

***ARTICLE 28.06 LANDSCAPING AND TREE PRESERVATION***

***DIVISION 3. GENERALLY - COMMERCIAL AND SUBDIVISION LANDSCAPING AND TREE PRESERVATION***

**Sec. 28.06.060. Purpose-Commercial and Residential Subdivision.**

- (a) Generally. The purpose of commercial and residential subdivision tree preservation is to provide for the preservation of native trees, prevent the clear-cutting of land, and provide for minimum landscaping and screening requirements, in recognition that trees, landscaping, screening, and buffering protect the health and welfare of the community, while addressing the water conservation and drainage issues particular to the Hill Country region. The purpose of this article is also to enhance the community's ecological, environmental, and aesthetic qualities.
- (b) Health, welfare, and general well-being. Preserving and improving the natural environment, and maintaining a working ecological balance, are of increasing concern to the city. The fact that the proper use of landscape elements can contribute to the processes of air purification, oxygen regeneration, water absorption, water purification, and noise, glare, and heat abatement as well as the preservation of the community's aesthetic qualities indicates that the use of landscape elements is of benefit to the health, welfare, and general well-being of the community, and therefore it is proper that the appropriate use of such elements be required.
- (c) Water conservation and drainage. The city experiences frequent droughts, due in part to a landscape characterized by thin-soiled rock formations; therefore, it is the purpose of this article to encourage the use of drought-resistant vegetation and landscaping that minimizes runoff and erosion.

**Sec. 28.06.061. Scope and Applicability.**

Divisions 3, 4, and 5 – Commercial and Subdivision Tree Preservation and Landscaping apply to all commercial property and residential subdivisions with five or more dwelling units within the incorporated municipal boundaries (i.e., city limits) and the extraterritorial jurisdiction (ETJ). This article applies to actions taken after the date of enactment. Nothing in this article is intended to modify or excuse an individual's obligation to comply with applicable federal, state, county or other laws, including laws imposing requirements stricter or more onerous than under this article.

In addition, Divisions 3, 4, and 5 apply to all development requiring site plan approval or construction plan approval subject to zoning requirements, including:

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- (a) All residentially-zoned property and property being used for residential use for which a subdivision application is accepted by the City after the effective date of this ordinance generating five or more dwelling units;
  - (b) All industrial, commercial, office, multi-family, institutional development, governmental facilities and infrastructure, and schools (including all new construction and any additions greater than 2500 square feet), and construction of a new parking lot or expansion of an existing parking lot; and
  - (c) All properties going through redevelopment through extension, reconstruction, resurfacing, or structural alteration must come into compliance. Site plan approval shall be conditioned on compliance with this article.
  - (d) For tree preservation purposes, this article applies to the three types of development stated above, and also includes:
    - (1) Any grading, filling or clearing of land related to a project as limited above;
    - (2) Trenching or excavating that may damage or destroy protected trees as defined related to a project as limited above;
    - (3) All governmental development shall comply with the tree preservation plan review procedure regardless of the zoning district in which they are located unless the development is utility related or in street R.O.W.
  - (e) Exemptions from Divisions 3 and 4 – Commercial Property and Residential Subdivision Tree Preservation include:
    - (1) The cultivation of land for agricultural purposes, fence building or rebuilding.
    - (2) Street construction and maintenance projects that do not increase the impervious cover beyond that of the original street.
    - (3) Structural repairs or replacements to existing structures.
    - (4) Construction or reconstruction of barns, silos, livestock pens, sheds, and other agriculturally related structures.
    - (5) Any site plan submitted prior to the effective date of this article except expansions or additions as stated in this Code.

#### **Sec. 28.06.062. Definitions.**

- (a) Rules of interpretation. Words and phrases used in this article shall have the meanings set forth in this section. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number shall include the singular number (and vice versa), and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.
- (b) Specific definitions.

ANSI: The American National Standards Institute (ANSI) is a private, non-profit organization that administers and coordinates the U.S. voluntary standards and conformity assessment system.

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Boundary tree: A tree whose trunk is on two or more properties owned by separate individuals.

Caliper inch: A unit of measure for tree size taken six inches above the ground level for field grown stock, and six inches above the soil line for container grown stock, and six inches above the root flare for bare root plants, up to and including the four-inch caliper size.

Certified arborist: A person with any one of the following certifications or credentials: ISA Certified Arborist or ISA Board Certified Master Arborist.

City administrator: The chief administrative officer of the city. The term shall also include the deputy city administrator.

City arborist: The employee or consultant designated by the city council as the city arborist.

City council: The governing body of the city.

City permit. A city license, certificate, approval, registration, consent, permit, or other form of authorization required by a city ordinance, regulation, or rule in order to develop, construct, and operate the improvements on the property.

Code. The Code of Ordinances enacted by the city, as may be amended from time to time.

Commercial land use. All activities and operations except for one- and two-family residences occupied by individual(s) claiming the dwelling as their homestead including commercial, industrial, multi-family, retail, GUI, and any other land use other than one- and two-family residences.

Critical root zone. The circular area surrounding a tree trunk, established as a distance equal to one foot of radial distance for every inch of caliper size or tree DBH, whichever is appropriate.

Development. The construction or placement of any buildings, utilities, access, roads or other structures, excavation, mining, dredging, grading, filling, clearing or removing vegetation, or the deposit of refuse, waste or fill.

Development Review Committee. A group consisting of the city administrator or designee, the city engineer, building official, and the city planner.

DBH (diameter at breast height). The unit of measure for tree size once over four inch (4") caliper. DBH is the tree trunk diameter of an existing tree measured in inches at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point beneath the split.

Escrow. A deposit of a cash bond with the city in accordance with this article.

Extreme drought classification. A mandatory drought response issued by the local water supply jurisdiction outlining conditions that include limits to water available for landscape irrigation making it impractical to establish new landscaping by irrigation.

Hardwood. Texas Ash, Bald Cypress, American Elm, Cedar Elm, Texas Madrone, Bigtooth Maple, All Oaks, Pecan, Arizona Walnut, Eastern Black Walnut, American Sycamore, Eastern Cottonwood, Red Mulberry, and Osage Orange.

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Healthy tree. Any tree that has not been determined to be considered dead, diseased, or posing an imminent threat or hazard to people or property by a Certified Arborist or by the City Arborist.

