

**CITY OF JOHNSON CITY CODE OF ORDINANCES
CHAPTER 10. SUBDIVISION BUILDING REGULATION
ARTICLE 10.03 TREE AND LANDSCAPE REGULATIONS**

DIVISION ONE. TREE PRESERVATION

Sec. 10.03.001 Purpose

- (a) The purpose of this Division is to provide a review process for the preservation of trees throughout construction and /or development.
- (b) This Division implements the following provisions of the Johnson City Comprehensive Plan to:
 - (1) Preserve the neighborhood character of Johnson City;
 - (2) Improve the quality of living for Johnson City citizens;
 - (3) Preserve and enhance the rural atmosphere of Johnson City;
 - (4) Responsibly protect the natural environmental resources of Johnson City;
 - (5) Preserve the rugged beauty and natural environment that defines the Hill Country character of Johnson City and makes it a unique and desirable community;
 - (6) Encourage the preservation of trees throughout construction and/or development; and
 - (7) Prevent the clear-cutting of land.

Sec. 10.03.002 Definitions

For the purposes of this Division, the following phrases, terms, words, and their derivation shall have the meaning given herein:

Caliper. The diameter of a tree four feet, six inches (4', 6") above the natural grade, measured with a tree caliper instrument or a flexible tape. If a tape is used, the circumference of the tree should be measured and the result divided by 3.14 to determine the diameter.

Categories of tree preservation. The designations "large tree species," "small tree species," and "heritage" are established for the purposes of applying the requirements of this Division.

Chief Administrative Officer; CAO. The City's Chief Administrative Officer or designee.

City. The City of Johnson City, Texas.

City arborist. A professional arborist appointed by the CAO and certified and/or degreed in horticulture, forestry, or a closely related field with expertise in forestry, landscape design, tree preservation, landscaping requirements, tree surveys, landscaping plans, irrigation plans, and tree preservation plans. Inspects, on behalf of the CAO, parcels to determine compliance with City requirements.

Commercial subdivision development. Any and all real property meeting the definition of subdivision, as set forth in Article 10.02, which is being or has been platted for commercial construction (e.g., industrial, office, multifamily, institutional, and retail) and commercial property to be developed or redeveloped, including additions and alterations to the structure or outdoor areas, such as parking lots or driveways.

Covered species. Any existing living tree of any species or type as defined in the Protected Tree Preservation Categories and Preservation Rates Table (“Table”) of this Division.

Dripline. The area of ground surrounding the trunk of a tree considered essential to protecting the root structure of a tree. For the purposes of this Division, the dripline shall be calculated at one foot for every one inch of caliper width measured at four feet, six inches (4’, 6”) above natural grade level. Construction may encroach into the dripline area of a tree, provided that alternative construction methods for protecting a tree are approved by the CAO.

Extraterritorial Jurisdiction; ETJ: The unincorporated area outside of and contiguous to the corporate boundaries of the City, as defined and established in accordance with Texas Local Government Code Chapter 42.

Multi-trunk tree. A tree having two or more trunks arising from the root collar or main trunk.

Permit: The Tree Preservation and Removal Permit required under this Division for conducting any action regulated by this Division.

Person: An individual, association, firm, corporation, governmental agency, political subdivision, or legal entity of any kind, including commercial or residential subdivision development.

Preservation rate. The number of total inches or area—if using the tree stand delineation method—to be preserved onsite and shall be calculated for each category and not as a whole.

Example: Total protected "Large Tree Species" inches onsite = 10,000; Preservation rate = 40%; $10,000 \times 40\% = 4,000$ inches shall be preserved.

Example: Total protected "Small Tree Species" inches onsite = 1,000; Preservation rate = 40%; $1,000 \times 40\% = 400$ inches shall be preserved.

Example: Total "Heritage" inches onsite = 1,000; Preservation rate = 60%; $1,000 \times 60\% = 600$ inches shall be preserved.

