

City of Fayetteville Staff Review Form

2015-0474

Legistar File ID

10/20/2015

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Derek Linn

10/2/2015

Parks & Recreation /
Parks & Recreation Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

An Ordinance to Amend Chapter 167 -- Tree Preservation & Protection and 177 – Landscape Regulations; to provide an additional option regarding tree maintenance agreements.

Budget Impact:

<hr/>		<hr/>	
Account Number		Fund	
<hr/>		<hr/>	
Project Number		Project Title	
Budgeted Item?	NA	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	NA	Item Cost	
Budget Adjustment Attached?	NA	Budget Adjustment	
		Remaining Budget	\$ -

V20140710

Previous Ordinance or Resolution #

Original Contract Number:

Approval Date:

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF OCTOBER 20, 2015

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director *C.E.*
Alison Jumper, Park Planning Superintendent

FROM: Derek Linn, Urban Forester *DL*

DATE: October 2, 2015

SUBJECT: **Amendment to Chapter 167 and 177: To Provide an Additional Option Regarding Tree Maintenance Agreements**

BACKGROUND:

It is the purpose of Chapter 167 of the Unified Development Code to preserve and protect the health, safety, and general welfare, and to preserve and enhance the natural beauty of Fayetteville by providing for regulation of the preservation, planting, maintenance, and removal of trees within the City. This chapter [(167.04)(J)(5)] further specifies for all plans requesting *on-site mitigation or off-site forestation* to include a three-year maintenance and monitoring plan, which holds the applicant responsible for the health of all planted trees on development plans. This section further directs for the applicant to deposit with the City either currency, bond, an irrevocable letter of credit, or other surety in the amount of replacement cost and labor to ensure and guarantee the survival of all mitigation trees for the initial three-year establishment period of the trees.

In addition, it is the purpose of Chapter 177 of the Unified Development Code to preserve and protect the health, safety, and general welfare, preserve and enhance the natural beauty of Fayetteville, and create an attractive, environmentally sound and healthy urban landscape for the residents of the City of Fayetteville to enjoy by providing for regulations of the design, planting, establishment, and maintenance of spaces updated by new development. This chapter [(177.05)(A)(2)] specifies the planting of all new *street trees* to include a three year maintenance and monitoring plan, which holds the developer responsible for the health of all planted trees. Approval of this plan is contingent upon the developer depositing with the City of Fayetteville one of the following: currency, bond, irrevocable letter of credit, or other surety in the amount equal to that provided in (167.04)(J)(4).

DISCUSSION and PROPOSAL:

The purpose of the tree maintenance surety as noted above is to provide incentive to ensure that required trees are watered, maintained, and healthy at the end of the three year establishment period; which ultimately supports a healthy urban forest.

While the surety provides the incentive for some applicants to properly maintain required trees, the surety requirement has not been as effective as desired to inspire the maintenance and watering that trees need to become healthy and established. Further, some applicants find it difficult to secure a three year bond on trees. Brought forward as a request from developers, this amendment adds an option for developers to contract with a landscape company to provide the three year maintenance of trees. This amendment is not an additional requirement, but rather, an additional option.

This option would be accepted in lieu of the currency, bond, or other surety as currently required and noted above. The fully executed contract would contain language that the City of Fayetteville is named as a third party beneficiary, and:

1. itemized proof of payment or charge for three years for the watering and maintenance needs of each required tree;
2. a clause that requires that if the approved contract is breached, the developer shall either immediately supply an acceptable replacement maintenance contract or shall deposit into the City's tree escrow account the normal original amount set forth in section 167.04(J)(4).

Urban Forestry staff worked in conjunction with the City Attorney's office to develop language that would both add flexibility while meeting the intent of the chapters.

Approving this ordinance revision would increase flexibility for developers to either meet the current surety and maintenance requirement; or, to provide an approved maintenance contract, in lieu of providing the currency, bond, or other surety.

RECOMMENDATION:

Staff recommends approving the proposed ordinance amendments to Chapter 167: Tree Preservation and Protection and Chapter 177: Landscape Regulations.

BUDGET/STAFF IMPACT:

The ordinance requirement will not have an impact on the City budget.

Attachments:

Existing Ordinance Language
Proposed Ordinance Language

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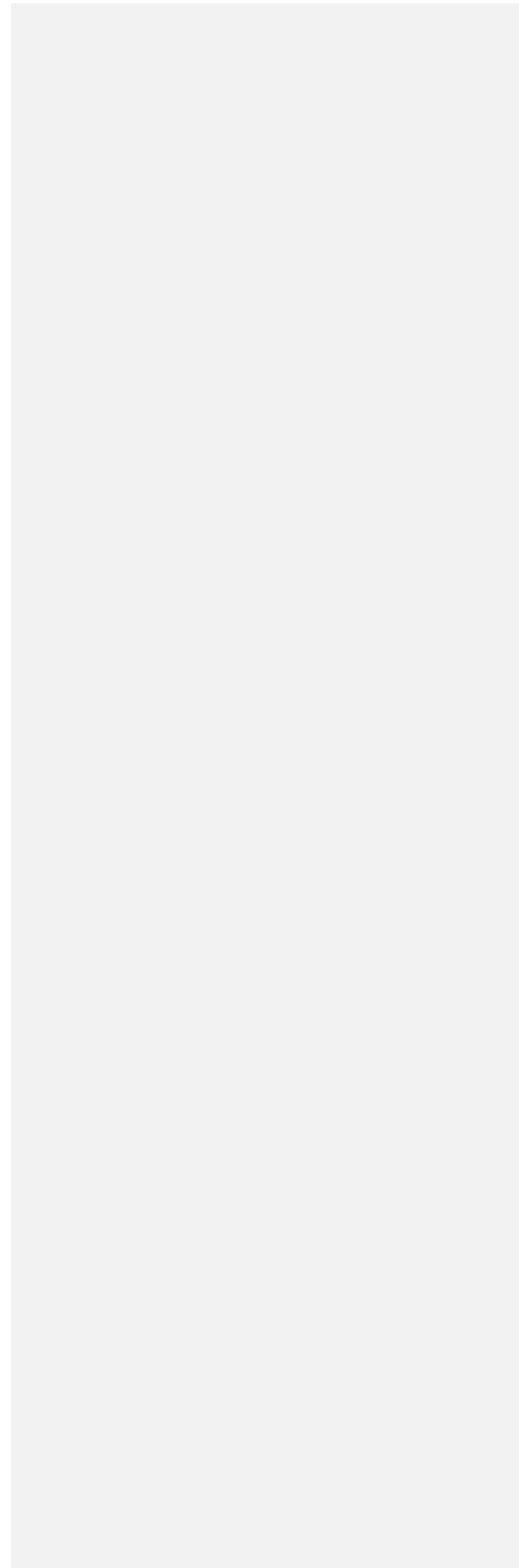
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CHAPTER 167: TREE PRESERVATION AND PROTECTION

167.01 Purpose

It is the purpose of this chapter to preserve and protect the health, safety, and general welfare, and preserve and enhance the natural beauty of Fayetteville by providing for regulations of the preservation, planting, maintenance, and removal of trees within the city, in order to accomplish the following objectives:

(A) *Objectives.*

- (1) To preserve existing tree canopy;
- (2) To create a healthful environment for Fayetteville residents, businesses, and industries;
- (3) To moderate the harmful effects of sun, wind, and temperature changes;
- (4) To buffer noise, air and visual pollution;
- (5) To filter pollutants from the air that assist in the generation of oxygen;
- (6) To reduce storm water runoff and the potential damage it may create;
- (7) To stabilize soil and prevent erosion, with an emphasis on maintaining tree canopy on hillsides defined as canopied slopes in Chapter 151;
- (8) To provide habitat for birds and other wildlife;
- (9) To preserve riparian banks and beds, and prevent sedimentation;
- (10) To screen incompatible land;
- (11) To promote energy conservation; and
- (12) To protect and enhance property values.

(B) *Principles.* This chapter shall be enforced according to the following principles:

- (1) Preservation shall be the first, best, and standard approach.
- (2) If preservation cannot be achieved, on-site mitigation shall next be pursued.
- (3) If on-site mitigation cannot be achieved, off-site preservation shall be pursued.
- (4) If off-site preservation cannot be achieved, off-site forestation shall be pursued.

- (5) If none of the above approaches can be achieved, payment shall be made to the tree escrow account.

(Code 1991, §162.01; Ord. No. 3699, §1 4-20-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

167.02 City Of Fayetteville Tree Preservation, Protection, And Landscape Manual

The urban forester, in cooperation with other members of city staff, shall promulgate and periodically revise forms, procedures and regulations to implement this chapter and publish this information in the *City of Fayetteville, Tree Preservation, Protection, and Landscape Manual*.

(A) Copies of the *Tree Preservation, Protection, and Landscape Manual* are to be made readily available to the public and shall include, but need not be limited to:

- (1) Specific criteria for gaining city approval of tree preservation plans;
- (2) The format and content of reports and plans the applicant must submit to the city pursuant to this chapter;
- (3) Tree protection during construction;
- (4) A glossary of important terms used in this chapter;
- (5) Size and species requirements for trees planted for on-site mitigation or off-site forestation;
- (6) Maintenance of trees (including but not limited to pruning, irrigation, and protection from disease).

(B) The Tree and Landscape Advisory Committee shall review and may recommend revisions to the *Tree Preservation, Protection, and Landscape Manual* at least every three years to reflect changes in arboricultural and horticultural practices, lists of preferred tree species, city policies, or the content of this chapter.

(Ord. No. 4340, 10-2-01)

167.03 Tree Registry And Urban Forest Analysis

(A) *Tree Registry.* Trees and groups of trees which are documented to be of historic merit, of an uncommon or endangered species, or are of extraordinary value due to their age, size, or type,

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may be registered in the City of Fayetteville's tree registry. It shall be the duty of the urban forester to maintain and keep this registry on file in the urban forester's office.

- (B) *Voluntary registration.* Registration of trees shall be voluntary and may be done by the owner(s) of the property on which the tree is located. Registration shall not run with the land unless the property owner wishes to use an express trust to transfer a benefit in the tree or groups of trees to the city. Registered tree owners are entitled to consultation with the Tree and Landscape Advisory Committee and/or the urban forester concerning proper care and protection of the tree, as well as an evaluation of the tree's condition.
- (C) *Urban Forest Analysis.* The city shall initiate a tree canopy analysis and an Urban Forestry Effects Model study or their current equivalent studies within the current geographical boundaries of the city by December 31, 2012. Thereafter, the city should conduct these studies every ten (10) years.

(Ord. No. 4340, 10-02-01; Ord. 5427, 8-2-11)

167.04 Tree Preservation And Protection During Development

- (A) *Applicability.* The provisions of this section shall apply to proposed subdivisions, and large scale developments required by other chapters of the Unified Development Code to go through the city's permitting process. Persons seeking to build one single-family dwelling unit, or duplex, are specifically exempt from the provisions of this section except when the land is located within the Hillside/Hilltop Overlay District; then all the provisions of this ordinance shall apply. Planned Zoning Districts should meet the percent minimum tree canopy based upon their primary use, but may be allowed a lesser tree canopy requirement as part of the overall Master Plan approved by the City Council.

- (1) *Subdivisions and large scale developments.* Applicants seeking approval of proposed subdivisions and large scale developments shall submit a site analysis plan, analysis report, and tree preservation plan with the preliminary plat or site plan. There shall be no land disturbance, grading, or tree removal until a tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.
- (2) *Grading permit.* An abbreviated tree preservation plan, as set forth in §167.04(H)(3), shall be submitted with the application for grading permits on projects

that are not required to go through subdivision or large scale development process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

- (3) *Building permits.* Tree preservation requirements apply to all permit applications for nonresidential construction, and the construction of multi-family residential buildings composed of three or more dwelling units. An abbreviated tree preservation plan, as set forth in § 167.04 (H)(3), shall be submitted with the application for building permits on projects that are not required to go through the subdivision or large scale development process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

- (4) *Parking lots.* Tree preservation requirements apply to all permit applications for the construction of parking lots with five or more spaces. An abbreviated tree preservation plan, as set forth in §167.04 (H)(3), shall be submitted with the application for permits on projects that are required to go through the subdivision or large scale development process. There shall be no land disturbance, grading, or tree removal until an abbreviated tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

- (5) *Hillside/Hilltop Overlay District.* Undeveloped land located within the Hillside/Hilltop Overlay District shall submit a site analysis plan, analysis report, and tree preservation plan with the preliminary plat or site plan. Single and two family residential development shall submit an abbreviated tree preservation and site plan at the time of obtaining a building permit. Structural changes to buildings located in the Hillside/Hilltop Overlay District that do not result in an enlargement of the building footprint or roof dripline shall not require an abbreviated tree preservation plan. There shall be no land disturbance, grading, or tree removal until a tree preservation plan has been submitted and approved, and the tree protection measures at the site inspected and approved.

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(B) *Tree preservation criteria.* The urban forester shall consider the following factors, and any other relevant information, when evaluating tree preservation plans:

- (1) The desirability of preserving a tree or group of trees by reason of age, location, size, or species.
- (2) Whether the design incorporates the required tree preservation priorities.
- (3) The extent to which the area would be subject to environmental degradation due to removal of the tree or group of trees.
- (4) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or group of trees is located.
- (5) Whether alternative construction methods have been proposed to reduce the impact of development on existing trees.
- (6) Whether the size or shape of the lot reduces the flexibility of the design.
- (7) The general health and condition of the tree or group of trees, or the presence of any disease, injury, or hazard.
- (8) The placement of the tree or group of trees in relation to utilities, structures, and the use of the property.
- (9) The need to remove the tree or group of trees for the purpose of installing, repairing, replacing, or maintaining essential public utilities.
- (10) Whether roads and utilities are designed in relation to the existing topography, and routed, where possible, to avoid damage to existing canopy.
- (11) Construction requirements of on-site and off-site drainage.
- (12) The effects of proposed on-site mitigation or off-site alternatives.
- (13) The effect other chapters of the UDC, or city policies have on the development design.
- (14) The extent to which development of the site and the enforcement of this chapter are impacted by state and federal regulations.
- (15) The impact a substantial modification or rejection of the application would have on the applicant.

***Note--**The above items are not presented in any particular order of importance. The weight each is given will depend in large part on the individual characteristics of each project.

(C) *Canopy area.* In all new Subdivisions, Large Scale Developments, Industrial and Commercial Developments, and all other improvements listed above, trees shall be preserved as outlined in Table 1 under Percent Minimum Canopy, unless the Applicant has been approved for On-Site Mitigation or Off-Site Alternatives as set forth in subsections I. & J. below. The square foot percentage of canopy area required for preservation in new development is based on the total area of the property for which the Applicant is seeking approval, less the right-of-way and park land dedications. An Applicant shall not be required to plant trees in order to reach the Percent Minimum Canopy requirement on land where less than the minimum exists prior to development, unless trees have been removed.

**Table 1
Minimum Canopy Requirements**

ZONING DESIGNATIONS	PERCENT MINIMUM CANOPY
R-A, Residential - Agricultural (nonagricultural uses)	25%
RSF-5, Single-family Residential – One Half Unit per Acre	25%
RSF-1, Single-family Residential – One Unit per Acre	25%
RSF-2, Single-family Residential – Two Units per Acre	20%
RSF-4, Single-family Residential – Four Units per Acre	25%
RSF-7, Single-family Residential – Seven Units per Acre	20%
RSF-8, Single-family Residential – Eight Units per Acre	20%
R-O, Residential –Office	20%
RT-12, Two and Three-family Residential	20%
RMF-6, Multi-family Residential – Six Units per Acre	20%
RMF-12, Multi-family Residential – Twelve Units per Acre	20%
RMF-18, Multi-family Residential – Eighteen Units per Acre	20%
RMF-24, Multi-family Residential – Twenty-Four Units per Acre	20%
RMF-40, Multi-family Residential – Forty Units per Acre	20%
NS, Neighborhood Services	20%
C-1, Neighborhood Commercial	20%
CS, Community Services	20%
C-2, Thoroughfare Commercial	15%
UT, Urban Thoroughfare	15%
C-3, Central Business Commercial	15%

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DC, Downtown Core	10%
MSC, Main Street Center	10%
DG, Downtown General	10%
NC, Neighborhood Conservation	20%
I-1, Heavy Commercial and Light Industrial	15%
I-2, General Industrial	15%
P-1, Institutional	25%
PZD, Planned Zoning District (HHOD)	25% (30%)

All residential zoning districts and C-1 districts within the Hillside/Hilltop Overlay District shall have their percent minimum canopy requirements increased by 5% to a total requirement of either 30% or 25%.

(D) *Prior tree removal.*

- (1) If trees have been removed below the required minimum within the five (5) years preceding application for development approval, the site must be forested to meet the Percent Minimum Canopy requirements set forth in Table 1, plus an additional ten percent (10%) of the total area of the property for which the Applicant is seeking approval, less the right-of-way and park land dedications. The number of trees required to be planted shall be calculated using the Base Density for High Priority trees.
- (2) *Waiver.* If an applicant is able to demonstrate to the Planning Commission's satisfaction that the trees were removed for a bona fide agricultural purpose, and not with the intent to thwart enforcement of this chapter, the additional 10% reforestation requirement shall be waived.

(E) *Tree preservation priorities.*

- (1) *Percent minimum canopy.* Proposed designs must meet the percent minimum canopy requirements for the particular zoning designation, emphasizing the preservation and protection of high priority trees on the site. Trees in utility easements shall not be counted toward the percent minimum canopy requirement, and such utilities shall be routed, wherever possible, to avoid existing canopy.
- (2) *Existing natural features.* Each design shall consider the existing natural features of the site, the preservation priorities for the trees, and the impact their proposed removal may have both on and off-site.
- (3) *Preservation priorities.* The list of preservation priorities (See: Table 2) shall guide the review of each development's design. The submittal of designs which do

not incorporate preservation priorities for the trees on the site shall result in the denial of the tree preservation plan.

- (4) *High priority trees.* The preservation and protection of high priority trees shall be enforced most stringently to meet the minimum percentage of canopy preservation. The preservation and protection of lower priority trees shall not be substituted for that of high priority trees, except:
 - (a) When the justification for such a substitution is set forth in the analysis report; and
 - (b) The substitution is approved by the urban forester.

Table 2
Preservation Priorities

High Priority	Mid-level Priority	Low Priority
Canopied slopes	Contiguous woodlands	Invasive species
Floodways and riparian buffers	Non-native woodlands	Relic orchards
Native woodlands	Use buffers	Less desirable species
Significant trees		

***Note--**Each of the above is listed alphabetically beneath its respective category. They are not presented in any particular order of importance within that category.

(F) *Tree Preservation Requirements for Proposed Residential and Non-Residential Subdivisions.*

- (1) *Residential subdivisions.* The Percent Minimum Canopy in residential subdivisions shall be located in areas that have the least possibility of impact as utilities are installed and homes built. The intent is to leave undisturbed as many existing trees as possible for the use and enjoyment of prospective lot owners. Residential Subdivisions requesting tree removal below the Percent Minimum Canopy requirement may choose either Residential On-Site Mitigation, or to contribute to the Tree Escrow Account as set forth in §167.04 J.4.a. Trees in utility easements shall not be counted toward the Percent Minimum Canopy requirement, and such utilities shall be routed to avoid existing canopy.
- (2) *Nonresidential subdivisions.* Two options are available for establishing a tree preservation plan for the development of nonresidential subdivisions. The urban forester shall recommend to the Planning

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Commission the option that will potentially preserve the largest amount of priority canopy based upon the tree preservation criteria set forth in § 167.04 (B) above.

- (a) *Preservation plan for entire subdivision.* The developer may choose to preserve the percent minimum canopy required for the entire development. With this option, the preserved canopy shall be located in areas that will not be impacted by future development of the individual lots. Canopy to be preserved shall be noted on the final plat, and shall be protected as set forth in §167.04 (L) below. Should the entire percent minimum canopy requirement for the site be so protected, the final plat shall include a statement that the individual lots, as represented thereon, shall not require separate tree preservation plans.
- (b) *Preservation plan for infrastructure only.* The developer, in consultation with city staff, shall delineate the area required for the construction of the infrastructure and improvements for the development. This area should include street rights-of-way, and utility and drainage easements. Lot lines, streets, and easements shall be located to avoid placing a disproportionate percentage of existing canopy in any one (1) proposed lot. This option shall not allow the removal of trees during the grading of individual lots, unless shown by the developer to be essential to the project's engineering design. The developer will be required to compensate for the canopy removed from this defined area by making the appropriate payment into the Tree Escrow Account. On all other areas of the development, the developer shall protect the existing canopy during the construction phase in accordance with §167.05 below. The final plat shall include a statement that the individual lots shall required separate Tree Preservation Plans.
- (3) *Hillside/Hilltop Overlay District.* Individual parcels or lots located within the Hillside/Hilltop Overlay District boundary shall submit an abbreviated tree preservation plan as set forth in § 167.04 (H)(3) indicating the location of the structure and the preservation of the minimum tree canopy requirement.
- (a) Developers shall have the option of doing cluster development, such as a
- PZD, which would encourage more open space and tree preservation areas. In this pattern of development, the tree preservation zone on each lot can be transferred to a larger open space instead of being required on the individual lots. The open space set aside during cluster development shall be placed in a permanent easement or land trust with all future development rights removed from the property.
- (G) *Initial review.*
- (1) *Meeting with the urban forester.* It is strongly recommended that prospective applicants meet with the urban forester for an initial review of the proposed tree preservation plan for the site prior to submitting a preliminary plat, large scale development, or site plan to the city. During the initial review, the urban forester shall make recommendations to ensure the proposed subdivision or development complies with the requirements of this chapter. These recommendations shall be nonbinding. However, applicants proceed at the risk of higher costs due to changes required by a noncompliant submittal should they choose not to have the initial review or to disregard the recommendations of the urban forester.
- (2) *Letter of confirmation.* The urban forester shall document whether the applicant participated in the initial review meeting in a letter of confirmation to the applicant. If the applicant chose to attend an initial review meeting, the letter shall also document any recommendations made. The urban forester shall ensure that a copy of the letter becomes part of the permanent file for the project.
- (H) *Submittal of plans.* Applicants should bear in mind that all plans will be evaluated according to the tree preservation criteria and percent minimum canopy requirements as set forth under §167.04 (B) and (C).
- (1) *Site analysis plan.* On sites with existing tree canopy, the applicant shall conduct a site analysis to determine the approximate age, health, size and species distribution of the trees, noting each on a site analysis plan, and clearly showing the locations and types of all natural features on a site, including features 100 feet beyond the property lines. The site analysis plan shall also specifically depict the applicable preservation priority level for each tree or group of trees on the site. The plan should include, but not be limited to, delineation of

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the following features as they exist on the site:

- (a) The existing topography of the site highlighting slopes of 15% or greater, and indicating the natural drainage patterns;
 - (b) The property line boundaries of the site;
 - (c) Soils identified according to the Unified Soil Classification System;
 - (d) Any significant trees existing on the site, and the location of trunks, spread of the canopy, species, diameter at breast height (DBH), and the overall health of each significant tree;
 - (e) Groupings of trees, delineating the edges of the overall canopy, noting the predominate species, average height, diameter at breast height (DBH), and general health of the trees.
 - (f) All existing utilities and utility easements;
 - (g) All perennial and intermittent streams and creeks that exist on the site or within 100 feet of the site;
 - (h) Floodplains and floodways on the site;
 - (i) All existing rights-of-way within and surrounding the project site, including any designated trails or bike paths; and,
 - (j) Any other factors that may impact the design of the site.
- (2) *Tree preservation plan.* The applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on-site, and the measures to be implemented for their protection. These measures shall include, but need not be limited to, fencing, limits of root pruning, as well as restrictions on traffic and material storage. The plan shall also clearly depict the limits of soil disturbance to include all areas to be graded both on and off-site, as well as the proposed location of utilities. The applicant should consult the *City of Fayetteville Tree Preservation, Protection and Landscape Manual* for details, examples and specific checklists.
- (3) *Abbreviated tree preservation plan.* Applicants requesting approval of development projects that require building, grading, or parking lot permits, but that do not fall under the requirements for large scale developments or subdivisions, shall prepare and submit an abbreviated tree preservation plan. The information for this plan may be combined with the site plan, plat drawing, or grading plan. The applicant is expected to show the general location of all existing groups of trees, individual significant trees, and to clearly depict the limits of soil disturbance to include all areas to be graded, both on and off-site, as well as the proposed location of utilities. Protective measures such as fencing, limits of root pruning, restriction on traffic and materials storage shall be depicted on the plan. A preliminary site visit with the urban forester is highly recommended before applying for any of the above-mentioned permits. The applicant should consult the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual* for details, examples and specific checklists. Applicants submitting abbreviated tree preservation plans shall not be required to submit either a site analysis plan or analysis report, nor shall they be required to hire architects, engineers, or landscape architects to prepare the abbreviated tree preservation plan.
- (4) *Analysis report.* The applicant shall submit an analysis report detailing the design approaches used to minimize damage to or removal of existing canopy that were considered in arriving at the proposed design. Written justification shall be presented as to why individual trees or canopy must be removed. The report shall also detail proposed on-site mitigation options or off-site alternatives, as detailed below.
- (5) *Grading and utility plans.* All subsequent grading and utility plans shall depict the tree preservation areas on the site, to include the preserved trees and the physical limits of all protective measures required during construction.
- (6) *Submittal requirements.* The applicant shall submit two (2) copies of a site analysis plan and analysis report to the urban forester, concurrently with their tree preservation plan. Applicants submitting abbreviated tree preservation plans shall not be required to submit either a site analysis plan or analysis report.
- (7) *Conservation requirements.* The city shall encourage the use of conservation easements for the added protection of trees preserved or planted to meet percent minimum canopy requirements in those

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instances where such would be of mutual benefit to the applicant and the city.

density of 150, two inch (2") caliper trees per acre removed.