Impervious cover. Buildings, parking areas, roads, and other impermeable man-made improvements covering the natural land surface that prevent infiltration. For further clarification on what is considered impervious cover, refer to the city's water quality protection ordinance (article 10.03).

Landscape architect. A person licensed to use the title of “landscape architect” in the State of Texas in accordance with state law.

Landscaping. Consists of introduced vegetation, as well as related improvements to a lot, including, but not limited to, forming and berming, irrigation systems, landscape subsurface drainage systems, site furnishings, and nonstructural retaining walls.

Natural area. An area where the naturally grown landscaping is left primarily undisturbed, except for the removal of poison ivy, greenbrier, and similar vegetation, oak wilt removal and/or prevention measures, and allowing for maintenance of the trees to maintain vigorous growth.

Owner. A person or persons with legal control over property in question. Owner includes all owners as it relates to boundary trees as defined herein.

Person. A human individual, corporation, agency, unincorporated association, partnership, or sole proprietorship, or other legal entity.

Protected tree. Any of the following:

- (1) Heritage tree. A protected tree generally having a trunk of 18.0” or greater caliper in inches measured at DBH or as further defined in Sec. 28.06.079.
- (2) Standard tree. A protected tree having a trunk of 8.0” -17.9” caliper in inches measured at DBH or as further defined in Sec. 28.06.079.

Residential Use. One- and two-family structures, occupied by individuals as their primary residence.

Responsible party. The owner/operator of the business located on the property on which the site development permit is being sought or where the protected tree or landscaping is required; the owner of the property upon which the tree is located or landscaping is required; the person who performs construction or landscaping on a lot, contracts with or directs a person to accomplish the construction.

Texas A&M AgriLife Extension: The document promulgated in part by the Texas A&M AgriLife Extension, entitled “Native and Adapted Landscape Plants: An Earthwise Guide for Central Texas,” as attached as Exhibit “A” to this Ordinance.

TCEQ: The state commission on environmental quality, or its successor agency.

Tree caliper: Caliper is the diameter of the trunk, measured at 6 inches above the soil line on the uphill side, and used for trees that measure 4” caliper or smaller. Over 4” caliper, trees are measured in DBH.

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**Sec. 28.06.063. Landscaping fund.**

A fund is hereby created in which any cash-in-lieu paid to the city pursuant to the mandates of this article shall be deposited. The fund may be drawn upon by the city to implement landscaping improvements on city land and city-controlled rights-of-way or to fund landscape project grants that serve a public city purpose.

**Sec. 28.06.064. Damaging or removing trees.**

No person shall damage or remove trees in violation of this article. “Damage” in this case includes, but is not limited to, altering or maintaining trees in a manner inconsistent with the standards published in American National Standards Institute (ANSI) A-300 “Standards for Tree Care Operations” for trees protected by this ordinance. A violation of this section is an offense under section 28.06.066.

**Sec. 28.06.065. Violations.**

It shall be unlawful for any person to violate this article.

**Sec. 28.06.066. Offense**

- (a) A person who violates, causes, allows or permits a violation of a section of this article designated as an offense commits a misdemeanor punishable by a fine not exceeding \$2000.00. In addition, the cost of the tree or trees may also be charged to the responsible party.
- (b) Each violation of this article designated as an offense constitutes a separate offense. Each tree removed or seriously damaged in violation of this ordinance is a separate offense.
- (c) No culpable mental state is required to prove an offense under this article if the offense involves:
  - (1) removal or damage to trees in violation of this article including clearing, grubbing, or construction through the use of heavy load vehicles as defined in Chapter 30 of the code over the critical root zone of a protected tree; or
  - (2) death of a protected tree outside of-but adjacent to-areas of disturbance by construction, including protected clusters.
- (d) Violations:
  - (1) Section 28.06.064. Damaging or Removing Trees.
  - (2) Section 28.06.065. Violations.
  - (3) Section 28.06.073. Landscape Material.
  - (4) Section 28.06.075(g). Paving over Critical Root Zone.
  - (5) Section 28.06.077. Maintenance Requirements.
  - (6) Section 28.06.079. Tree Preservation.

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(7) Section 28.06.082. Irrigation Requirements.

(8) Section 28.06.085(c). Pruning Oak Without Sealing Wounds.

**Sec. 28.06.067. - Liability.**

The provisions of this article shall not be construed as relieving or limiting in any way the responsibility or liability of any person that damages or removes any tree, from personal injury or property damage resulting from the damage or removal of the tree, or resulting from the negligence or willful acts of such person in the construction or maintenance of any property resulting in the damage or removal of a tree or the damage or removal of any tree, or from the damage caused by the failure to remediate oak wilt or planting of a prohibited tree. Nor shall it be construed as imposing upon the city or its officers, employees or agents any responsibility or liability by reason of the approval of any site development permit, subdivision, or construction under these provisions.

**Sec. 28.06.068. - Civil remedies.**

Nothing in this article shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this article and to seek remedies as allowed by law, including, but not limited to the following:

- (1) Injunctive relief to prevent specific conduct that violates the article or to require specific conduct that is necessary for compliance with the article, including remediation of oak wilt or protection of trees where such remediation or protection is required by this article at the expense of the responsible party;
- (2) A civil penalty up to \$1,000.00 a day when it is shown that the defendant was notified of the provisions of the article and after receiving notice committed acts in violation of the article or failed to take action necessary for compliance with the article; and other available relief.
- (3) Any person violating any provision of this article is subject to a stop work order. Any violation of this article is hereby declared to be a nuisance. Any violation of this article may serve as grounds to withhold or delay issuance of other permits and revocation of a certificate of occupancy.

**Secs. 28.06.069—28.06.070. Reserved.**

*DIVISION 4. STANDARDS -- COMMERCIAL PROPERTY AND SUBDIVISION  
LANDSCAPING AND TREE PRESERVATION*

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**Sec. 28.06.071. Street trees.**

- (a) Residential street tree requirements. The list below sets forth the minimum number of trees, per lot, that must be planted prior to the issuance of a certificate of occupancy permit for the dwelling. Trees shall be in the front of a residential lot, including at least one required tree planted in the front yard. Three large shrubs may be substituted for one required tree. The following minimum standards apply:

Zoning	No. of Required Trees
SF-1	2
SF-2	2
SF-3	1
SF-4	2
SF-5	1 per unit
MF	Follow Nonresidential Street Tree Requirements 28.06.071(b)
MH	1

- (b) Nonresidential street tree requirements. At least one required tree, shall be planted adjacent to or near the street right-of-way for each 25 feet, or fraction thereof, of linear street frontage. Trees shall be planted between the street right-of-way and any horizontal and vertical improvements. The required number of trees need not be placed uniformly, but may be clustered in groups.
- (c) Trees planted shall be a minimum two-and-a-half-inch caliper, staked, and wrapped. Small trees/large shrubs trees shall be a minimum one-and-a-half-inch caliper, staked, and wrapped.
- (d) Trees with deep roots may be planted in the area between the sidewalk and road if approved by the development review committee in consultation with the City Arborist. Trees of species whose roots are known to cause damage to public roadways or other public works are prohibited.
- (e) Trees are not allowed to be planted within public water, or wastewater easements. Trees are not allowed to be planted within fifteen feet of telecommunication or electrical lines.
- (f) Trees in place at the time of construction and preserved on the lot, may count towards the required planting of trees if the preserved trees meet all of the requirements listed herein.

**Sec. 28.06.072. Landscape buffers.**

- (a) Landscape buffer planting requirements.

- (1) All plant material shall be of native or adapted species.
- (2) All new proposed shade trees shall be a minimum of two and a half inches in caliper.

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- (3) All proposed ornamental trees shall be a minimum of one and a half inches in caliper.
- (4) All large shrubs shall be a minimum of five-gallon container size and small shrubs/groundcovers a minimum of one-gallon container size.
- (b) Landscape buffer spacing requirements. The following landscape buffer spacing requirements shall apply to all designated landscape buffers:
- (1) Shade trees (such as Live Oak or Cedar Elm). One per 50 feet of buffer frontage.
  - (2) Ornamental trees (such as Crape Myrtle or Desert Willow). One per 25 feet of buffer frontage.
  - (3) Large shrubs, five-gallon (such as Wax Myrtle, DW Yaupon, or Agarita). One per six feet of buffer frontage.
  - (4) Small shrubs/groundcovers, one-gallon (such as Lantana or Liriope). One per three feet of buffer frontage.
- (c) Landscape buffer widths. The following landscape buffer width requirements shall apply to all designated landscape buffers and shall be measured from the edge of the right-of-way:

	At Arterial Roadways	At Collector Roadways
AG	0	0
SF-1	35 feet	25 feet
SF-2	35 feet	25 feet
SF-3	40 feet	30 feet
SF-4	50 feet	40 feet
SF-5	40 feet	30 feet
MF	50 feet	40 feet
MH	35 feet	25 feet
O	25 feet	25 feet
LR	25 feet	25 feet
GR	25 feet	25 feet
CS	25 feet	25 feet
I	50 feet	50 feet
H	25 feet	25 feet
GUI	25 feet	25 feet
PR	25 feet	25 feet
PP	25 feet	25 feet
PD	Varies	Varies

- (d) Landscape buffer vegetation. The following landscape buffer vegetation requirements shall apply to all designated landscape buffers:

This buffer area shall contain either native vegetation in the form of trees and bushes left in their natural, undisturbed condition, or, if no such native vegetation exists, shall consist of landscaping in conformance with this article. If the area consists of landscaped plantings,



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maintenance of such plantings shall be the sole responsibility of the developer or the homeowners' or property owners' association.

**Sec. 28.06.073. Landscape material.**

All trees, plants, and vegetation shall comply with the Texas A&M AgriLife Extension "Native and Adapted Landscape Plants: An Earthwise Guide for Central Texas" recommended plant guide as attached as Exhibit "A". Invasive plants in this guide are specifically prohibited. A violation of this section is an offense under section 28.06.066.

**Sec. 28.06.074. Landscape plan and tree survey submittal.**

A landscape plan and tree survey shall be submitted to the city with the proposed site development plans and construction plans. The landscape plan shall comply with the landscape requirements. The landscape plan shall be signed and sealed by a landscape architect licensed by the state. The existing tree survey should be signed and sealed by a surveyor licensed by the state. The landscape plan must also be complied with while any structures are being built up to certificates of occupancy. Tree surveys are considered valid for two years from the date which they are completed.

**Sec. 28.06.075. Parking area landscaping.**

- (a) Parking lots and all vehicular parking and maneuvering areas, excluding driveways behind buildings, shall contain areas constructed, planted, and maintained as landscaped islands, peninsulas, or medians.
- (b) The minimum total area in landscaped islands, peninsulas, or medians in the parking lots in front of buildings shall be 90 square feet for each 12 parking spaces, having a minimum width of nine (9) feet.
- (c) One tree is required for every six parking spaces. Tree preservation is encouraged for parking areas defined as back of curb and a nine (9) foot buffer around that back of curb, thus one existing tree that is at four inches DBH shall count for two new trees.
- (d) No parking space shall be located further than 50 feet from a landscaped island, peninsula, median, or tree. They shall be located evenly through the parking areas; however, the location of landscaped islands, peninsulas, and medians may be adjusted to accommodate existing trees or other natural features.
- (e) Landscape terminal islands (end islands) shall be located at the end of all parking modules in a configuration to allow for turning radii of intersecting aisles to protect parked vehicles, provide for visibility, confine moving traffic to aisles and driveways, and provide space for landscaping. Medium and tall shrubs are prohibited on internal islands to maintain visibility.
- (f) All landscaped islands shall have curbs except when utilizing low impact development techniques to capture and utilize runoff for irrigation purposes.
- (g) Paving over more than seventy-five percent (75%) of the critical root zone is prohibited unless approved by the city development review committee. All approved paving shall be

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porous pavement to allow water and air exchange. Paving over more than seventy-five percent (75%) of the critical root zone without approval of the City is an offense.

**Sec. 28.06.076. Screening of dumpsters and building service equipment.**

- (a) For outdoor condensers, utility huts, and other building service equipment (other than a rooftop), such equipment shall be reasonably screened from view on two sides using a masonry wall and/or vegetative screen using plant material from the “Native and Adapted Landscape Plants” plant guide attached at Exhibit “A”, that, at maturity, are at least the height of the equipment to be screened.
- (b) All refuse and/or recycling containers shall be reasonably screened with landscaping from public view and the view of adjoining properties.
- (c) The opening for removal of the dumpster for collection shall be a minimum of 12 feet to allow proper service access. An additional ten feet in width is required for every additional dumpster.
- (d) All durable materials used in constructing a dumpster screening masonry wall system shall be consistent with and complement the primary structure.
- (e) The orientation of the dumpster opening shall not face the street or public sidewalk unless approved by the city administrator.

**Sec. 28.06.077. Maintenance requirements.**

- (a) The owner shall be responsible for (unless otherwise specified herein):
  - (1) Planting and maintaining trees in a manner which conforms to the American National Standards Institute (ANSI) A-300 “Standards for Tree Care Operations” and following all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture;
  - (2) Regular maintenance of all required landscaped areas and plant materials in a vigorous and healthy condition, free from diseases, pests, weeds, and litter. This maintenance shall include weeding, watering, fertilization, pruning, mowing, edging, mulching, or other necessary maintenance in accordance with generally accepted horticultural practice;
  - (2) The repair or replacement of required landscape structures (walls, fences, etc.) to a structurally sound condition;
  - (3) The regular maintenance, repair, or replacement, where necessary, of any screening or buffering;
  - (4) Replacing planted trees if they die or become diseased beyond repair within five years after planting;
  - (5) Repairing damage to landscaped areas, structures, screening, buffering, or trees as a result of ingress or egress from site easements by authorized or unauthorized parties; and

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- (6) Limitation of water due to drought restrictions placed by the City, Dripping Springs Water Supply Corporation, West Travis PUA, or any other water provider temporarily suspends the watering requirement in subsection (2).

- (b) A violation of this section is an offense under section 28.06.066.

**Sec. 28.06.078. Integrated pest management.**

An integrated pest management plan (IPM) shall be submitted with the site plan. The IPM shall include the soil analysis, fertilizer ratios, brands, and types of fertilization application methods to be used. Fertilizers must be phosphate-free.

**Sec. 28.06.079. Tree preservation.**

- (a) A grading and tree survey shall be submitted with the site development plans and construction plans. Residential site development, subdivision, or resubdivision which results in fewer than five dwelling units is exempt from this section.
- (b) The tree survey shall include all existing, live, healthy protected trees with an eight-inch DBH in diameter and larger, including clusters. The survey shall indicate the size (DBH) and species of tree. A survey including existing, live, healthy protected trees with a six-inch DBH in diameter must be submitted if mitigation as listed below is sought. Trees observed to be dead, diseased, or posing an imminent threat or hazard to people or property will be indicated with an asterisk on the tree list. Trees shall be represented by their critical root zone, meaning circles using the formula of one foot of radius for every one inch of trunk diameter. All required trees (both on and off the subject property) with critical root zones that intersect the limit(s) of disturbance with the project shall be represented. Unbroken circles indicate trees that are to remain. Dashed circles indicate trees that are to be removed (including trees identified to be distressed). Non-native trees or other exempt tree species as listed herein shall be omitted from the tree survey.
- (c) Protected trees are defined as follows:
  - (1) Protected Trees;
    - (A) Heritage Trees;
    - (B) Standard Trees.
  - (2) Hardwood trees defined in Sec. 28.06.062 “Definitions”
  - (3) Standard Trees. A Standard Tree means a tree of eight (8) inches or greater DBH for all hardwood tree species except the following species are Standard Trees with at least one (1) trunk being five (5) inches or greater DBH (the value of the five (5) inches or greater trunk is the value given to these small tree species):
    - i. Texas Persimmon (*Diospyros texana*) - five (5) inch DBH;
    - ii. Texas Redbud (var. *texensis*) - five (5) inch DBH;
    - iii. Texas Mountain Laurel (*Sophora secundiflora*) - five (5) inch DBH;
    - iv. Condalia (*Condalia hookeri*) - five (5) inch DBH;
    - v. Possum Haw (*Ilex decidua* - in floodplain only) - five (5) inch DBH;

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- vi. Hawthorne (*crataegus texana*) - five (5) inch;
  - vii. Any hardwood tree as defined– eight (8) inch DBH.
- (4) Heritage Trees. A Heritage tree means a tree of eighteen (18) inches or greater DBH for all tree species except the following species are Heritage with at least one (1) trunk being twelve (12) inches or greater DBH (the value of the twelve (12) inches or greater trunk is the value given to these small tree species):
- i. Texas Persimmon (*Diospyros texana*);
  - ii. Texas Redbud (var. *texensis*);
  - iii. Texas Mountain Laurel (*Sophora secundiflora*);
  - iv. Condalia (*Condalia hookeri*);
  - v. Possum Haw (*Ilex decidua* - in floodplain only);
  - vi. Hawthorne (*crataegus texana*).
- (5) Non-native Trees. Non-native invasive tree species are not protected and will be omitted from the tree survey. Non-native invasive tree species includes the following tree species:
- i. Chinese Pistache (*Pistacia chinensis*);
  - ii. Chinaberry (*Melia azedarach*);
  - iii. Chinese Tallow (*Sapium sebiferum*);
  - iv. Tree of Heaven (*Ailanthus altissima*);
  - v. Salt Cedar (*Tamerix* species).
  - vi. Japanese Ligustrum (*Ligustrum japonicum*).
  - vii. Nandina (*Nandina domestica*);
  - viii. Paper Mulberry (*Broussonetia papyrifera*)
- (d) Minimum Tree Preservation Requirements
- (1) No protected tree shall be removed from any real property within the City of Dripping Springs without following the provisions as stated below except where exempted.
  - (2) Preservation requirements that are set as percentage values shall be percentage of the trees, not percentage of the sum of all diameter inches.
  - (3) Tree Preservation by Land Use:
    - (A) Commercial as defined above::
      - (i) A minimum of 40% of Standard trees shall be preserved on a lot calculated by the total inches (DBH) of the existing standard trees on site
      - (ii) All Heritage trees shall be preserved on a lot.

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(iii) Heritage hardwood trees within clearing and installation for infrastructure (roads, utilities, etc.) shall not be removed without a waiver from the development review committee and mitigation.

(iv) The tree preservation plan must also be complied with during all construction including while any structures are being built as part of the project up to certificates of occupancy. An updated tree survey may be required by the City after construction and acceptance of infrastructure and prior to individual building construction.

(v) Waivers will be reviewed under the same standard as other Subdivision waivers pursuant to Section 1.6 of Exhibit A of the Subdivision Ordinance.

(B) Subdivision Development of residentially zoned areas (five or more dwelling units):

(i) A minimum of 35% of Standard trees shall be preserved on a lot calculated by the total inches (DBH) of the existing standard trees on site

(ii) Heritage trees shall be preserved on a lot.

(iii) Heritage trees within clearing and installation for infrastructure (roads, utilities, etc.) shall not be removed without a waiver from the development review committee and mitigation.

(iv) The tree preservation plan must also be complied with during all construction including while any structures are being built as part of the project up to certificates of occupancy. An updated tree survey may be required by the City after construction of infrastructure and prior to acceptance of public improvements. individual building construction. (v) Waivers will be reviewed under the same standard as other Subdivision waivers pursuant to Section 1.6 of Exhibit A of the Subdivision Ordinance.

(C) A property owner after the certificate of occupancy has been issued is no longer subject to Divisions 3, 4, or 5 but is subject to Divisions 1 and 2 of this ordinance.

(D) Steep slopes –Protected trees shall not be removed from a steep slope area.

(E) All Heritage trees on any lot shall be preserved unless the tree falls under an exception or a waiver to remove the tree is granted by the development review committee. Heritage trees within clearing and installation for infrastructure (roads, utilities, etc.) shall not be removed without a waiver from the development review committee and mitigation. Waivers will be reviewed under the same standard as other Subdivision waivers pursuant to Section 1.6 of Exhibit A of the Subdivision Ordinance.

(F) Tree preservation in Historic Districts shall comply with both this Article and the code and implementation manuals for the districts. When in conflict, the stricter requirement applies.

(4) Tree preservation in the Water Quality Protection Zones.

(A) No trees shall be removed without following the procedures set forth for Water Quality Protection Zones. The minimum percentage of trees to be preserved shall be by tree type, as follows:

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- (i) Standard trees – 100% shall be preserved
  - (ii) Heritage trees – 100% shall be preserved
  - (B) Drainageway Water Quality Buffer Zones. The above shall apply unless tree removal is specifically approved by the development review committee for allowable development in the WQBZ as defined by Water Quality Ordinance [22.05.017(d)]
  - (5) Protection of Critical Root Zone.
    - (A) No construction or disturbance shall occur within an area that constitutes more than seventy-five percent (75%) of the total CRZ for each tree being preserved, including Heritage and Standard Trees, and any other trees for which credit for preservation is to be assigned per this article. The Development Review Committee may approve construction closer to the trunk than one-half the radial distance, depending on the size, spacing, or species of the tree, the type of disturbance proposed, and uniqueness of the situation, if acceptable supplemental nutrients and/or soil aeration are provided and the probable survival rate of the tree is high.
    - (B) Cut or fill that is greater than four inches in depth and the severing of major roots shall be considered disturbance for the purposes of this article.
    - (C) Within the protected CRZ, only flatwork, decking, or similar construction, may be approved and shall not affect the branching of the tree as limited by Section 28.06.075.
    - (D) If proposed or actual protection of the CRZ of a tree does not meet the requirements of this section, then the tree shall be considered removed and shall require mitigation.
  - (e) A Tree Preservation Plan shall be submitted with the site plan for all applicable site plans and subdivisions. Unbroken circles indicate trees that are to remain. Dashed circles indicate trees that are to be removed (including trees identified to be dead, diseased, or posing an imminent threat or hazard to people or property).
  - (f) Healthy designated protected trees that require removal to accommodate the development shall be replaced as directed herein. Trees identified as dead, diseased, or posing an imminent threat or hazard to people or property shall not be included in tree preservation requirements evaluation.
  - (g) Pre- and post-construction fertilization is required for existing trees that will be or have been disturbed by construction activities, including disturbance of the critical root zone. Fertilizers must be phosphate-free.
  - (h) During construction, take measures to protect trees, including rigid fencing, shielding, and signage, as necessary. Rigid fencing shall be placed with a radius of at least ten feet from the trunk or at the critical root zone, whichever is greater, unless property lines or other features prohibit a complete radius. Rigid fencing shall consist of wood, chainlink, or other solid material approved by the city administrator. Stakes shall be no more than six feet apart and at least one and one-half deep into the ground. Rigid fencing shall be at least three feet in height.
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- (i) The city inspector or designee shall inspect and approve installed tree protection before issuance of any permit to commence with any construction activity.
  - (h) Tree protection shall remain in place until final landscaping installation as approved by the city inspector or designee.
  - (i) Parking or storing of vehicles, equipment or materials allowed within the critical root zone is prohibited.
  - (j) Any activity that damages trees on adjacent lots is prohibited.
  - (k) A violation of this section is an offense under section 28.06.066.

**Sec. 28.06.080. Mitigation for Tree Removal.**

- (a) Mitigation for all removed trees in excess of the percentage allowed and not covered by an exception is required for all trees removed during all construction including while any structures are being built as part of the project up to certificates of occupancy. For all removed trees in accordance with tree preservation requirements or after a waiver is approved for removal in excess of the tree preservation requirements the inches (DBH) required for mitigation will be determined using the approved tree survey or tree preservation plan. The number of trees needed to meet the preservation requirement will be included in the mitigation calculation.
- (b) Protected trees which are removed shall be mitigated using any combination of the following pursuant to a tree mitigation plan as approved by the development review committee:
  - (1) Preservation of existing protected trees >6 inches in DBH above minimum preservation requirements are considered credit trees. A survey including existing, live, healthy protected trees with a six-inch DBH in diameter must be submitted if mitigation is sought including any tree being used for mitigation. Credit for preservation shall be given at .5 : 1 inches. In addition, preservation of existing Ashe Juniper (*Juniperus ashei*); Huisache (*Acacia farnesiana*); Mesquite (*Prosopis glandulosa*); and Arizona Ash (*Fraxinus velutina*) > 6 inches in DBH provide credit at .5:1 inches and are considered credit trees.
  - (2) Relocation of the removed tree onsite, mitigation is required for relocated trees if mortality occurs within 2-years of the relocation;
  - (3) Replacement by new protected tree species, or alternative native trees approved by the City Administrator or designee;
  - (4) Payment of a fee in lieu of tree replacement; and/or
  - (5) Mitigation cannot be accomplished by only using one of methods “1” thru “4” above. They must be used in combination in a balance approved by the development review committee.
- (c) The preservation of healthy Standard trees on-site is encouraged and may be used as mitigation to offset the removal of Protected trees. The mitigating trees may be of any protected tree species with an aggregate DBH in inches of the trees removed (1:1). Mitigating trees should be >6 inches in DBH, in good health, and clear of existing or proposed utility easements and overhead electric lines. Existing Heritage trees cannot be used to mitigate for the loss of Heritage trees.

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- (d) Replacement trees are in addition to the minimum landscaping requirements as described in Section 28.06.071 through Section 28.06.077 of this document.
  - (e) Replacement trees may be of any protected tree species or alternative approved indigenous tree with an aggregate DBH in inches of the trees removed with ratio of (1:1) for Standard trees and (3:1) for Heritage trees.
  - (f) Replacement trees shall be a minimum of two and a half caliper inches measured 6 inches from ground level and a minimum height of 8 feet when planted.
  - (g) When possible, replacement trees shall be planted on the same lot according to an approved Tree Preservation Plan. Replacement trees may be planted on another lot if approved by the development review committee. Replacement trees must be maintained and kept alive for three years through a maintenance plan or replaced if destroyed, diseased, or dead within that time period.
  - (h) Landscaping should be mulched to a depth of 3-4" and devoid of weeds and trash. Newly planted trees shall be mulched in a 4 foot radius or 8 foot diameter. The mulch will be kept 6 to 8 inches away from the root flare.
  - (i) Biodiversity requirements for tree replacement
    - (A) When replacing trees on site, or at a location approved by the development review committee, no single tree species may account for more than 50% of the total required caliper inches to be replaced.
    - (B) When more than 300 inches (DBH) of replacement trees are required, a minimum of three (3) different approved tree species shall be used to fulfill the replacement requirements.
  - (j) Fee in lieu of replacement:
    - (i) If all or a portion of the required replacement trees will not be planted on-site or on a site approved by the development review committee, payment of a fee in lieu of replacement shall be made, which shall be deposited into the City's Landscaping Fund. The fee shall be determined as follows in the Table below;
    - (ii) As described in Texas Government Code Sec.212.905, a tree mitigation fee is not required for trees < 10 inches in DBH on a property that is an existing one-family or two-family dwelling that is the persons residence.

Table Mitigation methods for tree removal

<u>Tree Classification</u>	<u>Tree Diameter Removed (DBH)</u>	<u>Tree Planting: Aggregate DBH in inches of trees removed</u>	<u>Mitigation Fee per inch (DBH) of tree removed</u>
<u>Standard</u>	8.0" -17.9" or as defined herein	1:1	\$150



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<u>Heritage</u>	18.0" or greater or as defined herein	3:1	\$200
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(k) Tree Preservation Incentives. An individual may apply for, and subject to verification, shall receive incentives for tree preservation as follows:

- (1) Parking Space Reduction. Upon application and verification by the City Arborist, an individual shall be entitled to a reduction in the minimum parking requirements to help meet the minimum tree preservation requirements. For the purpose of providing an incentive, the said minimum parking requirements may be reduced by one (1) parking space for every four (4) diameter inches of trees that have been protected or mitigated on a site. The City Arborist shall issue a certificate to the appropriate city department(s) confirming that a reduction has been earned under this section. Up to fifteen (15) percent of the required spaces may be waived, however, a waiver in excess of fifteen (15) percent of the required spaces must be approved by the director of planning and development services or the director's designee, and no waiver may exceed thirty (30) percent of the required spaces. A waiver of up to fifty (50) percent of the minimum parking spaces required may be granted if the plan will result in the preservation of woodlands or significant stands of trees in a natural state in excess of the minimum tree preservation requirements. If used, the incentive provided by this subsection shall control over any other conflicting provision of this article.
- (2) Sidewalks. Where the development review committee determines that preservation of trees warrants the elimination, reduction in width, alternative routing, or modification to the sidewalk and curb requirements in accordance with the tree preservation standards, a waiver may be granted.
- (3) Tree Cluster(s). In order to emphasize the importance of preserving trees in a cluster during development, additional tree preservation credit will be given as follows:
  - (A) Cluster(s) of three (3) or more trees less than ten (10) feet apart without existing understory will be calculated at one hundred five (105) percent for each tree within the cluster with a minimum DBH size of two and one-half (2½) inches.
  - (B) Cluster(s) of three (3) or more trees less than ten (10) feet apart with existing understory will be calculated at one hundred fifteen (115) percent for each tree within the cluster with a minimum DBH size of two and one-half (2½) inches.
- (4) Landscape Credits. Landscape credits may be awarded as provided in this article. Trees installed to meet the requirements of the landscape buffer Section 28.06.071 through Section 28.06.077 may be used to meet the requirements of the final tree canopy section.
- (5) Minimum Lot Size and Setbacks. The board of adjustment may approve a variance to the minimum lot size and setback requirements of the applicable zoning district for an individual lot or lots where the applicant demonstrates the following:

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- (A) Compliance with the minimum lot size or setback requirement is needed to preserve a protected tree or heritage tree; and
  - (B) If the tree permit application is pursuant to a proposed subdivision plat, the average lot size of the proposed subdivision will equal or exceed that of the applicable zoning district; and
  - (C) The public purpose involved in protecting the tree exceeds the public purpose of complying with minimum lot size or setback requirements; and
- (6) State Certification in Lieu of Compliance. The City Arborist shall assist those who wish to have a site certified under the Texas Parks and Wildlife, Texas Wildscape Program in lieu of meeting city requirements in this division as long as twenty (20) percent of existing trees on-site are preserved.

