

## ARTICLE III. LANDSCAPING REQUIRED

### Sec. 33A-8. Landscape area established; designated thoroughfares.

The landscape provisions of this chapter shall apply to all lots, tracts and parcels of land adjacent to the right-of-way line on the following designated thoroughfares and freeways within the city limits:

- (1) Interstate Highway 635 (L.B.J.);
- (2) State Highway 114 (John Carpenter);
- (3) State Highway 183 (Airport Freeway);
- (4) State Highway 356 (Irving Blvd.);
- (5) State Highway Loop 12 (Walton Walker Blvd.);
- (6) State Highway 482;
- (7) State Highway 348;
- (8) State Highway 161;
- (9) Belt Line Road.

(Ord. No. 4967, § 2, 6-5-86)

### Sec. 33A-9. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

- (a) *Front yard.* An open, unoccupied space on a lot or tract facing a street and extending across the front of a lot or tract between the side property lines. See Illustration 1.
- (b) *Interior parkway.* The greenbelt area from the front or side property lines adjacent to a dedicated thoroughfare extending into the lot or tract. See Illustration 2.
- (c) *Exterior parkway.* The greenbelt area in the dedicated right-of-way of a thoroughfare or street between the back of curb or edge of pavement and the front or side property lines. See Illustration 3.

- (d) *Area of lot.* The total square feet contained within lot lines.
- (e) *Lot depth.* The mean distance between the front and rear lot lines.
- (f) *Corner lot.* A lot where the interior angle of two (2) adjacent sides at the intersection of two (2) streets is less than one hundred thirty-five (135) degrees. A lot abutting upon a curved street or streets shall be considered a corner lot for the purposes of this chapter if the arc is of less radius than one hundred fifty (150) feet, and the tangents to the curve, at the two (2) points where the lot lines meet the curve or the straight street extended, form an interior angle of less than one hundred thirty-five (135)degrees.
- (g) *Landscape area.* Any area which is pervious and capable of supporting living organic ornamental or native plant material, waterscape or art form. Concrete or asphalt parking lots shall not be considered as landscape area.
- (h) *Tree.*
  - (1) A woody single- or multi-trunk stem, when at maturity will obtain a minimum four (4) inch trunk when measured four (4) feet from base grade;
  - (2) A tree listed in the selective plant list as provided by the City of Irving; or
  - (3) A tree listed in the "Trees of North Texas" by Robert Vines.
- (i) *Tree caliper.* The tree caliper shall be the method in which the city will measure tree size as required by this article. The caliper of any tree, either existing or proposed, shall be determined by measuring the trunk caliper (diameter) twelve (12) inches from the existing grade.
- (j) *Streetscape area.* All points which may be included within any perpendicular line extending from the front property line to:
  - (1) A main building;
  - (2) A line parallel to the designated thoroughfare from the side property line to the facade of the main building closest to that side property line; or
  - (3) A line parallel to the designated thoroughfare from the edge of a building further from the front property line than another main building on the same property. See Illustrations 4, 5 and 6.
- (k) *Secondary building or structure.* Any building or structure which supports or is used in conjunction with the main structure, but performs a secondary function to that of the main structure and is located to the rear of the primary building.

(Ord. No. 4967, § 2, 6-5-86; Ord. No. 6095, § 1, 3-5-92)

**Sec. 33A-10. Landscape plan submittal process.**

Before the issuing of a building permit, the owner or developer will be required to submit to the building inspection department, a landscape plan and irrigation plan.