Protected tree. Trees that, by virtue of their size or species, are protected by this Division:

- (1) *Large tree species.* Trees of a covered species;
- (2) *Small tree species.* Trees of designated small tree species;
- (3) *Heritage tree.* Any protected large tree species that is greater than a 24-inch caliper trunk and any protected small tree species that is greater than an 8-inch caliper trunk; or

- (4) *Non-protected tree.* Any living tree that the CAO certifies in writing is injured, dying, diseased, or infested with harmful insects; that is in danger of falling, interferes with utility service, or creates unsafe vision clearance; or, in any manner, creates a hazardous or dangerous condition so as to endanger the public health, welfare, or safety, is not a protected tree.

Residential subdivision development. Any and all real property meeting the definition of subdivision, as set forth in Article 10.02, which is being or has been platted for single-family home construction.

Root protection zone (RPZ). The area around the base of a tree in which limited construction may take place.

Tree stand delineation. An alternative to the standard tree survey methodology. This option can be used in lieu of an "on-the-ground" tree survey required for the tree preservation and removal permit. This methodology uses a current aerial photograph and overlays the proposed development onto a photograph to determine the tree preservation rate, as described in the Tree Preservation and Rates Table of this Division. Heritage trees shall be shown on the plan only if they fall within the proposed development.

Sec. 10.03.003 Permit Required

- (a) *Permit required.* A Tree Preservation and Removal Permit ("Permit") shall be required for any tree removal, trimming, pruning, or de-mossing in the City of any tree described in this Division.
- (b) *Legality.* It shall be illegal to perform any tree removal, trimming, pruning, or de-mossing in the City of any tree without a permit.

Sec. 10.03.004 Permit Application Process

- (a) *Permit application and fee.*
- (1) A person, including a professional tree care or landscaping company, shall submit to the City an application for a Permit prior to any tree removal, trimming, pruning, or de-mossing.
 - (2) The application shall be accompanied by payment of a nonrefundable permit application fee set by Municipal Fee Schedule, as amended.
- (b) *Original tree survey.* A tree survey shall be submitted with the original application and shall be the reference by which all subsequent Permits for the tract(s) or portions of the tract(s) are reviewed. An applicant shall not circumvent the minimum preservation requirements set forth in this Division through the filing of multiple tree removal applications.
- (c) *Review and approval.* The CAO shall have the authority to review and act on all Permit applications in consultation with the City Arborist. Plans shall be approved, approved with

conditions, or denied. The CAO shall advise the applicant or designated representative as to the disposition of each Permit application.

(d) *Appeal to City Council.* An applicant aggrieved by a decision of the CAO may appeal such decision to the City Council. A written notice of appeal must be filed with the CAO within ten business days of the decision. The appeal shall stay the issuance of a building permit and shall be placed on the agenda for the next regular or special City Council meeting.

(e) *Variances.*

(1) An applicant may request a variance to the terms of this Division.

(2) A variance request must be submitted at the time of submitting an application to the CAO in writing setting out the basis for the request.

(3) The City Council shall review a variance request.

(4) A variance may be granted where:

(i) A literal enforcement of this Division will result in unnecessary hardship;

(ii) Such variance will not be contrary to public interest;

(iii) Such variance will be in harmony with the spirit and purposes of this Division;

(iv) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial; and

(v) The variance will not substantially weaken the general purposes of this Division.

(5) After review of the variance request, the City Council may:

(i) Approve the variance; or

(ii) Deny the variance; or

(iii) Grant the variance with such conditions as may be necessary for the furtherance of the purposes of municipal tree preservation in keeping with the spirit and intent of this Division.

(f) *Permit display or production.* A validly issued Permit shall be posted prominently at the site or produced immediately upon a request by the City.

