

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2004-02

AN ORDINANCE AMENDING ARTICLE 10-IV-4(A)1.i. OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, RELATING TO THE CONSTRUCTION OF SIDEWALKS AT THE TIME OF DEVELOPMENT OF A SUBDIVISION; AMENDING ARTICLE 7-I-1(b) OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS, BY AMENDING THE SECTION REQUIRING SIDEWALK CONSTRUCTION PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY OR PROVISION OF UTILITIES TO NEW CONSTRUCTION IN CERTAIN CIRCUMSTANCES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATION OF ANY PROVISION HEREOF; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, the City Council of the City of Kerrville, Texas, has previously determined on several occasions that in order to promote the health, safety, and general welfare of the City of Kerrville and the safe, orderly, and healthful development of the City, a network of sidewalks to facilitate pedestrian traffic within most areas of the City should be constructed at the time of development of a subdivision that requires the approval of the City of Kerrville or at the time of construction or renovation of buildings within the City; and

WHEREAS, having reviewed the City's regulations related to the construction of sidewalks within the City at the time of development of a subdivision as well as at the time of initial construction or renovation of a building, the City Council of the City of Kerrville has determined that the City's current regulations do not provide for sidewalks to be constructed in the manner desired by the City Council; and

WHEREAS, pursuant to Texas Local Government Code §212.002, notice has been given to all citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on December 9, 2003 to consider this Ordinance, the adoption of which will result in revisions to both Article 10-IV-4 of the Code of Ordinances of the City of Kerrville, Texas, which contains subdivision regulations currently in effect within the City, and its extraterritorial jurisdiction; as well as amendments to the City's building regulations; and

WHEREAS, such public hearing was held in the Council Chambers beginning at approximately 6:30 p.m. December 9, 2003, as advertised; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. That Article 10-IV-4(A)1.i. of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding Subsections (8) and (9) as follows:

- “(8) Following a determination that adequate right-of-way does not exist to allow for the installation of sidewalks on a portion or all of the subject tract or lot, the City Engineer is authorized to grant a waiver of the sidewalk requirement on a specific portion(s) or the entirety of the tract or lot. The property owner may appeal the decision of the City Engineer to Planning and Zoning Commission who shall review and offer a recommendation to the City Council.
- (9) All sidewalks required in this Section shall comply with all Federal, State, and local laws, including those requiring accessibility standards. Should a conflict occur between any of said standards, the most restrictive shall apply. ”

SECTION TWO. That Article 7-I-6 of the Code of Ordinances of the City of Kerrville, Texas, is amended in its entirety to provide as follows:

“Art. 7-I-6 Sidewalks.

(a) Commercial Development.

- (1) To the extent that sidewalks do not already exist, sidewalks shall be constructed within all street rights-of-way adjacent to all tracts or lots utilized or intended to be utilized for commercial development purposes, whether platted or unplatted, to the full length of the property line of the lot or tract involved, said construction to be:
 - a. concurrent with construction of the first structure on any lot or tract of land, whether or not the tract of land is platted or being subdivided;
 - b. concurrent with the construction of the addition to an existing building or buildings, regardless of the amount of additional square footage; or
 - c. concurrent with the construction of an additional building(s) on a lot or tract regardless of the amount of additional square footage.
- (2) Public and private colleges and universities, hospitals and other campus-like facilities are exempted from the requirements of this section subject to the following standards:
 - a. Such uses existed prior to January 1, 1981; and

- b. Such uses have an existing or planned fully developed internal pedestrian way system that provides access points off the users property to an existing or planned public sidewalk system. In the event of a planned or incomplete internal system, said planned or incomplete system shall be completed as part of the related building construction and/or expansion which increases the total square footage of an existing facility, regardless of the amount of additional square footage or, the construction of a new building.