The landscape and irrigation plan must illustrate the following data:

- (a) Date, scale, north arrow, name of owner;
- (b) A tree survey will be required if the developer elects to preserve existing trees on the lot. The tree survey will locate and identify all trees three (3) inches or greater in caliper for a depth of fifty (50) per cent of the lot;
- (c) Location of existing boundary lines and dimension of the tract or lot of record;
- (d) Topography base for entire site plan;
- (e) Illustrate all required building setback lines;
- (f) Illustrate the proposed streetscape area on the landscape plan illustrating the following:
  - (1) Total square feet in the streetscape area;
  - (2) Twenty (20) per cent of streetscape area to be landscape area (area in square feet);
  - (3) Location, species and size of any existing trees to be preserved;
  - (4) Area of any interior parkway;
  - (5) Area of parking lot, drive access or any impervious surfaces in the streetscape area;
  - (6) Size and square footage of all landscape islands and medians in the streetscape area; and
  - (7) The proposed planting plan shall illustrate in detail the location, quantity, container size or tree caliper and height, common names and botanical names of all proposed planted materials in the streetscape area.
- (g) Designate proposed general land use for all building areas;

- (h) Location and size of points of ingress and egress to dedicated rights-of-way and the existing curb lines or pavement edge;
- (i) Center line of existing water courses, drainage features, floodway easement and the one hundred (100) year floodplain;
- (j) Location and size of existing and proposed streets and alleys with location of all street intersections adjacent to the site;
- (k) Vicinity map indicating the neighborhood in which the property is located;
- (l) Location and type of signs and sign lighting luminaries; and
- (m) All utility easements either existing or proposed on or adjacent to the site.

(Ord. No. 4967, § 2, 6-5-86)

### **Sec. 33A-11. Applicability.**

Implementation of this chapter shall apply to the following:

- (a) Building permit application for new development on vacant lots or land adjacent to the designated thoroughfares;
- (b) Building permits for redevelopment or remodeling on lots or land adjacent to designated thoroughfares as outlined below:
  - (1) Grant of a zoning change with the exception of S-P-1 (R-AB), after the effective date of this chapter;
  - (2) Construction or remodeling costs which exceed fifty (50) per cent of the value of the structure only;
  - (3) Increase in the overall square footage allowed by fifty (50) per cent;
  - (4) Increase in the gross parking lot area by forty (40) per cent; and
  - (5) Application of this chapter shall not apply to structures which have been damaged by an act of God, i.e., tornadoes, flood, etc.
- (c) Nonresidential uses and zoning districts;
- (d) Multifamily residential uses.

(Ord. No. 4967, § 2, 6-5-86)

### **Sec. 33A-12. Method of calculation.**

The measurement of the streetscape area shall be to the main building for calculating the landscape in accordance with the definition of streetscape.

Buildings less than two thousand (2,000) square feet shall be counted as accessory buildings, and such area shall be used in the calculation of landscape requirements.

Secondary buildings shall not be counted in the calculation of the streetscape area for the site.

Front property line, for purposes of this chapter, shall mean the property line abutting a designated thoroughfare.

(Ord. No. 4967, § 2, 6-5-86)

### **Sec. 33A-13. Landscape development criteria--Generally.**

- (a) A minimum 15-foot interior parkway will be required. The interior parkway may be crossed by perpendicular or angled entry or exit driveways, but may not be utilized for on-site circulation, driveways or fire lanes. The interior parkway may include a sidewalk not exceeding five (5) feet in width if placement within the right-of-way is not feasible, as determined by the Director of Public Works or his designee. If a sidewalk is placed within the required interior parkway, the depth of the required interior parkway shall be increased by the same amount as the width of the sidewalk; e.g., placing a four (4) foot wide sidewalk within the interior parkway will require a nineteen (19) foot deep interior parkway along that portion of the street frontage. A sidewalk greater than five (5) feet in width may be provided as part of the development of a public or private park if the sidewalk is part of an improved bicycle, jogging or other recreational trail, or if it provides direct access to a park facility for mobilityimpaired patrons. With the exception of such driveways and sidewalks, the balance of this parkway shall remain pervious. The interior parkway shall be counted toward fulfilling the twenty (20) percent landscape area requirement. The interior parkway shall be kept neat, clean, and unobstructed by trash, litter, car bumper overhangs and temporary or portable signage. Bumper stops shall be required for parking spaces adjacent to the parkway.
- (b) Twenty (20) per cent of streetscape area will be required to be maintained as permanent landscape area. When the percentage requirements for the landscape area in the streetscape area, in conjunction with the requirements of the interior parkway, exceeds twenty (20) per cent, the developer shall only be required to provide up to a maximum of twenty-five (25) per cent landscape area in the total streetscape area. The landscape area must support either a permanent turf, ground cover, seasonal color or shrubs. Due to seasonal considerations, if the

developer cannot establish a permanent turf, ground cover, seasonal color or shrubs. Due to seasonal considerations, if the developer cannot establish a permanent turf, he shall be required to stabilize the landscape areas to prevent erosion.

- (c) For streetscape areas less than five thousand (5,000) square feet, the developer shall adhere to the following:
  - (1) One (1) tree for every three hundred seventy-five (375) square feet in the designated interior parkway; and
  - (2) Three (3) trees in the remaining streetscape area.
- (d) For streetscape areas greater than five thousand (5,000) square feet, the following criteria shall apply:
  - (1) Within the interior parkway, one (1) tree for every five hundred fifty (550) square feet if the average interior parkway width is twenty (20) feet or less; one tree for every seven hundred fifty (750) square feet if the average width is thirty (30) feet or less but greater than twenty (20) feet; one tree for every one thousand (1,000) square feet if the average width of the interior parkway is greater than thirty (30) feet; and
  - (2) In the streetscape area outside the interior parkway, one (1) tree shall be planted for every two thousand seven hundred (2,700) square feet.
- (e) For streetscape areas greater than one hundred thousand (100,000) square feet, the following criteria shall apply:
  - (1) Within the interior parkway, one (1) tree for every five hundred fifty (550) square feet if the average interior parkway width is twenty (20) feet or less; one tree for every seven hundred fifty (750) square feet if the average width is thirty (30) feet or less but greater than twenty (20) feet; one tree for every one thousand (1,000) square feet if the average width of the interior parkway is greater than thirty (30) feet; and
  - (2) In the streetscape area outside the interior parkway, one (1) tree shall be planted for every six thousand (6,000) square feet plus twenty-one (21) trees.

(Ord. No. 4967, § 2, 6-5-86; Ord. No. 6095, § 2, 3-5-92; Ord. No. 7525, § 1, 8-26-99)

**Sec. 33A-14. Same--Parking lots.**

- (a) Any required tree shall be planted in a landscape area of no less than sixty (60) square feet with the narrowest dimension of landscape area being five (5) feet wide.
- (b) No landscape area in the streetscape area shall be less than three (3) feet in width.
- (c) One of the following criteria is required:
  - (1) No parking space shall be located further than eighty (80) feet from the trunk of any tree in the streetscape area, or
  - (2) The required landscape area and number of trees may be aggregated or "clustered" into areas within the remaining streetscape area. This aggregated or clustered effect for landscape area is separate and independent of the landscape area requirement within the interior parkway. However, in no case shall the landscape area be aggregated or "clustered" in an area greater than fifty (50) per cent of the remaining landscape area to be distributed throughout the streetscape area.
- (d) Trees planted in the streetscape shall be a minimum of three (3) inches in caliper. The caliper of the required trees must be a minimum of three (3) inches when measured twelve (12) inches from the base of the trunk or the top of the ball.

(Ord. No. 4967, § 2, 6-2-86)

### **Sec. 33A-15. Preservation of existing trees.**

The developer/owner shall receive credit towards the landscape area requirement based on the following criteria:

- (a) The developer shall receive credit for 1.25 times the area directly below the dripline on the existing trees, i.e., five hundred (500) square feet of landscape area below the dripline shall receive six hundred twenty-five (625) square feet of landscape area. In order to receive the area credit, the developer must adhere to the following criteria:
  - (1) The existing trees shall be in a healthy, vigorous growing condition;
  - (2) The area below the dripline shall remain undisturbed either by cutting or filling in the development process;
  - (3) The developer/owner shall not put an impervious material under the dripline. Permeable pavers will be considered as impervious materials; and

- (4) The developer/owner shall only receive a maximum of fifty (50) per cent credit towards the overall landscape area and tree requirements.

(Ord. No. 4967, § 2, 6-2-86)

**Sec. 33A-16. Protection of landscape areas.**

The developer shall protect all landscape areas with a six (6) inch monolithic curb. When development occurs adjacent to an unimproved thoroughfare, thoroughfares listed in the capital improvements programs or future bond programs, the developer shall build the monolithic curb to the right-of-way line adjacent to the thoroughfare.

(Ord. No. 4967, § 2, 6-5-86)

**Sec. 33A-17. Tree credit.**

The developer/owner will receive credit for preservation of existing trees as outlined in the following schedule:

TABLE INSET:

Existing Trees	Tree Credit
1 tree, 3" to 6" in caliper	1
1 tree, 6" to 9" in caliper	2
1 tree, 9" to 12" in caliper	3
1 tree, 12" to 15" in caliper	5

In order to preserve existing trees which will impact the site, the developer shall only receive tree credit for preservation of the trees listed below:

Pecan

Cedar Elm

Post Oak

Red Oak

Live Oak

White Oak

Burr Oak

Hackberry

Water Oak

Chinquapin Oak

Hickory

Mesquite (8 inches or greater in caliper, single trunk)

Red Bud

(Ord. No. 4967, § 2, 6-2-86)

### **Sec. 33A-18. Replacement of preservation trees.**

Should any tree designated for preservation in the landscape plan die at anytime after approval of the landscape plan or issuance of a certificate of occupancy, the owner shall replace the tree with the equivalent species or a tree which will obtain the same height, spread and growth characteristics. The replacement tree shall be three (3) inches in caliper and installed as directed by this chapter. Failure to make the replacements within ninety (90) days after notification by the city shall result in a fine as outlined in this chapter.

(Ord. No. 4967, § 2, 6-5-86)

### **Sec. 33A-19. Conservation district (Irving Boulevard).**

Due to the existing setback requirements, parking standards, overhead utility lines and paving standards, the following landscape development criteria has been established for the lots adjacent to Irving Boulevard (S.H. 356) from Sowers Road east to Irving Heights Drive. The required twenty (20) per cent landscape area shall be waived in the redevelopment district; however, the developer must provide the required landscape area for each tree.

- (a) For streetscape areas less than five thousand (5,000) square feet, the developer shall adhere to the following:
  - (1) A five (5) foot interior parkway must be maintained as permanent landscape area;
  - (2) One (1) tree for every twenty-five (25) feet of frontage shall be planted in the interior parkway;

- (3) Three (3) trees shall be planted in the remaining streetscape area; and
  - (4) Each tree in the streetscape area shall be planted in a minimum landscape area of fifty (50) square feet with the most narrow dimension of the landscape area being five (5) feet.
- (b) For streetscape areas greater than five thousand (5,000) square feet, the developer shall adhere to the following:
- (1) A ten (10) foot interior parkway must be maintained as permanent landscape area;
  - (2) One (1) tree for every twenty-five (25) feet of frontage shall be planted in the interior parkway;
  - (3) One (1) tree for every six hundred fifty (650) square feet in the designated interior parkway area; however, if the cross section dimension of the interior parkway area exceeds thirty (30) feet, one (1) tree for every seven hundred fifty (750) square feet shall be required;
  - (4) One (1) tree shall be planted for every two thousand seven hundred (2,700) square feet of remaining streetscape area; and
  - (5) Each tree in the streetscape area shall be planted in a minimum landscape area of seventy-five (75) square feet with the most narrow dimension of the landscape area being five (5) feet.
- (c) The owner is required to irrigate all landscape areas by one of the methods outlined in section 33A-23.

(Ord. No. 4967, § 2, 6-5-86)

### **Sec. 33A-20. Landscaping in a utility easement.**

Trees or large shrubs shall not be planted in any utility easement without written permission of the utility or utilities involved. The developer shall notify the utility company governing the easement (Texas Power and Light, Lone Star Gas, etc.) or the proper departments of the City of Irving (public works, traffic and transportation, code enforcement, etc.) of the pending development, adhering to the guidelines as set forth by the utility company or the City of Irving. In the event the developer is unable to obtain permission to install the required landscaping, he shall maintain the fifteen (15) foot interior parkway adjacent to the utility easement and install the required trees.

(Ord. No. 4967, § 2, 6-5-86)

**Sec. 33A-21. Landscaping in the right-of-way; exterior parkway.**

The developer may landscape the right-of-way adjacent to his lot at his own option. The developer must meet the following criteria in landscaping the exterior parkway:

- (1) Landscape guidelines established by the state department of highways and public transportation or the City of Irving must be followed. Landscape plans will require approval of either or both agencies before implementation; and
- (2) The city reserved the right to refuse or delay landscaping in the exterior or interior parkway due to pending construction or thoroughfare improvements. In the event the city delays landscape installation of the interior parkway, the developer/owner will be allowed to install the landscaping after the improvements have been completed or be in violation of this chapter and subject to fine.

(Ord. No. 4967, § 2, 6-5-86)

**Sec. 33A-22. Sight easement clips.**

The design and placement of the landscaping materials will be at the discretion of the owner or landscape architect; however, the landscaping shall not obstruct the view between access drives and dedicated streets, parking isles, or access drives of parking lots. Nothing at an elevation greater than the top-of-curb plus two (2) feet allowed in area except single-trunk trees pruned to a height of seven (7) feet. Trees are to be of such size and so spaced that a visual obstruction that represents a traffic hazard is not created. No parking shall be allowed in the sight easement.

(Ord. No. 4967, § 2, 6-5-86)

**Sec. 33A-23. Irrigation.**

The developer/owner shall be required to irrigate the required landscape area by one of the following methods:

- (1) A fully automatic or manual underground irrigation system;
- (2) Hose attachment within fifty (50) feet of all landscape area; and
- (3) Installation of quick coupler system with a valve one hundred (100) feet on center.

(Ord. No. 4967, § 2, 6-5-86)

### **Sec. 33A-24. Enforcement.**

- (a) No certificate of occupancy shall be issued unless the developer has complied with the landscape plan on file. In the event the developer may not install the landscaping due to seasonal consideration, the developer shall be issued a temporary certificate of occupancy for ninety (90) days.
- (b) It shall be unlawful for the owner or occupant of the property to fail to comply with the provisions of this chapter. Noncompliance shall be subject to a fine of up to five hundred dollars (\$500.00) per day for each violation.

(Ord. No. 4967, § 2, 6-5-86; Ord. No. 6095, § 3, 3-5-92)

### **Sec. 33A-25. Maintenance.**

It shall be unlawful for the owner or occupant of property on which a landscape plan has been approved, pursuant to this chapter, to fail to plant or maintain in living and growing condition, the plants or trees shown on said plan. It shall be an affirmative defense to prosecution under this section if the plant or tree required has been planted and has died within six (6) months of the date of the complaint. The fine shall not exceed five hundred dollars (\$500.00) per day for each day of violation.

(Ord. No. 4967, § 2, 6-5-86; Ord. No. 6095, § 4, 3-5-92)

### **Sec. 33A-26. Appeal process.**

The landscape development criteria established in this chapter is intended to set standards and guide property owners in the landscape development of their property.

These standards are intended to act as a minimum in the overall development of land adjacent to the thoroughfare as described in this chapter. Art forms and other monuments may be considered, in addition to or substituted for, a portion of the landscape requirements. Due to the wide variety and quality of such features, the appeal shall be considered on a case by case basis, by the planning and zoning commission and city council for compatibility and enhancement of the streetscape area. In the event the developer wishes to deviate from landscape provisions from this chapter due to hardships created by topography, ingress, egress, utility easements, environmentally sensitive areas, or streetscape areas greater than two hundred thousand (200,000) square feet, he may make written appeal stating the reasons for the appeal, or if an impasse exists between the city and the developer due to interpretation of this chapter. The developer shall notify the city staff of the decision to appeal. Staff will review the appeal and/or landscape plan and make a recommendation to the planning and zoning commission. After planning and zoning commission review, a

written recommendation on the appeal shall be sent forward to City Council. The council will either approve or deny the appeal on the basis of public health, safety, welfare and aesthetics of the appeal.

An existing landscape plan may be amended by filing such plan with the department of building inspection. The amended plan must meet all the ordinance requirements of an original landscape plan.

Public notice of an appeal shall be sent to all property owners abutting the thoroughfare, as shown on the latest approved city tax roll, within five hundred (500) feet of the request ten (10) days prior to the planning and zoning public hearing and fifteen (15) days prior to city council public hearing. A nonrefundable filing fee of one hundred dollars (\$100.00) is required.

(Ord. No. 4967, § 2, 6-5-86)

**Sec. 33A-27. Selected plant list.**

The developer may select trees from the following plant list for fulfilling the requirements of this chapter. In the event the developer uses trees not identified in the selected plant list, the requested tree must be submitted to parks and recreation department for appraisal.

*Large or Medium Trees*

TABLE INSET:

Acer saccharinum	Silver Maple
Carya illinoensis	Pecan
Cedrus deodera	Deodora Cedar
Celtis occidentalis	Hackberry
Cercis canadensis	Red Bud
Crataegus reverchani	Hawthorne
Fraxinus pennsylvanica	Green Ash
Fraxinus texensis	Texas Ash
Gleditsia triacanthos	Honey Locust
Koelneria paniculata	Golden Raintree
Liquidambar styraciflua	Sweetgum
Magnolia grandiflora	Southern Magnolia
Morus alba "fruitless"	Mulberry
Pinus elliotii	Slash Pine

Pinus thumbergii	Japanese Black Pine
Pistacia chinensis	Chinese Pistachio
Platanus occidentalis	Sycamore
Prunus caroliniana	Cherry Laurel
Pyrus calleryana	Bradford Pear
Quercus falcata	Southern Red Oak
Quercus macrocarpa	Burr Oak
Quercus muhlenbergii	Chinquapin Oak
Quercus rubra	Northern Red Oak
Quercus shumardii	Shumard Oak
Quercus virginiana	Live Oak
Salix babylonica	Willow
Sapindus saponaria	Western Soapberry
Sapium sebiferum	Chinese Tallow
Taxodium distichum	Bald Cypress
Ulmus crassifolia	Cedar Elm

*Small Accent Trees*

TABLE INSET:

Ilex vomitoria	Yaupon
Lagerstroemia indica	Crape Myrtle
Ligustrum lucidum, tree form	Japanese Ligustrum

(Ord. No. 4967, § 2, 6-5-86)

**Sec. 3-66. Use restrictions.**

Notwithstanding any other provision of these regulations, no use may be made of land or water nor installation placed on land or water within the airport hazard area that will create interference with radio communication between the airport and aircraft; or that will create interference with any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device; or that will result in glare in the eyes of flyers using the airport but this prohibition shall not include momentary glare or glare from vertical or downward reflecting windows or glass panels used in the construction of structures; or that will impair visibility in the vicinity of the airport, attract birds, or that will otherwise endanger the landing, taking-off or maneuvering of aircraft operating through the facilities of the airport. No other airport or landing field shall be constructed within the airport hazard area.

(Ord. No. 2356, § 6, 8-24-72)

**Sec. 3-67. Existing nonconformities.**

Structures, trees or installations existing prior to the effective date of these regulations which do not conform to the requirements hereof shall be considered as legal nonconforming uses. These regulations shall not be construed to require the removal, lowering, change or alteration of any legal nonconforming use, structure, tree or installation. A permit shall be required for a legal nonconforming use and shall be issued on application of the owner or agent accompanied by affidavit that the use, structure, tree or installation was in existence on the effective date of these regulations. Applications for permits for nonconforming uses shall be made within one hundred eighty (180) days from the effective date of these regulations.

(Ord. No. 2356, § 7, 8-24-72)

**Sec. 3-68. Permits required.**

Before any new structure or use which could be defined as an airport hazard under this division may be constructed or established and before any such existing use or structure may be increased in height or otherwise altered, a permit to do so must be secured by the owner involved or his agent. All permit applications shall be made to the City of Irving. In the event that any administrative agency issues a permit erroneously allowing the beginning of erection of any structure or tree, said permit shall not constitute a variance or be construed in any manner to allow any person to penetrate the imaginary surfaces established. It will remain incumbent on the sponsor, builder, property owner or their agents, as the case may be, to prevent the creation of any object that will cause an airport hazard within the meaning of this division. The City of Irving shall have sole jurisdiction to enforce the airport hazard zoning regulations in the City of Irving except for the application for variances.

(Ord. No. 2356, § 8, 24-72)

**Sec. 34A-138. Restoration of property.**

- (a) At any time an MCS provider, in furtherance of its right to construct, operate, and maintain a multi-channel system, disturbs the yard, residence, or any real or personal property, such MCS provider shall ensure that the yard, residence, or other personal or real property is returned, replaced, and/or restored to a condition that is sufficiently comparable to the condition that existed prior to the commencement of the work.
- (b) The costs associated with both the disturbance and the return, replacement, and/or restoration shall be borne by the MCS provider. This subsection also requires the

MCS provider to reimburse a subscriber or private property owner, for any damage caused by the MCS provider, its subcontractor, or its independent contractor, in connection with the disturbance of a subscriber or private property owner's property which is not fully and completely restored or repaired as required in subsection (a) of this section.

- (c) The types of acts specifically included in this section are the following:
- (1) Removal of a person's sod, lawn, plants, shrubbery, flowers, trees, driveway, or fence to install, trench, repair, replace, remove, or locate cable or other equipment of an MCS provider;
  - (2) Installation or removal of cable or other equipment of an MCS provider within a person's residence which requires drilling, excavating, plastering, or the like on the part of the MCS provider;
  - (3) Temporarily relocating or moving a piece of personal property or a fixture of a person (such as a motor vehicle, fence, air conditioning or heating unit, or the like), in order to perform some sort of construction, maintenance, or repair on the multi-channel system; or
  - (4) Permanently removing an MCS provider's cable or equipment due to either the revocation, termination, or non-renewal of a franchise or authorization (if applicable), or the abandonment, withdrawal, or cessation, of multi-channel service to any portion of the city.
- (d) The requirements imposed upon the MCS provider extend to any subcontractor or independent contractor that the MCS provider might employ to perform the tasks outlined in this section.
- (e) An MCS provider shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the property owner, where possible. Where necessary to maintain the MCS system, the MCS provider shall have the right to trim trees upon and overhanging the rights-of-way, so as to prevent the branches of such trees from coming in contact with the wires, cable, or other facilities of the MCS provider. Upon the failure of the MCS provider to do so, the city shall have the right to do the trimming, and the cost shall still be due from the MCS provider. Regardless of who performs the work requested by an MCS provider, the MCS provider shall be responsible, shall defend and hold the city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed.

(Ord. No. 6879, § 1, 10-19-96)

**Sec. 34-20. Compliance with article by subdividers; trees not to be destroyed.**

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\*As to subdivisions generally, see ch. 35 of this Code.

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Before any acceptance or any approval of a final plat submitted to the city council by a developer or subdivider shall be had, improvements as to sidewalks shall be complied with and such sidewalks shall be constructed under the supervision and control of the department of public works of the city, in conformation to lines and grades and in accordance with specifications furnished or to be furnished by the department of public works. Such persons, so constructing or causing to be constructed such improvements shall comply with all provisions of this Code or ordinances of the city government such matters. It is provided, however, that wherever possible no trees shall be destroyed in order to effect the installation of any sidewalks in the city, but that the installation of the same shall be placed in such a manner as to go around the locations where trees exist. Until the developer or subdivider has so complied with the sidewalk requirements of this article, no utilities shall be turned on in connection with the property involved.

(Ord. No. 534, § 4)