(l) *Request for on-site mitigation*

(1) *Timing of request for on-site mitigation.* Requests to remove trees below the percent minimum canopy requirement must be incorporated with the applicant's tree preservation plan.

(2) *Plan requirements.* The tree preservation plan must graphically represent the species and location for all trees to be planted on-site. It shall also include a chart clearly stating the following information:

(a) The number of trees requested for removal;

(b) The percentage below the percent minimum canopy requirement they represent; and,

(c) Tree removal due to the grading work done to create tie backs for roads in the Hillside/Hilltop Overlay District shall be mitigated by reforesting a minimum of 25% of the tie backs pursuant to the landscape manual.

(d) Planting trees in non-canopy areas in order to reach the minimum percent canopy requirements for the site is not allowed in the Hillside/Hilltop Overlay District.

(e) The species and number of trees to be planted based on the forestation requirements below.

(3) *Planting details and notes.* Planting details and notes shall be included on the tree preservation plan as set forth in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*.

(4) *Forestation requirements.* The number and species of trees required for forestation shall be based upon the quality of the canopy lost:

(a) *High priority canopy.* When removing high priority canopy below the percent minimum canopy required, the canopy square footage removed shall be forested at a base density of 200, two inch (2") caliper trees per acre removed.

(b) *Mid-level priority canopy.* When removing mid-level priority canopy required, the canopy square footage removed shall be forested at a base

(c) *Low priority canopy.* When removing low priority canopy below the percent minimum required, the canopy square footage removed shall be forested at a base density of 100, two inch (2") caliper trees per acre removed.

(5) *Base Density.* Compensating for the environmental damage caused by removing tree canopy shall be accomplished by forestation on a per acre basis. The base density formula used above is based on two inch caliper trees. However, the urban forester may approve the use of trees with less than two inch (2") caliper for the planting of smaller tree species required by spatial constraints on the site. In such cases, the number of trees to be planted may be adjusted in accordance with the species density table to be found in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*, along with examples for using the base density formula.

(6) *Preferred species.* All trees to be planted shall be species native to the region, when available, and selected from the list of preferred tree species set forth in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*. Species selection shall be based upon the amount of space available for proper growth on the site, and must be approved by the urban forester.

(7) *Placement of trees.* The applicant is expected to plant trees in locations on the site where the environmental benefits of canopy cover are most likely to offset the impact of development. Trees shall not be placed within utility easements, or in other locations where their future protection cannot be assured.

(8) *On-site mitigation incentive.* If all the required trees can be located on-site, the Urban forester may approve up to a twenty percent (20%) reduction in the number of trees to be planted. Any incentive reductions allowed shall be based upon the following factors:

(a) The species of the mitigation trees; and,

(b) The space needed for the healthy growth of trees.

(9) *Residential On-Site Mitigation.* Applicants requesting On-Site Mitigation for Residential Subdivisions shall comply with all the

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provisions of §167.04 I. 1-7, as well as the following:

- (a) The Applicant's Mitigation Plan shall meet or exceed the required number of Mitigation Trees based on the Forestation Requirements as set forth at §167.04 I. 4.
 - (b) All Plans requesting Residential On-Site Mitigation shall include a binding three (3) year maintenance and monitoring plan, which shall hold the Applicant responsible for the health of all planted trees.
 - (i) Approval of a Plan requesting Residential On-Site Mitigation shall be contingent upon the Applicant depositing with the City an irrevocable Letter of Credit in an amount equal to the estimated cost of materials and labor for all trees at the time of planting. The irrevocable Letter of Credit must cover the entire three (3) year maintenance and monitoring period. Applicant shall submit cost estimates to the Urban forester for approval.
 - (ii) Upon completion of the three year landscape establishment period, the Urban forester shall inspect the site and determine whether ninety percent (90%) of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City shall release the Letter of Credit.
 - (iii) In the absence of such a finding, the Applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban forester. If the Applicant does not take remedial steps to bring the property into compliance, the City shall use the necessary moneys from the Landscape Establishment Guarantee to do so.
 - (iv) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
 - (c) The Applicant shall establish a bona fide Property Owners Association with a Bill of Assurance and Protective Covenants sufficient to ensure the continued health and vitality of the mitigation trees within the subdivision. The Bill of Assurance and Protective Covenants shall be filed of record with the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, and file-marked copies thereof shall be provided to the Urban forester prior to Final Plat approval.
 - (d) Developers requesting mitigation trees be planted along the street right of way of a Subdivision shall submit a street tree planting plan that complies with the standards outlined in the City of Fayetteville Tree Preservation, Protection, and Landscape Manual in order to ensure that new trees planted are of the highest quality, require low maintenance, and do not interfere with public safety. The species of trees to be planted shall be selected from the Approved Street Tree Species List, or be otherwise specifically approved by the Urban forester.
 - (i) The Applicant's Mitigation Plan for planting street trees shall describe in detail the method for tracking the development of the individual lots, which shall best ensure that required number and species of Mitigation Trees are planted.
 - (ii) The applicant shall submit an annual schedule of the initial structural pruning for all Mitigation Trees planted along street right of ways with the name and contact information of the International Society of Arboriculture (ISA) Certified Arborist or pruning service performing the work.
- (J) *Request for off-site alternatives.*
- (1) *Timing of request for off-site alternatives.* Requests for off-site alternatives must be incorporated in, and submitted concurrently with the applicant's tree preservation plan.
 - (2) *Off-site preservation.* The applicant may seek approval of the urban forester to preserve an equal or greater amount of canopy cover at a site within the city limits or, with the express approval of the City Council by its resolution, within one-quarter mile of the Fayetteville city limits.