**Sec. 28.06.081. Exceptions.**

Exceptions: The following shall be exempt from the Tree Preservation requirements of Section 28.06.079:

- (a) Lots on which buildings were constructed prior to the adoption of this ordinance and subsequently damaged by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind, provided a Building Permit is issued for restoration within 12 months after the damage occurs and additional square footage is not proposed.
- (b) Trees that are dead, diseased, or posing an imminent threat or hazard to people or property as determined by a tree survey and a letter from a certified Arborist.
- (c) Trees causing physical damage to existing structures, drainageways, utility systems or facilities in the public right of way as determined by the city engineer or their designee.
- (d) Protected trees damaged or destroyed by floods, fire, wind or other natural causes.
- (e) Trees or areas of tree canopy preventing the opening of reasonable and necessary vehicular traffic lanes in a street or alley.
- (f) Trees or areas of tree canopy located in the clear site line area and impeding required sight distance, as defined by the Dripping Springs Technical Criteria Manual (DSTC) Chapter 28, Exhibit C, as determined by the city engineer.
- (g) When undertaken in- and immediately adjacent to- the bounds of a public right-of way or dedicated public utility easement by an official government entity or their designee for public use, the installation of:
  - (1) roadways, bridges, culverts, and associated traffic facilities;
  - (2) sidewalks and similar off-highway trails and passageways;
  - (3) streets and passageway lighting;
  - (4) surface and subsurface stormwater drainageways (where horizontal boring is not practicable);
  - (5) subsurface potable water and wastewater utility infrastructure (where horizontal boring is not practicable); and
  - (6) roadway widening/creating on-street parking.
- (h) Trees identified by a certified Arborist as dead, diseased, or posing an imminent threat or hazard to people or property shall not be included in tree preservation requirements evaluation.

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**Sec. 28.06.082. Irrigation requirements.**

- (a) An irrigation plan is required as part of the site plan and will be prepared by a licensed irrigator (i.e., licensed landscape architect or engineer). The plan should include rain/freeze sensors on all controllers. The irrigation plan should provide drip irrigation in shrub beds and bubblers on all trees. Drip irrigation is encouraged on all residential and commercial live turf grasses.
- (b) Turf drought-tolerant grass plantings shall comply with the interior lot landscaping requirements in this article. St. Augustine is expressly prohibited.
- (c) Landscaped areas must be mulched as required by the interior lot landscaping requirements in this article.
- (d) Watering landscaping by hose-end sprinklers or permanently installed automatic sprinkler systems between 10 a.m. and 7 p.m. is prohibited.
- (e) Watering by hand-held hose, drip irrigation, or soaker hose is allowed at any time. No more than three hours per day maximum is allowed.
- (f) Watering or irrigating of any landscaping in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, parking area, street, alley, gutter, or ditch is prohibited.
- (g) A subdivision or commercial project that uses drip irrigation in all open, park, and common areas will receive a credit of fifty percent (50%) of water reuse fees in Section 22.06.007 – Development requirements.
- (h) All restrictions herein are in addition to any restrictions placed by a utility provider including the Dripping Springs Water Supply Corporation, the West Travis County PUA, or the City of Dripping Springs.

**Sec. 28.06.083. Drought conditions.**

- (a) During extreme drought classifications for this region as determined by the National Drought Mitigation Center, the city administrator, or designee, may accept a fiscal deposit of the amount equal to the cost of purchasing and installing the trees and other required landscaping into the city's drought tree fund in lieu of the installation of trees and other landscaping required by this article for the issuance of a certificate of occupancy permit, or the city administrator may accept an escrow equal to the cost of purchasing and installing the trees and other required landscaping. The city shall only accept the fiscal deposit or escrow if an erosion control plan consistent with section 28.04.016 of this code has been reviewed and accepted by the city administrator. Failure to maintain and adhere to an approved erosion control plan during periods of extreme drought classification shall be deemed a violation and the fines and penalties under section 28.06.066 of this article shall apply.

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- (b) Persons requesting that the city accept a fiscal deposit in lieu shall provide the city with written documentation from an entity that sells trees and landscaping the cost of purchasing and installing the trees and other landscaping required by this article.
  - (c) If no cost for the installation of trees and landscaping required by this article is provided to the city, the city shall require 66 percent of the cost of the trees and landscaping to be paid as the installation cost in addition to the cost to purchase the trees and landscaping.
  - (d) Any fiscal deposits for trees and landscaping paid to the city pursuant to this section shall be held in escrow. The escrow may be drawn upon by the city to implement tree and landscaping requirements for the depositing property owner, or the funds shall be released to the depositing property owner to implement tree and landscaping requirements within 30 days when the drought mitigation center determines that this region is no longer in an extreme drought condition or higher classification. Failure to implement the tree and landscaping requirements within 30 days of release of the fiscal deposit to the depositing property owner shall be deemed a violation and the fines and penalties under section 28.06.066 of this article shall apply.
  - (e) Whenever necessary to enforce any provision of this article or implement tree and landscaping requirements on the depositing property owner's property, city staff, or the city's contractor, may enter upon depositing property owner's property at any reasonable time to inspect or perform any duty imposed by this article during an extreme drought classification for this region. If entry is refused, the city shall have recourse to every remedy provided by law and equity to gain entry.
  - (f) The city is the custodian of any cash funds or bonds on deposit in the property owner's escrow account. The city has a fiduciary duty to the depositing property owner and may dispose of the escrowed funds only in accordance with this section.

#### **Sec. 28.06.084. Seasonal Installation Bond/Escrow**

- (a) Landscaping for any project should be installed at an appropriate time of year, to maximize the survivability of the material being planted. If construction activities are completed, save for the installation of trees, shrubs, ornamental ground covers, perennials, and annuals, from March 15 thru September 15, the Planning Department, at the option of Owner, may accept a fiscal deposit of the amount equal to the cost of purchasing and installing these materials in lieu of the installation of trees and other landscaping required for the issuance of a certificate of occupancy or certificate of completion, as appropriate; or, the Planning Department may accept an escrow equal to the cost of purchasing and installing the trees and other required landscaping. The City shall only accept the fiscal deposit or escrow if an erosion control plan consistent with section 28.04.016 of the Code has been reviewed and accepted by the City Administrator. Failure to maintain and adhere to an approved erosion control plan during the period March 15 – Sept. 15 shall be deemed a violation and the fines and penalties under section 28.06.066 of the Code shall apply.
  - (b) Upon the request that the City accept a fiscal deposit in lieu, owner/applicant shall provide the City Administrator with written documentation from an entity that sells trees and
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landscaping the cost of purchasing and installing the trees and other landscaping required by the Code.

