

## ARTICLE III. MINIMUM LANDSCAPING REQUIREMENTS FOR ALL ZONING DISTRICTS

### Sec. 86-61. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Berm* means an earthen mound designed to provide visual interest, screen undesirable views and/or decrease noise.

*Landscape buffer* means a combination of physical space and vertical elements, such as plants, berms, fences or walls, the purpose of which is to separate and screen incompatible land uses from each other.

*Landscaped open area* and *landscaped area* mean any combination of living plants, such as grass, ground cover, shrubs, vines, hedges or trees, and nonliving landscape material, such as rocks, pebbles, sand, mulch, walls, fences or decorative paving materials.

*Nonpermeable* means any surface lacking the ability for air and water to pass through to the root zone of plants.

*Ornamental tree* means a deciduous or evergreen tree planted primarily for its ornamental value or screening purposes. Such tree tends to be smaller at maturity than a shade tree.

*Screen* means a method of reducing the impact of noise and unsightly visual intrusions with less offense or more harmonious elements, such as plants, berms, fences or walls, or any appropriate combination thereof.

*Shade tree* means a sometimes evergreen, usually deciduous tree, planted for its high crown of foliage or overhead canopy; a large woody perennial having one or more self-supporting stems and numerous branches reaching a mature height of at least 25 feet and a mature spread of at least 20 feet.

*Shrub* means a self-supporting woody perennial plant of low to medium height which is characterized by multiple stems and branches continuous from the base, usually not more than ten feet in height at maturity.

*Visibility triangle* means an imaginary triangle located within the curb lines of two intersecting such curb lines at points 35 back from their intersection and the hypotenuse (or third side of the triangle).

(Ord. No. 861-98, § 2, 9-28-1998)

**Cross references:** Definitions generally, § 1-2.

**Sec. 86-62. Purpose.**

The purpose of this article is to:

- (1) Aid in stabilizing the environment's ecological balance by contributing to the processes of air purification, oxygen regeneration, groundwater recharge and storm water runoff retardation, while at the same time aiding in noise, glare and heat abatement.
- (2) Assist in providing adequate light and air and preventing overcrowding of land.
- (3) Ensure that landscaping is an integral part of development, not an afterthought.
- (4) Provide visual buffering and enhance the beautification of the city.
- (5) Safeguard and enhance property values and protect public and private investments.
- (6) Preserve and protect the unique identity and environment of the city and preserve the economic base attracted to the city by such factors.
- (7) Conserve energy.
- (8) Protect the public health, safety and general welfare.

(Ord. No. 861-98, § 1, 9-28-1998)

**Sec. 86-63. Applicability; variances.**

- (a) Except as otherwise provided in this section, the landscaping regulations set forth in this article shall apply to all land located within the city. Such landscaping requirements shall become applicable to each individual lot at the time a site plan is submitted for planning and zoning commission review or an application for a building permit on such lot is made.
- (b) This article shall apply to the all zoning districts within the city.
- (c) When this article becomes applicable to a lot, the requirements set forth in this article shall be binding on all current and subsequent owners of the lot.

(d) The community development review committee shall, as a minimum, impose landscaping requirements that are reasonably consistent with the standards and purposes of this article as a part of any ordinance establishing or amending a planned development district, or amending a special use permit. All landscaping requirements imposed by the community development review committee shall be reflected in landscape and irrigation plans that comply in form and content with the requirements of section 86-64.

(e) The board of adjustment may grant a special exception to the landscaping requirements set forth in this article upon making a special finding from the evidence presented that strict compliance with the requirements of this article will result in substantial financial hardship or inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this article. The applicant to be considered for special exception must submit a justification statement that describes which of the requirements set forth in this article will be met with modifications; which project conditions justify using alternatives; and how the proposed measures equal or exceed normal compliance.

(Ord. No. 861-98, § 3, 9-28-1998; Ord. No. 916-00, § 1, 7-10-2000)

#### **Sec. 86-64. Landscape plan approval.**

(a) At the time of site plan review, there shall be submitted to the community development review committee for its approval a landscape plan drawn to the same scale as the approved site plan and submitted with the same number of copies as the site plan.

(b) Except where otherwise provided, the person responsible for the property, whether owner or tenant, shall landscape all yard, setback, parking, service and recreational areas with lawns, trees, shrubs, flowers, vines, ground covers or other live plant materials, which shall be permanently maintained by the owner or tenant in a neat and orderly manner as a condition of acceptance of a certificate of occupancy. Once installed, all landscape materials shall be irrigated by a mechanical underground irrigation system and maintained in a living state. Dead or dying plant materials shall be removed and replaced in accordance with the approved landscape plan.

(c) Where the use of a living screen is proposed, such screen must be included as an element of the site plan and landscape plan.

(d) Fountains, ponds, sculptures, planters, walkways, flagpoles, light standards and decorative screen-type walls shall be permitted as elements of landscaping in areas designated for landscaping. Decorative-type walls, planters and sculptures shall be 30 inches or less in height. The community development review committee shall be authorized to permit heights in excess of 30 inches where it would be in the best interest of the landscaping and will not, in the community development review committee's

opinion, create a problem relative to public health, safety, convenience, prosperity and general welfare.

(e) Areas of landscaped open space shall be provided on the same lot, parcel or tract as the building that is being served and shall be provided in the following ratios:

(1) For lots, parcels or tracts of land having a building with a total gross floor area of less than 75,000 square feet, landscaping, as described in subsection (d) of this section, shall be provided at a minimum ratio of seven percent of the gross land area.

(2) For lots, parcels or tracts of land having a building with a gross floor area of 75,000 square feet or more, landscaping, as described in subsection (d) of this section, shall be provided at a minimum ratio of ten percent of the gross land area.

(f) For parking areas, a minimum of 20 percent of the required landscaping shall be provided in areas that are internal to the parking areas. In parking lots having only one row of parking, such requirement may be met with perimeter landscaping.

(g) For purposes of establishing compliance with the minimum area requirements for landscaping, no land within the 100-year floodway, as determined by the most recent Federal Emergency Management Agency (FEMA) study, shall be counted as fulfilling the minimum landscape area requirements.

(h) The landscape plan shall show in detail, but shall not be limited to, the location of each element of landscaping; a description by botanical or common name of each landscape element or group of elements; the number and size of each tree or planting container; and the height of any proposed planter, sculpture or decorative screen.

(i) The community development review committee shall consider the adequacy of the proposed landscaping and any other aspect deemed necessary by the community development review committee to promote the public health, safety, order, convenience, prosperity and general welfare.

(j) In the approval or disapproval of the landscape plan, the community development review committee shall not be authorized to waive or vary conditions and requirements contained in the comprehensive zoning ordinance, chapter 90 of this Code, or other valid city ordinances.

(k) It shall be unlawful to issue a certificate of occupancy prior to the approval of the landscape plan by the community development review committee. Prior to the issuance of a certificate of occupancy, all approved screening and landscaping must be in place or, if seasonal considerations prohibit the completion of the landscaping, a temporary certificate of occupancy may be issued for such time as is reasonable to complete the landscaping.

(l) When changes to a previously approved landscape plan are requested, and such changes will result in amendment or abandonment of an easement or right-of-way, or when the gross floor area of a structure will be increased by more than ten percent or 1,000 square feet, whichever is less, or if the approval of a revised site plan is required, the community development review committee shall be required to approve a revised landscape. The requirements for a submitted revised landscape plan shall be the same as the requirements for landscape plan submittal, and the community development review committee shall consider the same elements in the approval or disapproval of a revised landscape plan as for an original landscape plan. In considering a revised landscape plan, the community development review committee shall not be authorized to waive or vary conditions and requirements contained in the comprehensive zoning ordinance, chapter 90 of this Code, or amendments thereto, or other valid city ordinances. If the changes being proposed are of a minor nature, as determined by the director of planning and zoning or his designee, administrative approval of the minor revisions shall be permitted under the conditions set forth in this section.

(m) The director of planning and zoning or his designee shall be authorized to approve minor amendments to previously approved landscape plans. Minor amendments are those amendments which provide for rearrangement or reconfiguration of landscape areas or materials which are in conformance with an approved site plan and do not decrease the amount or quality of landscaping below that required by the comprehensive zoning ordinance, chapter 90 of this Code. In the approval or disapproval of a minor revision to an approved landscape plan or revised landscape plan, the director of planning and zoning or his designee shall not be authorized to waive or vary conditions and requirements contained in the comprehensive zoning ordinance, or amendments thereto, or other valid city ordinances. All minor revisions that are approved administratively shall appear as an item on the next community development review committee agenda following approval for acknowledgement of staff action.

