-way shall also include parkways and medians outside of the paved portion of the street. The usage of the term right-of-way for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way.

Root Protection Zone (RPZ) - The area of undisturbed natural soil around a tree defined by a concentric circle with a radius equal to the distance from the trunk to the outermost portion of the drip line. As a practical matter, this is the acute portion of the tree's root system. Approximately ninety percent (90%) of the tree's root mass occurs within the top three feet of the soil and most of the fine feeder roots which collect moisture and nutrients are located in the top six inches (6") of the soil. Typically, a tree's root system extends as much as two to three times the distance from the trunk to the drip line.

Screening shall mean any method of visually shielding or obscuring one land use from another, and shall meet minimum requirements that provide a year-round visual obstruction.

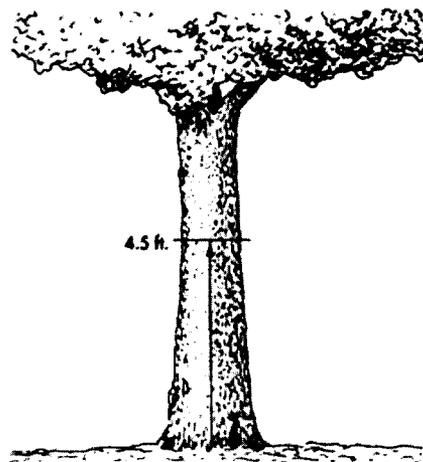
Shrubs shall mean self-supporting, woody, evergreen species that normally will grow in Austin County.

Tree shall mean any self-supporting wood plant of a species that normally grows to an overall height of a minimum of 15 feet in Austin County.

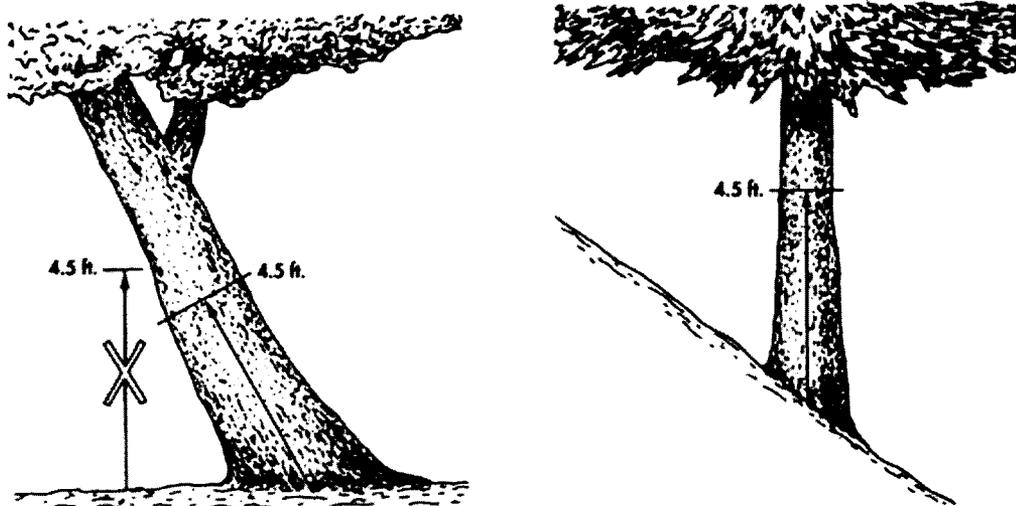
Tree Crown - Parts of the tree above the trunk including leaves, branches, limbs and scaffold: the uppermost part of the tree.

Tree Trunk Measurement – Tree trunks shall be measured in accordance with the following criteria:

1. Straight Trunk: Trees with fairly straight, upright trunks should be measured four and a half (4.5) feet above the ground as shown below.

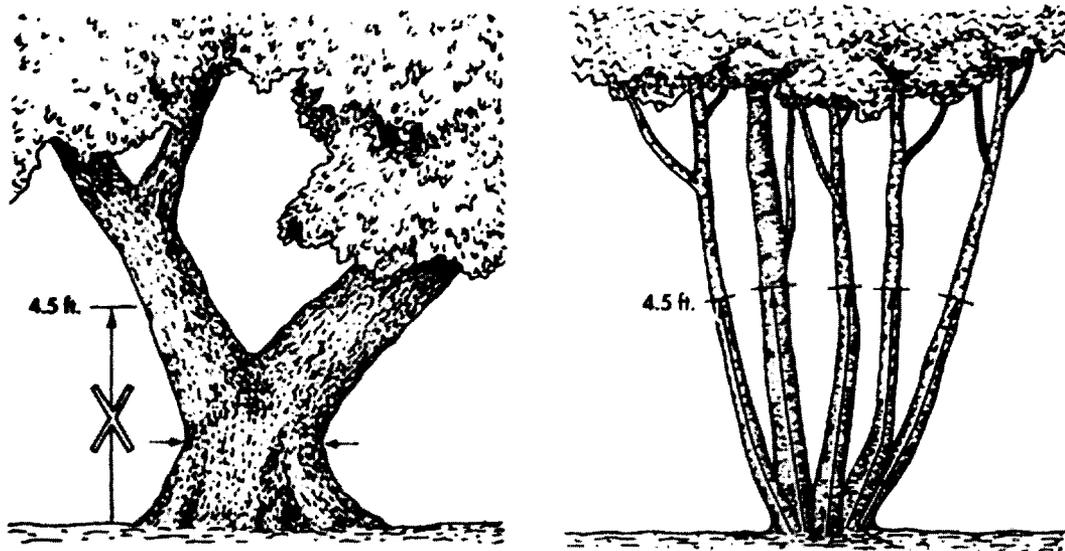


2. Trunk on an Angle or Slope: The trunk is measured at right angles to the trunk four and a half (4.5) feet along the center of the trunk axis, so the height is the average of the shortest and the longest sides of the trunk, as shown below:



3. Multi-Trunk Trees: To determine the diameter of a multi-trunk tree, measure each tree trunk larger than 1.0 inch (1”). Determine the diameter of the largest tree trunk. The

diameter of the multi-trunk tree is then computed as the diameter of the largest tree trunk plus $\frac{1}{2}$ of the composite diameters of each smaller tree trunk greater than 1.0 inch (1"). A multi-trunked tree is differentiated from individual trees growing from a common root stock if there is a visible connection between the trunks above ground.



Visibility triangle shall mean the triangular area adjacent to the intersection of any public street or public alley within which no obstruction may be placed that would block the sight lines for vehicular traffic. The triangle is established by measuring a distance of 45 feet from the intersection of the extended curb or edge of the pavement of major thoroughfares, and 25 feet from the extended edge of the curb or pavement of local streets. A straight line connecting the ends of each measured distance, which forms the hypotenuse, shall establish the visibility triangle. The visibility triangle shall not contain any visual or physical impediments or obstructions to the vertical view between 30 inches and seven feet in height.

Sec. 14-402. - Landscaping requirements.

Section 14-402.1 General

- (a) *Landscaping of site developments.* This paragraph shall be a minimum standard and shall apply to any property on which new development occurs for which a building permit is required, except as follows:
- (1) The restoration of a building with a historic designation;
 - (2) The remodeling of the interior of a building or the facade of a building that does not alter the location of exterior walls;
 - (3) Development of a building site owned and operated by a governmental entity; or
 - (4) The expansion, repair, or renovation of a single-family or two-family dwelling.
 - (5) The standards and criteria contained within this subsection are deemed to be minimum standards and shall apply to all new construction or any construction that increases the existing square footage of a structure by less than thirty percent (30%).

(b) No building permit shall be issued unless the proposed development includes the following minimum landscape requirements:

(1) Single-family and two-family residential development:

- a. The front yard of the premises must have one large tree, in accordance with the Approved Plant list of Section 14-403 of this article, located within 15 feet of the front lot line for each 50 feet of lot width or portion thereof, measured along the front lot line. Trees may be clustered or spaced linearly and need not be placed evenly at 50-foot intervals.
- b. The front yard shall have a minimum of 60 percent of open space. The open space shall consist of ground cover and be clear of any concrete, asphalt, gravel or other impervious material. The front yard requirement for a home built in a cul-de-sac shall have a minimum of 50 percent of open space.

(2) All development(s) other than single-family or two-family residential structures:

- a. The percentage of area required to be landscaped: 10% of area not covered by building or structure of all developments.
- b. At least 50 percent of the required landscaped open space shall be located within the parking lot as an island or as a peninsula in order to be applied towards the landscaped requirements of this section. The remaining 50 percent of the required landscape open space may be located outside of the parking lot, but must be located forward of the rear building line of the primary structure and be visible from the public street.
- c. The owner of the developed land shall not plant any tree on such land at a location which is adjacent to a street right-of-way where overhead utility lines are present. The intent of this restriction is to prevent a mature tree from being trimmed from the utility line area that would substantially hinder the longevity of the tree and its appearance.
- d. Trees such as crepe myrtles and other species that typically do not mature to a height that exceed 16 feet are acceptable to be planted under utility lines, provided that these trees do not adversely affect traffic safety.
- e. Trees that have the potential to grow over a long period of time that will exceed 16 feet in height such as elm, oak, pecan and similar species are prohibited from planting under or near the overhead utility lines. A buffer area is required for these type trees of at least eight feet from the utility right-of-way.
- f. The required number of trees on the developed land of the building site:

<u>AREA NOT COVERED BY BUILDING</u>	<u>TREES REQUIRED</u>
< 7,000 Square Feet	1
>7,000 Square Feet	1 + 1 per each additional 1,500 SF, rounded to the next highest tree

Section 14-402.2 Landscaping Installation and Maintenance

- a. Prior to issuance of a Certificate of Occupancy for any applicable building or structure, all screening and landscaping shall be in place in accordance with the landscape plan approved as part of the site plan.
- b. The property owner shall be responsible for the maintenance of all landscape areas and keep all areas free from nuisances. The areas shall be maintained so as to present a healthy, neat and orderly appearance at all times.
- c. Should any of the plant materials used in any landscaping required under this section die, the owner of the property shall have ninety (90) days after notification from the City to obtain and install suitable replacement plant material. Synthetic or artificial lawn or plant material shall not be used to satisfy the requirements of these regulations.
- d. If seasonal weather conditions, drought, or act of God makes it impractical to install landscaping, or replacement landscaping, as required herein, a deferral of the required plant installation may requested for a period not to exceed six (6) months. The applicant shall be required to provide a Letter of Credit, bond, or escrow deposit in an amount sufficient to cover the installation of the required landscape and irrigation requirements, plus a 10% contingency. Such amount shall be evidenced by an itemized bid prepared by a qualified contractor. Upon the failure of the applicant to complete the installation requirements, the City shall have the right to draw upon the letter of credit or escrow. A deferral may not be requested for any required screening fence or wall.
- e. Landscaped areas shall be kept free of trash, litter, weeds, and other material or plants not a part of the landscaping.
- f. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year.
- g. It shall be the duty of any person or persons owning or occupying real property bordering on any street to prune trees next to the street in such manner that they will not obstruct or shade any street lights, obstruct vision of traffic signs, or obstruct the view from any street intersection, pursuant to the City's visibility standards. Landscaping within required sight visibility areas at street intersections and site access driveway shall not exceed a maximum height of two feet (2.0').
- h. All landscape materials shall be installed according to American Nursery and Landscape Association (ANLA) standards.
- i. Irrigation:
 1. All landscaped areas shall be irrigated with an approved automatic underground irrigation system unless the landscaped area has been designed utilizing xeriscaping methods. All irrigation systems shall be designed and sealed in accordance with the Texas Commission on Environmental Quality (TCEQ) and shall be professionally installed. Irrigation shall not be required for undisturbed natural areas or undisturbed existing trees.
 2. Flat spray heads should be utilized under shrubs rather than upward spray heads on risers above shrubs. Lawn spray heads should have low precipitation rates, run for longer periods of time, and water infrequently to promote deep root growth for grasses. Irrigation systems must be equipped with a rain/freeze sensor.

