

# CHAPTER 78 SUBDIVISIONS<sup>1</sup>

Contents:

ARTICLE I. IN GENERAL

Sec. 78-1. Definitions.

Amending plat

Building setback restriction

City engineer

Develop

Developer

Development

Extraterritorial jurisdiction (ETJ)

Flag lot

Minor plat

Owner

Planning and zoning commission

Plat

Site plan

Subdivision

Vegetation setback

Visual barrier

Sec. 78-2. Penalty.

Sec. 78-3. Purpose; statutory authority; territorial jurisdiction.

Sec. 78-4. Applicability.

Secs. 78-5—78-26. Reserved.

ARTICLE II. ADMINISTRATION

Sec. 78-27. Filing fees.

Sec. 78-28. Variances.

Secs. 78-29—78-59. Reserved.

ARTICLE III. PLATS

Sec. 78-60. Preliminary plat.

Sec. 78-61. Final plat.

Sec. 78-62. Minor plats.

Sec. 78-63. Re-plats.

Sec. 78-64. Development plats.

Secs. 78-65—78-86. Reserved.

#### ARTICLE IV. GENERAL DESIGN STANDARDS

Sec. 78-87. Streets.

Sec. 78-88. Lots.

Sec. 78-89 Blocks.

Sec. 78-90. Building lines.

Sec. 78-91. Alleys.

Sec. 78-92. Easements.

Sec. 78-93. Reservations.

Sec. 78-94. Use of on-site sewerage facilities.

Sec. 78-95. Compensating open space requirements.

Sec. 78-96. Parking requirements.

Sec. 78-97. Traffic flow between adjacent parking lots.

Secs. 78-98—78-122. Reserved.

#### ARTICLE V. ENGINEERING AND CONSTRUCTION STANDARDS

Sec. 78-123. General policies regarding improvements; payment of costs of improvements.

Sec. 78-124. Engineering and specifications for construction.

Sec. 78-125. Streets.

Sec. 78-126. Drainage and storm sewers.

Sec. 78-127. Sanitary sewer system.

Sec. 78-128. Water system.

Sec. 78-129. Sidewalks.

Sec. 78-130. Submission of as-built plans of completed improvements.

Sec. 78-131. Maintenance bond.

Secs. 78-132—78-160. Reserved.

#### ARTICLE VI. VISUAL BARRIERS AND SETBACK REQUIREMENTS

Sec. 78-161. Applicability.

Sec. 78-162. Required setbacks.

#### ARTICLE VII. TREE PRESERVATION AND REPLACEMENT

Sec. 78-163. Findings and intent.

Sec. 78-164. Definitions.

Caliper

Canopy area

City administrator

City engineer

Critical root zone

Diameter at breast height (DBH)

Protected tree

Tree preservation plan

Urban Forest Technical Manual

Woodland tree stand

Sec. 78-165. Applicability and exceptions.

Sec. 78-166. General tree preservation standards.

Sec. 78-167. Tree assessment.

Sec. 78-168. Tree removal and replacement.

Sec. 78-169. Tree installation and maintenance.

Sec. 78-170. Penalties for violation.

Sec. 78-171. Mitigation and relief from from standards.

Sec. 78-165. Technical standards and specifications.

Sec. 78-167 Minimum tree canopy required for development.

Sec. 78-168 Canopy measurement.

Sec. 78-169 Additional requirements for residential development.

Sec. 78-170. Tree preservation adjoining residential property.

Sec. 78-171. Parking lot trees.

Sec. 78-172. Permit required for removal of protected tree.

Sec. 78-173. Protected tree removal permit.

Sec. 78-174. Pre-development planning and clearing permits.

Sec. 78-176. New and replacement trees.

Sec. 78-177. Accommodations of development standards.

Sec. 78-178. Protection of critical root zone during construction.

Sec. 78-179. Post-development maintenance and replacement.

Sec. 78-180. Variance procedure.

Sec. 78-181. Mitigation payments in lieu of preservation or planting.

Sec. 78-182. Tree mitigation fund.

Sec. 78-184. Fees.

Untitled

## ARTICLE VIII. LANDSCAPING REQUIREMENTS FOR ALL ZONING DISTRICTS

Sec. 78-185. Definitions.

Berm

Sec. 78-186. Purpose.

Sec. 78-187. Applicability; variances.

Sec. 78-188. Landscape plan approval.

Sec. 78-189. Residential subdivision perimeter fences and walls.

<sup>1</sup>State Law reference—Regulation of subdivision and property development, V.T.C.A., Local Government Code ch. 212.

## ARTICLE I. IN GENERAL

### Sec. 78-1 Definitions.

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

**Amending plat** means a revised plat correcting errors or making minor changes to a recorded plat pursuant to V.T.C.A., Local Government Code § 212.016.

**Building setback restriction** means a defined area designated on a subdivision plat in which no building or structure may be constructed and which is located between the adjacent street right-of-way line or other type of easement or right-of-way line and the proposed building.

**City engineer** means the registered professional engineer employed or designated by the city to provide professional engineering services for and on behalf of the city.

**Develop** means the act of improving and selling or using land for the purpose of constructing improvements thereon, to be sold or leased to others or otherwise handled for the personal gain or use of a developer.

**Developer** means a person, firm, corporation or any legal entity, whether one or more or a combination of one or more, engaged in a business of improving and selling or using land for the purpose of constructing improvements thereon, to be sold or leased to others or otherwise handled for their own personal gain or use.

**Development** means the man-made change to improved or unimproved real estate, including, but not limited to, the new construction or the enlargement of any exterior dimensions of any building or structures (excluding landscape structures), dredging, filling, grading, paving, excavation, clearing, or subdivision of property.

**Extraterritorial jurisdiction (ETJ)** means the unincorporated territory extending one-half of a mile beyond the corporate limits of the city, and contiguous to the corporate limits of the city, which has been established as a result of the provisions of the Texas Municipal Annexation Act, V.T.C.A., Local Government Code ch. 43 , and the state subdivision acts.

**Flag lot** means a lot that is divided in such a way that the main part of the property is set back at some distance from a roadway, which has a narrow portion of the property extending to the roadway primarily intended for access to the main part of the property.

**Minor plat** means a plat involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities, which meets all other standards required of other plats.

**Owner** means the person designated as the owner of record of the property to be subdivided or platted.

**Planning and zoning commission** means the planning and zoning commission of the city formed by city council ordinance and appointment.

**Plat.**

- **Development plat** means a map or drawing that complies with the provisions of section 78-64 of this chapter.
- **Final plat** means a map or drawing of a proposed subdivision prepared in a manner suitable for recording in the records of the county containing accurate detailed engineering data, dimensions, dedicatory statements, and certificates, and prepared in conformance with the conditions of preliminary approval previously granted by the planning and zoning commission.
- **Preliminary plat** means a map or drawing of a proposed development to illustrate the features of the development for review and approval by the planning and zoning commission but not suitable for recording in the county records.
- **Re-plat** means the re-subdivision of an existing recorded subdivision together with any change of lot size therein or the relocation of any street line.

**Semi-public** means a use that is partly public; public in some respects, as a private institution offering some public services or facilities.

**Site plan** means a site development plan showing the use of the land, including existing and proposed locations of buildings, drives, sidewalks, parking areas, drainage facilities, and other structures.

**Subdivision** means the division of a tract or parcel of land into two or more parts or lots for the purpose, whether immediate or future, of sale or building development or transfer of ownership, and shall include resubdivision. Subdivision shall not become valid until approved by the city council and recorded in county records.

**Vegetation setback** means a maintained land area separating different zoning classifications or uses.

**Visual barrier** means a continuous unbroken and solid screen of masonry construction, or fencing, natural hedge or vegetation at maturity (two years), or a combination thereof, of not less than six feet measured from the existing natural ground level. Non-vegetative barriers must be a maximum of eight feet in height measured from the existing natural ground level. Vegetation must consist of any combination of trees, shrubs, berms, or other natural flora. The visual barrier improvements shall be adequate to accommodate the proposed screening, and must be a minimum of one foot in width for non-vegetative screening and five feet in width for vegetative screening, provided it creates a visual barrier. The city shall not be responsible for the maintenance of required screening. Deed restrictions and covenants, if any, filed of record and running with the land for any tract, shall make provisions for a maintenance entity authorized to provide maintenance of the visual barrier improvements through assessment of the costs thereof to lot owners.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-2 Penalty.**

No person shall subdivide or develop land until a valid subdivision plat or development plat exists in compliance with this chapter. Any person violating this chapter or any portion thereof shall, upon conviction, be guilty of a misdemeanor and be punished as provided for in section 1-13.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-3 Purpose; statutory authority; territorial jurisdiction.**

- (a) Under the authority of V.T.C.A., Local Government Code ch. 212 , which provisions are hereby made a part of this chapter, the city council does hereby adopt the regulations in this chapter to control the subdivision and/or development of land within the corporate limits of the city and the extraterritorial jurisdiction of the city, in order to provide for the orderly development of the area to secure adequate provision for traffic, light, air, recreation, transportation, water, drainage, sanitary sewers, and other facilities, and under the authority of V.T.C.A., Local Government Code chs. 42 and 43 , which provisions are hereby made a part of this chapter, the city council does hereby adopt the regulations in this chapter as to the extent of extraterritorial jurisdiction.
  - (b) Any owner of land located inside of or within the corporate limits of the city or within the extraterritorial jurisdiction of the city wishing to subdivide or develop such land shall submit to the planning and zoning commission a preliminary and final plat of the subdivision, or submit to the city a development plat, if the owner is not subdividing, of the development, which shall conform to the minimum requirements set forth in this chapter. It is urged that informal discussions be held between the developer, the city officials and the city engineer to ensure compliance with the basic requirements and to arrive at a coordinated plat layout.
  - (c) No subdivision plat shall be filed or recorded and no lot in a subdivision inside of the corporate limits of the city or within the extraterritorial jurisdiction of the city shall be improved, developed or sold until the final plat shall have been approved by the city council. The city shall have the authority to prohibit the installation of public utilities in unapproved streets and easements and to prohibit the issuance of building permits for structures on lots abutting on unapproved streets. The final plat must be approved by the city council.
  - (d) Water and sanitary sewer service will not be available to any property that has not been platted.
- ( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-4 Applicability.**

- (a) This chapter shall govern every person owning any tract of land within the corporate limits of the city or within the extraterritorial jurisdiction of the city who may hereafter:
  - (1) Divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to the city;
  - (2) Divide the land into two or more parts for laying out suburban lots or building lots, streets, alleys, parks, or other portions intended for public use, or for construction of any commercial, public or residential structure on the land; or
  - (3) Develop any tract or parcel of land unless said tract or parcel of land has been previously subdivided and platted.
- (b) A division of land under this section does not include a division of land into parts greater than five acres, where each part has access and no public improvement is being dedicated (V.T.C.A., Local Government Code § 212.004 (a)).
- (c) A division of land under this section does not include a minor plat involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal facilities which meets all other standards required of other plats (V.T.C.A., Local Government Code § 212.0065 ).
- (d) The planning and zoning commission may allow the conveyance by metes and bounds of one or more portions of previously platted property without the necessity of a re-plat if:
  - (1) Each part has access to a public street;

- (2) Any resulting part which is less than the required minimum lot size is to be conveyed to the owner of an abutting property, and when combined with the abutting property will comprise a parcel which is not less than the required minimum lot size under this chapter;
  - (3) No dedication of public improvements is required in connection with the division;
  - (4) The requested division, considered in conjunction with other pending or reasonably anticipated requests, will not substantially alter a previously approved pattern of development; and
  - (5) The general purposes of this chapter may be served without the necessity of re-platting.
- (e) The authority to approve amending plats described by V.T.C.A., Local Government Code § 212.016 , minor plats involving four or fewer lots fronting on an existing street and not requiring the creation of any new street or the extension of municipal utilities, development plats, and a re-plat under V.T.C.A., Local Government Code § 212.0145 that does not require the creation of any new street or the extension of municipal facilities, is hereby delegated to the mayor, city administrator, city secretary and city engineer. Upon approval of any such plat by any one of such officers or employees, the city administrator and city engineer shall sign such plat on behalf of the city.
- (f) The person to whom the amending plat, minor plat or re-plat is presented for approval may, for any reason, elect to present the plat for approval to the municipal authority responsible for approving plats.
- (g) The person to whom the amending plat, minor plat or re-plat is presented for approval shall not disapprove the plat and shall be required to refer any plat which such person refuses to approve to the municipal authority responsible for approving plats within the time period specified in this chapter.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Secs. 78-5—78-26 Reserved.**

## **ARTICLE II. ADMINISTRATION**

**Sec. 78-27 Filing fees.**

- (a) The fees and charges shall be paid into the general fund of the city when any map or plat is tendered to the city engineer. Each of the fees and charges provided in this section shall be paid in advance, and no action of the city council, the planning and zoning commission or the city engineer or any city agency shall be valid until the fees shall have been paid. The city engineer, deputies or assistants shall calculate the fees and charges according to the current established schedule or as hereafter adopted by resolution of the city council from time to time.
- (b) These fees shall be charged on all plats regardless of the action taken by the city council. These fees are subject to change without notice.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-28 Variances.**

When a subdivider or developer can show that a provision of this chapter would cause unnecessary hardship if strictly adhered to, or where because of some condition peculiar to the site or the unique nature of the development compliance with this chapter is not consistent with or required by good engineering and planning practices, and if in the opinion of the city council, planning and zoning commission and the city engineer, a departure from this chapter may be made without destroying the intent of this chapter, the city council may authorize a variance.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Secs. 78-29—78-59 Reserved.**

## **ARTICLE III. PLATS**

**Sec. 78-60 Preliminary plat.**

- (a) *Required.* A preliminary plat of any proposed subdivision shall be submitted to the planning and zoning commission and approved before the subdivider proceeds with the final plat for recording, except in the case of minor plats.
- (b) *Scale; contents.* The preliminary plat shall be drawn to a scale of one inch equals 200 feet, one inch equals 100 feet, one inch equals 50 feet, one inch equals 40 feet, or one inch equals 20 feet. The preliminary plat shall contain at least the following information:
  - (1) *Existing features inside the platted area.*
    - a. The existing boundary lines of the land to be platted. Boundary lines shall be drawn in heavy for easy identification. Boundary lines shall be clearly tied to a minimum of two city monuments.
    - b. The location of all existing easements, pipelines, wells, watercourses, railroads, streets, and other similar drainage and transportation features.
    - c. The location and width of all existing streets, alleys, easements, buildings, and structures.
    - d. Topographical information with contour lines of two-foot intervals maximum, based on a datum approved by the city engineer.
    - e. Elevation of the 100-year floodplain and the extent, if any, that this occurs within the plat.
    - f. Location of any floodway within the plat.
    - g. Total acreage of platted area.
  - (2) *Existing features outside of the platted area.*
    - a. The names and property lines of all adjoining property owners.
    - b. The names and location of adjacent subdivisions, streets, easements, pipelines, watercourses, etc., within 100 feet of the plat boundary, with recording information on easements, streets, etc.
    - c. All lines outside of the proposed subdivision are to be dashed.
  - (3) *New features inside of the subdivision.*
    - a. The proposed name of the subdivision.
    - b. The location, width and names of proposed street rights-of-way, along with pavement widths.
    - c. Width and depth of all lots. If the side lot lines are not parallel, the distance between them at the building setback line and at the narrowest point should be given.
    - d. Location of building lines, vegetation barriers, alleys, and easements.