(Ord. No. 861-98, § 4, 9-28-1998; Ord. No. 916-00, §§ 2--4, 7-10-2000)

### **Sec. 86-65. Tree preservation.**

(a) It shall be unlawful for any person to remove or destroy, or cause the removal or destruction, of any tree which is three-inch caliper in size or larger and which is located on an undeveloped tract of land within the city without first obtaining a tree removal permit. If a tree has sustained damage which creates an immediate hazard to life or property, the director of planning and zoning may approve the removal of such tree. It is not the intent of this section to require a tree removal permit to remove trees located on developed sites. An application for a tree removal permit shall be filed with the director of planning and zoning and shall include the location, species, caliper, and height and canopy coverage of all trees proposed to be removed. Following staff review and inspection, the director of planning and zoning shall forward the application to the

community development review committee at the earliest possible meeting for approval, approval with conditions or denial.

(b) A tree survey within two years shall be required with submittals of each of the following: a detail plan, a subdivision plat and plans required for a building permit. If the proposed detail plan, plat or building permit will not result in new construction or expansion of existing development, a tree survey shall not be required. The tree survey shall identify the location, species, caliper and approximate canopy coverage of all healthy trees which are three-inch caliper in size or larger when measured at 41/2 feet above the ground.

(c) Trees identified by survey shall be preserved in accordance with the following requirements:

(1) A minimum of 60 percent of the trees which are three-inch caliper in size or larger shall be preserved. If more than 40 percent of such trees are removed, then each caliper inch of the largest trees removed in excess of 40 percent must be replaced with one caliper inch of a new tree of a species included on the tree list set forth in subsection (c)(4) of this section. The minimum size replacement tree is three-inch caliper. For the purposes of this section, tree replacement calculations shall begin with the largest tree removed and continue in descending order. For example, in a lot of ten trees, five of which are eight-inch caliper and five of which are four-inch caliper, four of the four-inch caliper trees and one of the eight-inch caliper trees are removed; therefore, one tree must be replaced to meet such requirement. The tree that must be replaced is the largest tree removed; in this case, the eight-inch caliper tree shall be replaced. However, the eight-inch caliper tree may be replaced with one eight-inch caliper tree, with two four-inch caliper trees, or any combination of trees three-inch caliper or larger which adds up to eight caliper inches.

(2) Ninety percent of the healthy and growing trees which are classified as "large" on the tree list set forth in subsection (c)(4) of this section and which are ten-inch caliper in size or larger must be preserved.

(3) Eighty percent of the healthy and growing trees which are classified as "small," on the tree list set forth in subsection (c)(4) of this section and which are four-inch caliper in size or larger must be preserved.

(4) Trees to be replaced as required by subsection (c) (1) of thei section must be included in the following list:

Tree List

TABLE INSET:

Large	Small
Boxelder	Indigo Bush Amorpha

Bitternut Hickory	Chittamwood
Pecan	Hawthorn
Northern Catalpa	Redbud
Texas Sugarberry	Roughleaf
Hackberry	Common Persimmon
White Ash	Eastern Wahoo
Green Ash	Loquat
Texas Ash	Deciduous Holly
Honey Locust	Privet
Black Walnut	Wax myrtle
Eastern Red Cedar	Photinia
Sweetgum	Chickasaw Plum
Osage Orange	Mexican Plum
Chinaberry	Cherry Laurel
Red Mulberry	Common Pear
Sycamore	Carolina Buckthrom
Eastern Cottonwood	Smooth Sumac
Burr Oak	Texas Sophora
Chinkapin Oak	Mexican Buckeye
Sumard Red Oak	Rusty Blackhaw
Texas Red Oak	Chastetree
Black Locust	Toothache Tree
Black Willow	Shrubalthea
Western Soapberry	Chinese Holly
Chinese Tallow	Burford Holly
Balch Cypress	American Holly
American Elm	Yaupon Holly
Cedar Elm	Crapemyrtle
Slippery Elm	
Southern Magnolia	
Crabapple	
Live Oak	

(d) All trees to be preserved shall be identified as such and shall be included on the landscape and screening plan.

