

ORDINANCE NO. 2284

AN ORDINANCE AMENDING THE KATY CODE OF ORDINANCES AND ESTABLISHING REQUIREMENTS FOR LANDSCAPING ON SITES OF NEW CONSTRUCTION OR DEVELOPMENT, OR ON SITES OF SUBSTANTIAL RENOVATION OR RECONSTRUCTION; PROVIDING FOR PROTECTION OF TREES IN THE PUBLIC RIGHT OF WAY AND REPLACEMENT OF TREES REMOVED TO ACCOMMODATE CONSTRUCTION; PROVIDING A PENALTY OF NOT MORE THAN \$200.00 PER DAY FOR EACH DAY OF VIOLATION; AND CREATING A LANDSCAPE APPEAL BOARD TO CONSIDER APPEALS.

WHEREAS, City Council finds that landscaping improves the appearance of commercial properties when viewed from the street, and

WHEREAS, City Council finds that landscaping safeguards and enhances property values and protects public and private investments, and

WHEREAS, City Council finds that landscaping screens the unattractive aspects of commercial properties, and

WHEREAS, City Council finds that landscaping reduces the negative environmental effects of development while protecting and enhancing the value of developed properties and the surrounding area, and

WHEREAS, City Council finds that landscaping promotes and protects the health, safety and welfare of the citizens of the City of Katy by creating an urban environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life,

WHEREAS, City Council has determined that trees enhance the quality of life and are beneficial to the health, safety and welfare of the citizens of the City of Katy, NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KATY, TEXAS, THAT:

I.

The matters in the preamble are found to be true and correct and are incorporated herein as part of this Ordinance.

II.

The Katy Code of Ordinances, Chapter 3, is amended by adding thereto a new article, Article 3.1300 LANDSCAPING, to read as follows:

**ARTICLE 3.1300 LANDSCAPING**

**Sec. 3.1301 Purpose.** The purpose of this article is:

1. To improve the appearance of commercial properties when viewed from the street.

2. To safeguard and enhance property values and protect public and private investments.

3. To screen the unattractive aspects of commercial properties.

4. To reduce the negative environmental effects of development while protecting and enhancing the value of developed properties and the surrounding area.

5. To promote and protect the health, safety and welfare of the citizens by creating an urban environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life.

**Sec. 3.1302 Scope and Application.**

1. This article shall apply to the street yard of all building sites where any of the following conditions is present, except as provided in subsection 2 below:

a. There is new construction of a building for which a building permit is required.

b. There is an enlargement exceeding five hundred (500) square feet or ten (10%) percent in area of the exterior dimensions of an existing building for which a building permit is required.

c. There is construction of a new parking lot or expansion of an existing parking lot within the street yard by more than one thousand (1,000) square feet or ten (10%) percent in area.

2. When a building or parking lot is enlarged, the requirements of this article shall be applied incrementally such that landscaping shall be required in proportion of the enlarged building area or off-street parking area to the existing

development, i.e., a ten (10%) percent increase requires ten (10%) percent of the required landscaping.

3. This article shall not apply to the following situations:

a. Residential uses with four (4) or less dwelling units per lot.

b. The reconstruction of an existing building when destroyed or ruined by flooding, fire, windstorm or act of God, only when reconstruction of that building will not result in an increase in building size or paving area of the parking facilities to be provided.

c. Interior finish work or remodeling in a portion of a building unless the work results in an increase in the paving area of the parking facilities within the street yard or in an enlargement of the exterior dimensions of an existing building.

4. A building located within the street yard of another building shall be considered as a separate building site unless it has previously been included within an approved landscape plan.

**Sec. 3.1303 Landscape Plan.**

1. The person, corporation, partnership, developer, entity as owner of property ("Landowner") to which this article

applies shall, at the time of applying for a permit and prior to commencement of any work on the site, submit a landscape plan to the Permits Department.

2. No permit shall be issued for work on any property to which this article applies until a Landscape Plan has been submitted and approved by the Director of Public Works or assigns ("Building Official").

3. The landscape plan submitted for approval shall:

- a. Identify the project and location,
- b. Show a North arrow,
- c. Be drawn to scale and identify the scale,
- d. Identify the landscape designer giving name address and telephone number,
- e. Show structure location,
- f. Show parking locations,
- g. Show set back lines,
- h. Identify plant types,
- i. Show plant quantity,
- j. Show plant size,
- k. Show street front locations of trees,
- l. Show parking space tree locations, and
- m. Show location, type and size of existing trees.

**Sec. 3.1304 Landscaping Requirements.**

**1. For all areas outside The Old Katy District**

a. Landscaping shall consist of required trees, and a choice of plant material including but not limited to planted grass, shrubs and ground cover. A minimum of all of the adjacent right of way as well as an additional ten (10%) percent of the lot area not covered by structure shall be utilized for landscaping.

b. On the front street and side street, a buffer shall be created between the developed area and the curb line no less than fifteen (15') feet in width. For each 50 lineal feet or less of buffer, two (2) hardwood trees, three (3) shrubs of three gallons or larger, and grass/groundcover shall be planted. Easements and rights of way may be considered as part of the required buffer, however no required trees/plants shall be planted in an easement or right of way.

c. In addition to the trees along the street, any parking area containing fifteen (15) or fewer spaces shall provide landscape area for the planting of one tree and three shrubs. Larger parking areas shall be landscaped with one tree and three shrubs for every 15 spaces or part thereof.

d. All trees shall be a minimum of one and one half (1.5") inch caliper as measured twelve (12") inches above grade. Grade shall be measured from the top of the ball or the top of the soil level inside a containerized tree.

e. All existing trees with a 3-inch or greater caliper measured at twelve (12") inches above grade that are salvaged and protected during construction shall be counted toward the satisfaction of this requirement regardless of the location on the property.

f. If living trees must be removed as part of the development or enlargement process, two (2) trees, as described in Sec. 3.1304,1,d, shall be planted as a replacement for each tree removed.

g. Required plants/trees must be maintained in a healthy condition at all times. The property owner is responsible for regular weeding, mowing of grass, irrigating, fertilizing, pruning, and other maintenance of all plantings as needed. Any plant/tree that dies must be replaced with another living plant that is compatible with the approved landscape plan within sixty (60) days after notification by the Building Official. The Building Official may extend this time period up to an additional thirty (30) days due to weather considerations. If the

plants/trees have not been replaced after appropriate notification and/or extension, the Landowner shall be in violation of this Ordinance.

h. Any damage to utility lines resulting from the negligence of the Landowner or the Landowner's agents or employees in the installation and maintenance of required landscaping in a utility easement is the responsibility of the Landowner. If a public utility disturbs plants/trees within a utility easement, it shall make every reasonable effort to preserve the plants/trees and return them to their prior locations after the utility work. If, nonetheless, plants/trees subsequently die, it is the obligation of the Landowner to replace them.

i. If an irrigation system is not installed, a hose bib shall be provided within fifty (50') feet of all landscape areas.

**2. For areas within The Old Katy District**

a. The Old Katy District is as defined in the City of Katy Zoning Ordinance Section 9.2-7, being located West of the East right of way line of Avenue A; West of the East right of way line of Avenue D; South of the South right of way line of George Bush Drive (6<sup>th</sup> Street); and North of the North right of way line of First Street between Avenue A

and Avenue B and North of the railroad right of way between Avenue B and Avenue D.

b. At the time of applying for a building permit, any Landowner proposing to expand or enlarge an existing structure within the Old Katy District or construct any new facility within The Old Katy District must also present to the Permits Department, a landscape plan incorporating trees or shrubs and/or grass/groundcover into the construction plan. If the Landowner is unable to incorporate any such plantings the Landowner shall explain the reason for failure to incorporate such plantings. If the Building Official determines that good cause exists for not incorporating such a plan, the Building Official may waive the landscape requirements. If the Building Official determines that reasonable grounds exist for requiring landscape plantings the permit may be denied.