- e. Location and approximate size of sites for schools, churches, parks, and other special land uses and vegetative barriers, where required.
  - f. The area, in square feet and acres, of each of the subdivided parcels.
- (4) *Key map.* A key map showing the relation of the subdivision to major and minor arterial and collector streets in all directions for a distance of at least one mile.
- (5) *Title.* The date, scale, north arrow, title under which the plat is to be recorded, appropriate legal descriptions such as survey name and abstract, the name of the owner, and the name of the engineer or surveyor platting the tract.
- (c) *Submission.* The owner shall furnish the city planning and zoning commission 14 days or more before the regular meeting of the planning and zoning commission with:
- (1) A portable document format (PDF) digital copy of the preliminary plat.
  - (2) A minimum of ten legible prints of the preliminary plat.
  - (3) Ten copies of a letter of transmittal stating briefly the type of street surfacing, drainage, sanitary facilities and water supply proposed, and the name, address, email address and telephone number of the owner and engineer or surveyor.
  - (4) A title letter or certificate as defined in section 78-61(f).
  - (5) The preliminary plat fee.
- (d) These documents shall be transmitted to the city engineer.
- (e) *Approval.* The planning and zoning commission shall approve, conditionally approve, defer or disapprove within 30 days any preliminary plat submitted to it. Approval of the preliminary plat shall not constitute final acceptance of the plat. Failure to act within 30 days of the regularly scheduled meeting at which the plat would have been submitted shall constitute approval by the planning and zoning commission unless additional time is requested from the developer. After preliminary approval and final approval by the planning and zoning commission, the final plat shall then be sent to the city council for final approval. Reasons for the disapproval or conditional approval or deferral shall be put in writing attached to one copy of the plat and returned to the person submitting the plat. Preliminary approval will expire 12 months after the approval of the planning and zoning commission of the preliminary plat or the final sections thereof except that, if the subdivider shall apply in writing prior to the end of such 12-month period stating reasons for needing the extension, this period may be extended for another 12 months, but not beyond the total of two years.
- (f) *Disapproval.* If any such plat is disapproved by the city council, such disapproval shall be deemed a disapproval of the offered dedication shown therein.
- (g) *Fee.* The fee shall be as currently established or as hereafter adopted by resolution of the city council from time to time.
- ( Ord. No. 2011-09 , § 1, 7-26-2011)

### **Sec. 78-61 Final plat.**

- (a) *Generally.* After the approval of a preliminary plat by the planning and zoning commission, two sets of construction plans for public facilities shall be submitted to the city and a final plat showing an actual field boundary survey of the tract prepared by a registered public surveyor and bearing his seal shall be submitted to the planning and zoning commission by filing at city hall. The plat shall have all changes and alterations made on it that were required on the previously submitted preliminary plat.

- (b) *Sheet size and scale.* All final plats shall be drawn on reproducible sheets 20 inches by 24 inches and to a scale of one inch equals 100 feet. Where more than one sheet is required, an index sheet of a maximum size of 20 inches by 24 inches shall be filed showing the entire subdivision at a suitable scale.
- (c) *Contents.* The final plat shall contain the following information:
- (1) *Existing features inside the subdivision.*
    - a. The existing boundary lines of the land to be subdivided. Boundary lines shall be drawn in heavy for easy identification.
    - b. The location of all existing watercourses, railroads, easements, pipelines, wells and other similar drainage and transportation features.
    - c. The location of the 100-year floodplain and floodway according to the most recent best available data.
    - d. The location of all the existing streets, alleys, and easements, buildings and structures to be retained and to be removed.
  - (2) *Existing features outside of the subdivision.*
    - a. The names and property lines of adjoining subdivisions and of the adjoining property owners together with the respective plat or deed references.
    - b. The name and location of adjacent streets, alleys, easements, watercourses, etc., within 100 feet of the plat boundaries.
    - c. All lines outside of the plat subdivision boundaries are to be dashed.
  - (3) *Streets, alleys, and easements.* The lines and names of all proposed streets or rights-of-way or easements to be dedicated to public use with the following engineering data:
    - a. For streets, provide complete curve data, central angle, tangent, degrees of curvature shown on the centerline or on each side of the street, provide length and bearing of all tangents, and furnish dimensions of all angle points of curve to an adjacent side lot line.
    - b. For watercourses and easements, provide the distance along the side lot line from the front lot line on the high bank of the stream, and provide a traverse line along the edge of all large watercourses in a convenient location, preferably along the utility easements if paralleling the drainage easement or stream.
  - (4) *Name and acreage.* Name of subdivision and total acreage.
  - (5) *Lots and blocks.* The lines and numbers of all proposed lots and blocks with complete bearings and dimensions for front, rear, and side lot lines along with areas in square feet and acres.
  - (6) *Setback lines and vegetation barriers.* Building setback lines and vegetation barriers, which shall be shown on all lots.
  - (7) *Reservations.* The use and property dimensions for all special reservations, including sites for schools, churches, parks, and reserves.
  - (8) *Monument and control points.*
    - a. State on the plat what was found/set at all boundary corners of the tract being subdivided
    - b. All plats shall be tied to two city monumentation control points and state which monuments were used. Reference bearings to a city monument.
    - c. No final plat may be approved until actually surveyed upon the ground by, or under the supervision of, a registered professional land surveyor. The surveyor shall set, or leave as found, sufficient, stable and reasonably permanent markers to represent or reference the property or boundary



corner, angle points, and points of curvature or tangency of a tract being subdivided. All survey marks shall be shown and described with sufficient evidence of the location of such markers on the plat.

- d. One permanent monument with x, y, and z shall be placed within the boundaries of each new subdivision. Elevation benchmarks should be placed within a dedicated street right-of-way, but outside of the paved portion of the roadway, with the location of such benchmark reflected upon the plat. The benchmark shall consist of a three-inch brass disk set in a concrete column six inches in diameter and three feet deep and buried with the top flush with the natural grade. The disc shall be stamped with the surface elevation as determined from a known benchmark based on city monumentation and shall also bear the subdivision name and section number, if any.
- e. Lot corners, street intersections, angle points, and street alignment monumentation must be installed prior to final acceptance of the subdivision.
- f. Benchmarks shall be based on the City of Montgomery Control System and related to at least two of those published monuments. The plat shall indicate which City of Montgomery Control monuments were recovered and which one was used to set the plat benchmark elevation. Measured elevation differentials between specific City of Montgomery Control monuments that are greater than 0.1 foot relative to the differential in the published elevations of those monuments shall be communicated to the City of Montgomery City Engineer.
- g. The requirement to set a new subdivision elevation benchmark is waived if a Texas Department of Transportation elevation benchmark, a City of Montgomery elevation benchmark or a previously set elevation benchmark within an existing recorded subdivision is located within 500 feet of the proposed subdivision plat boundary and the stamped elevation of the existing benchmark is referenced to the city's published datum. The location and description, including the elevation and datum of the existing benchmark to be used shall be reflected upon the plat.

(9) *Certificates of approval.* The following will be placed on the face of the plat in addition to the requirements of the county. Each final plat must bear the owner's certification and dedication statement, signed and acknowledged, in substantially the following form:

OWNER'S CERTIFICATION AND DEDICATION

STATE OF TEXAS	§
COUNTY OF MONTGOMERY	§

That (Owner's name) herein acting individually or through the undersigned duly authorized agents, does hereby adopt this plat designating the herein described real property as the \_\_\_\_\_ Subdivision, and does hereby make subdivision of said property according to the lines, streets, alleys, parks, and easements therein shown, and dedicate to public use forever all areas shown on this plat as streets, alleys, parks, and easements, except those specifically indicated as private; and does hereby waive any claims for damages occasioned by the establishing of grades as approved for the streets and alleys dedicated, or occasioned by the alteration of the surface of any portion of streets or alleys to conform to such grades and does hereby bind Owner, and Owner's successors and assigns to warrant and forever defend the title to the land so dedicated.

Owner hereby certifies that Owner has or will comply with all applicable regulations of the city, and that a rough proportionality exists between the dedications, improvements, and exactions required under such regulations and the projected impact of the subdivision.

WHERE PRIVATE STREETS ARE DEDICATED ADD:



Where streets or alleys are dedicated for private use, such dedication shall include an easement covering the street area which permits the installation, operation and maintenance of water, sewer, gas, electric, telephone, cable television or other such utility facilities by the city and other utilities lawfully entitled to provide service to the abutting property. The easement shall also provide a right of access to public agencies engaged in both routine and emergency public services including law enforcement, fire protection, medical response, inspection and code enforcement.

The certification and dedication statement must be signed by each owner and acknowledged in the manner provided for the acknowledgement of deeds. If the number of owners makes it impractical for the signature of each such owner to appear upon the plat, then, the plat may be signed and acknowledged by an agent or attorney in fact on behalf of such owners, provided that a valid power of attorney or other appropriate instrument establishing such agency is filed in the real property records of the county.

KNOW ALL MEN BY THESE PRESENTS:

That I \_\_\_\_\_, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereof were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Montgomery, Texas.

\_\_\_\_\_  
Signature and Seal of Registered  
Professional Land Surveyor

I THE UNDERSIGNED, Engineer for the City of Montgomery, hereby certify that this subdivision plat conforms to all requirements of the subdivision regulations of the city as to which his approval is required.

\_\_\_\_\_  
City Engineer - Montgomery

This plat and subdivision has been submitted to and considered by the city planning and zoning commission, and is hereby approved by such commission.

Dated This \_\_\_ Day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Chairperson Planning and Zoning  
Commission

This plat and subdivision has been submitted to and considered by the city council of the City of Montgomery, Texas, and is hereby approved by such council.

Dated This \_\_\_ Day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Mayor  
ATTEST:

\_\_\_\_\_  
City Secretary

- (10) *Key map.* A key map showing the relation of the subdivision to major and minor arterial and collector streets in all directions for a distance of at least one mile.
  - (11) *Title block.* The date, scale, north arrow, and subdivision title, along with appropriate legal descriptions such as survey name and abstract, with the name of the owner and engineer or surveyor platting the tract.
  - (12) *Dedications and certificates.* Such dedications and certificates as are applicable.
  - (13) *Special restrictions.* Where restrictions of land use other than those given in this chapter are to be imposed by the subdivider, such restrictions shall be placed on the final plat or on a separate instrument filed with the plat.
  - (14) *Off-site easements.* Provide recorded off-site easements with final plat submittal.
- (d) *Water, sewer, paving and drainage plans.*
- (1) Two sets of plans and specifications for water, sanitary sewers, storm sewers, paving and drainage prepared by a registered professional engineer must be submitted with the final plat. The aforementioned plans must also be submitted in an electronic format acceptable to the city. As noted in article V of this chapter, all developers will be required to retain services of a professional engineer for the design and inspection of all public utilities that the city will maintain after development occurs. A sealed utility letter report shall be submitted by the design engineer that explains how water and sewer service will be provided to each lot, and that states the design shown within the construction plans is in accordance with the latest requirements of the city design criteria manual. An analysis of the projected demand, connection point, future extension, over-sizing, and capacity in existing facilities shall be included. A land study shall be submitted showing water and sanitary sewer improvements necessary to cover all contiguous land owned or controlled by the developer. The subdivision plat cannot be approved by the city council for recordation until the city council approves construction plans for the subdivision.
  - (2) Approval of construction plans shall expire 12 months after the approval of the city council except that the developer may apply, in writing, prior to the end of such 12-month period, for an extension of said approval, setting forth the reasons for the need for such an extension. The city council may, at its discretion, extend the approval period for an additional 12 months. However, in no event shall the city council approve construction plans beyond a total of two years from the date of approval.
- (e) *Tax receipt.* A receipt or tax certificate shall be submitted with the final plat showing that all taxes have been paid.
- (f) *Title letter or certificate.* A title letter or certificate from a title guarantee company or from an attorney duly licensed to practice law in the state shall be submitted certifying to at least the following concerning title to the land:
- (1) A statement of records examined and the date examined (within the last 60 days).
  - (2) Description of the property by metes and bounds.
  - (3) Name of the fee owner as of the date of examination along with the date, file number, volume, and page of the recording of the deed involved.
  - (4) The name of any lienholder together with a date of filing, volume, and page of lien. A copy of the recorded document shall be provided.
  - (5) A general description of any easement and fee strips granted along with the file number, date of filing, volume and page of such recording information. A copy of the recorded document shall be provided.