- (c) If no cost for the installation of trees and landscaping required by the Code is provided to the City, the City shall require a fiscal deposit equal to 66% of the cost of the trees and landscaping to be delivered to the City as the installation cost in addition to the cost to purchase the trees and landscaping.
- (d) Any fiscal deposits for trees and landscaping paid to the City pursuant to this article shall be held in escrow. The escrow may be drawn upon by the City to implement tree and landscaping requirements for the depositing property owner, or the funds shall be released by the City to the depositing property owner or his/her/its designee to implement tree and landscaping requirements within 30 days of drawing upon the escrow. Failure to implement the tree and landscaping requirements within 30 days of release of the fiscal deposit to the depositing property owner shall be deemed a violation and the fines and penalties under section 28.06.066 of the Code shall apply.
- (e) Whenever necessary to enforce any provision of this section or implement tree and landscaping requirements on the depositing property owner's property, City staff, or the City's contractor, may enter upon depositing property owner's property at any reasonable time to inspect or perform any duty imposed by this section until such time the complete landscape package has been installed and accepted by the City. If entry is refused, the City shall have recourse to every remedy provided by law and equity to gain entry.
- (f) The City is the custodian of any cash funds or bonds on deposit in the property owner's escrow account. The City has a fiduciary duty to the depositing property owner and may dispose of the escrowed funds only in accordance with this section.

#### **Sec. 28.06.085. Oak Wilt Management**

- (a) Trimming or cutting of any oak species is prohibited from the first day of February to the last day of July. Permission may be granted to any entity or property owner wishing to trim or cut an oak tree susceptible to oak wilt during the prohibited months, provided that the entity or property owner contracts with a licensed professional tree care or landscaping company. Trimming or cutting of trees are allowed during the prohibited months if done in response to damage caused by weather. Trimming or cutting can be done by the entity, property owner, or a licensed professional or landscape company. In the case of oak species, wounds must be painted with an acceptable wound dressing within 30 minutes from the time of cutting.
  - (b) Contractors or individuals identified pruning any oak(s) without a demonstrated ability to seal all wounds greater than 0.75 inches within 30 minutes of the time of cutting will be required to cease all work until a wound sealant is onsite and utilized on the project.
  - (c) It is an offense for a contractor or individual to prune any oak without sealing wounds with an acceptable wound dressing within 30 minutes of pruning.
  - (d) Infected red oaks that die in late summer, fall or early winter should be cut down and burned when allowed, buried, or chipped soon after discovery to prevent fungal mats that may form on these trees the following spring.
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- (e) Potential oak wilt investigations should be performed by a member of the Texas Forest Service, a Certified arborist or the City Arborist. For information on oak wilt identification, spread and management reference [www.texasoakwilt.org](http://www.texasoakwilt.org).
  - (f) In the case of emergencies due to tree damage from weather events or other natural disaster the requirement for licensed professional tree care or landscaping company for review for trimming during prohibited months is not required if not available. In addition, painting within 30 minutes at the time of cutting is not required, but painting shall be done as soon as possible.

*DIVISION 5. STANDARDS -- COMMERCIAL AND SUBDIVISION INTERIOR LOT  
LANDSCAPING*

**Sec. 28.06.090. Scope and Applicability**

This article Divisions 3, 4, and 5 – Commercial and Residential Subdivision Tree Preservation and Interior Lot Landscaping apply to all commercial property and residential subdivisions with five or more dwelling units within the incorporated municipal boundaries (i.e., city limits). for which site development plan or construction plan approval by the city is required under the city's Code of Ordinances. This article applies to actions taken after the date of enactment.

**Sec. 28.06.091. Turf Grass Areas**

- (a) Turf grass areas of live grasses shall be planted in drought-tolerant species normally grown as permanent lawns in the City, including Zoysia, Bermuda, Buffalograss, Habiturf (combination of Buffalograss, Blue Grama, and Curly Mesquite) or other drought-tolerant turf grass varieties as approved by the City in consultation with Texas A&M Agrilife Extension or upon approved application to the Development Review Committee. Saint Augustine grass is expressly prohibited unless the applicant applies for an exception to the Development Review Committee with evidence that such grass is drought-tolerant.
  - (b) In residential home subdivisions, drought-tolerant turf grass areas shall be limited to a maximum of 50% of the total provided landscaped area, except that up to 75% of the areas can be drought-tolerant turf if solely supported by drip irrigation in lieu of spray irrigation. Areas that are approved for use for land application, septic area, or other type of wastewater application are not included in this calculation.
  - (c) In all other developments, drought-tolerant turf grass areas shall be limited to a maximum of 25% of the total provided landscaped area, except that up to 50% of the areas can be drought-tolerant turf if solely supported by drip irrigation in lieu of spray irrigation. Areas that are approved for use for land application, septic area, or other type of wastewater application are not included in this calculation.
  - (d) Drought-tolerant turf grass areas may be sodded, plugged, sprigged or seeded, except that solid sod shall be used in swales, other areas subject to erosion, or as required in a Water Quality Protection Zone Plan.
  - (e) Installation of sod dependent upon restrictions set by water utilities and drought stage restrictions. Section 28.06.084 should be followed in drought conditions for delay of installation of landscaping and trees as appropriate.
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- (f) Artificial turf is not considered turf for these percentages and may be used as part of the landscaped area that is not drought-tolerant live grass turf.

**Sec. 28.06.092. Soils**

New landscaped areas shall be prepared so as to achieve a soil depth of at least 6 inches for turf. A soil depth of 12 to 18 inches should be used for perennials and shrubs, and 18-24 inches for trees. The six-inch soil depth shall consist of at least 25% compost blended with soil.

**Sec. 28.06.093. Xeriscape materials**

Developers and homebuilders are encouraged to plant native, adapted, and non-invasive xeriscape plants and trees in addition to using other materials such as mulch and compost to promote use of water-wise landscaping. Landscaping using xeriscaping materials or artificial turf is considered non-turf and does not count against the maximum percentage of turf for lots.