Sec. 10.03.005 Applicability and Exemptions

(a) *City Limits and ETJ.* Oak wilt restrictions, permit requirements, and tree pruning restrictions in Section [REDACTED] shall apply to all real property within the City's corporate limits and its ETJ.

(b) *Subdivision platting.* A commercial or residential subdivision development within the City's corporate limits and/or its ETJ shall be subject to the tree removal, preservation, and/or pruning restrictions and permitting requirements of this Division.

(c) *Exemptions.* Exceptions from the terms and provisions of this Division shall apply to the following:

- (1) A protected or heritage tree in a hazardous or dangerous condition so as to endanger the public health, welfare, or safety may be removed upon written authorization for removal by the CAO.
- (2) During the period of an emergency, *e.g.*, tornado, storm, flood, or other act of God, the requirements of this Division may be waived by the CAO for the affected area(s).
- (3) A licensed plant or tree nursery shall be exempt from this Division only in relation to those trees planted and growing on the premises of said licensee that are planted and growing for the sale or intended sale to the general public.
- (4) Utility companies providing utility service shall receive authorization to prune or remove protected or heritage trees that endanger public health, safety, and welfare by interfering with utility service, provided that the removal is the minimum necessary for the utilities to function properly and no other alternative is available.
- (5) The mowing, clearing, and grubbing of brush located within or under the drip lines of protected or heritage trees shall be allowed, provided such mowing, clearing, or grubbing is not implemented by use of bulldozers, loaders, or other construction or earth moving equipment.
- (6) An area contained within public and private rights-of-way or utility or drainage easements is exempt from this Division upon a demonstration by an applicant that the removal is necessary for the right-of-way or easement to function properly.
- (7) Municipal functions and activities of the City are exempt from this Division.
- (8) Exemptions also shall apply in these circumstances:
 - a. Non-contiguous established single-family, owner- or lessee-occupied housing, three acres or less, platted or unplatted, located within a district zoned residential; or
 - b. Non-contiguous vacant single-family residential lots, three acres or less, platted or unplatted, located within a district zoned residential; and
 - c. For properties described in (a) or (b) and greater than three acres, platted or unplatted, within a subdivision regulated by deed restrictions prohibiting subdivision of real property.

Sec. 10.03.006 Tree Preservation Table

The preservation rates for protected trees shall be as outlined in the following Protected Tree Preservation Categories and Preservation Rates Table.

PROTECTED TREE PRESERVATION CATEGORIES AND PRESERVATION RATES			
Covered Species	"Large Tree Species" are any existing living tree of any species or type, <i>excluding</i> the following:	"Small Tree Species" are as follows:	Preservation Requirement
	Ashe Juniper (Cedar), smaller than 10" caliper Athel Tamarisk Brazilian Peppertree Chinaberry Chinese Elm Chinese Tallow Cottonwood Desert Willows	Condalia Mexican Redbud Mountain Laurel Possomhaw Texas Crab Apple/ Downy Hawthorn Texas Persimmon Texas Redbud	N/A

	Five Stamen Tamarisk French Tamarisk Hackberry, smaller than 10" caliper Japanese Ligustrum Salt Cedar Tamarisk Siberian Elm Tallowtree Tree of Heaven Willow Species other than Desert Willows		
Protected Category	Large Tree Species (other than Ashe Juniper or Hackberry) that are: 6" to 24" caliper	Small Tree Species that are: 5" to 8" caliper	40% of the total protected inches or area, if alternative tree stand option used
	Ashe Juniper and Hackberry: 10" caliper or greater		
Heritage Category	Large Tree Species that are: Greater than 24" caliper	Any Small Tree Species that are: Greater than 8" caliper	60% of the total protected inches or area, if alternative tree stand option used
100 Year Floodplain Category	All Protected and Heritage Category Trees	All Protected and Heritage Category Trees	80% of the total protected inches or area, if alternative tree delineation stand option used

Sec. 10.03.007 Tree Pruning Restrictions

- (a) *Required pruning.* The City shall have the right to prune overhanging trees which interfere with the visibility of any traffic control device, sign, or roadway, as necessary, to preserve the public safety.
- (b) *Tree topping.* Tree limbs shall not be severely cut back to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree without the CAO's approval.
- (c) *Branch/root pruning and wounded trees.* All broken branches and exposed roots one-half-inch in diameter or greater of any protected, heritage, or replacement tree shall be cut cleanly. In the case of oak species susceptible to oak wilt, wounds must be painted with an acceptable wound dressing within 30 minutes from the time of cutting.
- (d) *Oak wilt.* Trimming or cutting of any oak tree susceptible to oak wilt is prohibited from the first day of February to the last day of May. Permission may be granted, however, to any person wishing to trim or cut an oak tree susceptible to oak wilt during the prohibited months, provided that the person contracts with a licensed professional tree care or landscaping company with appropriate issued permits. In the case of oak species susceptible to oak wilt, wounds must be painted with an acceptable wound dressing within 30 minutes from the time of cutting. All trimming tools shall be cleaned with a disinfectant after each use to prevent spreading of the disease.

Sec. 10.03.008 Protected and Heritage Trees

- (a) *Removal of protected and heritage trees.* A person shall not, directly or indirectly, cut down, destroy, remove, or effectively destroy through damaging, any protected or heritage tree within the City or ETJ without first obtaining a Permit.
- (b) *Replacement Trees.* Should the required tree preservation percentage fall below the required percentage threshold as reflected in the Table, it shall be the responsibility of any person obtaining a Permit for a protected tree to provide replacement tree(s) having a total caliper width equal to that of the trees to be removed. Further, it shall be the responsibility of any person obtaining a Permit for a heritage tree to provide replacement tree(s) having a total caliper width equal to three times that of the trees to be removed. In considering a mitigation method, the CAO shall weigh the value of established smaller trees, clumps of trees, and natural vegetation that could be retained to meet the requirements of this Division and landscape regulations so that the addition of replacement trees may not be required.
- (1) Such replacement trees shall:
- a. Have a minimum caliper width of two inches; and
 - b. Have a minimum height of at least eight feet when planted.
- (2) No more than 35 percent of replacement trees may be of the same species.
- (3) A replacement tree that dies within one year of the date it was planted must be replaced by another tree, and a new one-year warranty period shall start for that tree.
- (c) *Mitigation in lieu of replacement.* Mitigation in lieu of a replacement tree(s) may be paid to the City.
- (1) This provision is limited to 50 percent of the required protected and heritage tree replacement.
- (2) Any such payments shall be deposited to the City's tree mitigation and replacement fund.
- (3) The per-caliper-inch cash value for replacement trees and planting is \$150.00 per caliper inch.
- (d) *Replanting of protected and heritage trees.* No person shall move, directly or indirectly, any protected or heritage tree on or from any real property within the City without first obtaining a Permit.
- (e) *Replanting standards.* Only those trees meeting the applicable Texas Association of Nurserymen Grades and Standards, as reviewed and approved by the CAO, shall satisfy the tree replanting requirements of this Division.

Sec. 10.03.009 Tree Protection Measures

- (a) *Safety zone.* Prior to commercial or residential subdivision development, a property owner shall establish and maintain a root protection zone and install four-foot-high plastic (or equivalent) safety fencing outside the drip line of protected and heritage trees for the duration of construction and development. Trees shall not be pruned to reduce the root protection zone.
- (b) *Waste material.* During construction or development of a commercial or residential subdivision development, a property owner shall prohibit the cleaning of equipment or

materials and/or the disposal of any waste material, including, but not limited to, paint, oil, solvents, asphalt, concrete, mortar, etc. under the canopy or within the drip line of any protected or heritage tree.

- (c) *Attachments.* No attachments or wires of any kind, other than those of a protective nature, shall be attached to any tree during construction or development of commercial or residential subdivision developments.
- (d) *Grade changes.* With major grade changes of six inches or greater resulting from placement of fill material, a retaining wall or tree well of rock, brick, landscape timbers, or other approved material shall be constructed around the tree no closer than six feet from the trunk of protected or heritage trees during construction or development of commercial or residential subdivision developments. The top of the retaining wall or tree well shall be at the new finished grade.
- (e) *Drip line.* Unless otherwise approved by the CAO, no commercial or residential subdivision development construction or construction-related activity shall occur within the drip line of any protected or heritage tree.
- (f) *Haul.* Any trees removed during commercial or residential subdivision development shall be chipped or hauled off-site within 30 days of the time the trees were removed.

Sec. 10.03.010 Liability; Duty of Care

- (a) *City liability.* Nothing in this Division shall be deemed to impose any liability for damages or a duty of care and maintenance upon the City or upon any of its officers or employees.
- (b) *Duty of care.* The person in possession of public property or the owner of any private property shall have a duty to keep the trees and landscaping upon the property and under their control in a safe, healthy condition. Any person who feels a tree located on property possessed, owned, or controlled by them is a danger to the safety of themselves, others, or structural improvements on-site or off-site shall have an obligation to secure the area around the tree or support the tree, as appropriate to safeguard both persons and improvements from harm.

Sec. 10.03.011 Violation and Enforcement

- (a) *Violation declared.* It shall be unlawful for any person to violate any term or provision of this Division. The City shall have the power to administer and enforce the provisions of this Division.
- (b) *Criminal offense.*
 - (1) A person who violates a provision of this Division commits a misdemeanor.
 - (2) A fine for a violation may not exceed \$500.
 - (3) Each day of the violation shall constitute a separate offense.
 - (4) The penalties in this section shall be cumulative and are not exclusive of any other rights or remedies the City may have or pursue.
- (c) *Civil action.*
 - (1) Any condition caused or permitted to exist in violation of any provision of this Division constitutes a public nuisance.
 - (2) A person who violates a provision of this Division is subject to a civil fine or injunction.

- (3) The City may file suit in district court to enjoin the violation or threatened violation of this Division by a person.
 - (4) Prior to taking civil action, the City shall notify the violator of the provisions of the Division that are being or have been violated.
 - (5) The City may seek to recover damages from the violator in an amount adequate for the City to undertake activity necessary to bring compliance with this Division.
 - (6) A person who violates a provision of this Division is subject to a civil penalty up to \$1,000.00 and not less than \$250.00 per day per violation, and a maximum of the replacement cost of the tree as determined by the Municipal Court. Each tree illegally removed or damaged shall constitute a separate offense. If the precise caliper of a tree cannot be determined, the cost of replacement shall be established by the CAO based upon an estimate of the total caliper inches of the removed or damaged tree(s).
 - (7) The remedies in this Section shall be in addition to the penalties described above.
- (d) *Specific penalties for unauthorized removal of protected and heritage trees.* If any protected or heritage trees are removed or injured and such removal or injury constitutes a violation of this Division, the City shall have the authority to enact the following administrative and civil penalties on the property owner:
- (1) A monetary penalty of \$500.00 per caliper inch of each protected or heritage tree removed or injured. Fines paid to the City as penalties shall be deposited into the Tree Mitigation and Replacement Fund.
 - (2) Replacement with tree(s) having a total tree caliper equal to five times that of the illegally removed or injured tree(s). Such replacement trees shall each have a minimum caliper width of four inches and a minimum height of at least nine feet.
- (e) *Administrative enforcement.*
- (1) The CAO or designee may issue a Stop Work Order to immediately halt work on a property at which a violation is occurring or has occurred.
 - (2) The CAO or designee may withhold or revoke site plan approval, building permits, occupancy permits, or any other appropriate approvals necessary to continue development on a property at which a violation is occurring or has occurred.
 - (3) An applicant may appeal an order to the City Council who shall issue a decision without unreasonable or unnecessary delay. The decision of the City Council shall be final.
- (f) *Right of entry.* The CAO or designee shall have the authority to enter upon the property premises of an applicant within the City or its ETJ for the purpose of enforcing the provisions of this Division.
- (g) *Legal fees and costs.* In any civil or criminal action, the City shall be entitled to recover from the defendant reasonable attorney's fees, costs of suit, and any other costs of enforcement.

DIVISION TWO. LANDSCAPING

Sec. 10.03.012

Purpose

The purpose of this Division is to provide requirements and standards for the installation and maintenance of landscaping elements and site improvements; to provide visual buffering and enhance the beautification of the City of Johnson City; to safeguard and enhance property values and to protect public and private investment; to preserve and protect the unique identity and environment of the City of Johnson City and preserve the economic base attracted to the City of Johnson City by such factors; and to protect the public health, safety, and general welfare.

Sec. 10.03.013 Applicability

- (a) Commercial and residential subdivision developments within the City's corporate limits and its extraterritorial jurisdiction are subject to the landscaping and irrigation requirements established within this Division.
- (b) A common commercial or residential subdivision development that includes more than one lot shall be treated as one lot for the purposes of satisfying the landscaping requirements of this Division. Split ownership, planning in phases, construction in stages, and/or multiple building permits for a project (i.e. apartments) shall not prevent it from being a common development, as referred to above. Each phase of a project shall comply with the requirements of this Division.

Sec. 10.03.014 Definitions

For the purposes of this Division, the following phrases, terms, words, and their derivation shall have the meanings given in this Section:

Berm. An earthen mound designed to provide visual interest, screen undesirable views, and/or decrease noise levels.

Buffering. The use of landscaping in conjunction with berms, walls, or decorative fences that, at least partially and periodically, obstruct the view from the street in a continuous manner of vehicular use areas, parking lots, their parked cars, and detention ponds.

Caliper. The diameter of a tree four foot, six inches (4', 6") above the natural grade, measured with a tree caliper instrument or a flexible tape. If a tape is used, the circumference of the tree should be measured and the result divided by 3.14 to determine the diameter.

Commercial subdivision development. Any and all real property meeting the definition of subdivision, as set forth in Article 10.02, which is being or has been platted for commercial construction (e.g., industrial, office, multifamily, institutional, and retail) and commercial property to be developed or redeveloped, including additions and alterations to the structure or outdoor areas, such as parking lots or driveways.

Drip-line. The area of ground surrounding the trunk of a tree considered essential to protecting the root structure of a tree. For the purposes of this Division, the dripline shall be calculated at one foot for every one inch of caliper width measured at four feet, six inches (4', 6") above natural grade level. Construction may encroach into the dripline area of a tree, provided that alternative construction methods for protecting a tree are approved by the CAO.

Irrigation. An in-ground irrigation system consisting of water lines, water emitters, and a controller that is professionally designed by an irrigator licensed by the State of Texas to meet the requirements of the plant material installed.

Landscaping. Any live plant material, such as trees, shrubs, ground cover, and grass, used in spaces void of any impervious material, building structure, or areas left in their natural state.

Loading area, service area, outdoor storage area. Area which is used for trash or garbage collection, vehicular loading and unloading, outdoor storage or repair, or for covered storage where the structure has no walls to screen views.

Owner. The person who holds legal title to a property or a lessee, agent, employee, or other person acting on behalf of the titleholder with authorization to develop the lot or property in question.

Pervious. The ability of a substance or material to allow the passage of water through the substance or material. Pervious pavers shall be considered pervious cover.

Plant material. Living trees, shrubs, vines, ground covers, sod, and/or flowering annuals, biennials, and perennials.

Residential subdivision development. Any and all real property meeting the definition of subdivision, as set forth in Article 10.02, which is being or has been platted for single-family home construction.

Root protection zone (RPZ). The area around the base of a tree in which limited construction may take place.

Street. The public right-of-way that provides primary vehicular access to adjacent land or areas.

Wall or fence. An artificially constructed barrier of posts connected by boards, rails, panels, or wire and erected for the purpose of enclosing space to separate parcels of land or to screen or enclose areas of land.

Sec. 10.03.015 General Requirements

- (a) Installation. All landscape materials shall be healthy nursery stock installed according to American Association of Nurserymen (AAN) standards. Irrigation systems shall comply with the requirements of 30 TAC Chapter 344, §§ 344.72—344.77 and specific requirements set forth in this Division.
- (b) Requirements for commercial and residential subdivision developments and standalone parking lots.
 - (1) Minimum planting requirements.

a. Parking lot shading. To reduce the thermal impact of un-shaded parking lots, trees shall be planted throughout parking lots so that no portion of the lot is more than 50 feet away from the trunk of a tree, unless otherwise approved by the CAO. Planting areas shall be a minimum of 9 feet by 18 feet. The use of existing trees to meet this requirement is encouraged.

b. Perimeter shading. Plant material shall consist of a minimum of one tree for every ten parking spaces. Trees shall be a minimum of two-inch caliper and eight feet tall at the time of planting. Planted areas along the front lot lines shall be a minimum of eight feet wide, of which two feet may be located in the right of way if it does not interfere with sidewalks or the placement of utilities. The use of existing trees to meet this requirement is always encouraged.

c. Screening of parking lot. Minimum planting shall consist of:

1. A compact hedge of five-gallon size plants having a minimum mature height of three feet and planted in a density of one plant for every 20 square feet; or
2. A continuous three-foot-high wall set back from the sidewalk. The area between the sidewalk and wall shall be planted with shrubs, grasses, or other continuous vegetative groundcover.

d. Buffering. Any commercial project abutting a residentially zoned property shall install a buffer which adequately protects future or existing tenants/home owners. The buffer shall consist of:

1. a buffer zone of an opaque fence with a minimum height of eight feet lined with Large Species Trees spaced at a minimum of twenty feet apart. Trees shall be a minimum of two-inch caliper and eight feet in height at time of planting. Trees shall be planted in planting areas of at least four feet in width along the entire length of the property.
2. A buffer zone of 100 feet; or
3. A buffer zone of a street plus 40 feet.

e. Pervious surfaces. Areas of the site that are not occupied by buildings, impervious parking surfaces, or accessory structures must have ground cover. Ground cover includes low growing, living plant materials, such as perennials, grass, ivy, and similar plants.

f. Streetscape. Construction and renovation plans for commercial sites must include street tree plantings planted no greater than 15 foot on center or spacing otherwise established by the City for the street on which the plantings will be made. Trees shall be a minimum of two-inch caliper and eight feet in height at time of planting.

(2) Minimum construction requirements.

a. Adequate aeration inserts shall be provided where paving will extend over expanding root systems within the maximum anticipated drip line.

b. All planting beds containing shrubs or ground cover shall be top dressed with a two-inch minimum layer of mulch for water conservation.

c. Vehicles may not overhang the minimum required planting areas.

- d. All solid waste storage facilities shall be enclosed on three sides by a sight-obscuring fence or wall and by a sight-obscuring gate on the remaining side.
- e. Any permitted outside storage of merchandise shall be enclosed by a sight obscuring fence, wall, or gate.
- f. Screening around all loading, service, and/or outdoor storage areas that will be visible from a public right-of-way shall be required in all districts other than a rural or residential district. The screening may be located anywhere on the property, subject to other provisions of this Division.
- g. Irrigation systems shall be required for all new commercial and residential subdivision developments. Landscaped areas shall be irrigated with a system that is suitable for the type of plantings installed. Irrigation plans shall be submitted with landscaping plans for approval by the CAO prior to the issuance of a building permit.

Sec. 10.03.016 Alternative Landscaping Plans / Methods

- (a) Alternative landscaping plans, plant materials, or planting methods may be used where unreasonable or impractical situations would result from the literal application of landscaping requirements or where necessary to protect existing vegetation. These landscaping requirements may be reduced if existing trees or other types of existing vegetation are preserved. Alternative plans, materials, or methods may be justified using natural conditions, such as streams, natural rock formations, topography, physical conditions related to the site, lot configuration, or utility easements.
- (b) The CAO shall consider alternative landscape plans, materials, or methods to determine whether proposed plans meet the intent of this Division, and he/she shall have the authority to approve alternatives.

Sec. 10.03.017 Landscape/irrigation Requirements at the time of Building Permit Application

- (a) Application review. Upon receipt of a complete landscaping and irrigation application, the CAO shall review the application for compliance with the provisions of this Division. Said review may include a field inspection of the site by the City Arborist prior to the issuance of a permit. Following review and inspection, the permit application shall be approved, disapproved, or approved with conditions by the CAO in accordance with the provisions of this Division.
- (b) Permit. No building permit shall be issued until the CAO has reviewed and approved the landscaping and irrigation plan(s).
- (c) Inspection. Prior to the issuance of a certificate of occupancy for the project, the CAO may inspect the landscape and irrigation system and certify that the site meets the requirements of this Division and conforms to the approved site plan and/or landscape and irrigation plans. The property owner must have the approved plan(s) on site for inspection.

Sec. 10.03.018. Maintenance Requirements

All landscaping and/or new or replacement trees shall be maintained for the life of the project. Should a tree die or be removed for which credit was obtained pursuant to the terms of this

Division, such landscaping and trees shall be replaced. Dead or damaged landscaping and trees shall be replaced with new, live plants within one month after notification by the City or during the next planting season if not possible at the time of notification. If plants are not replaced within the specified time limit, the owner shall be in violation of this ordinance.

Sec. 10.03.019. Violation

It shall be a violation of this Division for any person to intentionally or knowingly perform any regulated activity in a manner that does not conform to the requirements of this ordinance.

Sec. 10.03.020 Jurisdiction

(a) To ensure compatibility with this Division, the CAO shall have the authority to review and act on all landscaping plans for commercial and residential subdivision developments in the City and its extraterritorial jurisdiction (ETJ). When plans are approved, approved with conditions, or denied, the CAO shall issue a letter of compliance for each application.

(b) Appeal to City Council. Any applicant or party aggrieved by a decision of the CAO may appeal such decision to the City Council. Such notice of appeal must be filed with the City Secretary within ten working days of the decision in question. Such appeal shall stay the issuance of a building permit and shall be placed on the agenda for the next regular or special City Council meeting.

Sec. 10.03.021 Enforcement

The CAO, city arborist, and code compliance officer are hereby charged with the responsibility for the enforcement of this Division and may serve notice to any person in violation thereof or institute legal proceedings as may be required. The City Attorney is hereby authorized to institute appropriate proceedings to that end.

Sec. 10.03.022 Variances

(a) Variances to any decision of the CAO, city arborist, or code compliance officer to the terms of this Division may be granted by the City Council where a literal enforcement of the provisions of this Division will result in unnecessary hardship. A variance request must be submitted to the CAO in writing setting out the basis for the request. No variance can be granted unless:

- (1) Such variance will not be contrary to public interest;
- (2) Such variance will be in harmony with the spirit and purposes of this Division;
- (3) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial; and
- (4) The variance will not substantially weaken the general purposes of this Division.

(b) After review of the variance request, the City Council may:

- (1) Approve the variance; or
- (2) Deny the variance; or
- (3) Grant the variance with such conditions as may be necessary for the furtherance of the purposes of landscape preservation in keeping with the spirit and intent of the ordinance.