- (g) *Submission.* The planning and zoning commission shall be furnished with ten legible prints of the original tracing and a reproducible copy of the final plat and one copy of the plat in electronic form (Autocad or DXF format) ten days or more before the planning and zoning commission meeting. These documents shall be filed in the office of the city. City council shall also be furnished with ten legible prints of the original tracing and a reproducible copy of the final plat before the council meeting.
- (h) *Fee.* The fee shall be as currently established or as hereafter adopted by resolution of the city council from time to time.
- (i) *Public facility construction guarantee.* A fiscal guarantee of 100 percent of the construction cost of water, sewer, pavement, drainage facilities, and all public facilities for the subdivision, as approved by the city engineer and city attorney, shall be provided to the city council and approved by city council prior to the final plat being approved and recorded. The construction cost shall be based on an opinion of cost sealed by a professional engineer and approved by the city engineer. The guarantee may be provided in the form of a cash escrow deposit, surety bond, or irrevocable letter of credit.
- (j) *Approval.* The city planning and zoning commission shall approve or conditionally approve, defer or disapprove, within 60 days, any final plat submittal. The city council shall approve or disapprove any final plat submitted within 30 days after the date the plat is approved by the planning and zoning commission. Final approval will expire one year after the city council action granting approval of any final plat unless the final plat has been filed for record, except that, if the subdivider shall apply in writing prior to the end of such one-year period stating reasons for needing extension, this period may, at the discretion of the city council, be extended for another year, but not beyond that period.

( Ord. No. 2011-09 , § 1, 7-26-2011; Ord. No. 2018-10 , § 1, 6-12-2018)

### **Sec. 78-62 Minor plats.**

Minor plats shall contain all the information required of final plats as set forth in this chapter. Minor plats shall be submitted to the city and may be approved and signed by the city engineer and city administrator. The fee for a minor plat shall be as currently established or as hereafter adopted by resolution of the city council from time to time.

( Ord. No. 2011-09 , § 1, 7-26-2011)

### **Sec. 78-63 Re-plats.**

In addition to state law requirements as set out in V.T.C.A., Local Government Code ch. 212 , any re-platting shall follow the final platting rules as set forth in this chapter. A public hearing is required as directed by the Texas Local Government Code.

( Ord. No. 2011-09 , § 1, 7-26-2011)

### **Sec. 78-64 Development plats.**

- (a) Any person who proposes the development of a tract of land within the limits or extraterritorial jurisdiction of the city must have a development plat of the tract prepared in accordance with this chapter and the applicable plans, rules or ordinances of the city.
- (b) A development plat must be prepared by a registered professional land surveyor as a boundary survey showing:

- (1) Each existing or proposed building, structure or improvement or proposed modification of the external configuration of the building, structure or improvement involving a change of the building, structure or improvement;
  - (2) Each easement and right-of-way within or abutting the boundary of the surveyed property; and
  - (3) The dimensions of each street, sidewalk, alley, square, park, or other part of the property which is intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, sidewalk, alley, square, park or other part of the property.
- (c) All proposed easements and dedications shown on a development plat shall be recorded by separate instrument.
- (d) A development may not begin on the property until the development plat is filed with and approved by the city in accordance with this chapter.
- (e) If a person is required under this chapter or a city ordinance to file a subdivision plat, a development plat shall not be required in addition to the subdivision plat.
- (f) Title letter or certificate. A title letter or certificate from a title guarantee company or from an attorney duly licensed to practice law in the state shall be submitted certifying to at least the following concerning title to the land:
- (1) A statement of records examined and the date examined (within the last 60 days).
  - (2) Description of the property by metes and bounds.
  - (3) Name of the fee owner as of the date of examination along with the date, file number, volume, and page of the recording of the deed involved.
  - (4) The name of any lienholder together with a date of filing, volume, and page of lien. A copy of the recorded document shall be provided.
  - (5) A general description of any easement and fee strips granted along with the file number, date of filing, volume and page of such recording information. A copy of the recorded document shall be provided.
- (g) Submission. The city shall be furnished with four legible prints of the original tracing and one copy of the plat in PDF format and one copy of the plat in electronic form (Autocad or DXF format). A title letter or deed of trust shall be provided to provide evidence of ownership of the property to be developed.
- (h) Fee. The fee shall be as currently established or as hereafter adopted by resolution of the city council from time to time.
- (i) Approval. Development plats shall be submitted to the city and may be approved and signed by the city engineer and city administrator. Final approval will expire one year after the approval of any development plat, except that, if the developer shall apply in writing prior to the end of such one-year period stating reasons for needing an extension, this period may, at the discretion of the city council, be extended for another year, but not beyond that period. The development plat will not be signed by lienholders.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Secs. 78-65—78-86 Reserved.**

## **ARTICLE IV. GENERAL DESIGN STANDARDS**

**Sec. 78-87 Streets.**

- (a) *Street classification.* Streets shall be classified as follows:



- (1) *Major arterial streets.* Farm-to-Market 149, State Highway 105, FM 1097, and other streets shown on the Major Thoroughfare Plan, as city council may have adopted, are classified as major arterial streets.
  - (2) *Minor arterial streets.* Lone Star Parkway, Farm-to-Market 2853 and other streets shown on the Major Thoroughfare Plan, as city council may have adopted, are classified as minor arterial streets
  - (3) *Collector streets.* Collector streets are those platted for access to tracts where the zoning or land use is high-density residential (which may include one or more single-family residential neighborhoods); commercial office, retail or service; public or semi-public; and light or heavy industrial. Collector streets A collector street (sometimes referred to as a distributor road) is a low-to-moderate-capacity street which serves to move traffic from local to arterial streets.
  - (4) *Local streets, urban.* Urban local streets are those platted to serve low-to-moderate density residential neighborhoods.
  - (5) *Local streets, rural.* Rural local streets are those platted to serve acreage and estate lots with a density of one or fewer units per acre.
- (b) *Conformity to Major Thoroughfare Plan.* Subdivision layouts shall adhere to and substantially conform with the pattern, alignment, classification and ~~The width and location~~ of major and minor arterial and collector streets depicted by the ~~shall conform to such~~ Major Thoroughfare Plan adopted by ~~as the city council may have adopted, if any, both as to the horizontal and vertical alignment of pavements and right-of-way widths.~~
- (1) A proposed subdivision shall include street connections in the direction of the nearest existing or planned streets within one-half mile of the plat. The proposed subdivision shall also include street connections to any streets that abut, are adjacent to, or terminate at the plat.
  - (2) The proposed subdivision shall include streets that extend to undeveloped or partially developed land that is adjacent to the plat or that is separated from the plat by a drainage channel, transmission easement, survey gap, or similar property condition.
  - (3) The streets shall be in locations that will enable adjoining properties to connect to the proposed subdivision's street system.
  - (4) If where the plat to be submitted includes only part of the tract owned or intended for development by the subdivider, a tentative plan of a proposed future street system for the unplatted portion shall be prepared and submitted by the developer. Where it is obvious a street from another development should continue across the planned development, the plan shall provide for continuation of this street through the development. The tentative plan shall be filed of record, together with the plat, with the Montgomery County Recorder of Deeds Office. The plan shall also be maintained with the application records of the city. Upon submittal of an application for subdivision of the unplatted portion of the tract, such subdivision layout shall adhere to and substantially conform with the tentative plan. The tentative plan may be modified to account for changed conditions subject to a positive recommendation of the Planning and Zoning Commission and approval of the City Council.
- (c) *Marginal access streets.* Where a subdivision abuts or contains an existing or proposed arterial street, the city may require marginal access streets, reverse frontage lots with screen planting contained in a non-access reservation along the rear of the property line, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- (d) *Relation to existing street system.* The proposed street system shall extend all existing major and minor arterial streets and such existing collector and local streets as may be desirable for convenience and circulation. Where possible, the width and the horizontal and vertical alignment of extended streets shall be observed primarily with respect to the Major Thoroughfare Plan of the City of Montgomery.



- (e) *Street jogs.* Where offsets of street alignment are in the opinion of the planning and zoning commission unavoidable, such offsets may be employed, provided the distance between centerlines is not less than 125 feet.
- (f) *Large lot subdivision.* If the lots in the proposed subdivision are large enough to suggest resubdivision in the future, or if part of the tract is not subdivided, consideration must be given to possible future street openings and access to future lots which could result from such resubdivision.
- (g) *Through traffic.* Local residential streets shall be designed so as to discourage high speed or through traffic.
- (h) *Topography.* The street system shall bear a logical relationship to the natural topography of the ground.
- (i) *Right-of-way widths.* Street right-of-way widths shall be measured from the front lot line to the front lot line of ~~opposite~~ lots on the opposite side of the street, as designated on the adopted Major Thoroughfare Plan, and shall be as follows:
  - (1) Major arterial streets, including the wide median and parkway alternates: ~~120~~100 feet., ~~or as designated on the thoroughfare plan.~~
  - (2) Minor arterial street, including the parkway alternate: 100 feet.
  - (3) Main street: 100 feet.
  - (4) Collector street with marginal access: 100 feet. ~~Commercial or secondary streets: 80 feet.~~
  - (5) Parallel street parking: 60 feet.
  - (6) Collector street with sidewalks or a combined trail: 60 feet.
  - (7) ~~Local Residential~~ streets, rural: 60 feet.
  - (8) ~~Local Minor~~ streets, urban: 50 feet.
- (j) *Horizontal alignment.* Horizontal curves in streets shall conform to the minimum radius and tangent requirements as follows:

Classification	Minimum radius	Minimum tangent
Major and minor arterial streets	2,000 feet	100 feet
<del>Collector</del> Secondary streets	800 feet	100 feet
<del>Local Residential</del> streets	300 feet	50 feet
<del>Minor residential streets</del>	<del>300 feet</del>	<del>50 feet</del>

- (k) *Cul-de-sacs.*
  - (1) The maximum length of all cul-de-sacs shall be 600 feet, measured along the centerline from its intersection with the centerline of another street to the center of the turn-around right-of-way;
  - (2) Cul-de-sac streets shall have a minimum 60-foot right-of-way and a 50-foot paved radius for single- and two-family uses, and 70-foot right-of-way and 60-foot paved radius for all other uses. Cul-de-sacs shall include a 25-foot inside, 50-foot outside turning radius. Hammerheads and other turnaround alternatives shall meet the standards provided in the adopted Fire Code; Cul-de-sac landscape islands may be permitted by the Planning and Zoning Commission when it is determined that such islands can safely accommodate emergency vehicles and legal provision is established to properly maintain the islands. The maximum mature height of vegetation within a landscape island shall be 30 inches.
  - (3) The intersection of the cul-de-sac street segment and cul-de-sac turnaround shall be rounded by a radii of at least 30 feet;

- (4) A sidewalk with a minimum width of five feet shall be provided around the entire turn-around of the cul-de-sac leaving a minimum of six feet for a tree lawn between the back of curb of the cul-de-sac pavement and the sidewalk;
  - (5) Cul-de-sacs apply to urban local streets only;
  - (6) A sidewalk shall be provided between two lots located on the turnaround of the cul-de-sac connecting the sidewalks adjacent to the turnaround with those on adjacent streets and/or within adjacent developments, as set out in Subsection 1.05, Requirements for Miscellaneous Items, of the Design Criteria Manual.
- (l) *Dead-end streets* ~~(cul-de-sacs)~~.
- (1) *Maximum length.* The maximum length of a dead-end street with a permanent turnaround shall be 800 feet, except in conditions of unusual topography.
  - (2) *Temporary turnarounds.* Temporary turnarounds of 100 feet in diameter are to be provided at the end of streets more than 400 feet long that will be extended in the future. The following note should be placed on the plat: "Cross-hatched area is temporary easement for turnaround until street is extended (give direction) in a recorded plat."
  - (3) *Prohibited in the DT, Downtown District and the HO, Historic Overlay District.* Dead-end streets or cul-de-sacs are expressly prohibited in any area zoned and designated as an historic overlay district.
- (m) *Intersections.*
- (1) *Angle of intersection.* Except where existing conditions will not permit, all streets shall intersect at a 90-degree angle. Variations of more than ten degrees on local streets and more than five degrees on major and minor arterial or collector streets must first be approved by the city in writing.
  - (2) *Radius at acute corners.* Acute angle intersections approved by the planning and zoning commission are to have 25 feet or greater radii at acute corners.
  - (3) *Centerline tie with existing streets.* Each new street intersecting with or extending to meet an existing street shall be tied to the existing street on centerline with dimensions and bearing to show the relationship.
- (n) *Partial or half streets.* Partial or half streets may be provided where the planning and zoning commission feels that a street should be located on a property line. The following note shall be used in all such dedications: "This \_\_\_-foot strip is dedicated as an easement for all utility street purposes when and insofar a \_\_\_-foot strip adjacent to it is so dedicated and the required improvements are installed." A suitable fiscal guarantee approved by the city council in the amount established by the city engineer shall be required from the developer for the construction costs of the half street within the plat.
- (o) *Reserve strips.* Provisional one-foot reserves may be used along the side or end of streets that abut acreage tracts, accompanied by a note on the plat as follows: "One-foot reserve to become automatically dedicated for street purposes when adjacent property is recorded in a plat."
- (p) *Monuments.* All street intersections, angle points, and street alignments of curves shall be monumented by the developer. Such monuments shall be of iron pipe not less than one inch in diameter and three feet long driven into solid ground or at finish grade of the street.
- (q) *Street names.* New streets shall be named so as to provide continuity of names with existing streets and so as to prevent conflict with identical or similar names in other parts of the county. All street names will be approved by the planning and zoning commission and the city council.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-88 Lots.**

- (a) *Use.* All lots shown on the plat will be for residential purposes unless otherwise noted.
- (b) *Size generally.* Lot size shall be approved by the city council. On the basis of the appropriate zoning district in which they lie and the use to which they are to be put, all lots must conform to the regulations of the city council, including minimum area, width, and depth.
- (c) *Minimum width.* Minimum width is 75 feet. Radial lots on the inside of a curved street shall have a minimum width of 75 feet at and for a distance of 30 feet behind the building line. For radial lots on the outside of a curved street or cul-de-sac, the minimum width is established by measurement at the building line.
- (d) *Minimum depth.* Minimum depth is 120 feet.
- (e) *Minimum area.* Minimum area is 9,000 feet.
- (f) *Corner lots.* Corner lots with a width of less than 90 feet are to be at least five feet wider than the average of interior lots in the block. Corner lots with a width of less than 90 feet adjacent to a major or minor arterial street are to be at least 15 feet wider than the average of interior lots in the block.
- (g) *Flag lots.* Flag lots may not be used under any circumstances.
- (h) *Lots on major and minor arterial and collector streets.* Lots facing or backing on major and minor arterial and collector streets shall be at least ten feet deeper than the average of lots facing on adjacent local streets. Lots backing on major and minor arterial and collector streets shall not have access to any major or minor arterial or collector street.
- (i) *Double and reverse frontage lots.* Each lot in a subdivision shall front upon a public street. Double frontage and reverse frontage lots shall be avoided, except where essential to provide separation of residential development from major and minor arterial and collector streets or to overcome specific disadvantages of topography and orientation. A landscape buffer of at least 10 feet, across which there shall be no right of access, shall be provided along the line of lots abutting such arterial or collector street.
- (j) *Lots on drainage easements.* Minimum usable lot depths for lots backing on natural drainage easements shall be not less than 80 feet measured between the front lot line and the drainage easement.
- (k) *Orientation of side lot lines.* Side lot lines should be perpendicular or radial to street frontage.
- (l) *Access to street; lot frontage.*
  - (1) Each lot shall be provided with adequate access to an existing or proposed public street by frontage on such street.
  - (2) Wherever feasible, each lot should face the front of a similar lot across the street. In general, an arrangement placing adjacent lots at right angles to each other should be avoided.
- (m) *Lot numbering.* All lots are to be numbered consecutively within each block. Lot numbering may be cumulative throughout the subdivision if the numbering continues from block to block in a uniform manner that has been approved on an overall preliminary plat.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-89 Blocks.**

- (a) *Length.*
  - (1) *Residential lots.* Maximum block length for residential use shall be 1,400 feet, measured along the center of the block. Six hundred feet is a desirable minimum.
  - (2) *Lots on a major and minor arterial streets.* Maximum block length along a major or minor arterial street shall be 1,800 feet, except under special conditions and upon approval of the city council.

- (b) *Width.* Blocks shall be wide enough to allow two tiers of lots of at least minimum depth, except when prevented by the size of the property or the need to back up to a major or minor arterial street.
  - (c) *Numbering.* Blocks are to be numbered consecutively within the overall plat.
- ( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-90 Building lines.**

- (a) *Front street line.* The front building line shall not be less than 25 feet from the front property line, except, where the lots face on a major or minor arterial street, the front building line shall not be less than 35 feet from the front property line. New commercial structures or improvements being built in the DT, Downtown District shall refer to Sec. 98-266. *Height and Area Regulations.*
  - (b) *Side street line.* The building line on the street side of corner lots shall not be less than 15 feet from the side street property line, except that, where the lots side on a major or minor arterial street, the building line shall not be less than 25 feet from the side street property line, and where the side of a corner lot is across the street from or adjacent to the front of other lots, the building line shall be at the same distance from the streets as the front building line of the opposite or adjacent lots.
  - (c) *Side and rear setbacks.* Side and rear setbacks vary depending on the zoning classification. These setbacks shall be in accordance with chapter 98. Vegetative setbacks may also apply and shall be in accordance with section 78-162.
  - (d) *Pipeline easements.* A 15-foot building setback line shall be provided on each side of any pipeline easement.
- ( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-91 Alleys.**

- (a) *Width.* Where provided, alleys shall not be less than 20 feet in width.
  - (b) *Cut-offs.* In case of intersection alleys, a cut-off shall be required at each corner. Cut-offs shall be triangles having two equal sides, each of which shall be not less than ten feet in length.
  - (c) *Required alleys.* Alleys shall be required in all business areas and in those portions of new residential subdivisions where partial blocks are needed to complete existing blocks with alleys.
- ( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-92 Easements.**

- (a) *Size.* The size of easements where alleys are not provided shall not be less than eight feet on each side of rear lot lines, with additional five feet aerial on each side beginning at a plane 20 feet above the ground. The full width of an easement shall be not less than 16 feet at ground level and not less than 26 feet above ground. The full width of a drainage easement containing a piped storm sewer line shall be not less than 16 feet. The full width of a drainage easement containing an open ditch drainage facility shall be not less than the width of the ditch top plus 12 feet.
  - (b) *Use.* Where necessary, easements shall be retained for power, telephone, cable TV, storm sewers, sanitary sewers, water lines, open drains, gas lines, or other utilities. Such easements may be required across parts of lots (including side lines) other than as described in this section if, in the opinion of the planning and zoning commission, such easements are needed.
- ( Ord. No. 2011-09 , § 1, 7-26-2011)

### **Sec. 78-93 Reservations.**

- (a) *Permitted purposes.* No land contained in the proposed subdivision shall be reserved for any use other than a use permitted by the city council for the zoning in which the land to be reserved is located.
- (b) *Designation on plat.* The specific use for which each piece of land is to be used must be shown by appropriate label or description on the plat, provided that land to be used for any purpose other than residential uses may, if the specific use is not known, be described as a restricted or unrestricted reserve.
- (c) *Parks and playgrounds.* The location and size of parks and playgrounds shall be in accordance with the city council's plan, if any, and with the requirements of the city council.
- (d) *Schools.* The location and size of schools shall be in accordance with the city council plan with respect to school location, if any, and with the requirements of the school district.
- (e) *Unrestricted reserves.* Reserves, tracts, or those individual parcels of land in the subdivision plat which are not divided into lots are established to accommodate some specific purpose such as a commercial center, industrial site, golf course, or other type of private facility. Since the use of reserve tracts cannot be completely determined by the subdivider or the developer at the time plats are prepared and submitted to the city planning and zoning commission, these reserved tracts may be established as "unrestricted reserve" which allows maximum flexibility in the determination of the ultimate use for such properties. All unrestricted reserves will be bound by a one-foot reserve within the adjacent street right-of-way which will not permit access to the reserve tracts before those plats are resubmitted to the city council or planning and zoning commission for re-platting.
- (f) *Restricted reserves.* Where a specific purpose is established for a reserve tract, such intended use must be noted and identified on the plat. The building of noted improvements within the restricted reserves require a site plan to be submitted to the planning and zoning commission and approved by the planning and zoning commission and city council before construction commences. Where public facilities or rights-of-way will be dedicated during future development of restricted reserves, a re-plat will be necessary of the restricted reserve.
- (g) *Minimum area.* Minimum area is 9,000 square feet.

( Ord. No. 2011-09 , § 1, 7-26-2011)

### **Sec. 78-94 Use of on-site sewerage facilities.**

No plat submitted for a preliminary or final plat shall be approved within the extraterritorial jurisdiction of the city with on-site sewerage facilities for sanitary sewage disposal or treatment unless no alternative source of wastewater disposal is available.

( Ord. No. 2011-09 , § 1, 7-26-2011)

### **Sec. 78-95 Compensating open space requirements.**

In those instances where proposed lots have an area less than the minimum established by the planning and zoning commission, compensating open space will be required and can be approved by the planning and zoning commission and city council. For planned unit development (PUD), compensating open space must be made available based on the density of development and in accordance with the general zoning requirements of the city. Such compensating open spaces remain undeveloped or landscaped and may be developed for recreational purposes within the PUD, both active and passive. They may be used to provide courtyard access from the groups or clusters of lots adjacent to public streets or for temporary stormwater detention structures within the planned stormwater facility plan of the city.

- (a) Open space parcels shall be convenient to the dwelling units they are intended to serve. However, because of noise generated by certain recreational activities, they shall be sited with sensitivity to surrounding development.
- (b) As a general principle, undeveloped open space should be left in its natural state. A developer may make certain improvements such as cutting trails for walking or jogging, equestrian use or the provision of picnic areas, etc. In addition, the Planning and Zoning Commission may require a developer to make other improvements, such as removing dead or diseased trees, thinning trees or other vegetation to encourage more desirable growth, and grading and seeding.
- (c) Any lands reserved for open space purposes shall contain appropriate covenants and deed restrictions approved by the City Attorney ensuring that:
  - (1) The open space area will not be further subdivided in the future;
  - (2) The use of the open space will continue in perpetuity for the purpose specified;
  - (3) Appropriate provisions will be made for the maintenance of the open space; and
  - (4) Common undeveloped open space shall not be turned into a commercial enterprise admitting the general public at a fee.
- (d) The type of ownership of land dedicated for open space purposes shall be selected by the owner, developer, or subdivider, subject to the approval of the City Council. Type of ownership may include, but is not necessarily limited to, the following:
  - (1) City of Montgomery, Montgomery County or a quasi-public organization subject to their discretion as to accepting the dedication of fee title or dedication of their discretion to accept the common open space provided that:
    - a. The common open space is accessible to the residents of the city and county;
    - b. There is access to maintain the common open space; and
    - c. Streets or other public ways have been constructed to city standards and have been inspected and approved by the city.
  - (2) Shared, undivided interest by all property owners in the subdivision;
  - (3) Property-owner, condominium, or cooperative associations or organizations, provided the developer shall file a declaration of covenants, conditions and restrictions or other suitable document that will govern the association, to be submitted with the application for the final plat approval. The provisions shall include, but are not necessarily limited to, the following:
    - a. The property-owners association shall be established before any lots are sold;
    - b. Membership shall be mandatory for each property owner;
    - c. The open space restrictions shall be permanent, not just for a period of years;
    - d. The association shall be responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities;
    - e. Property owners shall pay their pro rata share of the cost, and the assessment levied by the association can become a lien on the property if allowed in the master deed establishing the property-owners association;
    - f. The property owners' association bylaws or the declaration of covenants, conditions and restrictions contain the following information:
      - i. The legal description of the common land;
      - ii. A description of common facilities;



- iii. The restrictions placed upon the use and enjoyment of the lands or facilities;
  - iv. Persons or entities entitled to enforce the restrictions;
  - v. A mechanism to assess and enforce the common expenses for the land or facilities (e.g., utility systems, private roads and other public or quasi-public improvements) including upkeep and maintenance expenses, real estate taxes and insurance premiums;
  - vi. A mechanism for resolving disputes among the owners or association members;
  - vii. The conditions and timing of the transfer of ownership and control of land facilities to the association;
  - viii. Any other matter the developer deems appropriate.
- (e) Common open spaces within each development shall be linked with each other and with existing and future open spaces in adjacent developments through the required sidewalk system or through the use of pedestrian paths.
- (f) All common open spaces shall have at least 10 feet of frontage on a public street which includes sidewalks, and be linked to that sidewalk system by either a sidewalk or pedestrian path.
- (g) The open space shall be to the greatest extent practicable accessible to the general public and not for the exclusive use of a property owners' association or nonprofit organization.
- (h) The open space shall be suitable for and protected and maintained for wildlife habitat, conservation, historic preservation (landscapes and/or accessory structures), outdoor education, passive and active outdoor recreation, park and outdoor recreation purposes, agriculture, horticulture, forestry, and/or a combination of these uses. It shall also be served by suitable access for such purposes. A maximum of of five percent of the open space may be paved (pervious "paving" materials are encouraged) or built upon for structures accessory to the dedicated use or uses of such open space, (e.g., pedestrian walkways and bike paths). Parking areas and areas used for vehicular access or egress shall not constitute open space.
- (i) At the discretion of the City Council, private subsurface wastewater and stormwater management systems may be located within the open space unless a development agreement is executed between the subdivider and city council. Surface systems, such as retention and detention ponds, shall not qualify towards the required open space unless these systems are determined to be non-structural, natural-like stormwater management systems that do not create impervious surfaces, enable infiltration, and that are otherwise compatible with the contemplated uses of the adjacent open space.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-96 Parking requirements.**

- (a) All developments shall provide sufficient off-street parking in accordance with the requirements of chapter 98.
- (b) Any parking lots or drives, excluding single-family residential driveways, shall be paved with asphalt or concrete.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-97Traffic flow between adjacent parking lots.**

Adjacent commercial parking lots shall be constructed to allow proper traffic between parking lots.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Secs. 78-98—78-122 Reserved.**

## **ARTICLE V. ENGINEERING AND CONSTRUCTION STANDARDS**

### **Sec. 78-123 General policies regarding improvements; payment of costs of improvements.**

Policies, terms and conditions to be followed in paving work and the extending of water and sewer lines and drainage must be approved by the city council and city engineer. All improvements shall be installed by the developer at his expense. The city shall not participate in the development unless a larger facility or improvement is required by the city. ~~The city may participate in the cost of the facility to the extent of the difference in the cost of the facility and improvement required to serve the developer's land and that required by the city to be installed.~~ With approval of the City Council, the city may contribute to the cost of the facility to the extent of the difference between the cost of the facility required to serve the development and the cost of the facility that the city requires to be installed. For example, if a 10"-diameter water line is needed to serve the development and the city requires a 12"-diameter water line, then the city may reimburse the developer on a pro-rata basis for the oversized water line. An appropriate method of such reimbursement between the city and the developer will be agreed to in writing before construction begins.

( Ord. No. 2011-09 , § 1, 7-26-2011)

### **Sec. 78-124 Engineering and specifications for construction.**

- (a) The city will reserve the right to approve all professional engineers that provide services to developers on public drainage, roads, streets, sewer and water facilities within the plat for utilities that will be dedicated to the public and operated and maintained by the city. The developer may retain an engineer of his choice registered in the ~~State of Texas~~ whose seal shall be placed on the drawings for the design of all private facilities for the purpose of drainage, roads, streets, sanitary sewers and water facilities within his plat.
- (b) All engineering construction plans, surveys, and standard specifications for construction of streets, drainage, and storm sewers or sanitary sewer lines shall be approved prior to commencement of construction of such facilities. The professional engineering services required of the developer for public utility work shall be done by an engineer approved by the city, and shall be as designated in the current issue of the manual entitled "~~Professional Practice General Engineering Service~~ Texas Engineering Practice Act and Rules Concerning the Practice of Engineering and Professional Engineering Licensure," published by the state society of professional engineers, and shall include both design and construction monitoring as defined therein, ~~at the developer's cost~~. Platting shall be done by the developer's engineer or surveyor.
- (c) The city has adopted the city design criteria manual. The current version of the design criteria manual is incorporated herein by reference and shall remain on file at the office of the city secretary.
- (d) Elevations included in all engineering construction plans and surveys must be based ~~two upon the~~ benchmarks and known city monumentation utilized in the final plat and must be clearly displayed on the construction plans and survey.

( Ord. No. 2011-09 , § 1, 7-26-2011; Ord. No. 2018-10 , § 1, 6-12-2018)

### **Sec. 78-125 Streets.**

- (a) All streets shall be designed and constructed in accordance with the provisions of this chapter and the ~~city design criteria manual~~, as adopted by city council. All streets shall be periodically inspected by the city's



engineer during the construction thereof. A developer shall deposit, in escrow with the city, an amount sufficient to offset costs incurred by the city for its engineer to inspect the streets during construction.

- (1) *Design criteria.* Street design, classifications, alignments, minimum pavement widths, and right-of-way widths shall be designed and constructed in accordance with the provisions of section 78-87 and the city design criteria manual, as adopted by city council.
- (2) *Residential street requirements.* Residential street classification is defined in section 78-87.
  - (a) Curb and gutter streets shall be used where residential lot widths are less than 100 feet.
  - (b) Open ditch drainage is allowed in areas where the residential lot width is 100 feet or greater.
- (3) *Driveway general requirements.*
  - (a) Nonresidential parking areas shall be designed to prevent backing of vehicles into a public street.
  - (b) Driveways shall be located and designed with respect to both the public street and the on-site circulation to provide maximum safety and to minimize interference with street traffic. To ensure this, the city engineer may require a traffic study to be performed **at the developer's/owner's expense**.
  - (c) Driveways shall be designed to accommodate all vehicle types having occasion to enter the site, including service, emergency or delivery vehicles.
  - (d) No single-family dwelling, townhouse, or duplex unit may take direct access to major or minor arterial streets if the property can be accessed by a collector or local street. If the property can only be accessed from a major or minor arterial street, then adequate maneuvering space shall be provided on the property, as vehicles shall not be allowed to back directly into the connecting street.
- (4) *Nonresidential driveway spacing.* All nonresidential driveways shall meet the following minimum spacing requirements:
  - (a) Adjacent left, adjacent right, and opposite right corner clearance and commercial driveway spacing is determined by the classification of the street as follows (where raised medians are present, the spacing can be reduced by 20 percent):
    1. Major arterial streets: 275 feet; 220 feet with raised medians.
    2. Minor arterial streets: 230 feet; 185 feet with raised medians.
    3. Collector streets: 185 feet; 150 feet with raised medians.
  - (b) Opposite left corner clearance and commercial driveway spacing is determined by the functional classification of the street as follows (where raised medians are present, the spacing can be reduced by 20 percent):
    1. Major arterial streets: 125 feet; 100 feet with raised medians.
    2. Minor arterial streets: 125 feet; 100 feet with raised medians.
    3. Collector streets: 90 feet; 75 feet with raised medians.
  - (c) In the event that a particular parcel or parcels lack sufficient street frontage to maintain the desirable spacing, the landowner shall have one of the following three options:
    1. In cases where a property owner desires multiple access points that do not meet minimum spacing requirements, or when the property owner requests access to a street other than the one approved by staff, they may seek a variance for minimum spacing, number, and/or location.
    2. The adjacent landowners may agree to establish a common driveway. Common driveways shall meet the standards set forth herein. Approval shall be conditional upon submittal of a perpetual joint use agreement which complies with the requirements set forth in this article.

3. In cases where a property cannot meet the desirable spacing and currently has no improved access to the site, the city will not deny the property owner an access point. However, the access must be located in such a place as to minimize safety concerns. A traffic study may be requested for review and approval by the City Engineer to confirm the location of the proposed driveway.
  - (d) Specifications for construction of access aprons shall be equal to or exceed the specifications for the existing street and be in accordance with the rules, regulations and standards for subdivision construction in the city.
  - (e) Driveways shall be designed to drain so that street drainage is contained within the street, storm sewer or appropriate drainageway in order to ensure protection to the private property. Typically, this is achieved by constructing the drive such that the elevation of the driveway at the property line is at least as high as the top of curb.
- (5) *Responsibility for Improvements on Existing Streets.* The subdivider shall be responsible for the construction of necessary improvements for existing public streets along any frontage of the proposed development and terminating at the next intersection from the nearest frontage point not to exceed 528 feet, ~~abutting the development to comply~~ with standards and the level of service required for such development by the adopted Major Thoroughfare Plan or by the City Administrator, or designee, if no such plan exists. Such streets shall be designed by the City Engineer at the subdivider's expense. The subdivider shall also be responsible for completing and submitting a traffic impact analysis for review of the City Engineer for all residential subdivisions with 100 or more lots and non-residential developments greater than five acres.

( Ord. No. 2011-09 , § 1, 7-26-2011)

#### **Sec. 78-126 Drainage and storm sewers.**

Adequate drainage shall be provided within the limits of the plat. A drainage plan shall be prepared by a licensed professional engineer in accordance with county drainage criteria or state department of transportation requirements (where drainage to a state department of transportation facility). The developer's engineer shall certify that improvements designed by the engineer will not unreasonably:

- (1) Impede the natural flow of the surface waters from higher adjacent properties;
- (2) Alter the natural flow of surface waters so as to discharge them upon adjacent properties at a more rapid rate, in greater quantities or in a different location than would result from the predevelopment natural flow of surface waters; or
- (3) Collect or concentrate the flow of surface waters for discharge into an existing natural or artificial drainageway in a manner which exceeds the capacity of the receiving watercourse.

( Ord. No. 2011-09 , § 1, 7-26-2011)

#### **Sec. 78-127 Sanitary sewer system.**

- (a) The developer shall be required to submit a letter from the state regulatory commission approving the sanitary sewer system. The developer shall provide sewer lines necessary to properly serve the subdivision and shall ensure that existing and/or new sewer facilities are adequate to carry the expected increase in load **as determined by the city engineer.**
- (b) Sanitary sewer lines shall have their locations and materials governed by the regulations of the state regulatory commission governing sanitary sewer systems and the **adopted** city plumbing code.
- (c) Pipe bedding and backfill details shall be approved by the city engineer.

- (d) The design of the sanitary sewer system shall be in accordance with the current requirements of the state commission on environmental quality and the city's design criteria manual.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-128 Water system.**

- (a) The developer shall be required to submit a letter from the state regulatory commission approving the water system.
- (b) Water distribution lines shall have their locations and materials determined by the rules and regulations for public water systems of the state department of health. The rules for "approved" systems shall govern.
- (c) Water gate valves shall be left-opening and AWWA-approved.
- (d) The design of the water distribution system shall be in accordance with the latest requirements of the state commission on environmental quality and the city's design criteria manual.
- (e) Water production and distribution improvements shall be sized to provide adequate capacity for the projected demand, including fire flow.
- (f) Water mains shall be located within a street right-of-way, an easement adjacent to a street right-of-way, or a recorded water line easement.
- (1) Four-inch mains may be used on dead end lines within cul-de-sacs, after the end of the six-inch line providing for fire hydrants.
  - (2) Six-inch mains may be used if the main is less than 900 feet for commercial use or 1,500 feet for residential use, and if connecting between two mains which are eight-inch size or larger.
  - (3) Eight-inch mains shall be used for mains over 900 feet long, or where more than three fire hydrants are needed.
  - (4) Twelve-inch mains and larger shall be used for water lines located along major and minor arterial streets and in accordance with the water system master plan.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-129 Sidewalks.**

- (a) Sidewalks on both sides of the street shall be required for all new subdivisions.
- (b) Sidewalks shall be at least five feet in width and constructed in accordance with the [city design criteria manual](#). Sidewalks shall be shown on the construction plans for the subdivision, which shall note when sidewalks shall be installed and by whom. If the required width conflicted with an adopted Major Thoroughfare Plan, small area plan, etc., then the larger width shall apply.
- (c) Sidewalks shall be installed no later than the date of the warranty inspection for the subdivision.
- (d) Sidewalks shall comply with applicable state and/or federal accessibility standards and have design approval from the state and city where applicable.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-130 Submission of as-built plans of completed improvements.**

The developer must present to the city engineer reproducible complete as-built plans for all paving, drainage structures, water lines and wastewater lines within 60 days after completion of such utilities, whether private or public. The as-built plans **and corresponding GIS shapefiles (compatible with the City's GIS)** must also be submitted in an electronic format acceptable to the city engineer.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-131 Maintenance bond.**

- (a) Upon the completion of all public improvements, including, but not limited to, streets, proper street signing, sidewalks, drainage, water, and wastewater facilities, in accordance with the city specifications and standards, and their acceptance by the city, the developer or contractor shall furnish the city with a financial guarantee acceptable to the city. The financial guarantee shall equal 30 percent of the contract cost of such improvements and shall be in effect one year from the date of completion and acceptance by the city. The guarantee may be provided in the form of a cash escrow deposit, surety bond, or irrevocable letter of credit.
- (b) If any of the work performed by the developer or landowner is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this article, the **city approved** designs, plans, drawings or specifications within one year after the date of the issuance of a certificate of final completion of the work or a designated portion thereof, whichever is longer, or within one year after acceptance by the city of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this article, the developer shall promptly correct the defective work, **to the city's standards**, at no cost to the city.
- (c) If within 20 calendar days after the city has notified the developer of a defect, failure, or abnormality in the work, the developer has not started to make the necessary corrections or adjustments, the city is hereby authorized but not required to make the corrections or adjustments, or to order the work to be done by a third party. The cost of the work shall be paid by the developer.
- (d) The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by the developer, his contractors, or subcontractors, or by the surety.
- (e) The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one year after the installation or completion. The one-year warranty shall cover all work, equipment, and materials that are part of the improvements made under this section of the ordinance.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Secs. 78-132—78-160 Reserved.**

## **ARTICLE VI. VISUAL BARRIERS AND SETBACK REQUIREMENTS**

**Sec. 78-161 Applicability.**

The city council and the planning and zoning commission have established the requirements for visual barriers in this article for all areas where commercial or multifamily zoning adjoins zoning of any other type. Churches, public buildings, and schools located in residentially-zoned areas shall also be required to provide visual barriers.

( Ord. No. 2011-09 , § 1, 7-26-2011)

**Sec. 78-162 Required setbacks.**

- (a) Vegetative setbacks of 25 feet in width shall be maintained at all times where commercial, retail, office, or service; attached and multifamily residential, industrial, ~~church~~, public or semi-public building or gathering facility or school properties abut any single-family residential use or property or adjacent acreage that is designated for ~~may in the future become~~ single-family detached residential use on the Official Zoning Map (and Future Land Use Plan, upon adoption). The purpose of the vegetative setback is to visually shield or obscure one use from another. The vegetative setback may consist of a combination of required plantings, wall, screen fence, or berms. In the event walls, fences, or berms are used to provide screening, the Planning and Zoning Commission may reduce the required number of trees and shrubs by up to 50 percent if it is determined that the purpose of the vegetative setback will still be achieved. For each 100 linear feet, or portion thereof, such setback shall be planted as follows:
- (1) No Subdivision Fence or Wall:
    - a. Four shade trees;
    - b. Five ornamental trees; and
    - c. 20 shrubs.
  - (2) With a Subdivision Fence or Wall:
    - a. Two shade trees;
    - b. Two ornamental trees; and
    - c. Eight shrubs.
- (b) Existing trees within the designated vegetative setback may be credited toward meeting the planting requirements. Protected trees within the buffer area shall be preserved and regulated in accordance with Article VII, Tree Preservation and Replacement.
- (c) If walls are incorporated into the vegetative setback, they shall be constructed of masonry material on both sides and be not less than six nor more than eight feet in height. The wall shall be placed along the interior side of the vegetative setback with the required plantings on the outer side facing the adjoining property.
- (d) If fences are incorporated into the vegetative setback, they shall be constructed of standard pressure-treated wood fencing materials (but not woven wood), shadow-box design, provide at least 90 percent opacity and be not less than six nor more than eight feet in height. Fences shall be placed along the interior side of the vegetative setback with the required plantings on the outer side facing the adjoining property.
- (e) Earthen berms, if incorporated into the vegetative setback, shall have a slope of 3:1 and a flat-topped crown at least two feet wide. Plant material shall be placed along the top of the berm and the side slope facing the adjoining property. Berms shall be undulated to provide a more natural appearance.
- (f) Vegetation setbacks of not less than 15 feet in width will be required for commercial property that abuts any existing multifamily tract. All multifamily tracts shall have a vegetation barrier of at least ~~10~~ ten feet within their property lines on all multifamily projects that abut single-family, multifamily or commercial zoning. For each 100 linear feet, or portion thereof, such setback shall be planted as follows:
- (1) Three shade trees;
  - (2) Three ornamental trees; and
  - (3) 10 shrubs.
- (g) ~~The vegetation setback must also provide a visual barrier.~~
- ( Ord. No. 2011-09 , § 1, 7-26-2011)

## ARTICLE VII. TREE PRESERVATION AND REPLACEMENT<sup>2</sup>

<sup>2</sup>Editor's note—Ord. No. 2019-13 , § 1, adopted June 25, 2019, in effect, repealed art. VII, §§ 78-171—78-179, and enacted a new art. VII. The ordinance designated these new provisions as §§ 78-171—78-184; to avoid duplication of section numbers, and at the editor's discretion, these provisions were redesignated as §§ 78-163—78-184. The previous article VII pertained to similar subject matter and derived from Ord. No. 2016-20, adopted September 27, 2016.

### Sec. 78-163 Findings and intent.

- (a) The city council finds that trees are an important public resource that contributes to the unique character of the city and its physical, historical, cultural, aesthetic, ecological and economic environment. Trees reduce the effects of pollutants, provide wildlife habitat, shade and cooling, and add value to real property. It is the goal of the city council to secure these benefits by maintaining the tree canopy over a significant area of the city.
- (b) This article is intended to:
- (1) ~~Prevent~~ prevent the indiscriminate cutting of trees in advance of development;
  - (2) ~~to preserve existing trees of certain species; to provide for the replacement of trees that are necessarily removed during construction or development;~~ Encourage the protection of healthy and desirable trees, and provide for the replacement and/or replanting of trees that are necessarily removed before or during construction, development, or redevelopment of a property;
  - (3) Provide natural areas for more efficient drainage of land, thereby reducing the effects of soil erosion and the need for additional drainage facilities;
  - (4) ~~to~~ Require the consideration of trees as a component of site design; and
  - (5) Prevent clear-cutting of land containing trees with a ten-inch diameter at breast height (DBH) or larger.
  - (6) ~~to allow for the commercial development of private property subject to minimum standards for the preservation and planting of trees. The provisions of this article shall not be construed or applied to preclude development or prohibit ingress or egress.~~
- (c) ~~The city recognizes and appreciates the value of private property within its city limits and extraterritorial jurisdiction (ETJ) that is devoted principally to agricultural use for the production and support of timber, forest products and livestock. These lands devoted to the production of plant and animal products and agricultural timber farms shall not be subject to this article while being actively managed for such purposes and recognized by the county appraisal district as having agricultural or timber exemptions.~~

(Ord. No. 2019-13 , § 1, 6-25-2019)

### Sec. 78-164 Definitions.

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

**Caliper** means the trunk diameter of nursery stock trees planted to satisfy a requirement of this article. Caliper is measured six inches above the root ball for trees that are four inches in diameter or smaller, and 12 inches above the root ball for larger nursery stock.

**Canopy area** means the extent of the uppermost crown of a tree or trees formed by the outer layer of leaves of an individual tree or group of trees.

**City administrator** means the person holding the office of city administrator or their designee acting in behalf of the city, with authority over the tree protection and preservation ordinance.

**City engineer** means the person or firm designated by the city council or the city administrator as the city engineer.

**Critical root zone** means the area within a radius extending out from the trunk of the tree one foot per each diameter inch of the trunk measured at breast height.

**Diameter at breast height (DBH)** means the diameter of trunk measured at 42 inches above natural grade.

**Protected tree** means any tree: ~~between the property line and existing or anticipated building setback lines on non single-family residential property~~

- (a) ~~With~~ a caliper of 1018 inches or greater that is not one of the following species: bois d'arc, thorny honey locust, hackberry, cottonwood, chinaberry, native black willow, native red or white mulberry, or Chinese tallow;
- (b) Possess a distinctive form, size, age, location or have historical significance; or
- (c) With a minimum caliper of five inches and are planted in the public right-of-way;

**Tree preservation plan** means a plan submitted by the owner in a form or manner specified by the city administrator or designee providing the method of protecting trees during construction that shall include protection details, standards, notes, and construction plans in accordance with generally accepted practices such as those provided in the Urban Forest Technical Manual, on file in the office of the city secretary. Total site area canopy area calculation shall also be included on the plan.

**Urban Forest Technical Manual** means the standards and specifications based on generally accepted practices developed by the city administrator or designee for sound arboricultural practices, techniques and procedures which shall serve as guidelines for trees regulated by this article, including, but not limited to, tree selection, planting, alteration, treatment, protection, and removal as approved by the city council, maintained by the city secretary and available through the city administrator.

**Woodland tree stand** means an area of contiguous wooded vegetation covering at least 2,500 square feet where the branches and leaves of the trees form a canopy over substantially all the area.

(Ord. No. 2019-13 , § 1, 6-25-2019)

## Sec. 78-165 Applicability and exceptions.

### ~~Sec. 78-165 Applicability and exceptions.~~

- (a) Except as otherwise provided by this section, the requirements of this article are applicable throughout the corporate limits and extraterritorial jurisdiction of the city and apply to all types of development or development activity by both public and private entities, including but not limited to:
  - (1) The removal of any protected tree;
  - (2) Clearing of all or a portion of property ~~regardless if it as-is~~ part of the development process ~~or done without connection to a specific development~~;
  - (3) Subdivisions of land for any purpose;
  - (4) Additions to non-residential buildings or parking lots that expand the footprint of the structure by 30 percent or more, or that add at least 3,000 square feet of area to the existing structure;



- (5) Construction of new multi-family or non-residential structures for which a building permit is required; and
  - (6) Construction of new one- or two-family residential structures.
- (b) This article does not apply to:
- (1) A tree removed from a **single** residential lot ~~or~~ at the direction of the homeowner residing on the property
  - (2) Harvesting of timber or forest products for commercial or personal purposes on private property **and lands devoted to the production of plant and animal products and agricultural timber farms shall not be subject to this article while being actively managed for such purposes and recognized by the county appraisal district as having agricultural or timber exemptions;**
  - (3) ~~Changes in the use or configuration of existing non-residential buildings or parking lots that does not expand the structure beyond the limits provided in (a)(4) of this section;~~
  - (4) Clearing, maintenance or tree trimming within an easement or right-of-way by a railroad or utility company;
  - (5) The construction of streets or highways by or on behalf of a state or local government entity; and
  - (6) The removal or trimming of trees or other vegetation within or adjacent to street rights-of-way to conform to traffic safety rules requiring unobstructed views; ~~or;~~
  - (7) Infill construction of single-family residences on lots in residential subdivisions vested in regulations in effect prior to September 27, 2016. **are subject to the requirements of section 78-177 but are otherwise exempt from the requirements of this article.**

(Ord. No. 2019-13 , § 1, 6-25-2019)

## **Sec. 78-166. General tree preservation standards.**

- (a) **General tree preservation standards.**
- (1) The applicant shall configure a site in such a manner that the maximum number of protected trees will not be removed or damaged due to the building layout and construction within the site.
  - (2) Trees may be planted or preserved within storm water detention areas provided that the trees do not interfere with the drainage or substantially impair the storm water detention function.

(Ord. No. 2019-13 , § 1, 6-25-2019)

- (3) **No person shall remove or otherwise damage a protected tree without first securing a tree removal permit as specified in Sec. [78-168](#), *Tree removal and replacement*.**
- (4) **If a stop work order is issued, it is unlawful for a person to continue work or removal of trees.**
- (5) **Before the site is cleared for construction, each existing tree shall be protected by the placement of a barrier around the critical root zone that is at least four feet in height. Barriers shall be orange construction fencing or an alternative barrier approved by the Administrator.**
- (6) **A minimum of 75 percent of the critical root zone of a tree to be preserved shall be maintained as a permanent, landscaped area at grades existing before site development unless special provisions are made for the protection and survival of the tree. Such special provisions, including, but not limited to, the use of permeable paving materials, shall be subject to the approval of the Administrator.**
- (7) **No part of the critical root zone of trees to be preserved may be paved with concrete, asphalt, or other impervious material.**



- (8) Soil or other materials shall not be temporarily or permanently stored in locations that would cause suffocation of root systems of trees to be preserved.

(b) ~~Sec. 78-166~~ *Additional requirements for residential development.*

- (1) Each building permit for a new one- or two-family dwelling shall require the preservation or planting of at least two trees. At least one tree shall be located in the front yard of the dwelling; have a minimum caliper of two inches; and be classified as a large tree per Table 2 in section 78-16884. The remaining tree on the dwelling property may be placed in the front, rear or side yards of the dwelling; be at least a 30-gallon container size tree; and may be any size classification. No certificate of occupancy shall be issued for any new one- or two-family dwelling until this requirement has been satisfied.

(Ord. No. 2019-13 , § 1, 6-25-2019)

(c) ~~Sec. 78-166~~ *Tree preservation adjoining residential property.*

- (8) Where non-residential property is developed adjacent to residential zoning districts, trees located within required side and rear yard setbacks classified as protected trees are subject to mandatory preservation. No permit shall be issued to authorize the removal of any healthy protected tree except where removal is necessary for the construction of infrastructure, driveways, or on-premise advertising signs.

(Ord. No. 2019-13 , § 1, 6-25-2019)

(d) ~~Sec. 78-166~~ *Parking lot trees.*

- (9) In the case of new parking lots, or additions to existing parking that expand the footprint of the parking lot by more than 30 percent, 60 square feet of tree canopy must be preserved or planted for each additional parking space. Parking lot trees must be located in the interior of the parking lot or in an area immediately adjacent to the parking lot. For parking lots of 250 spaces or more, at least 50 percent of the tree canopy must be located within the interior of the parking lot. Only trees of the preferred species listed in Table 2 of section 78-16884 may be used to satisfy the planting requirements of this section; and all such trees must be at least two and a half-inch caliper and a minimum of ten feet in height. Additionally, no parking space shall be further than 125 feet away from the trunk of a tree.

(Ord. No. 2019-13 , § 1, 6-25-2019)

## **Sec. 78-167. Tree assessment.**

- (a) A tree ~~assessment/preservation plan~~ must be included with all preliminary plat submittals to plat new subdivisions or developments, and again with the landscape plan for non-single-family residential construction. If the site of development or construction does not contain any protected trees, a verification letter of no protected trees shall be submitted to the city that attests that protected trees are not on the property and that the person making this determination is qualified to do so. Persons who may prepare the tree ~~assetment/preservation plan or~~ verification letter include registered surveyors, professional engineers, architects, landscape architects, arborists, or other qualified licensed professional. The letter must contain a statement affirming the author is qualified to prepare such document and listing his state license number or other certificates of documentation.

(b) *Contents of the tree assessment.*

(1) **Photographs.**

- a. Photographs of the site, taken at the property line from four geographical directions, in which any existing trees that are eight inches or larger in diameter (as measured at four feet above the ground) are visible.

- b. One or more photos of each existing eight-inch-diameter tree, taken at a distance from which its type, size, and condition are reasonably evident; and
  - c. All other photos that the applicant chooses to take and submit in support of the tree removal criteria in Sec. 78-168, *Tree Removal and Replacement*.
- (2) Labels and Tree List. The photographs shall include labels identifying each tree that shall correspond to a written list of the trees' species, approximate height, general appearance, and condition.
- (c) If the site of development or construction does not contain any protected trees, a verification letter of no protected trees shall be submitted to the city that attests that protected trees are not on the property and that the person making this determination is qualified to do so. Persons who may prepare the ~~tree preservation plan or~~ verification letter include registered surveyors, professional engineers, architects, landscape architects, arborists, or other qualified licensed professional. The letter must contain a statement affirming the author is qualified to prepare such document and listing his state license number or other certificates of documentation.
- (i) ~~The tree preservation plan shall be a scaled diagram overlaying the site plan and drawn to the same scale. Two copies of the plan shall be provided. The plan must include all details required for the preservation of existing trees during construction and for the installation of any new trees necessary to meet canopy area coverage required by this article. The tree preservation plan must include:~~
- (1) ~~The proposed location of all easements and setback lines; building setback lines on single-family residential lots are not required to be shown on the tree preservation plan and are not subject to protected tree preservation requirements.~~
  - (2) ~~The footprint of all proposed buildings, parking lots, and detention ponds;~~
  - (3) ~~The location, size, and variety of protected trees;~~
  - (4) ~~The location, size, and variety of each additional tree that will be preserved for credits and the outline of each woodland tree stand to be preserved;~~
  - (5) ~~The location and variety of each tree to be planted to achieve the required minimum canopy; and~~
  - (6) ~~Any other information required by the city administrator to calculate the required canopy or amount of earned credits.~~
- (j) ~~Trees may be planted or preserved within storm water detention areas provided that the trees do not interfere with the drainage or substantially impair the storm water detention function.~~
- ~~(Ord. No. 2019-13, § 1, 6-25-2019)~~
- (k) ~~Sec. 78-184. Fees. Appendix A contains a list of fees relating to tree preservation plans as currently established or as hereafter adopted by resolution of the city council from time to time and is available for review in the office of the city secretary. (Ord. No. 2019-13, § 1, 6-25-2019)~~

## **Sec. 78-168. Tree removal and replacement.**

- (a) ~~Sec. 78-168 Pre-development planning and clearing permits.~~
- (1) Except as expressly provided by this chapter, no development, ~~clearing or removal of trees~~ shall occur unless the site of the proposed work is covered by an approved tree preservation plan. ~~The location of all proposed buildings and improvements shall be oriented by the applicant, at the applicant's sole discretion, taking into consideration the existing tree stock and other relevant site characteristics.~~
  - (2) The applicant shall propose the location of woodland tree stands or individual trees for which preservation credits are requested. A tree located outside a woodland tree stand shall not receive credit

unless the tree has a diameter at breast height (DBH) of at least six inches. The applicant shall consider the preservation of trees in areas visible from abutting streets and public spaces. Preservation credits may be denied for trees located in existing or proposed easements or rights-of-way where there is a reasonable possibility that removal of the tree will be required for utility operations. New tree stock shall be planted where the minimum canopy is not met through preservation alone.