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(3) *Off-site forestation.*

(a) If off-site preservation cannot be achieved, the applicant may seek approval from the urban forester to plant the required number of trees on another site owned by the applicant and located within the city limits or, with the express approval of the City Council by its resolution, within one-quarter mile of the Fayetteville city limits. A tree conservation easement must be conveyed by the applicant to the city to protect any off-site preservation or forestation.

(b) An applicant may plant and maintain mitigation trees needed for the applicant's development as to fulfill the obligation set forth in the Tree Preservation and Protection Chapter in a nearby city park or public right of way if expressly approved by City Council Resolution. The City Council shall seek advice from the Urban Forester, Parks and Recreation Department staff and citizens about the advisability of forestation of the nearby city park and may apply express conditions including requiring irrigation to be installed and regular maintenance to be performed by the applicant.

(4) *Tree escrow account.* Tree preservation on-site is always the preferred option, with on-site mitigation, off-site preservation and off-site forestation to be considered in descending order only if the more preferred option cannot be fully achieved. If none of these options can completely fulfill a developer's obligation under this Tree Preservation and Protection Chapter, the developer shall pay into the City Tree Escrow Account \$250.00 for each tree required to meet the Base Density requirements which fairly represents the costs of material and labor to plant a tree. The developer shall also pay into the Tree Escrow Fund \$425.00 as three years of maintenance costs to ensure each tree survives for that period of time. Tree planting and maintenance costs should be reviewed at least every four years to ensure it remains the fair market costs for tree planting and maintenance for three years.

(a) Residential Subdivisions which cannot achieve the Base Density tree requirements through preservation or mitigation shall contribute to the Tree Escrow Account. The City shall use the

money paid into the Tree Escrow Account to plant trees within the subdivision along rights-of-ways, detention ponds, common areas or other areas where trees can be protected and have a high probability of survival to a mature tree. This shall be accomplished once the subdivision is built out or as approved by the urban forester.

(b) Money contributed in lieu of On-Site Mitigation or Off-Site Forestation shall be paid prior to issuance of a Building Permit on all Commercial, Industrial, or Multi-Family Residential buildings and prior to Final Plat acceptance for all Residential and Non-Residential Subdivisions.

(c) Money contributed under this section:

- (i) May be used for canopy mitigation, including planting site identification, tree acquisition, planting, and maintenance, utilizing either City Staff or contract labor;
- (ii) Shall not revert to the general fund for ongoing operations.

(d) If it is not possible to plant trees within the subdivision, planting locations will be sought in appropriate sites within a one (1) mile radius of where the original project is located, but if this cannot be achieved, the moneys shall be used to plant the trees in the park quadrant in which the development took place, or pursuant to J (2) and (3). Data extracted from the Urban Forest Analysis should be consulted when identifying appropriate locations to plant escrow funded trees.

(e) The City of Fayetteville shall refund the portion of the money contributed under this section, including the accrued interest that has not been expended seven (7) years from the date of the contribution. Interest shall be based on a four percent (4%) annual rate.

(f) Refunds shall be paid to the Applicant who made the original contribution.

(g) Notice of the right to a refund, including the amount of the refund and the procedure for applying for and receiving the refund, shall be sent or served in writing to the Applicant no later than thirty (30) days after the date which the

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refund becomes due. The sending by regular mail of the notices to the Applicant shall be sufficient to satisfy the requirement of notice.

- (h) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
- (i) At the time of the contribution to the Tree Escrow Account, the Urban forester shall provide the Applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this Ordinance.

~~(5) Maintenance agreement and landscape establishment guarantee. All plans requesting on-site mitigation or off-site forestation shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.~~

~~(a) Approval of a plan requesting on-site mitigation or off-site forestation shall be contingent upon the applicant depositing with the city either currency, bond irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor of trees at the time of planting. The bond, irrevocable letter of credit, or other surety must cover the entire three year maintenance and monitoring period. The applicant shall submit cost estimates to the urban forester.~~

~~(b) Upon completion of the three year landscape establishment period, the urban forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the city shall release the currency, bond, or letter of credit.~~

~~(c) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the urban forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary monies from the landscape establishment guarantee to do so.~~

~~(d) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.~~

(K) *Tree preservation plan review form.* The urban forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.

(1) The form shall clearly indicate whether the urban forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.

(2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.

(3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.

(4) The urban forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.

(L) *Continuing preservation and protection under approved tree preservation plans.*

(1) In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of an approved tree preservation plan, tree preservation areas shall be clearly depicted on the easement plats for large scale developments and the final plats for nonresidential subdivisions. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the urban forester. Lots in residential subdivisions are expressly exempt from these requirements. If it is impractical to include the actual depiction of the canopy to be preserved on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

Commented [LD1]: This is under the heading (J) *Request for off-site alternatives*, but it is a requirement that clearly applies to both on-site AND off-site forestation. I think this would make more sense and flow more accurately if it were in its own sub-section. See new 167.10.

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(2) The geographic extent and location of tree preservation areas, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the city clerk to place it on the agenda of the next regularly scheduled City Council meeting.

(3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation area shall seek prior approval from the urban forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the urban forester determines that natural replacements of sufficient health and vigor are already present in the tree preservation area.

(Code 1991, §162.10; Ord. No. 2699, §10, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §6, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01; Ord. No. 4539 02-03-04; Ord. 4855, 4-18-06; Ord. 4930, 10-03-06; Ord. 5308, 3-16-10; Ord. 5312, 4-20-10; Ord. 5427; 8-2-11; Ord. 5513, 7-17-12; Ord. 5773, 5-19-15)

167.05 Tree Protection Measures And Construction

- (A) *Site inspection.* A preliminary site inspection followed by periodic inspections will be conducted by the urban forester to ensure compliance with the tree preservation plan.
- (B) *Tree protection.* Tree preservation areas shall be protected from construction activity to prevent impingement by or the storage of construction vehicles, materials, debris, spoils or equipment in tree preservation areas. No filling, excavating or other land disturbance shall take place in tree preservation areas. Before commencing any construction activity, the applicant shall construct tree protection barriers on the site along the tree dripline or 10 feet from the trunk, whichever is greater. The applicant shall also post signs at each tree preservation area in accordance with the standards, specifications and guidelines provided in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*. The urban forester may require other protective measures based upon the individual characteristics of the site and the proposed construction methods. Tree protection measures shall also protect any off-site trees the roots of which extend onto the site of the proposed

construction. Any applicant damaging or destroying an off-site tree shall be required to mitigate such damage or destruction as prescribed by the urban forester. If the required barriers surrounding the tree preservation areas are not adequately maintained during construction, the urban forester shall prescribe remedial measures, and may issue a stop work order in accordance with § 153.07(C). All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting final plat approval or issuing a certificate of occupancy.

(Code 1991, §162.11; Ord. No. 3699, §11, 4-20-93; Ord. No. 3925, §8, 10-3-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §7, 4-16-96; Ord. No. 4008, §1, 12-17-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

167.06 Tree Planting, Maintenance And Removal On Street Rights-Of-Way And Other Public Grounds

- (A) *Follow the Tree Preservation, Protection, and Landscape Manual.* All tree planting, maintenance or removal on public grounds shall follow the standards, specifications and guidelines provided in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*.
- (B) *Tree planting.* Trees may be planted within street rights-of-way or on other public grounds only after notification to the urban forester; and provided the selection and location of said trees are in accordance with the requirements.
- (C) *Tree removal.* Trees shall not be removed from a street right-of-way or other public grounds unless approval is received from the urban forester, with the exception that city employees may remove trees when necessary to accomplish emergency repairs to sewer or water systems, or in order to alleviate flooding.
- (D) *Damage to trees.* It shall be a violation of this chapter to damage, destroy or mutilate any tree in a public right-of-way or on other public grounds, or attach or place any rope or wire (other than one to support a young or broken tree or limb), sign, poster, handbill or any other thing to any such tree.
- (E) *Top or cutback to stubs.* It shall be unlawful for any person to top or cutback to stubs the crown of any tree in street rights-of-way or on other public grounds.
- (F) *Reserved rights.* The city reserves the right to plant, preserve, prune, maintain or remove any tree within the street rights-of-way, alleys, squares, and all public grounds when such

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interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign, or as may be necessary to preserve or enhance the symmetry and beauty of such public grounds.

- (G) *Line of sight.* Trees shall not be planted to conceal a fire hydrant from the street or impede the line of sight on any street.
- (H) *Storm damage.* Trees severely damaged by storms, or other accidental causes, where required pruning practices are impractical are exempt from this chapter..
- (I) *City employees.* Before cutting, pruning, removing or trimming any tree, city employees performing tree work on public grounds shall attend an educational workshop on basic tree pruning. A certificate will be issued when an individual has successfully completed the workshop.
- (J) *Public utilities.* Nothing in this section shall be construed to prohibit public utilities from pruning or removing trees that encroach upon electric, telephone, or cable television transmission lines, or gas, sewer or water pipes.

(Code No. 1991, §162.07; Ord. No. 3699, §6, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §5, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01).

167.07 Commercial Tree Pruner/Service; Certificate And Insurance Required

- (A) *Certificate required.* Before cutting, pruning, removing, or trimming any tree within the City of Fayetteville, the owner and supervisory personnel of each business performing commercial tree work shall obtain a city issued commercial tree pruner/service certificate.
- (B) *Liability insurance.* Each business performing commercial tree work, to include tree surgery, within the City of Fayetteville, shall be required to carry liability insurance in the following minimum amounts:

- (1) General aggregate: \$100,000.00
- (2) Personal & advertising: \$100,000.00
- (3) Each occurrence: \$100,000.00

Proof of coverage shall include the name of the insurance company issuing the policy, the name of the insured, the policy number, effective and expiration dates, and the signature of an authorized representative of the insurance company.

- (C) *Workshop.* Owners and supervisory personnel shall attend an educational workshop on basic tree science and the proper techniques of tree pruning; or shall demonstrate sufficient knowledge of basic tree science and the proper techniques of tree pruning by scoring 75% or higher on a test provided by the International Society of Arboriculture (I.S.A.).
- (D) *Certificate issuance.* A certificate shall be issued when an individual has successfully completed the workshop or scored adequately on the test.
- (E) *Job site.* It shall be the responsibility of the business owner to ensure that a copy of the certificate is maintained at each job site.
- (F) *Supervision.* All persons engaged in the business of trimming trees shall be under the supervision of a certified tree pruner/service.
- (G) *Worker's compensation.* Those individuals performing commercial tree work on public grounds shall comply with all worker's compensation requirements as set forth under Arkansas law and shall hold a city issued commercial tree pruner/service certificate.
- (H) *Licensure.* Those individuals performing tree surgery shall comply with licensure requirements as set forth under Arkansas law.

(Code 1991, §162.13; Ord. No. 3699, §14, 4-20-93; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

167.08 Hazardous Trees

- (A) *Pruning.* Every owner of any tree overhanging a street or sidewalk within the city is responsible for pruning the branches so that such branches shall not obstruct vehicles or pedestrians.
- (B) *Order or removal.* The mayor, or his/her duly authorized representative, is hereby authorized to order the owner of any real property within the city to cause the removal of any dead or diseased trees on their property, and further, to order compliance, when such trees constitute a hazard of life and property, or harbor insects which constitute a potential threat to other trees. Whenever any such condition is found to exist, the mayor, or his/her duly authorized representative, shall send written notice via first class mail to the property owner ordering the performance of such acts within 20 days. If the property owner's identity or whereabouts are unknown, a copy of the written notice shall be posted upon the premises.
- (C) *Noncompliance.* It shall be unlawful for any person to fail or refuse to comply with any order and notice given pursuant to this section.

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(D) *Removal by city.* If the conditions described in a notice given, as set forth above, are not removed or corrected within 20 days after such notice given, the mayor, or his/her duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property and the city shall have a lien against such property for the costs. Enforcement of the lien shall be set forth in §95.03 of the *Fayetteville Code of Ordinances*. Such action shall not be taken if the owner has evidenced a willingness to comply by hiring a qualified tree service before the expiration of the 20 day period.

(Code 1991, §162.06; Ord. No. 3699, §6, 4-20-93; Ord. No. 3963, §4, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

167.09 Local Disaster Emergency

If it becomes necessary for the mayor to declare a local disaster emergency pursuant to A.C.A. §12-75-108(b)(2), the provisions of this chapter may be suspended for up to 30 days, if strict compliance with its provisions would prevent, hinder, or delay actions necessary to cope with the disaster emergency.

(Ord. No. 4316, 6-5-01; Ord. No. 4340; 10-2-01)

167.10 Tree Maintenance Agreements

(A) *Maintenance agreement and landscape establishment guarantee.* All plans requiring street trees per 177.05 shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.