(e) Existing trees may be used to fulfill tree planting requirements pertaining to screening and landscaping if such trees are in a healthy and growing condition.

(f) Existing trees to be preserved shall be protected by barricades or other acceptable methods during site preparation and construction to provide an area having one foot of radius for each caliper inch when measured at 4 1/2 feet above the ground.

(1) The protected area shall not be used for vehicle or equipment parking or storage of materials.

(2) A minimum of 75 percent of the protected area shall be maintained as permeable landscape area at grades existing prior to site development. Such area shall be maintained on a permanent basis following completion of site development.

(g) If any tree is removed in violation of the requirements set forth in this section, including an injury to a tree resulting from failure to follow required tree protection measures which causes, or may reasonably be expected to cause, the tree to die, the city shall have the authority to enact the following administrative and civil penalties on the owner of the property from which the tree was removed:

(1) A monetary penalty of \$100.00 per caliper inch of width of the removed tree; and

(2) Replacement with a new tree having a total tree caliper width equivalent to twice that of the removed tree. Such replacement tree shall have a minimum caliper width of three inches and shall be planted in a location approved by the director of planning and zoning. Funds paid to the city as tree removal penalties shall be deposited in a special account and used by the city to provide and support landscape planting on public property.

(h) The board of adjustment shall have the authority or jurisdiction to consider or grant variances or exceptions to the requirements of this section.

(Ord. No. 861-98, § 5, 9-28-1998; Ord. No. 916-00, § 6, 7-10-2000)

### **Sec. 86-66. Violation; penalty.**

Any person who violates any of the provisions of this article or this Code as amended by this article shall be guilty of a misdemeanor and, upon conviction in the municipal court, shall be subject to a fine not to exceed \$500.00 for each offense, and each day such violation shall continue shall be deemed to constitute a separate offense.

(Ord. No. 861-98, § 6, 9-28-1998)

## **ARTICLE II. TREES**

**Sec. 86-31. Responsibility for upkeep and maintenance; assistance.**

The city's public works department is responsible for the upkeep and maintenance of all trees located on city property or growing in, upon or over public property, including trees located in city medians. The city's public works department has the authority, control and supervision over the planting, removal, care, maintenance, trimming, spraying and protection of such trees. The public works department is authorized to seek additional assistance from other city departments, upon approval of the city manager or city council, to assist in maintaining healthy trees on city property.

(Ord. No. 937-01, § 1, 4-9-2001)

**Sec. 86-32. Unlawful acts.**

No person shall:

- (1) Intentionally damage, cut, carve, transplant or remove any trees on city property;
- (2) Attach any rope, nails, advertising posters or other contrivance to any tree;
- (3) Allow any gaseous liquid or solid substance which is harmful to trees to come into contact with such trees; or
- (4) Set or permit any fire to burn when such fire, or the heat of such fire, will injure any portion of a tree on city property.

(Ord. No. 937-01, § 2, 4-9-2001)

**Sec. 86-33. Duty of property owner.**

It shall be the duty of the person owning or occupying within the city real property which borders a public street, alley or sidewalk to prune the trees located on such property in such a manner that the trees will not obstruct or shade the streetlights, obstruct the passage of pedestrians, obstruct vision of traffic signs or obstruct the view of any street or alley intersection. The minimum clearance of an overhanging portion of a tree shall be ten feet over sidewalks and 12 feet over all streets and alleys.

(Ord. No. 937-01, § 3, 4-9-2001)

Secs. 86-34--86-60. Reserved.

**Sec. 58-101. Placement.**

(a) *Poles, trees, etc.* No person shall attach or maintain any sign upon any public utility pole, structure or tree within the city; provided, however, temporary political signs may be placed on trees located on private property with the consent of the owner of such private property.

(b) *Public streets or property.* No person shall place, erect or maintain, or cause the placing, erecting or maintaining of, any sign upon any easement, public right-of-way or public area.

(c) *Fences.* No person shall paint or attach a sign, other than an identification sign, to the outside of a fence or wall which is not a structural part of a building, whether or not such fence is located on the property line.

(Code 1984, § 10-1-5; Ord. No. 447, § 4, 1-27-1986; Ord. No. 460, § 2(10-1-5), 10-13-1986)