- (3) A clearing permit may be issued to authorize the removal of protected trees in conformity with a tree preservation plan that has been approved in conjunction with the approval or issuance of a subdivision plat, building permit or other form of development permit. Compliance with the tree preservation plan is a condition of the clearing permit. No related building permit and no certificate of occupancy may be issued until the city administrator or designee confirms that the development has been completed in conformity with the tree preservation plan.
- (4) A partial clearing permit may be issued prior to the approval of a tree preservation plan submitted in conjunction with a final plat or development permit application in order to allow pre-development clearing of a portion of the land. An application to obtain a partial clearing permit must include a site plan of the of the property on which the applicant delineates proposed building setback lines that are applicable to the site. The partial clearing permit does not permit clearing activities in areas that are located within these setback lines. Building setback lines on single-family residential lots are not required to be shown on the site plan and are not subject to protected tree preservation requirements.

(Ord. No. 2019-13 , § 1, 6-25-2019)

(b) ~~Sec. 78-168 Permit required for r~~Removal of protected tree.

- (1) A person shall not cut down or remove any protected tree unless authorized to do so under a permit issued as provided by this article. A protected tree is any tree: ~~between the property line and existing or anticipated building setback lines on non-single family residential property~~
  - (a) ~~w~~With a caliper of ~~10~~18 inches or greater that is not one of the following species: bois d'arc, thorny honey locust, hackberry, cottonwood, chinaberry, native black willow, native red or white mulberry, or Chinese tallow; ~~;~~
  - (b) Possess a distinctive form, size, age, location or have historical significance; or
  - (c) With a minimum caliper of five inches and are planted in the public right-of-way;
- (2) ~~A person shall not cut down or remove any protected tree unless authorized to do so under a permit issued as provided by this article.~~ Only the following permits may be issued to authorize removal of a protected tree:
  - (a) A protected tree removal permit; ~~and~~
  - (b) A clearing or partial clearing permit issued in conjunction with a subdivision plat, building permit, or other form of development permit that incorporates a tree preservation plan approved under this article.

(Ord. No. 2019-13 , § 1, 6-25-2019)

(c) ~~Sec. ~~~Protected tree removal permit.

- (1) A protected tree removal permit is required when an applicant is requesting to remove a protected tree(s). Applications for protected tree removal permits are reviewed by the city administrator, or designee.
- (2) The application for a protected tree removal permit shall be made by the owner of the property on which the protected tree is located, and shall be accompanied by documentation showing:

- (a) The approximate location of all protected trees on site;
  - (b) The DBH of all protected trees on site;
  - (c) The canopy area of all protected trees on site;
  - (d) The species and/or common name of each tree;
  - (e) The approximate size of the lot, tract or parcel on which the tree is located;
  - (f) Reason for the proposed removal;
  - (g) A tree replacement plan, after evaluation of the tree removal permit by city administrator or designee, and only if total canopy area coverage for the site falls below 50 percent; and
  - (h) Other information required to make determination in the opinion of the city administrator or designee;
- (3) A protected tree removal permit shall be issued to authorize the removal of:
- (a) Any protected tree that is dying or has become a hazard tree;
  - (b) Any protected tree that obstructs the only practicable means of ingress or egress to or from property; or
  - (c) Any other protected tree on previously developed property provided that removal of the protected tree does not reduce the tree canopy below the required minimum tree canopy applicable to the property under Section 78-166175.
- (4) A protected tree removed from previously developed property under a permit issued in accordance with this section must be replaced elsewhere upon the property unless the minimum canopy requirements of this article are satisfied without the necessity of replacement.
- (5) A protected tree removal permit authorizes the removal of the protected tree identified in the application and shall require replacement of the removed trees as described in Sec. 78-169, except in the following situations if corrective pruning if not sufficient to resolve the problem:
- (a) *Obstruction.* The protected tree obstructs the free passage of pedestrian or vehicular traffic or obstructs a traffic light or sign. A tree, shrub, or other plant or portion thereof shall be deemed to be an obstruction to pedestrian traffic if it is lower than eight feet above a sidewalk and an obstruction to vehicular traffic if it is lower than 13 feet above streets;
  - (b) *Dead or Diseased.* The protect tree is dead or infected with a highly infectious disease or insect that threatens to become epidemic unless otherwise controlled under emergency situations;
  - (c) *Danger to Public.* The protected tree by reason of location or condition constitutes an imminent danger to the health safety, or welfare of the general public; or
  - (d) *Transplantation.* The protected tree is transplanted to a suitable location on the same property or off-site provided that the owner complies with the generally accepted transplanting methods described in the urban forest technical manual and the protected tree survives for a period of at least two years.

~~A protected tree removal permit may authorize the removal of up to ten specific trees identified in the application and~~ The protected tree removal permit expires 30 days following the date of issuance. The city administrator or designee shall prescribe the form of application for a tree removal permit. An application fee set forth in appendix B must accompany each application.(Ord. No. 2019-13 , § 1, 6-25-2019)

Editor's note—The "appendix B" referenced herein is not included in this article and is available for review in the office of the city secretary.

**Sec. 78-169. Tree installation and maintenance.**


(a) ~~Sec. 78-169~~ *New and replacement trees.*

- (1) Only trees of the preferred species listed in Table 2 of this section are considered acceptable for new and replacement tree planting. Additional tree species may be considered and approved on a case by case basis by the city administrator or designee and such trees will receive a canopy credit applicable to the species class height. At least 20 percent of new trees must be a minimum of three inches in caliper at planting. The remaining 80 percent of required new trees must be a minimum of two-inch caliper. Replacement trees on residential lots are exempt from size and species requirements in this section. ~~and shall follow sizing requirements in accordance with section 78-177.~~
- (2) Not less than 25 percent of new trees planted shall be evergreen.
- (3) Trees planted under or near overhead power lines must be chosen from the small tree category of Table 2. Large tree species shall not be planted within 30 feet of overhead power lines. Medium tree species shall not be planted within 20 feet of overhead power lines.

TABLE 2 PREFERRED SPECIES LIST		
Tree species and height at maturity	Leaf type	Canopy credit
Large Over 40 feet tall	Loblolly Pine	evergreen
	Slash Pine	evergreen
	Water Oak	deciduous
	Live Oak	evergreen
	Shumard Red Oak	deciduous
	Southern Red Oak	deciduous
	Chinquapin Oak	deciduous
	Cedar Elm	deciduous
	Green Ash	deciduous
	Sweetgum	deciduous
	American Elm	deciduous
	Montezuma Cypress	deciduous
	Bald Cypress	deciduous
Sycamore	deciduous	
Medium 25 to 40 feet tall	Winged Elm	deciduous
	Chinese Pistache	deciduous
	Lacebark Elm	deciduous
	River Birch	deciduous
	Eastern Red Cedar	evergreen
Small Less than 25 feet tall	Little Gem Magnolia*	evergreen
	Rusty Blackhaw*	deciduous
	Fringetree*	deciduous
	Redbud*	deciduous
	Hophornbeam*	deciduous

TABLE 2 PREFERRED SPECIES LIST		
Tree species and height at maturity	Leaf type	Canopy credit
	Japanese Blueberry	evergreen
	Cherry Laurel	evergreen

\*Denotes only trees suitable for planting under or adjacent to power lines.

(Ord. No. 2019-13 , § 1, 6-25-2019) 

(b) ~~Sec. 78-169~~ *Post-development maintenance and replacement.*

- (1) Protected trees, parking lot trees, and replacement or mitigation trees must be maintained in a healthy condition for at least one year following the issue of a certificate of occupancy. The property owner is responsible for irrigating, fertilizing, pruning, and other maintenance of such trees as needed. Preserved or planted trees that die within the maintenance period must be replaced within 90 days with new trees meeting the requirements of ~~this s~~Section ~~78-176~~. Planted trees that die during the maintenance period must be replaced with new trees having the total canopy value that is not less than the canopy of the tree to be replaced. Replacement trees planted to satisfy the requirements of this section are subject to a one-year maintenance period and must be replaced if they fail to survive the extended maintenance period.
- (2) Trees on residential lots are not subject to the one-year maintenance period established by this section. A homeowner is not required to replace a lot tree that dies or at the direction of the homeowner.
- (3) No person, or company directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any protected tree regardless of whether the protected tree is on private property or the abutting public right-of-way with the following exceptions:
  - b.
    - (a) Dead trees may be removed at any time and shall be considered in the tree preservation plan. This shall not require city approval under this article.
    - (b) If any protected tree is determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and requires immediate remove without delay, authorization for removal may be given by the city emergency management coordinator or other designee of the city, and such a protected tree may then be removed without obtaining a written permit as required in this chapter and the fees, restitution, and penalties will not apply. Canopy coverage requirements will not be waived or altered as a result of this provision, and tree replacement shall be required if applicable.
    - (c) During a period of emergency, such as a tornado, storm, flood or other act of God, the requirements of this article may be waived as may be deemed necessary by the city's designated emergency management coordinator (EMC) or, if unavailable, by the EMC equivalent from the federal, state or county emergency management agencies.
    - (d) Any tree may be reasonably pruned for aesthetic, maintenance, disease control, or safety reasons. This shall not require city approval.
    - (e) No protected tree shall be pruned in a manner that significantly disfigures the tree or in a manner that would reasonably lead to the death of the tree.

- (f) Trees which are to be removed for disease or safety reasons shall be approved by the city prior to cutting. Factors to be considered include, but are not limited to, the overall health of the tree, the potential for adverse impacts of both leaving and removing the tree, and aesthetic value.

(Ord. No. 2019-13 , § 1, 6-25-2019)

(Ord. No. 2019-13 , § 1, 6-25-2019)

(c) ~~Sec. 78-169~~ *Technical standards and specifications.*

- (1) The city administrator or designee is authorized to prepare technical standards and specifications to ensure the proper implementation of the provisions of this article. These can be found in the Urban Forest Technical Manual. In the event of any conflict between the provisions of this article and the provisions of the Urban Forest Technical Manual, the provisions of this article shall control.

### Sec. 78-170 Penalties for violation.

- (a) Any person, firm or corporation that violates a provision of this article shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding \$~~1000~~500.00. In cases of offenses involving the illegal removal of trees, the removal of each tree constitutes a separate offense. In cases of continuing violation, each separate day that a violation continues constitutes a separate offense.
- (b) In addition to any criminal penalties imposed in subsection (a) above, the city may seek civil injunctive relief or other appropriate relief in district court as authorized by law.

(Ord. No. 2019-13 , § 1, 6-25-2019)

### Sec. 78-171. Mitigation and relief from from standards.

(a) ~~Sec.~~ *Variance procedure.*

- (1) The ~~City Council~~ ~~city administrator~~ may grant a variance to the requirements of this article where literal enforcement will result in unnecessary hardship. A variance shall not be granted unless:
- The variance is not contrary to public interest;
  - The variance will be in harmony with the spirit and purpose of this article;
  - The variance will not substantially weaken the general purposes of the regulations herein established for the protection of trees and the promotion of tree canopy; ~~and~~
  - The variance granted is limited in scope to that relief which is necessary to relieve the hardship condition ~~and does not exceed 50% of what this article requires to be preserved or planted;-;and~~
  - ~~A hardship and/or special circumstances or conditions exist on the property and were not created by the applicant and are not merely financial.~~
- (2) All variance requests must be made in writing to the city administrator or designee and must include the subject of the requested variance and the justification for granting the variance, including a description of the hardship condition that will result if the requested relief is not granted. The applicant has the burden of demonstrating that sufficient evidence exists for granting the variance. ~~The city administrator may deny or grant the variance as requested or may allow an alternate form of relief. The city administrator shall issue a decision in writing not later than ten business days following the date the variance request is received.~~
- (3) An applicant for a variance bears the burden of demonstrating that application of the preservation or planting requirement will result in unnecessary hardship.



- (4) An applicant who disputes the decision of the ~~City Council~~ ~~city administrator~~ may appeal the variance decision to a court of competent jurisdiction within a timeframe established by the court. ~~the municipal planning and zoning commission. Any appeal must be made in writing and must be filed with the city administrator within ten days following the date of the initial written decision. The city administrator shall refer the appeal to the planning commission and the decision of the planning commission shall be final.~~

(Ord. No. 2019-13 , § 1, 6-25-2019)

- (b) ~~Sec. Mitigation payments~~ *Fee* in lieu of preservation or planting.

- (1) An applicant may seek a variance ~~foras to all or~~ a portion of the tree preservation or planting requirements upon the condition that the applicant pay mitigation fees in lieu of preservation or planting. ~~An applicant for a variance bears the burden of demonstrating that application of the preservation or planting requirement will result in unnecessary hardship.~~
- (2) Mitigation fees authorized by this section shall be payable at the rate of \$1.50 per square foot of additional canopy necessary to achieve the coverage applicable to the property after allowance for all other credits.