- (b) **Single or Two-family Residential Development.** Sidewalks shall be constructed concurrent with the construction of the first structure on any lot or tract of land utilized or intended to be utilized for single or two-family residential development purposes, whether platted or unplatted, except in:
 - (1) All legally platted lots existing prior to January 1, 1981;
 - (2) Replats of any lots originally platted prior to January 1, 1981;
 - (3) Unplatted property exempted from the platting requirement per the Subdivision Ordinance;
 - (4) Legally platted subdivisions recorded on or after January 1, 1981, in which 75% (percentages rounded to the nearest whole number) or more of the lots in said subdivision have received certificates of occupancy prior to the effective date of this ordinance; except that should a single lot or tract of land within said subdivision, as of the effective date of this ordinance, be adjacent to property developed with a sidewalk, whether or not separated from such single lot by a public or private road, alley, or easement shall be required to install a sidewalk on said lot or tract of land; or
 - (5) Single lot subdivisions platted on or after January 1, 1981 in which:
 - a. All adjacent property, whether or not separated from said single lot subdivision by a public or private road, alley, or easement, is exempted from sidewalk construction by one of the exemptions in (b)(1) through (4) above; or
 - b. All adjacent developed property, whether or not separated from said single lot subdivision by a public or private road, alley, or easement, do not have existing sidewalks as of the effective date of this ordinance.

- (c) **Compliance with Subdivision Ordinance.** All sidewalks must comply with subparagraphs (5), (6) and (7) of Article 10-IV-4(A)1.i. of the City Code of Ordinances with respect to width and location.
- (d) **Sidewalks Required Regardless of Exemption from Subdivision Regulations.** Notwithstanding Article 10-IV-4(A)1.i., sidewalks shall be constructed in the rights-of-way of all streets, public or private, pursuant to this Article.
- (e) **Utility Connections; Certificates of Occupancy.** The Chief Building Official shall not issue any final utility clearance or certificate of occupancy until all sidewalks required to be constructed have been finally completed and approved by the Public Works Department.
- (f) **Administrative Waiver.** Where the City Engineer determines that adequate right-of-way does not exist to allow for the installation of a sidewalk(s) on a portion or all of the subject tract or lot, the City Engineer is authorized to waive the provisions of this Article for a portion or the entirety of a development. A decision of the City Engineer not to waive said requirements may be appealed to the City Council by the property owner.
- (g) **Appeal to City Council.** Following a determination by the City Engineer pursuant to (f) above, the City Council shall consider the following criteria for granting a waiver:
 - (1) Topographic restrictions such as slope, drainage structures, etc;
 - (2) whether all property(s) adjacent to the subject property, whether or not the said property(s) is separated from the subject property by a public or private road, alley, or easement, is exempted from sidewalk construction by operation of this Article;
 - (3) whether all property(s) adjacent to the subject property is developed property, whether or not separated from said subject property by a public or private road, alley, or easement, and does not have existing sidewalks as of the effective date of this Article; or
 - (4) If it shown to the satisfaction of the City Council that any of the requirements of this Section, if complied with, would work an undue hardship on the property owner; that the requirements required herein would not be in the best interest and general welfare of the public; or, that the intent of this Article was being met by the granting of such waiver.

- (h) All sidewalks required in this section shall comply with all Federal, State, and local laws, including those requiring certain accessibility standards. Where there are instances of conflicting requirements, the most restrictive standards apply.

SECTION THREE. The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Kerrville, Texas, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. This Ordinance shall be in full force and effect immediately upon and after its final passage and publication as required by law.

SECTION SIX. The penalty for violation of this Ordinance shall be in accordance with that general penalty provision contained in Title 1, Chapter I of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense.

SECTION SEVEN. Pursuant to Texas Local Government Code §52.013(a), the City Clerk is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION EIGHT. The City Council has previously adopted by ordinance a codification of its civil and criminal ordinances. This Code of Ordinances has recently been reviewed and revised and will eventually be readopted by Council. As a result, the provisions contained herein may be renumbered and relettered pursuant to the recodification.

PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, 2003.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, 2004.

Stephen P. Fine, Mayor

ATTEST:

Brenda Craig, City Clerk

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney