

- (2) Consulting with all interested persons, boards, commissions and civic and governmental bodies on matters concerning the purpose of the commission; and
  - (3) Soliciting and encouraging the use of the city by the film and television industries.
- (Code 1959, § 2-11-3)

**ARTICLE XII. ENVIRONMENTAL  
ADVISORY BOARD**

**Sec. 2-12-1. Established; purpose.**

In order to improve the quality of life for the citizens of the city through the assessment, investigation, maintenance and improvement of environmental factors, including but not limited to historic properties, wetlands protection, water quality, air quality, noise levels, wastewater disposal, solid waste disposal, storm drainage disposal, water resources, surface water systems, floodplains, coastal zones, transportation systems, visual pollution, fish and wildlife management, land development, environmental design, open spaces in recreation, unique natural features in undeveloped or agricultural lands, vegetation and wildlife, and any other factors that have an impact upon the quality of life in the city, there is hereby created an advisory board to be known as the environmental advisory board, referred to in this article as the board. This board shall assume all duties previously assigned to the mayor's advisory committee on the environment.

(Code 1959, § 2-12-1; Ord. No. 1557, § 1, 6-19-89)

**Sec. 2-12-2. Membership; term of office; compensation of members.**

(a) The environmental advisory board shall consist of 11 voting members, who shall serve voluntarily, without compensation, for their service on the board, and a nonvoting staff advisory committee composed of the director of the department of parks, recreation and cultural affairs, a representative of the department of public works and a representative of the department of community development.

(b) Each ward of the city shall be represented by a voting member of the board, with four addi-

tional board members to be appointed from the city at large. The term of the board members shall be three years. The terms of the board members shall commence on February 1 and shall end on January 31 of the year in which the expiration of the term occurs. When a vacancy shall occur, either by the expiration of the term of office or otherwise, the vacancy shall be filled as required, either for an unexpired term or a full term depending on the conditions of expiration. Each member shall be eligible for reappointment or redesignation. All voting members shall be appointed by the mayor subject to confirmation by the city council.

(Code 1959, § 2-12-2; Ord. No. 1557, § 1, 6-19-89)

**Sec. 2-12-3. Duties.**

The environmental advisory board shall be an advisory board, and its duties shall include the following matters under the direction of the mayor:

- (1) To make recommendations to any appropriate private or governmental agency, organization or individual on environmental issues;
- (2) To hold public hearings to gather information and citizen input; and
- (3) To provide environmental education to the public on environmental issues.

(Code 1959, § 2-12-3; Ord. No. 1557, § 1, 6-19-89)

**ARTICLE XIII. MUNICIPAL POLICY ON  
LEASING PUBLIC PROPERTY**

**Sec. 2-13-1. City policy regarding subleasing of municipal property.**

(a) It is hereby declared to be the policy of the city that any lease of municipal property entered into, renewed, modified, or amended after the effective date of this ordinance, excluding those existing leases which already contain an automatic renewal provision not requiring the approval of the city for renewal, shall contain a provision prohibiting the assignment or sublease of the lessee's interest in the lease without the approval of the city council.

a manner that the existing grade or elevation of the street is increased by the repair, maintenance or alteration without first securing a permit therefor from the director of public works.

(c) *Application for permit.* Application for a permit, in writing, describing the work to be done, shall be made to the director of public works by the person proposing to do the work. The application shall state the name of the person performing the work and shall be accompanied by plans, specifications and schedules as required by the director of public works. Prior to issuing the permit, the director of public works shall take into consideration the following.

- (1) Present grade of the roadway;
- (2) Anticipated change in grade;
- (3) Cost of repairing the roadway to conform with the present grade;
- (4) Necessity of the repairs;
- (5) Amount of traffic at the particular inter section; and
- (6) Any other factors which are necessary in the determination of whether to grant or deny such permit.

(d) *Issuance of permit.* The permit will be granted only if the director of public works finds that the repair or maintenance will not alter the existing grade of the roadway, or that the change in grade will not adversely affect traffic. The director of public works may condition the grant of such permit on terms other than those submitted by the requesting party if it is determined that such conditions are necessary to maintain the existing grade of the crossing.

(e) *Deviation from permit conditions.* The permit, when issued, shall be for such repair or maintenance as described in the written application, and any deviation therefrom shall be supplemented by another application and permit, clearly stating the changes involved, within 24 hours of making such changes.

(f) *Penalty.* Any person violating any provision of this section shall be fined not less than \$100.00 for each offense, and a separate offense shall be

deemed committed on each day during or on which a violation occurs or continues.  
(Code 1959, § 15-29)

**Sec. 17-2-8. Lighting of street obstructions and excavations.**

Any person who shall excavate or deposit in any street, sidewalk or alley heaps of rubbish, brick, dirt, lumber or any other material whatever shall place lamps, in accordance with the Manual on Uniform Traffic Control Devices adopted by the state highway department, around such excavation and in the center of such piles of rubbish, brick, dirt, lumber or other material, at every point of probable danger, and at the summit of such heap or pile, which lamps must remain lighted during the night, and in such a way as to shed sufficient light to make the excavation or heap or pile of rubbish visible to persons passing along streets.  
(Code 1959, § 15-30)

State law reference-Authority to require barriers, MCA 1972, § 21-19-5.

**Sec. 17-2-9. Permit to lay pipes in street.**

It shall be unlawful for any person to lay or cause to be laid any pipes, mains or sewers in, along, under or across any of the streets of the city without first obtaining a permit from the council. (Code 1959, § 15-31)

State law reference-Authority to grant privilege to lay, MCA 1972, § 21-27-5.

**Sec. 17-2-10. Damaging pavement or curbing.**

It shall be unlawful for any person to destroy, break, mutilate, smash or crack any sidewalk, paved street or curbing in the city, and, if any person shall destroy, break, mutilate, smash or crack or otherwise destroy or injure sidewalks, paved streets or curbing, he shall immediately repair the sidewalk, street or curbing to first class condition after notice to do so.  
(Code 1959, § 15-32)

**ARTICLE III. PLANTING, PROTECTION AND REMOVAL OF TREES**

**Sec. 17-3-1. Purpose of article.**

(a) The purpose and intent of this article is to establish protective regulations for trees in the

city in order to promote replenishment of the native stock of-trees, conservation, groundwater recharge, stormwater runoff retardation, oxygen regeneration and noise abatement, and to make the city a more beautiful, healthier and safer place to live.

(b) The intent of this article is also to encourage the protection of trees for which the city is recognized, and which therefore promote and contribute to the economy and tourism development of the city, and which the city stands to lose unless protective measures are taken.

(c) To this end, it shall be unlawful to cut down, remove, damage, poison, substantially alter or in any other manner destroy or cause to be destroyed any trees covered by this article, except in accordance with the provisions of this article.

(Code 1959, § 15-3-1)

### **Sec. 17-3-2. 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:

*Protected tree* means a woody perennial plant that:

- (1) Is located within a tree protective zone and has a single trunk which has reached a diameter of eight inches or a circumference of 25 inches, when measured 18 inches above the ground;
- (2) Is an oak, magnolia, pecan or cypress tree, regardless of zoning location, that has a single trunk which has reached a diameter of five inches or a circumference of 16 inches, when measured 18 inches above the ground; or
- (3) Any tree in or upon the streets, sidewalks or other publicly owned property of the city.

*Protective barrier* means a physical structure limiting access to a protected tree, composed of wood or other suitable materials, which ensures compliance with the intent of this article.

*Relocate* or *relocation* means the digging up by a property owner of a tree from a place on his

property and the planting of the same tree in another place on the same property or in a public place as directed by the tree committee.

*Remove* or *removal* means the actual removal of a tree by digging up or cutting down, or the effective removal through damage.

*Substantially alter* or *substantial alteration* means the injury, mutilation, disfiguring or substantial trimming of a tree such that the aesthetic, ecologic or economic value of the tree is substantially impaired. Routine trimming shall be considered substantial alteration for which a permit is necessary, except as otherwise provided in this article.

*Tree protective zone* means that portion of any lot lying within a district that has been designated in the comprehensive zoning district map as a multiplefamily residential district, commercial district or industrial district.

(Code 1959, § 15-3-3; Ord. No. 1569, § 1, 11-13-89)

Cross reference-Definitions and rules of construction generally, § 1-1-2.

### **Sec. 17-3-3. City arborist; tree committee.**

(a) The position of city arborist, in conjunction with the tree committee, is hereby created. The city arborist shall direct, regulate and control the care of and necessary removal of all trees growing in the city.

(b) The city arborist shall take active steps to:

- (1) Educate the public as to the economic and aesthetic benefits of trees to the city and its citizens, both on publicly owned property and privately owned property;
- (2) Promote the planting, health and growth of trees, with the particular objective of establishing and protecting avenues of live oak trees and other trees deemed suitable by the city arborist;
- (3) Promote the care, feeding, fertilization and other measures desirable for the health and growth of existing trees in street rightsof-way and publicly owned property in the. city; and
- (4) Protect trees from damage, removal, lack of sustenance or any other act or condition

which might threaten the health and growth of such trees.

(c) The tree committee shall consist of the city arborist, the building official, the planning director and one employee from the beautification division, parks, recreation and cultural affairs department, to be designated by the other members of the tree committee.

(d) The tree committee shall take active steps to process and render decisions granting or denying applications for permits under this article. The city arborist, or any member of the tree committee acting alone, shall be powerless to render decisions granting or denying applications for permits under this article. The decision of the tree committee, except as otherwise provided in this article, shall be final.

(Code 1959, § 15-3-5; Ord. No. 1569, § 1, 11-13-89)

**Sec. 17-3-4. Permit for removal, relocation or alteration of protected tree-Required; exceptions.**

The terms and provisions of this article shall apply as follows:

- (1) It shall be unlawful for any person to remove, relocate or substantially alter or cause to be removed, relocated or substantially altered any protected tree without first having obtained a permit to do so as provided in this article.
- (2) Public utilities having the right to construct and maintain power or transmission lines on public streets or private right-of-way pursuant to valid certificates of public convenience and necessity from the public service commission are authorized to trim such trees without further permit, as necessary for the safe and proper operation and maintenance of such lines.
- (3) City crews, without permits, will be authorized to trim trees as necessary to eliminate the following:
  - a. Any limb which overhangs a public sidewalk and is considered a hazard to pedestrians.

- b. Any limb which overhangs a public street and becomes a hazard to vehicular traffic.
- c. Any limb which obstructs the motorist's view of a traffic control sign or device.

(Code 1959, § 15-3-7; Ord. No. 1569, § 1, 11-13-89)

**Sec. 17-3-5. Same-Application; tree site plan; approval or denial.**

(a) Any person wishing to obtain a permit to remove, relocate or substantially alter a protected tree shall make application to the tree committee by filing a written application on forms provided by the community development department. Where an application as required by this article has been submitted, no permit shall be issued until a tree site plan for the lot or parcel has been submitted by the applicant to the tree committee and reviewed and approved by the tree committee. Upon a showing by the applicant of extreme hardship, the tree committee, in its discretion, may waive all or certain of the requirements for the tree site plan submission, performing instead an onsite inspection of the property. The tree site plan shall show the following information at a scale sufficient to enable the determination of matters required under this article:

- (1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structures and improvements, if any.
- (2) Location and dimensions of all existing trees which are subject to this article, identified by common or botanical name. Trees proposed to remain, to be relocated or to be removed shall be so identified. Groups of trees in close proximity, at a three-foot spacing or closer, may be designated as a clump of trees, and a predominant species, estimated number and average size listed.
- (3) A statement showing how trees not proposed for removal are to be protected during land clearing and construction, i.e., a statement as to proposed protective barriers.
- (4) A statement as to grade changes proposed for the lot or parcel and how such changes

will affect the matters regulated by this article.

(5) Any proposed tree replacement program.

(b) The application and tree site plan shall be reviewed and either approved or denied by the tree committee within seven working days from submission thereof, and such action shall be reported in writing to the applicant.

(c) The tree committee, upon a determination that an application is to be denied, shall state the basis for such denial specifically, and shall notify the applicant of the criteria upon which the denial is predicated. (Code 1959, § 15-3-9)

**Sec. 17-3-6. Same-Criteria for issuance.**

After application is filed with it, the tree committee shall issue a permit for the removal, relocation or substantial alteration of a protected tree if one or more of the following criteria set forth under subsection (1) of this section are met, and provided that none of the conditions set forth under subsection (2) of this section exist:

- (1) One or more of the following criteria shall be met:
  - a. The tree is located in an area where a structure or improvement will be placed according to a tree site plan as required by section 17-3-5, and it unreasonably restricts all reasonable use of the property.
  - b. The tree is diseased, injured, in danger of falling too close to and causing destruction or damage to a principal existing structure, interferes with existing utility service, creates unsafe vision clearance, or conflicts with other ordinances or regulations.
  - c. Only routine trimming is requested by the applicant for a tree which is upon the property of the city and is in need of routine trimming.
- (2) The tree committee shall consider significant adverse impact on the urban and natural environment in the following areas in granting a permit, and shall deny the

permit if one or more of the following conditions exist:

- a. Groundwater and surface water stabilization. The removal will substantially alter the water table adversely with regard to water assimilation by vegetation, transpiration, and the evaporation potential of associated soils and bodies of water.
- b. Ecological impact. The removal will have a substantial adverse impact upon existing biological and ecological systems, or microclimatic conditions which directly affect these systems, or such removal will create conditions which may adversely affect the dynamic equilibrium of associated systems.
- c. Noise pollution. The removal will significantly increase ambient noise levels to the degree that a nuisance is anticipated to occur.
- d. Air movement. The removal will significantly reduce the ability of the existing vegetation to reduce wind velocity to the degree that a nuisance is anticipated to occur.
- e. Air quality. The removal will significantly affect the natural clearing of the atmosphere by vegetation through particulate matter interception or the release of oxygen to the atmosphere as a byproduct of photosynthesis.
- f. Wildlife habitat. The removal will significantly reduce available habitat for wildlife existence and reproduction or result in the emigration of wildlife from adjacent or associated ecosystems.
- g. Aesthetic degradation. The removal will have an adverse impact upon the aesthetic value of the property and the surrounding property, as determined from a consideration of the following factors:
  1. The intended use of the property.
  2. The existing tree coverage.
  3. The number of trees to be removed from the entire lot.
  4. The type, size and condition of the trees to be removed.

5. The area to be covered with structures, parking and driveways.
6. Topography and drainage.
7. The extent to which the trees contribute to the economic and environmental integrity of the surrounding area.
8. The extent to which removal will adversely affect property values and the economic and environmental integrity of the surrounding area.

(Code 1959, § 15-3-11)

**Sec. 17-3-7. Tree relocation or replacement when tree removed or substantially altered.**

As a condition of the granting of a permit for the removal, relocation or substantial alteration of a protected tree, the applicant shall be required to relocate each protected tree being removed or required to replace each protected tree being removed at not less than a 2 to 1 ratio. As a condition to the granting of a permit, the applicant may, at the discretion of the tree committee, be required to replace each protected tree being substantially altered at not less than a 2 to 1 ratio. It shall be the prerogative of the tree committee to specify alternate public property locations for planting of required replacement trees. Each replacement tree shall have characteristics comparable to those of the protected tree removed, and shall be a minimum of 1 1/2-inch caliper nursery stock, with a seven-foot minimum height after planting. The required type of replacement tree and location of relocated or replacement trees shall be identified by the tree committee prior to issuance of a tree removal permit, taking into consideration the factors listed in subsection 17-3-6(2).

(Code 1959, § 15-3-13)

**Sec. 17-3-8. Prerequisites for issuance of building permit.**

If development, redevelopment or improvement of any parcel of land will require the removal or substantial alteration of a protected tree, proof of issuance of a tree removal permit shall be submitted to the city along with the application for a building permit for the development, redevelop-

ment or improvement. No building permit shall be issued until the proof of issuance of a tree removal permit has been received, or until a tree site plan, as outlined in section 17-3-5, has been submitted to the city, illustrating that no protected trees will be removed or relocated in the development, redevelopment or improvement of the parcel.

(Code 1959, § 15-3-15)

**Sec. 17-3-8. Protection of trees during building operations.**

(a) It shall be unlawful for any person, in the development, redevelopment or improvement of any parcel of land, to store, within 30 feet of the trunk of any protected tree, equipment, material, debris, fill, gasoline, oil, paint, chemicals or other materials harmful to trees.

(b) Before development, redevelopment or improvement, the developer or, builder shall be required to erect and maintain suitable protective barriers so as to prevent damage to protected trees. Wood, metal or other substantial material shall be utilized in the construction of protective barriers. This protection, where required, shall remain until such time as the development, redevelopment or improvement is completed.

(c) During construction, no attachments or wires shall be attached to any protected tree.

(d) It shall be unlawful to pave with concrete, asphalt or any other impervious material within a distance from any protected tree deemed appropriate by the tree committee, taking into consideration the size and type of tree, but in no case shall any impervious material be located within five feet of the outside diameter of any protected tree.

(Code 1959, § 15-3-17)

**Sec. 17-3-10. Waiver of requirements during emergency situations.**

In case of emergency, such as hurricane, windstorm, flood, freeze or other disaster, the requirements of this article may be waived by the mayor during the emergency period so that the require-

ments of this article will not in any way hamper public or private work to restore order to the city. (Code 1959, § 15-3-19)

**Sec. 17-3-11. Appeals.**

If any person is dissatisfied with the decision of the tree committee, adversely affecting such person involved, in the application of this article, such person may make a written appeal to the mayor and the council of the city, which shall hear any complaints of such person. After a full and complete hearing of the complaints of such person, the council shall render its opinion affirming, overruling or modifying the decision of the tree committee as may be fit and proper under the circumstances.

(Code 1959, § 15-3-21)

**Sec. 17-3-12. Enforcement of article.**

The tree committee shall be charged with the enforcement of this article, and, for the purpose of enforcement, the committee is hereby clothed with police power to do all acts necessary to ensure the provisions of this article are not violated, including but not limited to the issuance of citations for the violation of any provision of this article.

(Code 1959, § 15-3-23)

**Sec. 17-3-13. Violation of article; penalties.**

(a) *Generally.* Any person who shall violate any provision of this article shall, upon conviction, be fined not less than \$100.00 and not more than \$1,000.00, or shall be committed to jail for up to 30 days, or both, per protected tree that has been unlawfully removed, damaged, substantially altered or destroyed.

(b) *Replacement of trees.* Any person who unlawfully removes, damages, substantially alters or destroys any protected tree shall be required to replace the tree at not less than a 2 to 1 ratio. It shall be the prerogative of the tree committee to specify alternate public property locations for planting of required replacement trees. Such replacement trees shall be planted in accordance

with the city arborist's requirements. The type, size and number of replacement trees shall be determined by the tree committee.

(c) *Revocation of business license.* Any commercial tree care contractor or general contractor must be licensed by the city in order to conduct business within the city. Two or more convictions of violation of any provision of this article by any commercial tree care contractor or general contractor shall result in revocation of such person's license to do business within the city. (Code 1959, § 15-3-25)

**Sec. 17-3-14. Severability.**

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or applications, and, to this end, the provisions of this article are severable.

(Code 1959, § 15-3-27)

**ARTICLE IV. STREET NAMES AND PROPERTY NUMBERING**

**Sec. 17-4-1. Street identification and property numbering map.**

(a) The street identification and property numbering map entitled "Comprehensive Street Identification and Property Number Map," attached as exhibit A to the ordinance from which this article is derived, is hereby adopted as the official street identification and property number map of the city. Any street name amendments made thereto shall be adopted by the city council by ordinance, and all property numbers assigned shall be assigned by the planning office in accordance with the guidelines set forth in this article. No other street names or property numbers shall be used or displayed in the city except as indicated on the comprehensive street identification and property numbering map. The comprehensive street identification and property numbering map shall be properly attested and placed on file in the city planning office, and it shall be the duty of the planning office to maintain and keep the compre-

- (10) *Duplex, triplex and fourplex buildings.* Individual units of duplex, triplex and fourplex buildings shall be assigned a number which corresponds to the nearest numerical interval.

(Code 1959, § 15-4-3)

**Sec. 17-4-3. Street names.**

The following shall apply in determining new street names:

- (1) *Duplicate names.* Duplicate or similar sounding street names shall not be permitted.
- (2) *Curvilinear streets.* Where there is a change in the direction of a street of greater than 60 degrees for a distance equal to or exceeding 1,000 feet in length, then each segment of the street shall bear a different name.

(Code 1959, § 15-4-5)

**Sec. 17-4-4. Posting of address numbers Generally.**

(a) The owner, occupant or person in charge of any house or building to which a number has been assigned pursuant to this article will be notified in writing by the department of public safety of the number assigned after the adoption of this article.

(b) Within 60 days after the receipt of such written notification from the department of public safety, the owner, occupant or person in charge of a house or building to which a number has been assigned shall affix the number in a conspicuous manner in a conspicuous place.

(c) It shall be the duty of such owner, occupant or person in charge thereof, upon affixing the new number, to remove any different number which might be mistaken for or confused with the number assigned to the structure.

(d) Address identification numbers must be posted in a manner which is legible and distinguishable when viewed from the street on which the principal frontage is located.

(Code 1959, § 15-4-7)

**Sec. 17-4-5. Same-Prerequisite for issuance of building permit or certificate of occupancy.**

No building permit or certificate of occupancy may be issued for any structure or premises which does not display an appropriate address identification number in accordance with the terms and conditions of this article.

(Code 1959, § 15-4-9)

**Sec. 17-4-6. Penalty for violation of article.**

The violation of any provision, requirement or prohibition of this article, or any section thereof, shall constitute a misdemeanor and shall be punishable by a fine of not less than \$50.00 and not more than \$100.00. Such offense shall be a continuous offense, and each day a violation continues shall constitute a separate offense and be punishable as such.

(Code 1959, § 15-4-11)

**ARTICLE V. LANDSCAPING RULES AND REGULATIONS**

**Sec. 17-5-1. Title of article.**

This article shall be known as the landscaping rules and regulations of the city.

(Code 1959, § 15-5-1)

**Sec. 17-5-2. Purpose of article.**

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 stormwater runoff retardation, while at the same time aiding in noise, glare and heat abatement;
- (2) Ensure that the local stock of native trees and vegetation is replenished;
- (3) Assist in providing adequate light and air and in preventing overcrowding of land;

- (4) Provide visual buffering and enhance the beautification of the city;
  - (5) Safeguard and enhance property values and protect public and private investment;
  - (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; and
  - (8) Protect the public health, safety and general welfare.
- (Code 1959, § 15-5-3)

**Sec. 17-5-3. 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:

*Accessway* means an area intended to provide an entrance or exit for vehicular traffic from a public right-of-way to an offstreet parking or loading area. The maximum width of an accessway through a residential perimeter landscaped strip for vehicular use shall be 24 feet. The maximum width for accessways for commercial and industrial use shall be 36 feet. No more than one two-way accessway shall be permitted for any street frontage up to 100 linear feet. One-way accessways through a residential perimeter landscaped strip shall be not greater than 15 feet in width. One-way accessways through commercial or industrial perimeter landscaped strips shall be not greater than 18 feet in width. Where ownership involves over 100 feet of street frontage, one additional two-way or two additional one-way drives may be permitted for each additional 100 feet of frontage or major fraction thereof.

*Berm* means a mound or wall of earth that is molded into a landform in a landscaped area. When berms are used for screening, buffering or any other purpose, the berm shall be constructed in accordance with applicable provisions of chapter 23, and so that soil erosion is prevented. The surface of the berms shall be completely covered with landscape material so that bare soil is not visible.

Allowance for soil settlement shall be calculated at ten percent after the berms are compacted.

*Buffering* means the use of landscaping, berms, walls, fences or any combination thereof that at least partially blocks, in a continuous manner, the view from one area to another, which shall not be penetrated by vehicular access.

*City* means the City of Biloxi.

*Deciduous* means the tendency of a plant to drop or lose its leaves during a particular season of the year, generally during the colder months.

*Dripline* means the periphery of the area underneath a tree which would be encompassed by perpendicular lines dropped from the farthest edges of the crown of the tree.

*Encroachment* means the act of advancing beyond the usual or proper limits, as in the encroachment of a motor vehicle beyond the limits of the parking area onto landscaping.

*Encroachment barrier* means the protective barriers which shall be provided, positioned and secured to prevent any part of an automobile or other vehicle from extending into or over living landscaping, fences or walls. A distance of 30 inches shall be provided between landscaping and the inside edge of protective barriers when the barrier allows the vehicle to extend over it. Protection for all landscaping from vehicular encroachment shall be provided with concrete curbing, wheel stops, landscape timbers, railroad ties or bumper rails.

*Evergreen* means the tendency of a plant to retain its leaves during all seasons of the year.

*Fence* means a barrier intended to mark a boundary, screen a view or prevent intrusion. When a screen is required along an interior lot line adjacent to a residential use or district, such a fence shall be a minimum of six feet in height and constructed in accordance with applicable provisions of chapter 23. All fences shall be able to withstand normal wear, function as a barrier and keep an attractive appearance, and shall be built in a sound workmanlike manner, with adequate footings.

*Front building line* means a building wall fronting on the street. Such building wall line shall follow and include the irregular indentations of the building. Steps and unenclosed porches shall be excluded for the purpose of this article.

*Grass* means low-growing plants which creep along the earth surface to form a solid mat or lawn. Only perennial grasses (those which live for more than one growing season) shall be allowed to satisfy the requirements of this article. Such turfs or grasses shall be mowed or manicured and shall be kept healthy and weed-free. Installation of lawns shall be by sodding, seeding or hydromulching.

*Ground cover* means low-growing plants which grow in a spreading fashion to form a more or less solid mat of vegetation. They are generally included in most landscaped areas to provide permeable cover for bare earth and therefore prevent soil erosion. The individual plants shall be spaced close enough to one another so that they will have grown into a complete cover of the planted area in a maximum of two growing seasons after installation.

*Hedge* means shrubs planted in a continuous line which will block at least 80 percent of a view in a maximum of two growing seasons after installation. All hedges shall conform to the height regulations contained in chapter 23.

*Interior landscaped area* means that area inside the perimeter of a property which is permeable and capable of being planted with live landscape materials. An example of this would be landscaped islands within a parking lot.

*Irrigation* means an adequate supply of water which can be made available to landscape plant materials, such as an underground sprinkler system or a hose bib, which shall be installed within 150 feet of any plant material or living landscaping to allow for hand watering.

*Landscape materials* consist of plant material including but not limited to trees, shrubs, ground covers, grass, flowers and native plant materials, and also including but not limited to inorganic features such as planters, stone, brick and aggregate forms, water and other landscape elements.

*Landscaped area* means that area within the boundaries of a given lot which is devoted to and consists of plant material including but not limited to trees, shrubs, ground covers, grass, flowers and native plant materials, and also including but not limited to inorganic features such as planters, stone, brick and aggregate forms, water and other landscape elements; provided, however, that the use of such inorganic materials shall not predominate over the use of organic plant material. Artificial plants are not considered landscape material.

*Owner* means the person who has legal title to the property in question, or a lessee, agent, employee or other person acting on behalf of the titleholder with written authorization to do so.

*Perimeter landscaped area* means that area surrounding a vehicular use area which is devoted to and consists of live plant material including but not limited to trees, shrubs, ground covers, grass, flowers and native plant materials, and also inorganic elements including but not limited to planters, stone, brick and aggregate forms, water and other landscape elements; provided, however, that the use of grass in combination with inorganic materials shall not predominate over the use of organic plant material. Artificial plants are not considered landscape material.

*Refuse storage* means any area used for the storage of trash or garbage. Refuse storage is not permitted as part of the landscaped area, but is permitted adjacent to vehicular use areas. Any such areas visible from a public right-of-way shall be screened from view with an opaque fence or screen a minimum of six feet in height.

*Screening* means the use of landscaping, beams, fences, walls or any combination thereof that at least partially blocks, in a continuous manner, the view from one area to another.

*Shrubs* means woody or semi-woody perennial plants that do not die after one growing season. Their size, form, texture and growing requirements are highly variable. They are customarily included in most landscape designs to provide for lower-scale buffering and visual interest. They may be combined in a myriad of ways to accomplish the goals of the landscape design.

*Sidewalk* means a hard-surfaced, all-weather area a minimum of four feet in width designed for the convenience of pedestrian access, which is normally located immediately inside the public right-of-way line.

*Sight triangle* means the area on either side of an accessway at its junction with a street forming a right-triangle shape within which clear visibility of traffic and pedestrians shall be maintained.

*Soil* means the medium in which plants will grow.

*Tree* means an evergreen or deciduous upright woody perennial plant having a single main stem or several main stems and which attains a height of at least 15 feet, generally with few or no branches on its lower part. Tree species shall be a minimum of seven feet in overall height immediately after planting.

*Tree removal* means the uprooting or severing of the main trunk of the tree or any act which causes or may reasonably be expected to cause the tree to die.

*Turf* means low-growing plants which creep along the earth surface to form a solid mat or lawn. Only perennial grasses (those which live for more than one growing season) shall be allowed to satisfy the requirements of this article. Such turfs or grasses shall be mowed or manicured and shall be kept healthy and weed-free. Installation of lawns shall be by sodding, seeding or hydromulching.

*Vehicular use area* means that area of private development subject to vehicular traffic, which is required to be a hard-surfaced, all-weather area, including accessways, loading and service areas, areas used for the parking or storage of vehicles, boats or portable construction equipment, and all land which vehicles cross over as a function of primary use.

*Vines* means herbaceous or semi-woody plants requiring support. upon which to grow. Vines climb by twining or by tendrils which attach to a surface. They are generally used in the landscape to soften the effect of inorganic elements such as

fences, walls and arbors, as well as to provide some screening or buffering effects.

*Walkway* means a hard-surfaced, all-weather area intended for pedestrian circulation within a development. Such a walkway may be located within the required landscaped areas, but may not be counted as a part of such a required landscaped area for computation of the requirements.

*Wall* means a barrier which is intended to mark a boundary, screen a view or prevent intrusion. When a wall is required along an interior lot line adjacent to a residential use or district, such a wall shall be a minimum of six feet in height and constructed in accordance with applicable provisions of chapter 23. All walls shall be able to withstand normal wear, function as a barrier and keep an attractive appearance, and shall be built in a sound workmanlike manner, with adequate footings.

(Code 1959, § 15-5-5)

Cross reference-Definitions and rules of construction generally, § 1-1-2.

**Sec. 17-6-4. Applicability of article– Generally.**

(a) Except as otherwise provided in this section, this article shall apply to all land located in the city. The requirements set out in this article shall remain effective for any subsequent owner.

(b) A common development which includes more than one lot shall be treated as one lot for the purposes of satisfying this article. Split ownership, planning in phases, construction in stages or multiple building permits for a project shall not prevent it from being a common development as referred to in this subsection. Each phase of a phased project shall comply with the requirements of this article.

(c) This article shall not apply to the following:

- (1) Building permits for single-family or duplex residences where only one such structure is constructed per lot.
- (2) Building permits for remodeling or renovation of less than 50 percent of the replacement cost of a structure, as long as the front and side exterior walls of the building remain in the same place.

- (3) Building permits for the restoration of a building when the restoration does not exceed 50 percent of the replacement cost of the building, when restoration is required as a result of fire or other natural causes and provided the permit is applied for within 12 months of the occurrence of the fire or other natural causes.
- (4) Building permits for restoration of buildings identified as landmarks or contributing buildings within a historic district.

(Code 1959, § 15-5-7)

**Sec. 17-5-6. Same– Existing development.**

Any development in existence before adoption of this article shall comply with the requirements set forth in this article under any of the following circumstances:

- (1) A change in the use to which a vehicular use area is accessory requiring a 25 percent increase in the number of parking spaces.
- (2) Reconstruction or renovation in the extent of 50 percent or more of the replacement cost of any structure.
- (3) A cumulative increase in the gross floor area of a structure exceeding 25 percent of the original gross floor area.

(Code 1959, § 15-5-9)

**Sec. 17-5-6. Plan approval; prerequisites for issuance of certificate of occupancy.**

(a) No lot included under the provisions of this article shall be cleared of suitable landscape materials until an appropriate permit has been issued. Prior to the issuance of any permit under this article, three copies of a plot plan shall be submitted to and approved by the building division of the community development department, subject to the review and approval of such other agencies as may be deemed advisable by the building division. The plot plan shall be drawn to scale, shall include dimensions and distances, and shall clearly delineate the existing and proposed parking spaces or other vehicular use areas, accessways, driveways, sprinklers or water outlet locations, the location, size and description of all

other landscape materials, and the location and size of buildings, if any, and shall designate, by name and location, the landscape material to be installed or, if existing, to be used in accordance with the requirements of this article. No permit shall be issued for such building or paving unless such plot plan complies with the provisions of this article, and no certificate of occupancy shall be issued until the landscaping is complete, and it shall be unlawful to occupy the premises unless the landscaping is installed in accordance with the approved plot plan and the requirements of this article.

(b) The building division of the community development department may issue a temporary certificate of occupancy valid for a period of 30 days, with extensions not to exceed an accumulation of 270 days, if all of the following conditions exist:

- (1) Except for the completion of landscaping installation, a certificate of occupancy would normally be issued.
- (2) Completion of the required landscaping before a permanent certificate of occupancy is issued would result in hardship to the applicant, as applied in this case. Hardship shall not include financial or economic hardships.
- (3) At the time the temporary certificate of occupancy is requested, the developer or owner makes fiscal arrangements, by bonds, certificate of deposit or letter of credit, satisfactory to the city, in the amount of \$3.00 per square foot of required landscaping not yet in place, to ensure that it shall be installed. Any owner or developer wishing to make such fiscal arrangements must also grant the city access to the land to install the required landscaping if the landscape installation has not been completed at the end of the required extension period. Such fiscal arrangements shall be released when the required landscaping is completed.

(Code 1959, § 15-5-11)

**Sec. 17-5-7. Installation and maintenance standards.**

All landscaping materials required under this article shall be of nursery stock quality and shall

be installed in a sound workmanlike manner and according to accepted good planting procedures. All landscaping shall be adaptable to climate conditions of the area. All landscaping shall be maintained in good condition and in accord with all provisions of this article as follows:

- (1) All landscaping shall present at all times a healthy, neat, clean, orderly, disease-free and pest-free appearance.
- (2) All landscaping soil and fill shall be generally free from weeds, and totally free from all refuse and debris at all times.
- (3) Landscaping elements such as walls and fences shall be repaired or replaced as needed to present a clean and neat appearance and to function as intended.
- (4) Any dead plant material or material which fails to show healthy growth must be removed within 60 days.
- (5) Replacement of removed plant material must take place within 90 days of removal or notification, whichever occurs first.
- (6) Any replacement plant material must meet the size and other characteristics of newly planted material as required in this article.
- (7) Maintenance of all landscaping is the responsibility of the owner, agent and lessee, jointly or separately.
- (8) All required landscaping shall be irrigated by one of the following methods:
  - a. An underground sprinkling system.
  - b. A hose attachment within 150 feet of all landscaping.
- (9) Trees and large shrubs shall be adequately supported using metal stakes and wire guys. Such supports should be so designed that they will protect trees and shrubs from injury. Trees and shrubs shall be fastened to the supports with an acceptable commercial tree tie of plastic- or hose-covered wire.
- (10) In no instance shall any landscaped area required by this article be encroached upon by any type of vehicle, except that the front of a vehicle may encroach upon any inte-

rior landscaped area when the area is at least 3½ feet in depth per abutting parking space and protected by wheel stops or curbing. Two feet of the landscaped area may be part of the required depth of each abutting parking space, provided that in no case shall the protected landscaped area be reduced to less than three feet in depth.

(Code 1959, § 15-5-13)

**Sec. 17-5-8. Landscaping and sidewalks within street right-of-way.**

(a) Landowners are encouraged to landscape the areas within the nonpaved street right-of-way abutting their land; provided, however:

- (1) The city may at any time require such landscaping to be removed, and the city shall not be responsible or liable if any landscaping is required to be removed.
- (2) Such landscaping in the right-of-way shall not impede or obstruct visibility from any vehicles, and must receive the prior approval of the city engineer.
- (3) Any underground sprinkler systems, planters or other permanent structures placed in the right-of-way shall require approval by the city engineer.
- (4) No landscaping shall be placed in an area of right-of-way where a capital improvement project has been funded for such location, unless and until such project has been completed.

(b) Sidewalks shall be required for all developments included under the provisions of this article.

(Code 1959, § 15-5-15)

**Sec. 17-5-9. Sidewalks on private property.**

Where developing properties abut public roads having insufficient public right-of-way to allow the placement of sidewalks within the right-of-way, landowners are encouraged to place sidewalks on their property parallel and adjacent to the public road, in lieu of an equal amount of area from the total landscape area requirement. Upon completion of sidewalks built to city standards,

the city will accept responsibility for maintenance of all sidewalks adjacent and parallel to the public road through receipt of a maintenance easement, at the landowner's option.

(Code 1959, §,15-5-16; Ord. No. 1581, § 1, 1-22-90)

**Sec. 17-5-10. Vehicular use areas-Interior landscaped areas.**

Landscaped areas in the interior of a vehicular use area shall be provided when the vehicular use area is over 5,000 square feet in size. The following conditions shall apply to the interior landscaped areas:

- (1) The total of all interior landscaped areas shall occupy at least ten percent of the vehicular use area, but in no case shall required parking spaces be reduced.
- (2) Such landscaped areas shall be located in such a manner as to divide and break up the expanse of paving. Each unused space resulting from the design or layout of parking spaces which is over 24 square feet in size shall be landscaped. In no case shall more than 20 parking spaces be created without the inclusion of one landscaped island for each 20 contiguous parking spaces created.
- (3) The planting of one tree shall be required in accordance with the provisions of this article for every 20 interior parking spaces. All newly planted trees shall be planted in a permeable area of a size no less than a three-foot square (nine square-feet total permeable area), except that additional permeable area may be required to ensure adequate growth.
- (4) Multistoried or covered parking structures shall be exempted from providing interior landscaping.

(Code 1959, § 15-5-17; Ord. No. 1581, § 1, 1-22-90)

**Sec. 17-5-11. Same— Perimeter landscaping.**

Not less than a three-foot landscaped buffer, free from any vehicular encroachments, shall be installed around the perimeter of all vehicular use areas, except as provided in section 17-5-12. The planting of one tree shall be required, in accor-

dance with the provisions of this article, for every 35 lineal feet or fraction thereof within the perimeter landscaped area. The remainder of the perimeter landscaped area may include shrubs, ground covers, grasses, flowers vines, hedges and inorganic features such as planters, stone, brick and aggregate forms, provided that tie combination, of grass and aggregate forms shall not predominate within the perimeter landscaped area..

(Code 1959, § 15-5-19)

**Sec. 17-5-12. Same-Landscaping adjacent to public right-of-way.**

On the site of a building or open lot use providing an offstreet parking area or other vehicular use area, where such area will not be entirely screened visually by an intervening building or structure from any abutting right-of-way, excluding dedicated alleys, there shall be provided landscaping between such area and such right-of-way as follows:

- (1) Not less than a five-foot landscaped buffer, free from any vehicular encroachments, located between the abutting right-of-way and the offstreet parking area or other vehicular use area which is exposed to an abutting right-of-way, shall be landscaped. Such landscaping is to include one tree planted in accordance with the provisions of this article for each 35 lineal feet or fraction thereof. Such trees shall be located between the abutting right-of-way and offstreet parking area or other vehicular use area and shall be planted in a planting area 'of at least 25 square feet with a dimension of at least five feet. The remainder of the landscaped area adjacent to public rights-of-way may include shrubs, ground covers, grasses, flowers, vines, hedges and inorganic features such as planters, stone, brick and aggregate forms, provided that the combination of grass and aggregate forms shall predominate within such area.
- (2) All property other than the, required landscaped strip lying between the right-of way and the offstreet parking area or other vehicular use area shall be landscaped with at least grass or other ground cover.

(3) Necessary accessways from the public right-of-way through all such landscaping shall be permitted to service the parking or other vehicular use areas, and such accessways may be subtracted from the lineal dimension used to determine the number of trees required. When an accessway intersects a public right-of-way or when the subject property abuts the intersection of two or more public rights-of-way, all landscaping within the sight triangle areas described in this subsection shall provide unobstructed cross-visibility at a level between three feet and six feet; provided, however, trees having limbs and having foliage trimmed in such a manner that no limbs or foliage extend into the cross-visibility area shall be allowed, provided they are located so as not to create a traffic hazard. Landscaping, except required grass or ground cover, shall not be located closer than three feet to the edge of any accessway pavement. The triangular areas referred to in this subsection are:

- a. The areas of property on both sides of an accessway formed by the intersection of each side of the accessway and the public right-of-way line, with two sides of each triangle being ten feet in length from the point of intersection and the third side being a line connecting the ends of the two other sides.
- b. The area of property located at a corner formed by the intersection of two or more curblines, with two sides of the triangular area being 30 feet in length along the abutting curblines, measured from their point of intersection, and the third side being a line connecting the ends of the other two lines.

(Code 1959, § 15-5-21)

**Sec: 17-5-13. Building landscaping.**

All buildings within developments included under the provisions of this article shall be suitably landscaped, with particular attention being devoted to landscaping of any facades opposing public rights-of-way. Adjacent to all such facades opposing public rights-of-way, a minimum of a five-foot landscaped area shall be required. Auto-

bile parking which projects, not more than two feet into such landscaped area shall be permitted (Code 1959, § 15-5-23)

**Sec. 17-5-14. Screening of vehicular use areas abutting residential district.**

When a vehicular use area abuts a residential district, a six-foot high opaque screen is required along the entire abutting edge in accordance with applicable provisions contained in chapter 23. This applies whether or not a perimeter landscaped strip is required. The screen may consist of a masonry wall, wooden fence, earth berm, opaque hedge or any combination thereof.

(Code 1959, § 15-5-25)

**Sec. 17-5-15. Credit for existing trees.**

Credit shall be provided for preservation of existing trees in accordance with the following:

- (1) An existing tree may be included as part of the tree planting requirements of this article if it meets the minimum standards of this article, with the exception of existing pine, willow and gum trees.
- (2) If any preserved tree dies within five years of construction, one tree shall be replaced for each tree credited against such preserved tree that dies.
- (3) For each tree to be credited, a planting area or open ground space of at least nine square feet shall be required. The required planting area or open ground space may be increased in accordance with the diameter of the credited tree. No vehicular encroachment shall be permitted within the planting area or open ground space.
- (4) Planting or open ground areas shall be located so that the trunk of the preserved tree is as close to the center of the open ground area as possible, and in no case shall the trunk be closer to the boundary of such area than one-third of the maximum dimension of the designated open ground area.
- (5) All trees to be credited shall have constructed around them an adequate barrier to preclude damage during the construc-

tion phase. No excavation or grading shall occur around a tree to be credited which shall result in damage or destruction of the credited tree.

(Code 1959, § 15-5-27)

**Sec. 17-5-16. Limitation on total area of required landscaping.**

No development will be required to provide total landscaped area in excess of ten percent of the total site area. Total landscaped areas includes landscaped area required under all the sections contained in this article. In cases where the strict application of this article requires the developer to provide total landscaped area in excess of ten percent, it shall be the duty of the building official and the city planner to grant variation of the requirements in such a manner as to limit the required total landscape area to ten percent of the total lot area and maintain the intent of this article.

(Code 1959, § 15-5-28; Ord. No. 1581, § 1, 1-22-90)

**Sec. 17-5-17. Variances.**

(a) It is the intent of this article to offer the prospective developer as much latitude as possible when designing required landscaping. The design should take into consideration and be compatible with the shape and topography of the area, the architectural characteristics of adjacent structures and the character of existing adjacent landscaping.

(b) The landscape design standards are not intended to be arbitrary or inhibiting to creative solutions. Project conditions may justify modifications of this article when conditions arise where full compliance is impossible, or under circumstances where achievement of the city's objectives can be better obtained through modified requirements. Therefore, in specific cases, variation of the requirements may be permitted by the building official and city planner when this variation more fully achieves the objectives contained in' this article and when one or more of the following conditions justify the variance:

- (1) There are special circumstances and conditions applying to the land or building for which the variance is sought, which circum-

stances or conditions are peculiar to such land or building and do not apply generally to land or buildings in the neighborhood, and the circumstances or conditions are such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of such land or building.

- (2) The granting of the variance is necessary for the reasonable use of the land or building and the variance granted is the minimum variance that will accomplish this purpose.
- (3) The granting of the variance will be in harmony with the general purpose and intent of this article and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (4) Granting the variance requested will not confer on the applicant any special privilege that is denied by this article to other lands, structures or buildings in the same district.
- (5) Topography, soil or other site conditions are such that full compliance is impossible.
- (6) Improved environmental quality or utility would result from the variance.
- (7) Alternate or special construction methods, techniques, material and mechanical equipment are to be used, when deemed by the building official and city planner as being significantly better than those required by this article. Variations shall be limited to the specific project under consideration, and shall not establish precedent for acceptance in other cases.

(Code 1959, § 15-5-29)

**Sec. 17-5-18. Appeals.**

If any person is aggrieved with the decision of the building official, adversely affecting such person involved, in the application of this article, such person may make a written appeal to the mayor and the city council, which shall hear any complaints of such person, and, after a full and complete hearing of the complaints of such person,

the council shall render its opinion affirming, overruling or modifying the decision of the building official, as may be fit and proper under the circumstances.

(Code 1959, § 15-5-31)

**Sec. 17-5-19. Penalty for violation of article.**

Where any building or structure is erected; constructed, altered, renovated, relocated or converted, or any building, structure or land is used except in conformity with the provisions of this article, any proper official of the city or duly authorized representative, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction or alteration or other violation, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land, or to prevent any illegal act, conduct or use in or about such premises. The violation of any provision, requirement or prohibition of this article, or section thereof, shall constitute a misdemeanor, and shall be punishable by fine of not less than \$100.00, and not more than \$500.00, or 30 days in jail, or both. Such offense shall be a continuous offense, and each day that a violation continues shall constitute a separate offense and be punishable as such. Any person, owner, firm, corporation, general agent, lessee, tenant, architect, contractor, builder or other person who commits, takes part or assists in any such violation shall be guilty of a misdemeanor and shall be punishable as provided in this section.

(Code 1959, § 15-5-33)