

Sec. 14-334. Median and right-of-way landscape and irrigation agreement.

(a) The terms and conditions of the "Median and Right-of-Way Landscape and Irrigation Agreement," labeled Exhibit C and included in this article as section 14-337, having been reviewed and considered by the town council, are hereby approved in all things. Such Exhibit C is hereby incorporated into the body of this article for all purposes.

(b) The terms and conditions set forth in such Exhibit C are adopted by the town council as policies under which developers shall be permitted to install, provide and maintain landscaping materials and irrigation facilities in dedicated streets, medians and other public rights-of-way.

(c) The director is hereby authorized to execute on behalf of the town a median and right-of-way landscape and irrigation agreement with any developer of a residential or nonresidential subdivision within the town desiring to execute such agreement. Such agreement shall be substantially according to the terms of Exhibit C.

(d) Any person desiring to provide, install, operate and maintain landscaping materials and irrigation facilities within a dedicated street, median or other public right-of-way, must first enter into and execute a median and right-of-way landscape and irrigation agreement with the town, substantially according to the terms of Exhibit C.

(Code 1989, ch. 3, § 10.04)

Sec. 14-335. Exhibit A, guidelines governing landscape and irrigation improvements in medians and rights-of-way regarding residential subdivisions and guidelines governing landscape and irrigation improvements in medians regarding commercial subdivisions.

In order to allow orderly processing of proposed landscape and irrigation improvements in medians and rights-of-way associated with subdivisions, the procedures discussed in the following sections shall be used, and the steps are as follows:

- (1) Submittal of plans to parks and recreation department.
- (2) Approval of plans by parks and recreation department.
- (3) Agreement between developer and town.

(a) *Submittal of plans.* The developer shall submit, in duplicate, to the director of parks and recreation (director), complete plans for any and all improvements. The developer shall submit a separate drawing showing the specific areas of development. In this drawing, the number of housing units, retail or commercial leasing spaces, shall be numbered and designated for tabulations. It shall be the specific purpose of this

separate drawing to designate the method by which the 80 percent completion provisions of Exhibit C (section 14-337), subsection (13), of the landscape and irrigation agreement. Plans shall include the following:

- (1) Place all the following information on a one-dimensioned, scaled drawing on a sheet size of 24 inches x 36 inches which can be reduced to an 8 1/2- x 11-inch print.
 - a. Proper dimensions of the site and approximate distance to nearest cross street;
 - b. All existing public and private streets including street and sidewalk widths;
 - c. Screening walls and location, type and height of screening wall, whether living or masonry (masonry screening walls must be designed by a registered professional engineer);
 - d. All existing public utility services including fire hydrants, water mains and sewer mains within the tract and immediately adjacent to it with pipe size and location indicated;
 - e. All proposed water and sanitary sewer pipe lines with sizes indicated and valves, fire hydrants, manholes and other appurtenances or structures shown;
 - f. All existing or proposed water, sewer and irrigation connections, meter locations, size of meters, with meter and/or detector check valve vaults indicated;
 - g. All existing utility and visibility easements;
 - h. All existing or proposed buildings on the property, existing structures, access points on and adjacent to the property;
 - i. Existing and proposed contours of berms in intervals of one foot;
 - j. Detail structural designs of entryway features;
 - k. The following information should be submitted on the landscape plan:
 1. Type and size of existing/proposed plant materials.
 2. Distance of trees/shrubs from sidewalks, curbs and screening walls.
 3. Spacing between trees/shrubs.
 4. Total square footage of gross landscape area.
 5. Total number of trees/shrubs and proposed allowance for loss (percentage or numbers).

l. Title block in the lower, right-hand corner containing:

1. Name of project.

2. Name and address of owner and representative.

3. Date.

m. North arrow (up or to the right);

n. Graphic scale: one inch = 40 feet (or larger);

o. Adjacent platted subdivisions;

p. Such other information deemed reasonably necessary to the director.

(b) *Review and approval by town.* The director shall review and approve submitted plans, and shall have the right to require revisions prior to approval of such plans.

(c) *Agreement.* The developer desiring to provide, install, operate and maintain landscaping or irrigation improvements in a dedicated street, median or public right-of-way must first enter into and execute, a median and right-of-way landscaping and irrigation agreement with the town, according to the rules and regulations as set forth in this article (agreement). A standard form agreement shall be available from the director. The director is authorized to execute the agreement on behalf of the town.

(d) *Landscape plan guidelines.*

(1) Primary landscaping material to be used by the developer shall be trees which provide shade or will provide shade at maturity. Shrubbery and other planting materials may be used to compliment the tree plantings, so as to be maintained with self-propelled mechanical equipment (i.e., tractor mower).

(2) Developers, at their sole expense, shall furnish or cause to be furnished all labor, materials, equipment, accessories and services necessary to maintain all plant materials installed in a healthy vigorous, growing condition. Replacing any materials (i.e., shrubs, trees, grass) when and as they become damaged or die, for the period of time the developer is responsible for maintaining the area in accordance with the approved landscape plan. (Refer to subsection 14-337(13) of the landscape and irrigation agreement).

(3) Any person desiring to provide, install and maintain landscaping materials and irrigation facilities must first enter into and execute a median and right-of-way landscape and irrigation agreement.

(4) A clear sight line for the observance of oncoming traffic is required at median breaks and street or drive intersections. The following criteria shall apply with modifications at the discretion of director or his duly appointed representative:

a. Upon installation, a tree canopy shall be a minimum of nine feet above grade. Shrubs and ground covers shall be a maximum of 30 inches above grade upon maturity. These specifications shall apply for a distance of 200 feet along type C thoroughfares and above, and 100 feet for lesser thoroughfares, for median ends or street intersections as measured along the curb.

b. Trees shall be installed at a minimum of five feet from curbs.

c. Trees shall be spaced a minimum of 20 feet apart.

d. Trees shall be placed no closer than 40 feet from the end of medians.

e. No plantings shall be permitted within areas less than five feet in width. All such areas shall be covered with concrete or other permanent fixed materials such as bomonite.

f. All landscape planting areas shall be provided with the following soil depths:

1. A minimum of 24 inches of topsoil for all small shrub installations;

2. A minimum of 36 inches of topsoil for all large shrubs and small tree installations;

3. A minimum of five feet of topsoil for all large and canopy tree installations;

4. The above soil requirements may be waived by the director, provided that alternative provisions (certified by a registered landscape architect) are designed to promote health and vigorous plant growth.

(e) *Irrigation.*

(1) Any person desiring to provide, install, operate and maintain landscape materials must also install permanent underground irrigation facilities for such landscaped areas in accordance with the design specifications stated in subsection (e)(2) of this section.

(2) Irrigation design specifications are as follows:

a. Irrigation line shall not be less than three feet from the curb (street).

b. No irrigation head or valve shall be within three feet of a water utility (fire hydrant).

c. No sprinkler heads or irrigation line shall be installed within 1 1/2 feet from the alley pavement.

(f) *Maintenance requirements.*

(1) The developer, at its sole expense, shall furnish or cause to be furnished, all labor, materials, equipment, accessories, water and electrical utilities, and all other services necessary to maintain all plant materials installed in a healthy, vigorous, growing condition; replace any materials when and as they become damaged or die in accordance with the landscape plan. (Refer to the landscape agreement, section 14-337(13).)

(2) The landscape materials shall not be submitted, removed or relocated unless such action is in accordance with the approved landscape plan.

(3) The director, or his duly authorized representative, shall periodically inspect the areas landscaped under the median and right-of-way landscape and irrigation agreement to determine that such areas are being properly maintained by the developer. If the town finds that the developer is not properly maintaining such areas, the town shall notify the developer, in writing, specifying the deficiencies. If the developer does not remedy the deficiencies within 15 days following receipt of such written notice, the town shall have the option of performing the necessary maintainable work itself and bill the developer for all costs for such maintenance.

(Code 1989, ch. 3, § 10.05(Exhibit A))

Sec. 14-336. Exhibit B, suggested landscape materials.

The following is a list of suggested landscape materials:

(1) *Tree:* A woody plant that produces one main trunk and a more-or-less distinct and elevated head.

Ulmus crassifolia - Cedar Elm - 1 1/2 to three-inch caliper
Sapium sebiferum - Chinese Tallow - 2 1/2 to three-inch caliper
Quercus shumardii - Red Oak - 2 1/2 to three-inch caliper
Quercus virginiana - Live Oak - 2 1/2 to three-inch caliper
Liquidambar styraciflua - Sweetgum - 2 1/2 to three-inch caliper
Taxodium distichum - Bald Cypress - 2 1/2 to three-inch caliper
Lagerstroemia indica - Crepe Myrtle - seven to eight feet height

(2) *Shrub:* A woody plant that remains low and produces shoots or trunks from the base.

Ilex cornuta "Burfordii" - Burford Holly - five-gallon
Ilex cornuta "Burfordii'ana" - Dwarf Burford - five-gallon
Ilex cornuta rotunda - Dwarf Chinese Holly - five-gallon
Juniperus sabina tamariscifolia - Tamarix Juniper - five-gallon
Nandina domestica compacta - Nandina - five-gallon

(3) *Ground cover:*

Trachospermum asiaticum - Asiatic Jasmine - 1 1/4-inch pots
Vinca minor - Vinca - 4 1/4-inch pots

(4) *Turf:*

Common Bermuda - Cynodon Doctylon, seeding rate two to three pounds/1,000 square feet

Buffalo Grass - Buchloe Daltyloide, seeding rate five to six pounds/1,000 square feet

(Code 1989, ch. 3, § 10.05(Exhibit B))

Sec. 14-337. Exhibit C, median and right-of-way landscape and irrigation agreement for residential developers and commercial developers with medians.

This agreement made and entered into as of the _____ day of _____, 20_____, by and between the Town of Flower Mound, Texas, a municipal corporation of the State of Texas (hereinafter called "town") and _____.

Whereas, _____ is the developer of approximately _____ acres of land located in Town of Flower Mound, Denton County, State of Texas as more particularly described in Exhibit A attached hereto and incorporated herein by reference (hereinafter called "property"); and

Whereas, in connection with development of the property, _____ desires to provide certain landscaping and irrigation improvements being above and beyond the normal required town landscaping and irrigation improvements; and

Whereas, normal required town landscaping and irrigation improvements shall be defined as:

(1) Developer shall grade the median and/or right-of-way to a grade approved by the director of parks and recreation (hereinafter called "director"); and

(2) Developer shall seed the areas at a predetermined rate with either Buffalo or Bermuda grass, and provide temporary irrigation, if necessary, to establish the turf; and

(3) Developer shall be required to reseed the area if developer wishes to establish the turf other than during the recommended seeding dates (April 15 to September 1 of any year) for Bermuda or Buffalo grass; and

(4) Developer shall not be required to install permanent underground irrigation for normal required town landscaping and irrigation improvements.

Now, therefore, for and in consideration of the sum of \$1.00 and other good and valuable consideration, including the consideration the town is allowing _____ to install irrigation and landscape improvements within the town's medians and rights-of-way which the town will eventually assume maintenance responsibilities, and including the mutual covenants and promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

(1) _____ shall be permitted and shall have the responsibility to install, improve, operate and maintain all landscaping and irrigation facilities within the medians and rights-of-way for _____ Roads, within the parameters of the property, subject to the town's approval of plans and specifications as provided herein (hereinafter called "landscaping and irrigation improvements").

(2) Prior to installation of the landscaping and irrigation improvements, _____ shall submit to the director, in duplicate, complete plans and specifications for the landscaping and irrigation improvements, which plans and specifications shall be prepared by a landscape architect or practicing professional in the field.

Plans and specifications shall be drawn to scale, including dimensions and distances, and shall clearly indicate the location, type, size and description of all proposed landscape materials and irrigation facilities, including total quantities. In addition, the plans and specifications shall clearly indicate the configuration, location, type and total number of heads and controllers to be used in the irrigation system.

(3) Upon submission of the plans and specifications, the director shall review same and shall approve same to determine that the landscaping and irrigation improvements are of such quality as to improve and enhance the surrounding areas, and do not violate any town ordinance or other regulation. All landscaping and irrigation improvements shall be installed within the medians and rights-of-way in full compliance and in accordance with the plans and specifications as approved by the town.

(4) _____ shall furnish or cause to be furnished, at its expense, all labor, equipment, accessories, water and electrical utilities and all other services necessary to install, operate and maintain the landscaping and irrigation improvements in accordance with the plans and specifications. The director, or his or her designee, shall have the right to inspect the installation of landscaping and irrigation improvements and shall require such steps by _____ that in the director's, or his or her

designee's, opinion are necessary to cause proper installation in accordance with the plans and specifications. Upon completion of installation mentioned above, the director shall provide _____ with written confirmation when, in the director's opinion, the landscaping and irrigation improvements have been installed in compliance with the plans and specifications. It shall be the developer's responsibility to make all additions, corrections, renovations and changes to comply with the plans and specifications.

(5) _____ shall not make any material change in the landscaping and irrigation improvements without first obtaining prior written approval from the town. Before approving any such changes, the town may require submission of new plans and specifications for approval in accordance with the terms and conditions of this agreement.

(6) The parties recognize that the medians and rights-of-way are public property, which have, or may have in the future, located within them improvements by public utilities, including the town. _____ shall defend, indemnify and hold harmless the town, its officers, agents and employees from and against all damages, claims, lawsuits, demands, suits, judgments and costs, including reasonable attorney fees and expenses arising out of such installation, operation and maintenance, including direct reimbursement of the town for the costs of any damage to town property. However, _____ shall not be responsible for maintaining any public utilities located in the medians, rights-of-way or elsewhere.

(7) Except in the event of an emergency, the town will coordinate with _____ to minimize damage to the landscaping the irrigation improvements should the landscaping and irrigation improvements be affected by any proposed town improvements to or maintenance or repair of _____ roads or town utilities located therein. All damage to the landscaping and irrigation improvements caused by the town as a result of the aforementioned improvements, maintenance or repair by the town shall be repaired by the town. However, notwithstanding anything herein to the contrary, at such time that the left-turn lanes on _____ roads be installed, any damage caused to the landscaping and irrigation improvements within the medians shall not be the responsibility of the town, and such landscaping and irrigation improvements shall be repaired or replaced at _____ expense.

(8) Should _____ desire to erect, construct, and maintain other improvements in such medians and rights-of-way in addition to the landscaping and irrigation improvements, including such items as no directional signs, project identification, sculptures or other objects, _____ must request and obtain prior written approval from the director which approval shall not be unreasonably withheld. Such additional improvements shall hereinafter be called "additional improvements."

(9) The parties recognize that one of the benefits that _____ received as a result of this agreement, is the opportunity to install and maintain the

landscaping and irrigation improvements which are above and beyond the normal improvements allowed in street medians and rights-of-way. The greater improvements shall enhance the value of the property.

(10) _____ shall defend, indemnify and hold harmless the town and its officers, agents, and employees, from and against all damages, claims, fees and expenses, arising out of, or resulting from, the installation, operation and maintenance of the landscaping and irrigation improvements, or additional improvements, provided for in this agreement.

(11) _____, at its own expense, agrees to provide and keep in force during the term of this agreement, owner's excess liability insurance covering _____ and the town as an insured party in the amount of \$1,000,000.00 for bodily injury, including death; \$300,000.00 for bodily injury, including death; \$300,000.00 for damages arising out of or in connection with the installation, operation or maintenance of the landscaping and irrigation improvements as provided for in this agreement. All such insurance policies shall provide that the insurance policy shall not be cancelled by the insurer unless and until at least 30 days written notice of such cancellation is delivered by the town. _____ shall furnish the town with certificates of insurance required by this paragraph. Such certificates must be delivered to the town before _____ commences any work within the town medians and rights-of-way.

(12) Should any landscaping and irrigation improvements provided for pursuant to this agreement be damaged or destroyed by the fault of a third party, _____ shall have the responsibility of pursuing recovery from such third party and shall hold harmless the town and its officers, agents and employees from or resulting from pursuing recovery from such third party. The obligations of and the benefits to _____ under this agreement may not be assigned without prior written consent of the town.

(13) _____ shall maintain the landscaping and irrigation improvements except that it may terminate some of its maintenance responsibility under the following conditions:

a. The developer's maintenance responsibility according to the approved landscape plan shall cease in a residential subdivision at the end of such time that 80 percent of the lots have building permits issued for the construction of homes, plus a period of one year. The developer's maintenance responsibility shall not be less than two years and not more than five years.

b. The developer's maintenance responsibility, according to the approved landscape plan, shall cease in a nonresidential development at the end of such time that 80 percent of the retail spaces have been issued certificates of occupancy, plus a period of one year. The developer's maintenance responsibility shall not be less than two years and not more than five years.

c. At the end of such time that the developer ceases maintenance responsibility in a residential subdivision or a nonresidential development, the town will not assume responsibility of the irrigation system until it has been inspected by the director or his or her duly appointed representative, and proven to be in proper working order.

d. Should the developer desire to continue maintenance at the end of his time of responsibility:

1. The town shall be responsible for the water used in the medians (grass and trees only).

2. The developer shall be responsible for the water used in all other portions of the medians and rights-of-way.

3. The town shall not be required to water its portion of the medians.

4. The town shall have the right to require at the developer's expense, that the developer change the irrigation system to allow the town to water its portions of the medians separately. In such an event, the town shall provide the meters.

5. At such a time the developer wishes to discontinue maintenance responsibility, the developer shall notify the director, in writing, three months prior to ceasing maintenance.

(14) This agreement embodies the entire agreement between the parties and cannot be varied, changed, altered or amended except by the written agreement of all parties hereto.

(15) All the terms and conditions of this agreement are hereby made binding on the executors, heirs, administrators, successors and assigns of all parties hereto.

(16) All notices permitted hereunder shall be in writing and shall be deemed to have been properly given or served by the deposit of such with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage, at the address set forth below the signatures of the pertinent party. Each such notice shall be effective upon being deposited as aforementioned. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt thereof by the addressee. Rejection of, the refusal to accept or the inability to deliver because of address change of which no notice was given, shall be deemed notified as of the date of receipt or rejection thereof. Any part shall have the right from time to time and at any time until the termination hereof, to change its respective address by notifying the other party, in writing, and each shall have the right to specify as its address any other address within the United States of America.

(17) This agreement shall be governed by, and construed in accordance with the laws of the State of Texas. Venue for any suit brought to enforce any rights or obligations under this agreement shall be Denton County, Texas.

(18) In case any one or more of the provisions contained in this agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this agreement shall be construed as if such invalid, illegal or unenforceable provisions have never been contained herein.

(19) The effective date shall be the last date of any signature of a party as set forth below.

In witness whereof, this agreement has been executed and delivered as of the effective date as herein provided.

TABLE INSET:

	Town of Flower Mound
Date: _____	_____

TABLE INSET:

ACKNOWLEDGEMENT	
STATE OF TEXAS	§
COUNTY OF DENTON	§

Before me, the undersigned authority, on this day personally appeared _____ of the Town of Flower Mound, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same as the act and deed of the Town of Flower Mound, for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the _____ day of _____, 20_____.

TABLE INSET:

	_____ Notary Public in and for the State of Texas
	Notary Printed Name: _____ My Commission Expires: _____
Date: _____	_____ Developer

TABLE INSET:

ACKNOWLEDGMENT	
STATE OF TEXAS	§
COUNTY OF DENTON	§

Before me, the undersigned authority, on this day personally appeared _____ of _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same as the act and deed of _____, for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the _____ day of _____, 20_____

TABLE INSET:

	_____ Notary Public in and for the State of Texas
	Notary Printed Name: _____ My Commission Expires: _____

(Code 1989, ch. 3, § 10.05(Exhibit C))

Secs. 14-338--14-370. Reserved.

DIVISION 2. PERMITS

Subdivision I. In General

Secs. 94-51--94-70. Reserved.

Subdivision II. Tree Replanting Permit

Sec. 94-71. Required.

Tree replanting permits required pursuant to division 4 of this article shall be subject to the procedures of this division.

(Code 1989, ch. 12, § 6.15(a); Ord. No. 12-00, § 6, 2-17-2000)

Sec. 94-72. Application.

An application for a tree replanting permit may be submitted at any time and need not be submitted in conjunction with a development plan or record plat or a building permit. Tree replanting permits shall be obtained by making application to the town's tree preservation and enforcement officer or authorized designee on forms prescribed by the town. No fee shall be charged to make application for a tree replanting permit. The application shall also be accompanied by a written document indicating the reasons for replanting of the protected tree and two copies of a legible site or plot plan, drawn to the largest practicable scale, indicating the following minimum information:

- (1) The existing location, caliper width, height and common name of all protected trees proposed to be replanted and the proposed locations for such replanting of the trees.
- (2) The location of all existing or proposed structures, improvements, easements and site uses, properly dimensioned and referenced to property lines, setback and yard requirements, and special relationships.
- (3) The information required in this subdivision may be summarized in legend form on the site or plot plan.

(Code 1989, ch. 12, § 6.15(a)(1); Ord. No. 12-00, § 6, 2-17-2000)

Sec. 94-73. Review of application.

Upon receipt of a proper application for a tree replanting permit, the town's tree preservation and enforcement officer or authorized designee shall review the application and may conduct field inspections of the site or development and/or refer the permit application to other departments for review and recommendations as deemed necessary and appropriate by the director of community development or authorized designee. The application for a tree replanting permit shall be approved unless the town's tree preservation and enforcement officer or authorized designee determines that the proposed replanting will unnecessarily damage or jeopardize the health of the trees proposed to be replanted. A denial of an application for a tree replanting permit by the tree preservation and enforcement officer or authorized designee may be appealed to the tree board, the decision of which relative to such permit application shall be final.

(Code 1989, ch. 12, § 6.15(a)(2); Ord. No. 12-00, § 6, 2-17-2000)

Secs. 94-74--94-90. Reserved.

Subdivision III. Tree Removal Permit

Sec. 94-91. Application.

Tree removal permits for the removal of protected, specimen, majestic and historic trees in conjunction with the development, subdivision and/or resubdivision of real property shall be obtained by making application to the town's tree preservation and enforcement officer or authorized designee on forms prescribed by the town. The application shall accompany the development plan, record plat or site plan of the development and shall include a written document indicating the reasons for removal of the protected trees. The application must be completed and signed by a registered arborist or landscape architect and must include two copies of a legible tree survey, drawn to the largest practicable scale, indicating the following:

- (1) The location, caliper width, height and common name of all single-trunk trees of six inches caliper width or greater, measured at four feet above natural grade level, and at least 12 feet high; and all multigrain trees having a total caliper width of eight inches, measured by combining the caliper width of the largest stem or branch with one-half the caliper width of each additional stem or branch, all measured at four feet above natural grade level, and at least 12 feet high.
- (2) The location of both the trunk and drip line, caliper width, height, estimated age (not to be determined using invasive measures which might damage the tree), a reproducible color photograph, and common name of all protected, specimen, majestic and historic trees proposed to be removed.
- (3) Provide existing natural grade elevation and proposed final grade elevation at each location for each protected tree for which a tree removal permit is requested.
- (4) The location and dimensions of all existing or proposed public streets, alleys, rights-of-way, utility easements, drainage easements, fence easements, pedestrian access easements or other public rights-of-way or easements.
- (5) The location and dimensions of the designated parking area and designated stockpile area required in this subdivision and of any site proposed or anticipated to be proposed for a temporary batching plant permit.
- (6) The location of all existing or proposed property lines, lot lines, building lines, setback and yard requirements, any proposed building footprint or floor plan, and other special relationships or significant features of the proposed development plan, record plat or site plan of the development.
- (7) Existing and proposed site elevations, grades and major contours, including a chart listing all protected, specimen, majestic and historic trees, their respective locations, and indicating where grades around protected trees will be changed by six inches or more.

(8) The information required in this subdivision shall be summarized in legend form on the tree survey and shall include the reason for the proposed removal of the protected trees.

(9) Each tree shall be identified by numerical reference on the tree survey.

(10) Each tree shall be affixed with a permanent tag bearing the corresponding number as depicted on the tree survey. The tag shall be permanently attached at a height not less than five feet nor more than six feet above existing grade on the south face of the tree.

(11) The survey shall bear the stamp or seal of a registered surveyor relative to the location of any trees and shall bear the stamp or seal of a registered landscape architect relative to the species of any trees.

(12) A sign shall be placed on each separate lot or tract for which a tree removal permit is requested to inform the general public that an application for a tree removal permit has been filed relative to a protected, specimen, majestic or historic tree.

a. The size of the signs shall be three feet by four feet and be made out of aluminum or corrugated plastic material.

b. The signs shall be mounted on stakes/poles.

c. The signs shall be visible from the street.

d. There shall be one sign for each street frontage.

e. The signs shall have a white background, with letters and borders being green in color. The signs shall state the following:

TOWN OF FLOWER MOUND, TX
A TREE REMOVAL REQUEST IS BEING MADE ON THIS PROPERTY

FOR INFORMATION CALL _____

(Code 1989, ch. 12, § 6.15(b)(1); Ord. No. 12-00, § 6, 2-17-2000)

Sec. 94-92. Review of application.

(a) An application for a tree removal permit for a protected tree shall be accompanied by an administrative fee listed in appendix A of this Code per tree proposed for removal, not to exceed a total per permit application of an amount listed in appendix A of this Code. An application for a tree removal permit for a specimen tree, majestic tree or historic tree shall be accompanied by an administrative fee as listed in

appendix A of this Code, per tree proposed for removal. Upon receipt of a proper application accompanied by the appropriate fee, the tree preservation and enforcement officer or his authorized designee shall review the application and may conduct field inspections of the development and/or refer the permit application to other departments for review and recommendations as deemed necessary and appropriate by the tree preservation and enforcement officer or his authorized designee.,

(b) The application for a tree removal permit, if required, shall be considered an integral part of the application for development plan approval, and no development plan for any development, subject to the terms and provisions of this subdivision shall be approved without approval of such tree removal permit. It is further provided that if a property owner and/or developer does not submit a tree removal permit application prior to town approval of a development plan covering a particular site, then if a tree removal permit application for the site is submitted later, approval of the development plan may be revoked. In this event, a revised development plan must be submitted for review by the town.

(c) The tree preservation and enforcement officer may approve, approve with conditions or deny a request for a tree removal permit for protected trees, provided that such request for a tree removal permit is for the removal of trees in all development districts with exception of the Cross Timbers Conservation District. An appeal of the decision of the tree preservation and enforcement officer may be made to the tree board.

(d) An application for a tree removal permit for protected, specimen, majestic or historic trees within the Cross Timbers Conservation District or application for a tree removal permit for specimen, majestic or historic trees within the Long Prairie District shall be submitted to the tree board for review and recommendation to the town council that the permit application be approved, approved with conditions or denied. The tree board shall not recommend an application for a tree removal permit be approved or approved with conditions, unless the board finds that the subject development, subdivision or resubdivision cannot reasonably be developed, based on economic and/or practical considerations, without removal of the trees included in the permit application.

(e) The tree board's recommendation concerning an application for tree removal permit shall be reviewed by the town council. The town council may then approve the application, approve it with conditions, or deny the application; however, the town council may overturn the denial of an application for tree removal permit by the tree board only upon a finding that the subject development, subdivision or resubdivision cannot reasonably be developed, based on economic and/or practical considerations, without removal of the trees included in the permit application.

(f) Approval for removal of a historic or majestic tree shall require a three-fourths vote of the tree board and the town council, respectively.

(Code 1989, ch. 12, § 6.15(b)(2); Ord. No. 12-00, § 6, 2-17-2000)

Sec. 94-93. Application for agricultural property.

No fee shall be charged to make application for a tree removal permit for the removal of protected trees located on real property having an agricultural zoning district classification; provided, however, that if within any 12-month period, tree removal permits for the removal of 20 or more protected trees are issued for the same agricultural property or tract, or any of its portions, the agricultural zoning district classification of such property cannot be changed, nor can an application for approval of development plan, planned development or zoning amendment relative to such property be made, during the 60-month period following the 12-month period during which the 20 or more protected trees were removed.

(Code 1989, ch. 12, § 6.15(b)(3); Ord. No. 12-00, § 6, 2-17-2000)

Sec. 94-94. Special provisions for A agricultural districts.

Notwithstanding anything contained in this chapter to the contrary, for tracts zoned A agricultural district, the tree survey requirements contained in this subdivision shall be limited in their application to proposed rights-of-way, easements and an area equal to 20 feet on any side of such rights-of-way and easements, provided that the applicant executes a development agreement with the town that all trees on the tract and outside of such areas, for the purposes of such agreement, are protected trees (regardless of their species or caliper width) and that the unauthorized removal of such trees shall result in the revocation of any previously approved development plan and record plat for a 60-month period.

(Code 1989, ch. 12, § 6.15(c); Ord. No. 12-00, § 6, 2-17-2000)

Secs. 94-95--94-120. Reserved.

Sec. 94-152. Intent of division.

The removal or replanting of any protected trees (specifically, protected, specimen, majestic or historic trees, as defined in this division) requires a tree removal permit or a tree replanting permit, as the case may be, in accordance with the terms and provisions of this division. The terms and provisions of this division allow trees located within necessary public rights-of-way, easements and the buildable area of a building lot or site where the lot or site is less than one acre in size to be removed without a tree removal permit and prior to the issuance of a building permit. It is provided, however, that where a building lot or site is one acre in size or larger, then no protected,

specimen, majestic or historic trees shall be removed from the buildable area of the lot or site before the issuance of a building permit relating to the lot or site.

(Code 1989, ch. 12, § 5.08(b); Ord. No. 12-00, § 2, 2-17-2000)

Sec. 94-153. Applicability of division provisions.

The terms and provisions of this division shall apply to real property within the town's corporate limits and extraterritorial jurisdiction as follows:

- (1) All real property upon which any protected, specimen, majestic or historic tree is located, excluding developed single-family and two-family residential property.
- (2) All vacant and undeveloped real property.
- (3) All real property to be subdivided or resubdivided, including record plats and replants.
- (4) The yard areas of all developed property, excluding developed single-family and two-family residential property. It is provided, however, that where a building lot or site is one acre or larger in size, then no protected, specimen, majestic or historic trees shall be removed from the buildable area of the lot or site before the issuance of a building permit relating to the lot or site.

(Code 1989, ch. 12, § 5.08(c); Ord. No. 12-00, § 2, 2-17-2000)

Sec. 94-154. Exceptions.

The following exceptions from the terms and provisions of this division are hereby authorized and granted:

- (1) If any protected, specimen, majestic or historic tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and require immediate removal without delay, authorization for removal may be given by the town manager, upon recommendation of the tree preservation and enforcement officer or authorized designee, and such protected, specimen, majestic or historic tree may then be removed without obtaining a written permit as required in this article.
- (2) During the period of an emergency, such as a tornado, storm, flood or other act of God, the requirements of this division may be waived as may be deemed necessary by the town council.

(3) All licensed plant or tree nurseries shall be exempt from the terms and provisions of this division only in relation to those trees planted and growing on the premises of such licensee, that are so planted and growing, for the sale or intended sale to the general public in the ordinary course of such licensed business.

(4) Utility companies franchised or otherwise authorized to provide utility service may remove protected, specimen, majestic or historic trees that endanger public safety and welfare by interfering with utility service, except that where such trees are on owner-occupied properties developed for single-family or duplex use, removal of such trees shall be at the option of the property owners.

(5) The mowing, clearing and grubbing of brush located within or under the drip lines of protected, specimen, majestic or historic trees shall be allowed, provided that such mowing, clearing or grubbing is accomplished by hand or by mowers. The use of bulldozers, loaders or other construction or earth moving equipment for this purpose shall not be allowed.

(6) For recreational property or uses, such as golf courses and baseball, soccer, football or similar athletic facilities, and public works projects such as water or wastewater treatment plants, pump stations, storage tanks, and public streets and drainage improvements, the buildable area of the property shall include that portion of the property necessary for the construction of such recreational and public works improvements, including sufficient adjacent area, to allow the normal operation of construction equipment.

(7) The terms and provisions of this division shall not apply to a lot of record, a deed for which was recorded in the office of the county clerk prior to January 9, 1975, or to any development, subdivision or resubdivision for which a record plat has been approved by the town council and filed in the plat records of the county prior to February 1, 1993.

(8) All easements and rights-of-way included on a record plat approved by the town and filed in the plat records of the county.

(9) All property zoned for nonresidential use and included within the Lakeside Business District, the Denton Creek District and all specific plan areas as defined in the town's comprehensive plan relative only to the requirements of replacement trees and or cash equivalents for the removal of protected, specimen, majestic and/or historic trees pursuant to a tree removal permit granted by the town council.

(Code 1989, ch. 12, § 5.08(d); Ord. No. 12-00, § 2, 2-17-2000)

Sec. 94-155. Informational assistance.

(a) In furtherance of the purposes and provisions of this division, the town's tree preservation and enforcement officer or authorized designee shall develop, distribute to persons making application for either tree removal permits or tree replanting permits, and make available to the general public an informational pamphlet identifying appropriate and useful facts, guidelines and how-to information relative to the preservation, protection and replanting of trees.

(b) The tree preservation and enforcement officer or authorized designee shall also develop, maintain and make available to applicants for tree removal permits or tree replanting permits and to the general public a tree species reference book to provide more detailed information concerning tree care in general and the characteristics, soil and growth requirements and other traits of specific tree species identified on the town's protected tree list and approved tree planting and replacement list.

(c) A current edition of the Texas Association of Nurserymen Grades and Standards, as applicable to the tree species on the town's protected tree list and approved tree planting and replacement list, shall be maintained by the tree preservation and enforcement officer or his authorized designee and made available to applicants for building permits, tree removal permits or tree replanting permits and to the general public, as only those trees meeting and planted or replanted in accordance with the applicable Texas Association of Nurserymen Grades and Standards shall satisfy the tree planting, replanting and/or replacement standards and requirements contained in this division.

(Code 1989, ch. 12, § 5.08(k); Ord. No. 12-00, § 2, 2-17-2000)

Sec. 94-156. Penalty upon failure to comply with division provisions.

(a) Any person violating or failing to comply with any provision or requirement of this division shall be deemed guilty of a misdemeanor and, upon conviction, shall, without exception, be fined the maximum amount provided in section 1-13 of this Code. A separate offense shall be deemed committed upon each day during or on which each separate violation or failure to comply occurs or continues to occur and shall be punishable as such.

(b) Notwithstanding the foregoing, any violation by any person of any provision of this division that constitutes an immediate danger or threat to any protected, specimen, majestic or historic tree or to the health, safety and welfare of the public may be enjoined in a suit brought by the town for such purpose.

(c) In addition to any other remedies or penalties contained in this section, the town may enforce the provisions of this section pursuant to the applicable provisions of V.T.C.A., Local Government Code ch. 54, which chapter provides for the enforcement of municipal ordinances.

(d) Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this division.

(Code 1989, ch. 12, § 5.08(j); Ord. No. 12-00, § 2, 2-17-2000)

Secs. 94-157--94-180. Reserved.

Subdivision II. Protected Trees

Sec. 94-181. Designation.

A protected tree shall be any existing living tree of a species or type listed on the town protected tree list and that has or possesses each of the following characteristics or criteria:

(1) A single trunk of six inches in caliper width or greater, measured at four feet above natural grade level, and at least 12 feet high; or a multitrunk having a total caliper width of eight inches, measured by combining the caliper width of the largest stem or branch with one-half the caliper width of each additional stem or branch, all measured at four feet above natural grade level; and at least 12 feet high.

(2) Located outside of a public street, alley, right-of-way, utility easement, drainage easement, fence easement, pedestrian access easement, or other public right-of-way or easement; or the buildable area of a building lot or site, as included on a record plat approved by the town council and filed in the plat records of the county; or the buildable area of a building lot or site, as included on a building permit site plan approved by the town. For the purposes of any development of a building lot or site one acre in area or larger, the term "buildable area" shall mean all that portion of the building lot or site inclusive of the footprint of the building and projected ten feet from the outside of the building footprint. For the purposes of any development of a building lot or site less than one acre in area, "buildable" area shall mean that portion of the building lot or site not within the required front yard, side yard and rear yard areas. For the purposes of issuing building permits, "buildable area" shall also mean those areas on a building lot or site, as shown on the required site plan, necessary for the construction of such other improvements as driveways, parking areas, pools, tennis courts and accessory buildings, including sufficient adjacent area to allow the normal operation of construction equipment.

(3) Subject to the review and approval of the tree preservation and enforcement officer or authorized designee, a protected tree shall not include any living tree that a registered arborist or landscape architect 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; in any manner creates a hazardous or dangerous condition so as to endanger the public health, welfare or safety; or that is identified on

approved subdivision construction plans as necessary to be removed to comply with EPA storm water permitting requirements or FHA lot grading plans.

(Code 1989, ch. 12, § 5.08(e)(1); Ord. No. 12-00, § 2, 2-17-2000)

Sec. 94-182. Replanting.

(a) *Generally.* No person, directly or indirectly, shall replant, relocate, transfer or move from one location to another any protected tree on any real property within the town without first obtaining a tree replanting permit, as provided in section 94-71, tree replanting permits.

(b) *Standards.* Only those trees meeting and replanted in accordance with the applicable Texas Association of Nurserymen Grades and Standards shall satisfy the tree replanting requirements contained in this subdivision.

(c) *Penalty for unauthorized replanting.* Any person replanting, relocating, transferring or moving from one location to another any protected trees on any real property within the town, without first obtaining a tree replanting permit, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished as provided in section 1-13 of this Code.

(Code 1989, ch. 12, § 5.08(e)(2); Ord. No. 12-00, § 2, 2-17-2000)

Sec. 94-183. Removal.

(a) *Generally.* No person, directly or indirectly, shall cut down, destroy, remove or effectively destroy through damaging, any protected tree on any real property within the town without first obtaining a tree removal permit as provided in section 94-91.

(b) *Permit required.* Protected trees shall not be removed prior to the issuance of a tree removal permit as provided in division 2 of article II of this chapter. Under no circumstances shall the clear-cutting of protected trees on any real property within the town be allowed prior to the issuance of a tree removal permit for such property.

(c) *Replacement trees required.* It shall be the responsibility of any person obtaining a tree removal permit for a protected tree to provide replacement with trees having a total caliper width equivalent to 1 1/2 times that of the trees to be removed. Total caliper width for replacement trees shall be measured as follows: For single-trunk trees, the width shall be measured at four feet above ground level. For multitruk trees, total caliper width shall be calculated by combining the caliper width of the largest stem or branch with one-half of the caliper width of each additional stem or branch, all measured at four feet above ground level. An example: If a six-inch protected tree is removed, then that tree must be replaced by trees with a total caliper width of nine

inches. This total caliper width could be satisfied by one nine-inch-caliper replacement tree, or three three-inch caliper width replacement trees, or any other combination providing a total caliper width of nine inches. Such replacement trees shall be container-grown and have minimum caliper width of 2 1/2 inches to three inches, measured at six inches above ground level. Alternatively, container-grown replacement trees may have a minimum caliper width of four inches measured at 12 inches above ground level. In any event, replacement trees shall have a minimum height of at least six feet, and shall be planted in locations approved by the tree preservation and enforcement officer or his authorized designee. At the discretion of the tree preservation and enforcement officer or authorized designee, money may be paid to the town instead of providing the replacement trees required by this subdivision. Any such payments shall be deposited in a special account or fund and used by the town to provide and/or support supplemental landscape plantings in public areas of the town and/or to support the administration and enforcement of the town's tree preservation regulations. A per-caliper-inch cash value for replacement trees shall be set annually by the town council after review and recommendation by the tree board. The tree preservation and enforcement officer or authorized designee shall maintain a record of the current per-caliper-inch cash value of replacement trees.

(d) *Penalties for unauthorized removal.* If any protected trees are removed from any real property without a tree removal permit, or if a protected tree is injured because of failure to follow required tree protection measures such that the tree dies or may reasonably be expected to die, the town shall have the authority to enact one or more of the following administrative and civil penalties on the developer and/or owner of the property:

(1) A monetary penalty of \$250.00 per-caliper-inch of width of the protected trees removed, payable to the town. Funds paid to the town as tree removal penalties shall be deposited in a special account or fund and used by the town to provide and/or support supplemental landscape plantings in public areas of the town, and/or to support the administration and enforcement of the town's tree preservation regulations.

(2) Replacement with new trees having a total tree caliper width equivalent to five times that of the removed trees. Such replacement trees shall be container-grown and have a minimum caliper width of 2 1/2 inches to three inches, measured at six inches above ground level. Alternatively, container-grown replacement trees may have a minimum caliper width of four inches measured at 12 inches above ground level. In any event, replacement trees shall have a minimum height of at least six feet, and shall be planted in locations as approved by the tree preservation and enforcement officer or authorized designee.

(Code 1989, ch. 12, § 5.08(e)(3); Ord. No. 12-00, § 2, 2-17-2000)

Secs. 94-184--94-200. Reserved.

Subdivision III. Specimen Trees

Sec. 94-201. Designation of specimen trees.

Specimen trees shall be designated according to the following provisions:

(1) Except as specified in this section, any tree listed on the town's protected tree list and within 50 percent of the caliper width or circumference measured at four feet above ground level of the same such tree as listed in the most current edition of the Big Tree Registry, as amended, published by the Texas Forest Service, shall be considered a specimen tree. A copy of such registry shall be available for review in the office of the tree preservation and enforcement officer. A listing and map of all designated specimen trees shall be maintained and updated by the tree preservation and enforcement officer or authorized designee and made available to the public upon request. In addition to the provisions of this subsection, a specimen tree shall be any other tree that has been designated by the town council, upon recommendation by the tree board, after public hearing and due notice to the owner of the tree, to be of high value because of its type, size, age or other relevant criteria. Notwithstanding the foregoing, it has been determined that specific trees as indicated in this subsection shall be considered specimen trees in accordance with the following schedule:

TABLE INSET:

Tree type	Percent of Big Tree Registry
Any tree not listed on the protected tree list in section 94-242(b)	75 percent

(Code 1989, ch. 12, § 5.08(f)(1); Ord. No. 12-00, § 2, 2-17-2000)

Sec. 94-202. Removal.

(a) *Generally.* No person, directly or indirectly, shall cut down, destroy, remove or effectively destroy through damaging, any specimen tree on any real property within the town without first obtaining a tree removal permit as provided in section 94-91, tree removal permits.

(b) *Permit required.* Specimen trees shall not be removed prior to the issuance of a tree removal permit. Under no circumstances shall the clear-cutting of specimen trees on any real property within the town be allowed prior to the issuance of a tree removal permit for such trees.

(c) *Replacement trees required.* It shall be the responsibility of any person obtaining a tree removal permit for a specimen tree to provide replacement with trees

having a total caliper width equivalent to two times that of the trees to be removed. Total caliper width for replacement trees shall be calculated in the manner described in section 94-183(c). Such replacement trees shall be container-grown and have a minimum caliper width of 2 1/2 inches to three inches, measured at six inches above ground level. Alternatively, container-grown replacement trees may have a minimum caliper width of four inches measured at 12 inches above ground level. In any event, replacement trees shall have a minimum height of at least six feet, and shall be planted in a location approved by the tree preservation and enforcement officer or authorized designee. At the discretion of the tree preservation and enforcement officer or authorized designee, money may be paid to the town instead of providing replacement trees required by this division. Any such payments shall be deposited in a special account or fund and used by the town to provide and/or support supplemental landscape plantings in public areas of the town and/or to support the administration and enforcement of the town's tree preservation regulations. A per-caliper-inch cash value for replacement trees shall be set annually in accordance with section 94-183(c).

(d) *Penalties for unauthorized removal.* If any specimen trees are removed from any real property, or if a specimen tree is injured because of failure to follow required tree protection measures such that the tree dies or may reasonably be expected to die, the town shall have the authority to enact one or more of the following administrative and civil penalties on the developer and/or owner of the property:

(1) A monetary penalty of \$500.00 per-caliper-inch of width of the specimen trees removed, payable to the town. Funds paid to the town as tree removal penalties shall be deposited in a special account or fund and used by the town to provide and/or support supplemental landscape plantings in public areas of the town and/or to support the administration and enforcement of the town's preservation regulations.

(2) Replacement with trees having a total tree caliper width equivalent to ten times that of the removed trees. Such replacement trees shall be container-grown and have a minimum caliper width of 2 1/2 inches to three inches, measured at six inches above ground level. Alternatively, container-grown replacement trees may have a minimum caliper width of four inches measured at 12 inches above ground level. In any event, replacement trees shall have a minimum height of at least six feet, and shall be planted in locations approved by the tree preservation and enforcement officer or authorized designee.

(Code 1989, ch. 12, § 5.08(f)(2); Ord. No. 12-00, § 2, 2-17-2000)

Secs. 94-203--94-220. Reserved.

Subdivision IV. Majestic or Historic Trees

Sec. 94-221. Designation.

Majestic or historic trees shall be designated according to the following provisions:

(1) *Majestic trees.* Any tree listed on the town's protected tree list and within 75 percent of the caliper width or circumference measured at four feet above ground level of the same such tree as listed in the most current edition of the Big Tree Registry, as amended, published by the Texas Forest Service, shall be considered a majestic tree. A copy of such registry shall be available for review in the office of community development. A listing and map of all designated majestic trees shall be maintained and updated by the director of community development or authorized designee and made available to the public upon request. In addition to the above, a majestic tree shall be any other tree that has been designated by the town council, upon recommendation by the tree board, after public hearing and due notice to the owner of the tree, to be of high value because of its type, size, age or other relevant criteria.

(2) *Historic tree.* Upon recommendation by the tree board, a historic tree shall be any tree that has been designated by the town council, after public hearing and due notice to the owner of the tree, as a tree of notable historical interest and value to the town because of its location or historical association with the community. A listing and map of all designated historic trees shall be maintained and updated by the tree preservation and enforcement officer or authorized designee and made available to the public upon request.

(Code 1989, ch. 12, § 5.08(g)(1); Ord. No. 12-00, § 2, 2-17-2000)

Sec. 94-222. Removal.

(a) *Generally.* No person, directly or indirectly, shall cut down, destroy, remove or effectively destroy through damaging, any majestic or historic tree on any real property within the town without first obtaining a tree removal permit as provided in section 94-91.

(b) *Permit required.* Majestic or historic trees shall not be removed prior to the issuance of a tree removal permit. Under no circumstances shall the clear-cutting of majestic or historic trees on any real property within the town be allowed prior to the issuance of a tree removal permit for such property.

(c) *Replacement trees required.* It shall be the responsibility of any person obtaining a tree removal permit for a protected tree to provide replacement with trees having a total caliper width equivalent to 2 1/2 times that of the trees to be removed. Total caliper width for replacement trees shall be calculated in the manner described in section 94-183(c). Such replacement trees shall be container-grown and have a minimum caliper width of 2 1/2 inches to three inches, measured at six inches above ground level. Alternatively, container-grown replacement trees may have a minimum caliper width of four inches measured at 12 inches above ground level. In any event, replacement trees shall have a minimum height of at least six feet, and shall be planted

in locations as approved by the tree preservation and enforcement officer or authorized designee. At the discretion of the tree preservation and enforcement officer or authorized designee, money may be paid to the town instead of providing replacement trees required by this subdivision. Any such payments shall be deposited in a special account or fund and used by the town to provide and/or support supplemental landscape plantings in public areas of the town and/or to support the administration and enforcement of the town's tree preservation regulations. A per-caliper-inch cash value for replacement trees shall be set annually in accordance with section 94-183(c).

(d) *Penalties for unauthorized removal.* If any majestic or historic trees are removed from any real property, or if a protected tree is injured because of failure to follow required tree protection measures such that the tree dies or may reasonably be expected to die, the town shall have the authority to enact one or more of the following administrative and civil penalties on the developer and/or owner of the property:

(1) A monetary penalty of \$750.00 per caliper inch of width of the majestic or historic trees removed, payable to the town. Funds paid to the town as tree removal penalties shall be deposited in a special account or fund and used by the town to provide and/or support supplemental landscape plantings in public areas of the town.

(2) Replacement with trees having a total tree caliper width equivalent to 15 times that of the removed trees. Such replacement trees shall be container-grown and have a minimum caliper width of 2 1/2 inches to three inches, measured at six inches above ground level. Alternatively, container-grown replacement trees may have a minimum caliper width of four inches measured at 12 inches above ground level. In any event, replacement trees shall have a minimum height of at least six feet, and shall be planted in locations approved by the tree preservation and enforcement officer or authorized designee.

(Code 1989, ch. 12, § 5.08(g)(2); Ord. No. 12-00, § 2, 2-17-2000)

Secs. 94-223--94-240. Reserved.

Subdivision V. Tree Protection Standards Generally

Sec. 94-241. Enumeration.

The following tree protection measures shall be required:

(1) Prior to construction or land development, the developer shall install four-foot-high plastic (or equivalent) safety fencing around the drip line of protected trees and six-foot-high chain-link fencing around the drip line of specimen, majestic and historic trees. Prior to and during construction or land development, all protected trees within 30 feet of a public right-of-way, public easement or buildable lot area, as included on the

applicable approved and filed record plat, shall be marked with three-inch-wide red ribbon or tape.

(2) Prior to construction or land development, the developer shall establish designated parking areas for the parking and maintenance of all vehicles, trailers, construction equipment and related items and designated stockpile areas for the storage of construction supplies and materials during construction of the subdivision. The location and dimensions of such designated areas shall be clearly identified on both subdivision construction and site plans and shall be approved by the tree preservation and enforcement officer or authorized designee prior to construction or land development of the subdivision. Such designated areas shall be completely fenced with chain-link fencing and gates for safety purposes and to separate protected, specimen, majestic or historic trees from the construction area and related construction activity. With the approval of the tree preservation and enforcement officer or authorized designee, the designated parking and stockpile areas may be combined into one fenced area, provided that the preservation of protected trees is not adversely affected or jeopardized. Supplies and pipe and other items that are customarily unloaded where installed shall not be required to be stored within the designated stockpile areas. Sites approved for temporary batching plant permits shall be fenced and gated in the same manner as designated parking and stockpile areas. Temporary batching plant permits shall also be required for the operation of all batching plants, pursuant to the regulations of this chapter.

(3) During construction, the developer 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 drip line of any protected, specimen, majestic or historic tree or group thereof.

(4) No attachments or wires of any kind, other than those of a protective nature, shall be attached to any protected tree.

(5) With major grade changes of six inches or greater, a retaining wall or tree well of rock, brick, landscape timbers or other approved materials shall be constructed around the tree no closer than the drip line of the tree. The top of the retaining wall or tree well shall be constructed at the new grade.

(6) Unless otherwise approved by the town, no construction or construction-related activity shall occur under the canopy or drip line of any protected, specimen, majestic or historic tree or group thereof. Furthermore, if a foundation, street or alley pavement, utility line, on-site sewer facility, pool, tennis court, patio, sidewalk, drive or parking lot must be constructed within the drip line of a protected tree, it shall be constructed no closer than five feet from the trunk of such protected tree; provided further that the portion of any driveway or parking lot constructed within the drip line of any protected, specimen, majestic or historic tree or group thereof shall be constructed of pave-stone or other permeable materials approved by the tree preservation and enforcement officer or authorized designee.

(7) Any trees removed during land development, construction or construction-related activities shall be chipped or hauled off-site. Burning of removed trees is prohibited.

(Code 1989, ch. 12, § 5.08(h); Ord. No. 12-00, § 2, 2-17-2000)

Sec. 94-242. Approved tree lists.

(a) *Generally.* The tree species lists contained in this section have been developed and will be periodically updated by the town's tree board and shall be maintained and distributed to the public by the tree preservation and enforcement officer or authorized designee as guides for the identification and selection of tree species that meet the various standards and requirements of this division. Trees included on these tree species lists were selected on the basis of one or more of the following criteria or factors: hardiness, resistance to disease, suitability relative to local climate and soil conditions, adaptability for transplantation, longevity, and adaptability to various landscape conditions, resistance to drought, aesthetic qualities, shade provision, windbreak provision, and screening qualities.

(b) *List of trees that are protected.* Only those tree species found on the following list shall be subject to the preservation, protection and replanting requirements of this section.

Protected Tree List

TABLE INSET:

Common Name	Scientific Name
Southern live oak	(<i>Quercus virginiana</i>)
Escarpment live oak	(<i>Quercus fusiformis</i>)
Shumard oak	(<i>Quercus shumardii</i>)
Chinkapin oak	(<i>Quercus muehlenbergii</i>)
Bur oak	(<i>Quercus macrocarpa</i>)
Sawtooth oak	(<i>Quercus acutissima</i>)
Texas red oak	(<i>Quercus texana</i>)
Post oak	(<i>Quercus stellata</i>)
Blackjack oak	(<i>Quercus marilandica</i>)
Water oak	(<i>Quercus nigra</i>)
American elm	(<i>Ulmus americana</i>)
Cedar elm	(<i>Ulmus crassifolia</i>)
Winged elm	(<i>Ulmus alata</i>)

Lacebark elm	(<i>Ulmus parvifolia</i>)
Slippery elm	(<i>Ulmus rubra</i>)
Bald cypress	(<i>Taxodium distichum</i>)
Pecan/hickories	(<i>Carya species</i>)
Pines	(<i>Pinus species</i>)
Chinese pistache	(<i>Pistachia chinensis</i>)
Flowering pear	(<i>Pyrus calleryana</i>)
Redbuds	(<i>Cercis species</i>)
Mexican plum	(<i>Prunus mexicana</i>)
Poosum haw	(<i>Ilex decidua</i>)
Texas buckeye	(<i>Aesculus glabra V. arguta</i>)
Common persimmon	(<i>Diospyros virginiana</i>)
Texas ash	(<i>Fraxinus texensis</i>)
Green ash	(<i>Fraxinus pennsylvanica</i>)
Western soapberry	(<i>Sapindus drummondii</i>)
Sycamore	(<i>Plantanus occidentalis</i>)
Chittamwood	(<i>Bumelia languinosa</i>)
Sweet gum	(<i>Liquidambar styraciflua</i>)
Black walnut	(<i>Juglans nigra</i>)
Magnolia	(<i>Magnolia grandiflora</i>)
Yaupon holly	(<i>Ilex vomitoria</i>)
Carolina buckthorn	(<i>Rhamnus caroliniana</i>)

(c) *Approved tree planting and replacement list.* Only those tree species found on the following approved tree planting and replacement list shall satisfy the tree planting and replacement standards and requirements of this subdivision:

Approved Tree Planting and Replacement List

TABLE INSET:

<i>Common Name</i>	<i>Scientific Name</i>
Southern live oak	(<i>Quercus virginiana</i>)
Escarpment live oak	(<i>Quercus fusiformis</i>)
Shumard oak	(<i>Quercus shumardi</i>)
Chinkapin oak	(<i>Quercus muehlenbergii</i>)
Bur oak	(<i>Quercus macrocarpa</i>)
Sawtooth oak	(<i>Quercus acutissima</i>)

Texas red oak	(<i>Quercus texana</i>)
Water oak	(<i>Quercus nigra</i>)
American elm	(<i>Ulmus americana</i>)
Winged elm	(<i>Ulmus alata</i>)
Lacebark elm	(<i>Ulmus parvifolia</i>)
Bald Cypress	(<i>Taxodium distichum</i>)
Pecans and hickories	(<i>Carya species</i>)
Chinese pistache	(<i>Pistachia chinensis</i>)
Juniper tree	(<i>Juniperus species</i>)
Texas ash	(<i>Fraxinus texensis</i>)
Western soapberry	(<i>Sapindus drummondii</i>)
Sweet gum	(<i>Liquidambar styraciflua</i>)
Eastern red cedar	(<i>Juniperus virginiana</i>)
Eldarica pine	(<i>Pinus eldarica</i>)
Pines	(<i>Pinus species</i>)
Leyland Cypress	(<i>Cyressocyparis leylandi</i>)
Black Walnut	(<i>Juglans nigra</i>)
Magnolia	(<i>Magnolia grandiflora</i>)

(d) *Approved median and right-of-way tree planting list.* The following tree species shall be allowed to be planted in medians and rights-of-way when approved by the town. Additional tree species with nonaggressive root systems/deep root systems maybe authorized for planting in such areas by the director of recreational services:

Approved Median and ROW Tree Planting List

TABLE INSET:

<i>Common Name</i>	<i>Scientific Name</i>
Sweet gum	(<i>Liquidambar styraciflua</i>)
Aristocrat pear	(<i>Pyrus</i>)
Crepe myrtle	(<i>Lagerstroemia indica</i>)
Wax myrtle	(<i>Myrica cerifera</i>)
Plum	(<i>Prunus species</i>)
Holly	(<i>Ilex species</i>)
Possum haw	(<i>Ilex decidua</i>)
Native pecan	(<i>Carya species</i>)
Redbuds/whitebuds	(<i>Cercis species</i>)
Fruitless crabapples	(<i>Malus species</i>)

Southern live oak	(<i>Quercus virginiana</i>)
Escarpment live oak	(<i>Quercus fusiformis</i>)
Texas red oak	(<i>Quercus texana</i>)
Shumard oak	(<i>Quercus shumardi</i>)
Chinkapin oak	(<i>Quercus muehlenbergii</i>)
Bur oak	(<i>Quercus macrocarpa</i>)
Sawtooth oak	(<i>Quercus acutissima</i>)
Water oak	(<i>Quercus nigra</i>)
Winged elm	(<i>Ulmus alata</i>)
Lacebark elm	(<i>Ulmus parvifolia</i>)
Slippery elm	(<i>Ulmus rubra</i>)
Bald Cypress	(<i>Taxodium distichum</i>)
Hickories	(<i>Carya species</i>)
Pines	(<i>Pinus species</i>)
Chinese pistache	(<i>Pistachia chinensis</i>)
Juniper tree	(<i>Juniperus species</i>)
Texas buckeye	(<i>Aesculus glabra</i> variety <i>arguta</i>)
Common persimmon	(<i>Diospyros virginiana</i>)
Texas ash	(<i>Fraxinus texensis</i>)
Western soapberry	(<i>Sapindus drummondii</i>)
Black walnut	(<i>Juglans nigra</i>)
Magnolia	(<i>Magnolia grandiflora</i>)
Yaupon holly	(<i>Ilex vomitoria</i>)
Carolina buckthorn	(<i>Rhamnus caroliniana</i>)
Thornless honey locust	(<i>Gleditsia triacanthos</i> variety <i>inermis</i>)

(Code 1989, ch. 12, § 5.08(i); Ord. No. 12-00, § 2, 2-17-2000; Ord. No. 101-02, § 1, 12-16-2002)

DIVISION 3. PLANTING STANDARDS

Sec. 94-121. Street yard trees.

Trees shall be planted or existing trees preserved within the street yard of the nonresidential lot or building tract according to the following provisions:

- (1) For street yards less than 10,000 square feet in area, one tree shall be provided per 1,000 square feet, or fraction of such amount, of street yard.

(2) For street yards between 10,000 and 110,000 square feet in area, one tree per 2,500 square feet, or fraction of such amount, of street yard area over 10,000 square feet is added to the requirement of ten trees.

(3) For street yards over 110,000 square feet in area, one tree per 5,000 square feet, or fraction of such amount, of street yard area over 110,000 square feet is added to the requirement of 50 trees.

(4) Street yard trees shall be a minimum of three-inch caliper.

(5) Trees required to satisfy other provisions of this division and lying within the street yard may be used to satisfy the requirements of this section.

(Code 1989, ch. 12, § 5.03(e)(1))

Sec. 94-122. Street buffer trees.

Trees shall be planted or existing trees preserved within the street buffer landscaping area required by section 82-242 of this Code, street buffer landscaping, according to the following provisions:

(1) Street buffer trees shall be provided in a ratio of one tree for every 30 feet of lineal frontage, except that a ratio of one tree for every 25 feet of lineal frontage shall be provided along scenic roadways.

(2) Street buffer trees shall be a minimum of three-inch caliper.

(Code 1989, ch. 12, § 5.03(e)(2))

Sec. 94-123. Parking area trees.

Trees shall be planted or existing trees preserved within off-street parking areas according to the following provisions:

(1) One tree shall be provided for each ten parking spaces provided on the site; provided, however, that churches and/or schools shall be required to provide one tree for each 20 parking spaces provided on the site.

(2) Parking area trees shall be minimum of three-inch caliper, except as provided in subsection (4) of this section.

(3) All parking spaces shall be located within 50 feet of a tree that is located within the same parking area, measured from the trunk of the tree; provided, however, that for

churches and/or schools, all parking spaces shall be located within 100 feet of a tree that is located within the same parking area, measured from the trunk of the tree.

(4) A maximum of 30 percent of the trees used to satisfy the requirements of this subsection (3) may come from section 94-242(d), approved median and right-of-way planting list.

(Code 1989, ch. 12, § 5.03(e)(3))

Sec. 94-124. Median and right-of-way trees.

Trees may be planted in medians and rights-of-way only with the approval of the town, provided that such trees are selected from section 94-242(d), approved median and right-of-way planting list.

(Code 1989, ch. 12, § 5.03(e)(4))

Sec. 94-125. Residential lots.

The following tree planting requirements shall be satisfied prior to the issuance of a certificate of occupancy for a single-family, duplex or multifamily use:

(1) A minimum of three trees, with a minimum caliper width of 2 1/2 inches to three inches, and at least six feet in height, shall be provided on each single-family and duplex lot prior to the issuance of a certificate of occupancy. At least one of the required trees shall be located within the front yard area of the lot.

(2) A minimum of one tree, with a minimum caliper width of 2 1/2 inches to three inches, shall be provided for each 3,000 square feet of gross lot area on each multifamily lot prior to the issuance of a certificate of occupancy. At least 50 percent of the required trees shall be located within either the front or side yard area of the lot.

(3) From July 1 until September 1 of each year, only container grown trees shall be used to satisfy the requirements of this section. The builder/developer shall certify that such trees are container grown.

(4) Homeowners desiring to plant trees of a caliper width in excess of two times the requirements of this division may, from July 1 until September 1 of each year, file a town approved affidavit with the director of community development to this effect. Such trees shall be planted by March 1 of the following year in which the affidavit was filed. Failure to comply with the requirements of this division shall be considered a misdemeanor, punishable as such by a fine in accordance with section 1-13 of this Code.

(Code 1989, ch. 12, § 5.03(e)(5))

Sec. 94-126. Tree species.

Unless specified otherwise, only those tree species included in section 94-242(c), approved tree planting and replacement list, shall satisfy the tree planting requirements of this division.

(Code 1989, ch. 12, § 5.03(e)(6))

Sec. 94-127. Measurement of trees.

Unless specified otherwise, tree caliper shall be measured at a height of 12 inches above the ground; provided, however, that for trees with a trunk diameter of less than four inches at a height of 12 inches, tree caliper shall be measured at a height of six inches above the ground. Multitrunk trees shall be measured with the largest trunk at full caliper added to one-half of the remaining trunks at caliper.

(Code 1989, ch. 12, § 5.03(e)(7))

Sec. 94-128. Credit for large trees.

(a) Trees that are newly planted or already established and growing shall be counted for credit against the requirements of section 82-241 of this Code, street yard landscaping and section 82-243 of this Code, parking area landscaping, as follows, provided that they are located within the street yard and/or parking area:

TABLE INSET:

12 inches or greater diameter:	2,000 square feet
6 inches or greater diameter:	1,000 square feet

No credit shall be allowed or given if grade alterations surrounding the established tree are detrimental to the survival of the tree. It shall be incumbent upon the developer to demonstrate the site development follows recommended procedures to guarantee survival of established trees. If existing trees are to be retained in a parking lot area, sufficient ground (the drip line) shall be left upgraded around each tree to allow for the survival of the tree. Special consideration shall be given to the preservation of large oak, elm, pecan and hickory trees. Preservation of trees shall be in conformance with division 4 of this article, tree preservation.

(b) Existing trees that have either been preserved or replanted and meet the minimum standards of the following tree credit schedule may be substituted or credited

against the requirements of this division, tree planting standards as follows. Fractional measurements shall be rounded to the nearest whole number. Caliper width shall be measured at a point four feet above natural grade level.

TREE CREDIT SCHEDULE

TABLE INSET:

Caliper Size (Diameter)	Tree Credits
Less than 3 inches	0
3--6 inches	
7--10 inches	2
11--14 inches	3
15--20 inches	4
21--26 inches	5
27--32 inches	6
Greater than 32 inches	7

However, no tree credits shall be allowed or permitted for trees that are dead, dying, diseased or infested with harmful insects; trees which have not been adequately protected using required tree protection measures, as defined in division 4 of this article, tree preservation, or which are otherwise likely to die; trees that are not included on the protected tree list; or trees that are located within recreational tracts, golf courses or similar sub areas of planned developments which are not intended to be developed for either residential or nonresidential uses.

(Code 1989, ch. 12, § 5.03(e)(8))

Secs. 94-129--94-150. Reserved.

Sec. 98-876. Landscaping standards.

Landscaping standards along major thoroughfares in the CI campus industrial district shall be as described in this section. All other landscaping standards shall be subject to article V of chapter 82 of this Code, landscaping and screening, as amended.

(1) *Street yard landscaping.* All undeveloped areas of the street yard shall be landscaped a minimum of 50 percent.

(2) *Street buffer landscaping.* The area of the lot adjacent to the street right-of-way line and extending into the lot a minimum width of 60 feet shall be landscaped,

except for the necessary driveway. Street buffer landscaped area shall be counted toward the street yard landscaping requirement.

(Code 1989, ch. 12, § 3.28; Ord. No. 32-00, § 4(3.28(n)), 4-3-2000)

Sec. 98-877. Tree planting standards.

(a) *Generally.* Tree planting standards along major thoroughfares in the CI campus industrial district shall be as described in this section. All other tree planting standards shall be subject to article V of chapter 82 of this Code, landscaping and screening, as amended.

(b) *Street buffer trees.* Trees shall be planted or existing trees preserved within the street buffer area by a ratio of one tree per every 500 square feet of buffer area. Trees shall be a minimum of three inches in caliper and shall consist of evergreen and deciduous trees as selected from the town's approved tree planting list.

(Code 1989, ch. 12, § 3.28; Ord. No. 32-00, § 4(3.28(o)), 4-3-2000)

Sec. 98-878. Compliance with area plan components.

All development in the CI campus industrial district shall be in compliance with the components outlined in the area plans for the Lakeside Business District or the Denton Creek district.

(Code 1989, ch. 12, § 3.28; Ord. No. 32-00, § 4(3.28(p)), 4-3-2000)

Secs. 98-879--98-910. Reserved.