**Sec. 3.1305 Landscape Visibility Requirements.**

No tree or shrub shall be planted so as to create a traffic hazard or interfere with driver visibility.

**Section 3.1306 Compliance.**

1. All requirements of this article shall be completed prior to the time a certificate of occupancy or approval of a parking area is issued or given.

2. The obligations to create and maintain landscape areas shall apply to the Landowner, their successors and assigns.

**Section 3.1307 Tree preservation.**

No living tree shall be removed from any public right of way or easement without authorization from the Building Official.

**Section 3.1308 Appeal.**

1. There is hereby created a Landscape Appeal Board (The Board) to hear appeals arising from the enforcement of this Ordinance. The Board shall consist of five (5) persons, to-wit: one (1) councilmember, one (1) Keep Katy Beautiful board member, and three (3) members of the public to be appointed by the Mayor and approved by the City Council. No hearing shall be conducted unless three members are present for the hearing. Members shall be appointed to two-year terms to run concurrently with the office of the Mayor.

2. Any person who is denied a building permit and such denial is based solely on non-compliance with the Landscape Ordinance (The Ordinance) may file notice of appeal with The Board. Such appeal must be made within 15 working days following the date of the denial of a permit. The notice of appeal shall contain a statement of the grounds of the denial and the name of the person who denied the permit (The Notice.) The original

notice shall be sent to the Board by mailing to the City Secretary of the City of Katy, P. O. Box 617, Katy, Texas 77492, and a copy to the Building Official in care of the Permit Department of the City of Katy Public Works Department (The Department). Within 10 working days after receipt of The Notice, the Building Official shall deliver to The Board copies of all documents and papers filed with The Department relative to the permit denial (The Documents). Only papers and documents relating to landscaping need be submitted. The Building Official shall also state in writing the grounds for the denial.

3. Upon receipt of The Notice, The Documents and statements from The Department, The Board shall call a hearing where it shall consider the action taken and hear oral statements and argument from the aggrieved party and the City of Katy who shall be represented by the City Administrator.

4. The Board shall hear and decide all appeals of a permit denial. The Board may, by majority vote, uphold the decision of The Department or reverse the decision of The Department and order the issuance of a permit as requested.

5. As an alternative to upholding or reversing the decision of The Department, The Board may grant a variance to The Ordinance based upon an alternate plan presented by the permit applicant. In granting a variance The Board must find

that the variance is within keeping of the general goals of The Ordinance, will not affect the value or aesthetics of adjoining property, is not based solely on economic grounds, or is not necessitated by any conduct or action by the applicant.

6. Any decision of The Board or variance granted by The Board shall be in writing and a copy mailed by certified mail, return receipt requested, to the Landowner at the address shown on the permit application. The decision shall be mailed within three (3) working days following the date The Board has rendered its decision.

7. Any Landowner aggrieved by a decision of The Board may appeal such Board decision by filing a petition for the same in a court of competent jurisdiction specifying the grounds of such appeal. Such petition shall be filed with fifteen (15) working days following the date The Board has rendered its decision and not thereafter.

**Section 3.1309 Penalty.**

Any person found to have violated this article shall upon a finding of guilty be guilty of a misdemeanor and subject to a fine of no more than \$200.00 for each day a violation exists.

III.

This Ordinance shall become effective after its publication as required by the Katy City Charter. The City Secretary is authorized to publish only the caption of this Ordinance.

PASSED AND APPROVED this the 13 day of June, 2005.

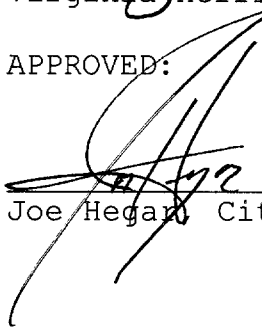
CITY OF KATY, TEXAS

By:   
DOYLE G. CALLENDER, Mayor

ATTEST:

  
Virginia Herrington, City Secretary

APPROVED:

  
Joe Hegar, City Attorney