(Ord. No. 2019-13 , § 1, 6-25-2019)

- (c) *Tree mitigation fund.*

- (1) The city administrator or designee shall establish a dedicated account to be known as the tree mitigation fund. Mitigation fees paid as provided by this section ~~78-181 of this article~~ shall be recorded for the benefit of the fund and accounted for in a manner that distinguishes such funds from other general funds of the city. The balance of such fund remaining at the each of each fiscal year shall be appropriated as the beginning balance of the fund for the following fiscal year. The assets of the fund may be used as provided by this section and for no other purpose.
- (2) The assets of the fund shall be expended under the direction of the city administrator or designee and may be used to purchase and plant new trees in public parks, parkways, medians and rights-of-way of public streets and upon the grounds of other public property of the city. Planting costs payable from the fund include the installation of related irrigation equipment and other measures necessary to the protection and subsequent maintenance of new trees for a period of up to three years following planting. An amount not to exceed 20 percent of the fund balance at the beginning of each fiscal year may be expended to promote public awareness of the objectives of this article, including Earth Day or Arbor Day programs for the distribution of sapling trees to the general public.

#### ~~Sec. Accommodations of development standards.~~

- (a) ~~The city council recognizes that in certain instances the goal of this article must be balanced against potentially conflicting objectives arising from other development regulations. The city administrator may modify or waive the application of development standards as provided in this section when the city administrator determines that modification will facilitate the tree preservation requirements of this article and will not substantially increase the risk of unsafe traffic conditions or congestion, inconvenience to pedestrians, or flooding.~~
- (b) ~~Up to 15 percent of required parking spaces may be waived if compliance with the canopy requirements cannot otherwise be achieved and if the reduction in parking area results in an equivalent increase in the area of preserved canopy.~~
- (c) ~~Sidewalks may be relocated, reduced in width or otherwise modified, where the application of sidewalk standards would otherwise conflict with tree preservation and canopy objections.~~



- (d) ~~The city administrator shall consider the effect on site drainage of low impact development strategies incorporating tree preservation and tree planting and, guided by generally accepted engineering standards and practices, may approve offsetting reductions to the size of onsite stormwater detention facilities.~~

~~(Ord. No. 2019-13, § 1, 6-25-2019)~~

## ARTICLE VIII. LANDSCAPING REQUIREMENTS FOR ALL ZONING DISTRICTS

### Sec. 78-185 Definitions.

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

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

**Landscape buffer** means a combination of physical space and vertical elements, such as plants, berms, two-sided fences or walls with at least five feet of plantings on the side of the development and adjacent to the fence or wall, the purpose of which is to separate and screen incompatible land uses from each other.

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

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

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

**Screen** means a method of reducing the impact of noise and unsightly visual intrusions with less offense or more harmonious elements, such as plants, berms, two-sided fences or walls with at least five feet of plantings on the side of the development and adjacent to the fence or wall, any appropriate combination thereof.

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

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

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

( Ord. No. 2017-08, § 1, 3-14-2017 )

### Sec. 78-186 Purpose.

The purpose of this article is to:

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

( Ord. No. 2017-08, § I, 3-14-2017 )

**Sec. 78-187 Applicability; variances.**

- (a) This article applies to all lots, parcels, or tracts of land within the city as well as any areas subsequently annexed by the city with the following exceptions:
  - (1) Previously platted residential lots.
  - (2) Any platted parcel, less than five acres, that contains an occupied building which has a valid certificate of occupancy.
- (b) When this article becomes applicable to a lot, the requirements set forth in this article shall be binding on all current and subsequent owners of the lot.
- (c) The planning and zoning commission shall, as a minimum, impose landscaping requirements that are reasonably consistent with the standards and purposes of this article as a part of any ordinance establishing or amending a planned development district, amending a special use permit. All landscaping requirements imposed by the planning and zoning commission and shall be reflected in landscape and irrigation plans that comply in form and content with the requirements of section 78-188.
- (d) The board of adjustment may grant a special exception to the landscaping requirements set forth in this article upon making a special finding from the evidence presented that strict compliance with the requirement of this article will result in inequity to the applicant without sufficient corresponding benefit to the city and its citizens in accomplishing the objectives and purposes of this article. The applicant to be considered for special exception must submit a justification statement that describes which of the requirements set forth in this article will be met with modifications; which project conditions justify using alternative; and how the proposed measures equal or exceed normal compliance.

( Ord. No. 2017-08, § I, 3-14-2017 )

**Sec. 78-188 Landscape plan approval.**

- (a) At the time of site plan review, there shall be submitted to the city administrator or designee, a landscape plan drawn to the same scale as the approved site plan and submitted with the same number of copies as the site plan. The planning commission may adopt a thematic landscape plan for certain areas of the city that dictate private plans.

- (b) Except where otherwise provided, the person responsible for the property, whether owner or tenant, shall landscape all yard, setback, parking, service and recreational areas with lawns, trees, shrubs, flowers, vines, ground covers or other live plant materials, which shall be permanently maintained by the owner or tenant in a neat and orderly manner as a condition of certificate of occupancy. Once installed, all landscape materials shall be irrigated by a mechanical underground irrigation system and maintained in a living state. Dead or dying plant materials shall be removed and replaced in accordance with the approved landscape plan.
- (c) Where the use of a living screen is proposed, such screen must be included as an element of the site plan and landscape plan.
- (d) Fountains, ponds, sculptures, planters, walkways, flagpoles, light standards and decorative screen-type walls shall be permitted as elements of landscaping in areas designated for landscaping. Decorative-type walls, planters and sculptures shall be 30 inches or less in height. The city administrator or designee shall be authorized to permit heights more than 30 inches where it would be in the best interest of the landscaping and will not, in the opinion of the city administrator or designee, create a problem relative to public health, safety, convenience, prosperity and general welfare.
- (e) Areas of landscaped open space shall be provided on the same lot, parcel or tract as the building that is being served and shall be provided in the following ratios:
  - (1) *Nonresidential.* New nonresidential development in all districts shall be subject to all provisions of this article, provided that a one-time expansion of the floor area of buildings on a lot or building tract not exceeding 15 percent of the existing floor area shall not be subject to the requirements of this article. For lots, parcels or tracts of land applicable of this section landscaping shall be provided at a minimum ratio of ten percent of the gross land area, excluding development on lots of record.
  - (2) *Residential subdivisions and multifamily.* Excluding single-family detached, single-family attached, duplex dwellings or multi-family dwellings on lots of record, new residential, duplex and multi-family development, including new residential subdivisions, shall be subject to the provisions of this subsection; landscaping shall be provided at a minimum of 12 percent of the gross land area.
- (f) For parking areas, a minimum of 20 percent of the required landscaping shall be provided in areas that are internal to the parking areas. In parking lots having only one row of parking, such requirement may be met with perimeter landscaping.
- (g) Proposed utilities shall be located, when possible, so that their installation will not adversely affect vegetation to be retained on site.
- (h) For purposes of establishing compliance with the minimum area requirements for landscaping, no land within the 100-year floodway, as determined by the most recent Federal Emergency Management Agency (FEMA) study, shall be counted as fulfilling the minimum landscape area requirements.
- (i) The landscape plan shall show in detail, but shall not be limited to, the location of each element of landscaping; a description by botanical and common name of each landscape element or group of element; the number and size of each tree or planting container; and the height of any proposed planter, sculpture or decorative screen.
- (j) The city administrator or designee, with the aid of appropriate city staff, shall consider the adequacy of the proposed landscaping and any other aspect deemed necessary to promote the public health, safety, order, convenience, prosperity and general welfare.
- (k) In the approval or disapproval of the landscape plan, the city administrator or designee shall not be authorized to waive or vary conditions and requirement contained in the comprehensive zoning ordinance, chapter 98 of this Code, or other valid city ordinances.

- (l) It shall be unlawful to issue a certificate of occupancy prior to the approval of the landscape plan by the city administrator or designee. Prior to the issuance of a certificate of occupancy but after the screening and landscaping has been approved, a temporary certificate of occupancy may be issued for such limited time as is reasonable to complete the landscaping.
- (m) When changes to a previously approved landscape plan are requested, and such changes will result in amendment or abandonment of an easement or right-of-way, or when the gross square footage of a lot, parcel or tract of land will be increased by more than ten percent or 1,000 square feet, whichever is less, or if the approval of a revised site plan is required, the planning and zoning commission's designee shall consider the same elements in the approval or disapproval of a revised landscape plan as for an original landscape plan. In considering a revised landscape plan the planning and zoning commission shall not be authorized to waive or vary conditions and requirements contained in the comprehensive zoning ordinance, chapter 98 of this Code, or amendments thereto, or other valid city ordinances. If the changes being proposed are of a minor nature, as determined by the city administrator or designee, administrative approval of the minor revisions shall be permitted under the conditions set forth in the following subsection.
- (n) The city administrator or designee shall be authorized to approve minor amendments to previously approved landscape plans. Minor amendments are those amendments which provide for rearrangement or reconfiguration of landscape areas or materials which are in conformance with an approved site plan and do not decrease the amount or quality of landscaping below that required by the comprehensive zoning ordinance, chapter 98 of this Code. In the approval or disapproval of a minor revision to an approved landscape plan or revised landscape plan, the city administrator or designee shall not be authorized to waive or vary conditions and requirements contained in the comprehensive zoning ordinance, or amendments thereto, or other valid city ordinances. All minor revisions that are approved administratively shall appear as an item on the next planning and zoning commissions agenda following approval for acknowledgment of staff action.

( Ord. No. 2017-08, § I, 3-14-2017 )

### **Sec. 78-189. Residential subdivision perimeter fences and walls.**

- (a) No plats or subdivision containing six or more lots shall be approved when the side or rear property line of any of lots adjoin a collector or minor or major arterial street unless a masonry (excluding stucco or cinder block), wood, iron picket or a fence with a combination of materials is constructed along the side or rear property line of all lots adjoining the street. Such fence shall be of consistent material and color, at least six feet in height and not exceed eight feet in height above the average surrounding grade or ground level, and shall not be placed or constructed closer than 10 feet from any entry street right-of-way line.
- (b) No plat or subdivision of land on which a subdivision perimeter fence is to be constructed shall be approved unless the plat clearly provides that the subdivision perimeter fence shall be owned by the developer and his or her successors, including but not limited to, any homeowners or civic association, or in common by the homeowners of the subdivision. Additionally, the following statement must appear on the face of the plat: "The City of Montgomery, Texas, does not maintain subdivision fences."
- (c) The applicant may construct a subdivision monument sign and wall or fence in conjunction with the development of a subdivision provided such construction is in accordance with this Section.
  - (1) The plans for such signs, walls and fences shall be submitted at the time the plans for other subdivision improvements are submitted. If a wall and/or fence is not detailed with final engineering plans, a site plan will be required with applicable fees.

- (2) No sign, wall or fence shall be constructed which interferes with the line of sight of motorists approaching or exiting a subdivision.
  - (3) A wall or fence, if constructed, shall be built on private property along the frontage of the subdivision adjacent to the roadway. The wall or fence shall not exceed eight feet in height and shall be of one uniform architectural design. Walls shall not be constructed within public utility easements unless an easement agreement is executed and filed with the city.
- (d) Fences within a common subdivision placed along arterial or collector streets shall be coordinated by the developer so that they will be constructed with the same height, spacing, pattern, colors and materials.
- (1) Where perimeter fencing or walls are installed around a subdivision or development, they shall comply with the following standards when located adjacent to collector or arterial street rights-of-way:
    - a. A minimum eight-foot buffer shall be provided between the back of a sidewalk and a fence or wall. Landscaping, including shade and ornamental trees and shrubs, shall be incorporated within the buffer to soften the appearance of the wall or fence. Per each 100 linear feet or portion thereof, plantings shall be as follows:
      - i. Three shade trees;
      - ii. Three ornamental trees; and
      - iii. 15 shrubs.
    - (2) No more than 75 percent of any street frontage shall be occupied by the fence or wall.
    - (3) The required 25 percent openings in the fence or wall frontage shall serve to visually link intersecting streets, view corridors into and out of the development, pedestrian entryways, and parks or open space. Fences or walls that have a surface area that is not more than 50 percent opaque, hedges and screens composed of living plant material, or any land use with a wall or fence lower than 42 inches, may count toward the 25 percent requirement.
- (e) Fence and wall maintenance.
- (1) Owners shall maintain all fences and walls, including those existing prior to the adoption of this chapter, in sound structural condition. Any broken, bent, loose, missing, or removed fence parts shall be repaired or replaced including but not limited to pickets, panels, posts, hinges, handles, locks and latches, braces, bolts, nails, and fastenings.
  - (2) Owners shall maintain all fences and walls free of all forms of deterioration including, but not limited to, rot, rust, termite infestation, missing, chipping, cracking, or peeling paint or stain, and/or cracked, broken, or otherwise deteriorated masonry.
  - (3) Fence and wall repairs and replacement parts must be of the same material, size, shape, color and design as the existing fence or wall. Permits, when required, must be issued and posted in a conspicuous location near the work being performed.
  - (4) It shall be unlawful for any person to install or repair a fence or wall, or any portion of a fence or wall, located on a residential lot, with used or secondhand materials.
  - (5) Fences and walls shall maintain an adequate level of weather proofing by means of applying paint or stain. Areas of chipping, peeling, cracking, missing, flaking, and/or fading paint or stain shall be repainted or re-stained so as to conform to the rest of the fence or wall.
  - (6) It shall be unlawful for any owner(s) to allow a fence or wall on his property to lean in any direction. Leaning fences or fence portions must be straightened and secured. Bracing the exterior of a fence or wall with a post, pole, or any other object is prohibited.

- (7) Any person violating the terms of this Section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \_\_\_\_\_ dollars, or by imprisonment in the county jail not exceeding \_\_\_\_\_ days, or by both such fine and imprisonment.