3. The 10% landscaping requirement for multi-family or nonresidential developments may be reduced to 8.5% when 70% of the total required landscaping is devoted to any combination of the following:
 - i. Undisturbed natural areas or undisturbed existing trees,
 - ii. Xeriscape landscape design,
 - iii. Incorporate porous hose, deep pipe, clay pot lid, porous capsule, perforated drain pipe, Micro catchment, drip, wick or other comparable alternative irrigation systems for arid climates, or
 - iv. Utilize reclaimed, recycled, gray water, non-potable surface water, rainwater or alternative water harvesting systems in accordance with Texas Commission on Environmental Quality (TCEQ) standards and the adopted City plumbing code.
 - v. Incorporation of raised landscape islands and landscape beds into the building design in the sidewalk and pedestrian access areas immediately around the building foundation in a manner that promotes public seating and interaction.
 - vi. Landscaping that when mature will reduce the apparent scale of large buildings.
4. Flat spray heads should be utilized under shrubs rather than upward spray heads on risers above shrubs. Lawn spray heads should have low precipitation rates, run for longer periods of time, and water infrequently to promote deep root growth for grasses. Irrigation systems must be equipped with a rain/freeze sensor.
- j. Vegetation other than approved grasses or ground cover is prohibited in any City right-of-way unless authorized by the City.

Section 14-402.3 Landscaping and the Public Right-of-Way

a. Landscaping and Public Rights-of-Way

1. All unpaved portions of public right-of-way (R.O.W.) must be planted with an approved grass. A maximum of five percent (5%) of the required interior plant material may be placed within the R.O.W. parkway.
2. The City shall have jurisdiction and supervision over all trees and plant materials planted or growing on City property or growing in, upon or over City property and right-of-way, as defined in this article. The City shall have authority to plant, trim, spray, treat, preserve and remove such trees and plant materials to ensure the public safety or preserve the aesthetics of City property. The City, through its subdivision processes, may allow for the designation of medians within public rights-of-way for landscaping, and designate primary landscape installation and maintenance responsibilities to a duly authorized Homeowner or Property Owner Associations, but the City reserves the authority to plant, trim, spray, treat, preserve and remove such trees and plant materials to ensure the public safety or preserve the aesthetics of City property, or may require the said duly authorized Homeowner or Property Owner Associations to plant, trim, spray, treat, preserve

and remove such trees and plant materials to ensure the public safety or preserve the aesthetics of City property.

b. General Provisions. The following acts are unlawful:

1. Damage, cut, carve, transplant or remove any trees on City property;
2. Attach a rope, nail, advertising poster, sign or other contrivance to any City tree;
3. Allow any gaseous liquid or solid substance harmful to trees to come into contact with City trees; or
4. Set or permit any fire to burn when such fire, or the heat from such fire, will injure any portion of a tree on City property.

Sec. 14-403. - Approved plants.

Trees, shrubs, and ground cover plants shall be utilized in accordance with the Recommended Ornamental Plants for Southeast Texas, Including Houston and Beaumont published by the Texas Agrilife Extension Service of the Texas A&M System, a copy of which shall remain on file the office of the City Planning & Community Development Department. Developers proposing to use an alternate species of plants shall submit any information on the alternate species to the Planning and Community Development Director for review. If after review, it is determined that the alternate species of plants meets the intent of these regulations, the alternate plant species will be permitted.

Sec. 14-404 - Minimum diameter of planted trees.

Trees planted to meet the requirements of this article must have a minimum diameter of 3 inch caliper measured at four feet (4.0') above ground level at the time of planting.

Sec. 14-405. - Tree preservation.

The provisions of this section shall apply to all developments including commercial, industrial, single- and multi-family-residential, and all other development in the corporate limits of Sealy and the Sealy ETJ.

A. Purpose and Intent

The purpose of these requirements is to encourage the preservation of mature trees, preservation of protected trees during construction and land development. It is the intent of these regulations to achieve the following:

- Prohibit the indiscriminate clearing of property.
- Protect and increase the value of residential and commercial properties within the City and ETJ.
- Maintain and enhance a positive image for the attraction of new business enterprises to the City.
- Protect healthy quality trees and promote the natural ecological environmental and aesthetic qualities of the City.
- Help provide needed shaded areas in order to provide relief from the heat by reducing the ambient temperature

1. Affectivity

Developments for which a Plat, Site Plan or Master Plan (Land Study) has not yet been submitted at of the effective date of this chapter shall be subject to the requirements for tree protection specified herein.

The requirements of this article shall not pertain to Minor Plats, Development Plats, or Amending Plats or to the owners of three (3.0) acres or less or property who use a residence as a homestead.

2. Private Property

Agricultural: Property used for agricultural or timber harvesting within the City Limits or as appraised for agricultural or timber production in the City ETJ and being actively used for agricultural or timber purposes shall be exempt from the requirements specified herein.

3. Homeowners

The owner of a residence of two acres or less who uses the residence as a homestead shall be exempt from the tree protection and replacement requirements of this ordinance as it pertains to that residential property.

4. Exceptions

The replacement of preserved tree provisions of this ordinance of this chapter shall not be required under any of the following circumstances:

- **Damaged/Diseased Trees:** The tree is dead, diseased, damaged beyond the point of recovery, in danger of falling, or endangers the public health, welfare or safety as determined by the City.
- **Utility Service Interruption:** The tree has disrupted a public utility service due to a tornado, storm, flood or other act of nature. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.
- **Business Interests:** The following business ventures shall be exempt from the requirements specified herein as follows:
- **Landscape Nursery:** All licensed plant or tree nurseries shall be exempt from the tree protection and replacement requirements and from the tree removal permit requirements only in relation to those trees planted and growing on the premises which are so planted and growing for the sale to the general public.
- **Golf Course:** Golf courses shall be exempt from the tree protection and replacement requirements and from the tree removal permit requirements for removal of protected trees within areas designated as tee boxes, fairways or greens. All other areas shall be subject to these requirements.

5. Replacement and Protection of Existing Trees

- A. Developers and subdividing property owners must submit a tree preservation plan with their preliminary plat or site plan.
- B. Upon determining the number, size and location of any protected trees, the developer or subdivider must identify which of those protected trees can be preserved and which are

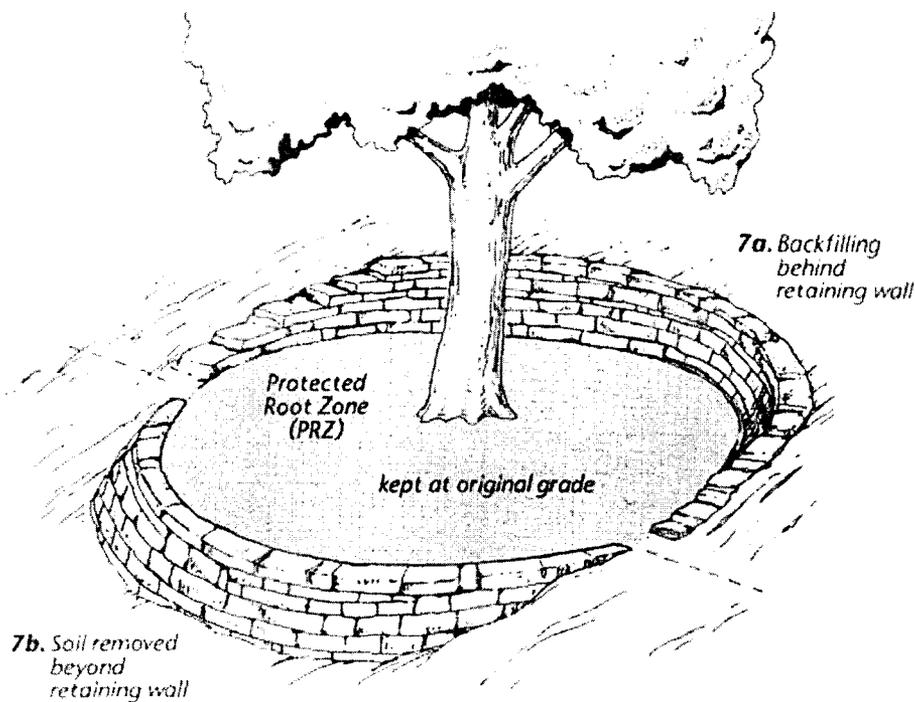
proposed to be removed. A tree plan or survey showing protected trees shall be submitted with the preliminary plat or site plan. The burden shall be upon the applicant to show the necessity for any protected tree to be removed.

- C. When a protected tree is proposed to be removed, staff shall endeavor to seek any practical design solution that may be available in order to preserve any protected tree. If a design solution should necessitate the need for a variance from any requirement of the Sealy City Code, the Planning Commission and City Council, in consideration of such variance, shall have the authority to grant a variance upon determining that the preservation of the tree is in the public interest and that the variance proposal would not result in health or safety issues.
- D. When design solutions are not available to preserve protected trees, the developer or subdivider shall be required to determine the composite caliper of the protected trees proposed to be removed. The composite caliper of protected trees to be removed shall be multiplied by eighty percent (0.8%) to determine the aggregate amount of tree caliper that must be installed to replace protected trees to be removed. The developer or subdivider shall have the option to either; 1) preserve mature non-protected trees or 2) to replace the protected tree species with the planting of many small protected trees, a few protected trees or a single protected tree. For either option, the aggregate replacement caliper must be equal or greater than the existing aggregate caliper of protected trees to be removed. For site plans, the aggregate caliper for replacement trees shall be counted toward fulfillment of the normal landscaping requirements of this chapter.
- E. For subdivisions, the aggregate caliper for replacement protected trees shall be in addition to the normal landscaping requirements of the Sealy City Code. To the greatest extent practical, protected and replacement trees should be located in common Home Owner Association maintained greenbelts or a part of sedimentation and erosion control buffer to ensure the long term tree health and maintenance.
- F. No person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree situated on property regulated by this chapter, except as follows:
 - 1. Right-of-way owned or leased by a governmental entity as of the effective date of this ordinance.
 - 2. Property owned or leased by a public utility excluding property used for administration offices or functions.
- G. Improvements shall be designed, whenever reasonably possible, to preserve a protected tree. The building official may approve a landscape plan that provides for the removal of a protected tree when he determines that the development cannot reasonably preserve the protected tree.
- H. If the Director of Planning and Community Development Department approves the removal of a protected tree, the landscape plan must provide for the planting of two replacement trees of like type for each protected tree to be removed. Such replacement trees shall be in addition to any other trees required to be planted under this chapter.

I. Whenever one or more existing trees, whether protected trees or otherwise, or existing shrubs provide an effective and desirable buffer or screen for a proposed use or development, the building official may require that all or some of the existing trees or shrubs, be preserved if the preservation can be accomplished without undue interference with the development of the premises. The building official will credit any existing trees or shrubs which are preserved against any requirements for trees, shrubs, or screening as provided in this article, if the preserved trees or shrubs substantially serve the purpose of the requirement.

J. Use of Retaining Walls to Preserve Trees

When using retaining wall when natural grade must be raised or lowered, the tree well shall be designed in accordance with the design concepts depicted below:



Sec. 14-406 - Tree preservation credit.

Landscape plans that preserve existing trees found on the approved list of qualified trees shall be given credit toward the total number of trees required as shown below:

<u>Diameter of Existing Tree</u>	<u>Credit Against Tree Requirement</u>
1" – 3"	2.0 trees
3 1/2 " – 9"	3.0 trees
9 1/2 " – 15"	5.0 trees
15 1/2" or greater	10.0 trees

Sec. 14-407. – Replacement of Credited Tree.

If a credited tree dies, it must be replaced with the credit number of trees.

Sec. 14-408. - Buffering and screening.

- A. A non-residential or multi-family use adjacent to, or directly facing, a single-family use shall provide a minimum twenty feet (20') landscape buffer adjacent to the property line of the residential use or residentially used property. A minimum of one (1) shade tree shall be planted for each thirty linear feet (30') of landscape buffer. A minimum of ten (10) shrubs shall be planted for each fifty linear feet (50') of landscape buffer. All other areas within the landscape buffer shall be covered with grass or another solid vegetative cover approved at the time of Site Plan approval. The buffer wall standards below shall also be applicable. If the non-residential use is heavy commercial with outdoor storage or outdoor operations, or industrial, the required buffer shall be a minimum of forty feet (40')
- B. A non-residential, non-industrial use that is adjacent to, or facing, a multi-family development shall provide a minimum ten foot (10') landscape buffer adjacent to the property line of the residential use or residentially used property. Industrial uses shall be required to install a twenty (20) foot buffer. A minimum of one (1) shade tree shall be planted for each thirty linear feet (30') of landscape buffer. A minimum of ten (10) shrubs shall be planted for each fifty linear feet (50') of landscape buffer. All other areas within the landscape buffer shall be covered with grass or another solid vegetative cover approved at the time of Site Plan approval. The buffer wall standards below shall also be applicable. The buffer width shall increase to thirty feet (30') if the non-residential use is heavy commercial with outdoor storage or outdoor operations, or industrial.
- C. The following standards shall apply when a buffer wall is required:
1. Fences and walls used as a buffer must have a minimum height of 6 feet (6') but may not exceed 8 feet (8') in height. If a fence is installed on top of a berm, the fence height shall be measured from the grade level of the berm and not from the natural grade. The height restriction shall not apply to decorative or architectural ornamental elements, such as pilasters and pilaster caps.
 2. Fencing & walls shall not be placed within a required sight triangle.
 3. Fences and walls must be constructed of high quality materials, such as decorative block, brick, stone, woodcrete (decorative concrete), faux stone, wrought iron and comparable materials. The use of chain-link fencing, with or without slats, sheet metal, railroad ties or like materials may not be used as a screening wall or fence.
 4. Breaks in the fence or wall may be made to provide pedestrian connections to the perimeter of the site and to adjacent development or to provide a means of access to maintain the buffer wall or required landscaping.
 5. In lieu of a masonry or wood screen, a combination of trees and shrubs and/or an earthen berm, may be installed to satisfy the minimum six-foot height. If vegetation is used for screening, vegetation shall be a minimum of six (6) feet tall at the time of planting, shall be evergreen and shall create an opaque barrier immediately at the time of planting. Earthen berms shall be constructed with a maximum 1:3 (one vertical to three horizontal) slope. The entire length of the berm shall be vegetated with dense evergreen plant material. The incorporation of screening mesh, shade cloth or other

acceptable screening techniques may also be considered. Depending upon the height of the items being screened, the distance from the buffer of items being stored and the proximity of residential lots, staff reserves the flexibility to increase or decrease these standards based upon site specific circumstances, An applicant may appeal the final decision of the City with respect to this requirement to the Planning Commission.

6. A non-residential use adjacent to a multi-family use (4 or more dwellings per building) shall provide a minimum ten foot (10') landscape buffer adjacent to the property line. A minimum of one (1) shade tree shall be planted for each thirty linear feet (30') of landscape buffer. A minimum of ten (10) shrubs shall be planted for each fifty linear feet (50') of landscape buffer. All other areas within the landscape buffer shall be covered with grass or another solid vegetative cover approved at the time of Site Plan approval. The buffer wall standards below shall also be applicable.
7. The following standards shall apply when a buffer wall is required:
 - a. Fences & walls used as a buffer must have a minimum height of six feet (6') but may not exceed eight feet (8') in height. The height restriction shall not apply to decorative or architectural ornamental elements, such as pilasters & pilaster caps.
 - b. Fencing and walls shall not be placed within the line of sight as determined by the Sight Triangle.
 - c. Fences and walls must be constructed of high quality materials, such as decorative block, brick, stone, woodcrete (decorative concrete), faux stone, wrought iron and comparable materials. The use of chain-link fencing, with or without slats, sheet metal, railroad ties or like materials may not be used as a screening wall or fence.
 - d. Breaks in the fence or wall may be made to provide pedestrian connections to the perimeter of the site and to adjacent development.
 - e. In lieu of the masonry or wood screening wall, a combination of screening trees, shrubs and earthen berms may be constructed to the minimum six-foot height. Earthen berms shall be constructed with a maximum 1:3 (one vertical to three horizontal) slope. The entire length of the berm shall be vegetated with dense evergreen plant material.

Sec. 14-409. - Landscape Plan, Tree Preservation Plan, Tree Protection & Planting Plan

A landscape plan demonstrating compliance with all landscaping requirements shall be submitted to the City for approval. The landscape plan may be submitted as a part of the site plan.

A. Qualifications to Prepare Landscape Plans

For all lots greater than 3 acres in area, Landscape Plans shall be prepared by a Registered Landscape Architect. For lots less than 3 acres in area, a Landscape Designer or Landscape Contractor, knowledgeable in plant materials and landscape design may prepare the landscape plan. Irrigation plans shall be prepared by a Licensed Irrigator or

Landscape Architect. The City may reject plans if deemed of insufficient quality or completeness and require that plans be prepared by a Registered Landscape Architect or a Licensed Landscape Contractor.

- B. The landscape plan shall meet the following standards and contain the following information:
1. Sheet size 24" x 36", or as approved.
 2. Acceptable scale: 1" = 10', 1" = 20', or as approved.
 3. North arrow, graphic and written scale in close proximity.
 4. Appropriate title (i.e. "Landscape Plan"),
 5. Title block shall include the project street address, project name, date of plan preparation
 6. Name and contact information of firm preparing plan.
 7. Property boundaries and dimensions, existing/proposed utilities & easements
 8. Required buffer yards and screening improvements.
 9. Location, caliper size & name of existing trees to be preserved, or removed, with a tree preservation plan & tree protection plan and calculation showing how protected trees to be removed will be replaced.
 10. Plant schedule showing the location, quantity, size and name of all existing and proposed plant materials and spacing intervals.
 11. Provide Required/Provided Bufferyard, Landscaping and Tree calculations.
 12. Show required visibility triangles.
 13. Location & footprint of proposed/existing buildings, sidewalks & parking lots.
 14. Any berms delineated with one-foot (1') contour intervals.
 15. Type of irrigation system and location of watering source (irrigation, sprinkler, or hose bib).
 16. Description of how existing trees will be protected during construction.
 17. All General Landscaping Notes listed below:

Landscape Plan General Notes

- CONTRACTOR SHALL STAKE OUT TREE LOCATIONS & AND BEDS FOR OWNER APPROVAL PRIOR TO INSTALLATION.
- CONTRACTOR IS RESPONSIBLE FOR VERIFYING LOCATIONS OF UNDERGROUND UTILITIES PRIOR TO CONSTRUCTION.
- IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO ADVISE THE OWNERS OF ANY CONDITION FOUND ON-SITE WHICH PROHIBITS INSTALLATION PER THESE PLANS.
- ALL SHRUB & GROUND COVER BEDS SHALL HAVE A MINIMUM OF TWO INCHES OF MULCH.
- LANDSCAPE EDGING SHALL BE LOCATED AS DEPICTED ON LANDSCAPE PLAN.
- TREES SHALL BE PLANTED A LEAST 5- FEET FROM ANY UTILITY LINE & OUTSIDE ALL UTILITY & DRAINAGE EASEMENTS. A 3-FOOT CLEAR DIAMETER AROUND FIRE HYDRANTS IS REQUIRED.
- ANY TREE PLANTED WITHIN 5 FEET OF A CURB, WALK OR DRIVE MUST INCLUDE AN APPROVED RIGID PLASTIC ROOT BARRIER.

- TREES OVERHANGING WALKS & PARKING AREAS SHALL HAVE A CLEAR TRUNK HEIGHT OF 7- FEET.
- TREES PLANTED ON SLOPES WILL HAVE THE SOIL STAIN AT AVERAGE GRADE OF SLOPE.
- MULTI-TRUNK AND ORNAMENTAL TREES WILL BE ALLOWED IN THE CITY'S RIGHT-OF-WAY SUBJECT TO CITY APPROVAL, BUT MUST BE LOCATED OUT OF CLEAR SIGHT VISIBILITY AREAS.
- A VISIBILITY TRIANGLE MUST BE PROVIDED AT ALL INTERSECTIONS AS REQUIRED BY THE SEALY LANDSCAPE ORDINANCE.
- PLANT MATERIALS SHALL BE MAINTAINED IN A HEALTHY AND GROWING CONDITION & BE REPLACED WITH PLANT MATERIAL OF SIMILAR VARIETY & SIZE, IF DAMAGED, DESTROYED OR REMOVED.
- LANDSCAPE AREAS SHALL BE KEPT FREE OF TRASH, LITTER AND WEEDS.
- ALL SIGNS & FENCING IS CONTINGENT ON THE ISSUE OF PERMITS & INSPECTIONS.

C. Tree Preservation Plan

1. At a minimum a *tree preservation plan* shall include:

- Existing/proposed topography
- Location of property lines, easements, approaches, right-of-ways, setbacks, parking areas, and sidewalks;
- Location, species, and size in DBH of each heritage tree and each protected tree except those located inside the footprint of proposed structures (for commercial development). Driveways and parking facilities are included as structures.
- Tree inventory that summarizes total number of DBH inches to be removed and to be preserved (trees down to 1 and ½ inch DBH can be used to calculate preservation diameter inches).

D. Tree Protection and Planting

1. Tree protection improvements will be installed before any site work is initiated and shall be maintained for the duration of construction. Tree protection will consist of the following:

- a. It will consist of fencing (orange mesh or chain link) placed around the RPZ.
- b. No vehicles or construction materials/debris will be allowed in the RPZ.
- c. No equipment shall be cleaned or other liquids deposited within the limits of the dripline of any Protected Tree. This includes, but is not limited to, paint, oil, solvents, asphalt, concrete, mortar, or other materials;
- d. No signs, wires, or other attachments, other than those of a protective nature, shall be attached to any Protected Tree;
- e. Trespassing or throwing trash into a Protective Fence area is prohibited.
- f. Any damage done to tree crowns or roots will be repaired immediately and any wounds on oak or pecan trees will be painted with pruning paint within 60 minutes to prevent oak wilt or other disease or infestation to the tree.
- g. Wells or retaining walls around the RPZ will be used if proposed finished grades will raise or lower the natural RPZ grade by more than 6 inches.

- h. The finished RPZ will be pervious.
 - i. For commercial, multifamily and other developments; a minimum of 25% of the total DBH must be preserved.
 - j. For single family residential development of single or contiguous lots; contiguous lots include three or more lots, a minimum of 50% of total DBH must be preserved.
 - k. Utility and flatwork per the original builder's plan are exempt for up to 45% of the RPZ.
2. Single-family and duplex residential builders are required to plant, or preserve, a minimum of 1 approved large tree per dwelling lot. Trees planted or allowed to remain shall have minimum 3 inch DBH and an overall height of at least 8 feet when planted. Trees may not be planted in the right of way.
3. Site plans should accommodate existing trees by providing islands in parking lots, grading, and landscaping surrounding structures. In commercial, multifamily, and other developments, trees will be added to the landscape, as necessary, to have the equivalent of 4 inch DBH per 50 feet of street frontage. The clustering of trees, in lieu of small landscaping islands, shall be permitted

Sec. 14-410. - Median and right-of-way trees.

In addition to any other trees that may be required pursuant to this article, the owner of a residential or commercial development must plant trees within any required medians. A clear sight line for the observance of oncoming traffic is required at median breaks and street or drive intersections. The following criteria shall apply with modifications at the discretion of the Planning and Community Development Director or their duly appointed representative:

- (1) Trees shall be installed a minimum of five feet from curbs.
- (2) Trees shall be spaced a minimum of 20 feet apart.
- (3) Trees shall be placed no closer than 40 feet from the end of medians.
- (4) No plantings shall be permitted within areas less than five feet in width.
- (5) All required landscape areas within a dedicated median, street or other public right-of-way, must also provide and install irrigation facilities for such landscape areas. Such irrigation facilities shall consist of an adequate number of heads and controllers to properly irrigate all areas landscaped.
- (6) The developer, at its sole expense, shall furnish or cause to be furnished, all labor, materials, equipment, accessories, water and electrical facilities, and all other services necessary to maintain all plant materials installed in a healthy, vigorous, growing condition; replace any materials when and as they become damaged or die in accordance with the landscape plan.

Sec. 14-411. - Alternate landscaping.

The Planning Commission may approve an alternative plan, which is not in strict compliance with the requirements of this article. Such alternative plan must meet the objectives and purposes of this article, as determined by the planning commission, and clearly be superior to a plan that would otherwise be in strict compliance. In making such determination, the planning commission may consider the topography, shape, size, or other natural features of the

property; the suitability of any alternative screening or buffering proposal; and other similar factors.

Sec. 14-412. - Replacement of dead landscaping plants.

If any required landscaping tree, shrub, or ground cover plant should die, the owner shall replace these plants in compliance with this article by the end of the next planting season.

Sec. 14-413. - Replacement of existing landscape development plan.

Any major modification to the existing landscape development plan must be in accordance with this article and must be approved by the city's building official.

Sec. 14-414. – Government owned land.

The requirements of this chapter shall apply to land developed by any a governmental entity, but shall not be construed to require governmental entities to landscape public rights-of-way, utilities, easements or outdoor maintenance/ operation yards.

Sec. 14-415. - General planting standards.

When located within a visibility triangle, trees shall be headed to a minimum height of seven feet, and shrubs shall be maintained at a maximum height of 30 inches, as measured from the surrounding soil line.

Sec. 14-416. - Landscape planting and installation.

All approved landscaping must be installed in accordance with the approved landscape plan, tree preservation plan, tree protection plan & planting plan prior to issuance of a final certificate of occupancy for a building site. However, the property owner may elect to provide the Building Official with documented assurances that the landscaping will be completed, as prescribed in Section 14-402.2 of this Chapter. If so, a conditional certificate of occupancy may be issued by the Building Official for a period of six months. For purpose of this section, "documented assurance" shall be per the requirements of Section 14-402.2 of this chapter.

The property owner is responsible for notifying the Building Official when the landscape installation is completed and for obtaining non-conditional Certificate of Occupancy. If the property owner fails to notify the building official within the prescribed six-month period, the building official shall revoke the conditional certificate of occupancy.

Sec. 14-417. – Public/Private Schools, Churches & Institutional Use Landscaping Credits.

The City recognizes the unique circumstances associated with school and church development and the fact each of these uses may have considerable open space devoted to playgrounds, ball fields, outdoor recreation or areas for future expansion of facilities. For these uses, the Planning and Community Development Director may issue landscaping credit toward fulfilling the landscaping requirements of this article subject to the following criterion:

1. Open space is landscaped with approved turf grass designated by this section,
2. Open space contains recreational facilities, including, but not limited to playgrounds and tennis courts, on pervious or impervious surfaces;

3. More substantial tree and shrub landscaping is planted along the perimeter of the school or church property lines;
4. Landscape Plan complies with all Landscape Buffer requirements of this section for protected uses.

The decision of the Director may be appealed to the Planning Commission and City Council per the provisions in Section 14-418.

Sec. 14-418. – Planning Commission and City Council Action.

- A. The Planning Commission shall have the authority to:
 1. Hear and decide upon an alleged error in any order, requirement, decision, or determination by an officer of the City of Sealy in the enforcement of these regulations; and
 2. Authorize variances from these regulations where it is determined that the granting of a variance will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of these regulations will result in an unnecessary hardship, and so that the spirit of these regulations shall be observed and substantial justice done.
- B. Any person may appeal a decision of an officer of the City of Sealy to the Planning Commission, as provided herein. Such appeal shall be filed, in writing, with the City Secretary not later than 30 days after the date a decision is made by the city official. If such person or persons fails to file such petition within such 30-day period, the decision of the building official shall become final and binding.
- C. Variances.
 1. The Planning Commission shall not grant a variance unless it makes specific written findings, based directly upon the particular evidence presented to it, which support conclusions that:
 - a. The granting of a variance is necessary to secure appropriate development of a parcel of land that differs from other parcels within the district by being of such restricted area, shape, or slope that it cannot be appropriately developed without modification;
 - b. The granting of a variance will not be materially detrimental or injurious to other property or improvements within the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets, increase the danger of fire, endanger the public health, safety, and well-being, or substantially diminish or impair property values within the neighborhood; and
 - c. The variance desired will not be contrary to the general purpose and intent of these regulations.
 2. The Planning Commission may establish reasonable stipulations of approval or modification to a plan proposed with a variance, in order to minimize the impact of the variance on surrounding property, preserve the character of the area, or protect property within the area.
- D. Any person may appeal a decision by the Planning Commission to the City Council. Such appeal shall be filed with the City Secretary not later than ten days after the Planning

Commission renders a decision. If such person or persons fail to file such petition within such ten-day period, then the decision of the Planning Commission shall become final and binding.

- E. Appeal of a final decision by City Council. If the City Council affirms the decision of the Planning Commission, any person may appeal a decision of the City Council to a court of competent jurisdiction. Such appeal shall be filed with the court not later than ten days after the filing of the City Council's decision with the City Secretary. If such person or persons fail to file such petition within such ten-day period, then the decision of the City Council shall become final and binding.
- F. Effect of filing an appeal. The filing of a notice of an appeal shall stay any proceeding in furtherance of the action appealed from, unless the City official rendering such decision, determination, or interpretation certifies, in writing, to the Planning Commission and the applicant, that a stay poses an imminent peril to life or property, in which case the appeal will not stay further proceedings. The Planning Commission may review such certification and grant or deny a stay on the proceedings.
- G. The Planning Commission, or City Council upon appeal, may reverse, affirm, or modify the decision, determination, or interpretation appealed from and, in so modifying such decision, determination, or interpretation, the Commission shall be deemed to have all the powers of the officer from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the applicant.
- H. All decisions made by the Planning Commission shall be provided in writing to the applicant and shall include the action taken by the Commission, or the City Council upon appeal, any correction or compliance that is necessary to bring the project into conformance, the subsequent procedures or steps that may or shall be taken, and the location, time, and date for beginning and completing such subsequent procedures or steps.

Sec. 14-419. - Penalty.

Any person who violates any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished as provided in the City Code.

Sec. 14-420. - Reserved.”

Section 4. The City Council deems this ordinance to be an ordinance affecting public health and safety. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense.

Section 5. Repealer. All ordinances or parts of ordinances, or resolutions, official or unofficial policies, or practices inconsistent or in conflict herewith, are, to the extent of such inconsistency or conflict, hereby repealed.

Section 6. Severability. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be

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adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Sealy, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

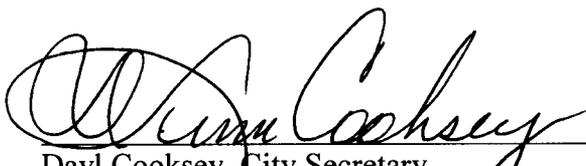
PASSED AND APPROVED on first reading this 13th day of January, 2015.

PASSED, APPROVED, AND ADOPTED on second and final reading this 27th day of January, 2015.



Mark Stolarski, Mayor

ATTEST:



Dayl Cooksey, City Secretary