(1) Approval of a plan requesting on-site mitigation or off-site forestation shall be contingent upon the applicant depositing with the city either currency, bond irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor of trees at the time of planting. The bond, irrevocable letter of credit, or other surety must cover the entire three year maintenance and monitoring period. The applicant shall submit cost estimates to the urban forester.

(2) Upon completion of the three year landscape establishment period, the urban forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the city shall release the currency, bond, or letter of credit.

(3) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the urban forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary monies from the landscape establishment guarantee to do so.

(4) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.

(5) However, in lieu of cash surety, letter of credit, or bond, the monitoring and maintenance requirement may also be met through proof of a three year tree maintenance contract with a landscape contractor approved by the Urban Forester. The contract shall name the City of Fayetteville as a third party beneficiary. This fully executed contract shall contain:

(a) itemized proof of payment or charge for 3 years of watering and maintenance for each required tree.

(b) a clause that requires that if the approved contract is breached, the developer shall either immediately supply an acceptable replacement maintenance contract or shall deposit into the City's tree escrow account the normal original amount set forth in section 167.04(J)(4).

(c) after inspection by the Urban Forester at the end of the three year period, if the Urban Forester determines that less than 90% of the trees are found healthy and with a reasonable chance of surviving to maturity, the trees shall be replaced by the developer within 60 days of notice from the Urban Forester. If the developer fails to comply, the City would recover losses as outlined in the contract."

167.1011-167.99 Reserved

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CHAPTER 177: LANDSCAPE REGULATIONS**

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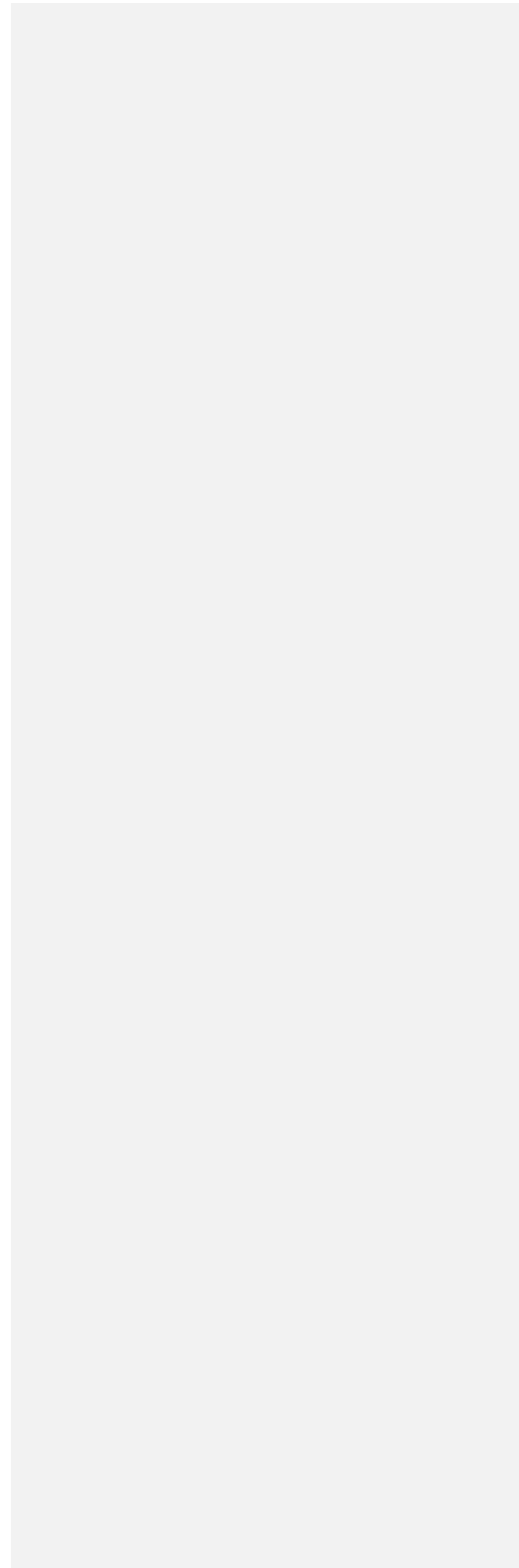
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CHAPTER 177: LANDSCAPE REGULATIONS

177.01 Purpose

- (A) It is the purpose of this chapter to preserve and protect the health, safety, and general welfare, preserve and enhance the natural beauty of Fayetteville, and create an attractive, environmentally sound and healthy urban landscape for the residents of the City of Fayetteville to enjoy by providing for regulations of the design, planting, establishment and maintenance of spaces impacted by developmental practices.
- (B) The standards found within this chapter accomplish these purposes with existing and new vegetation by:
- (1) Promoting the beautification of the City of Fayetteville and enhancing its aesthetic quality;
 - (2) Promoting reasonable conservation and replenishment of valued tree canopy and vegetation;
 - (3) Aiding in restoring ecological balance by contributing to air purification, oxygen regeneration, and ground water recharge;
 - (4) Providing for vegetation to reduce storm water runoff and the potential damage it may create;
 - (5) Achieving a meaningful urban landscape while permitting economically feasible urban development to occur.
 - (6) Creating a healthy environment for Fayetteville residents, businesses, and industries;
 - (7) Moderating the harmful effects of sun, wind, and temperature changes;
 - (8) Buffering noise, air and visual pollution;
 - (9) Screening incompatible land uses and enhancing the appearance of parking lots in all zoning districts;
 - (10) Promoting energy conservation; and
 - (11) Protecting and enhancing property values.
- (C) *Principles.* This chapter shall be enforced according to the following principles:
- (1) Sufficient landscaping shall provide beautification, soil stability and suitable drainage.
 - (2) Trees, shrubs, groundcover and grass shall be the primary source of landscaping and shall be retained and/or placed in such a manner as to reduce water runoff and provide for safe sight distances at intersections and points of access.
 - (3) The current property owner shall properly maintain all landscaping and shall replace any landscaping that dies or is damaged. Landscaping that dies or is damaged shall be removed and replaced by the current owner of the property. The owner shall have sixty (60) days from the receipt of written notice issued by the City of Fayetteville to remove and replace any required landscaping that dies or is damaged.
 - (4) Native vegetation is preferred. Vegetation requiring minimum watering is also preferred.
 - (5) Preservation is primary; therefore landscaping shall make a concerted attempt to incorporate existing on-site trees and shrubbery.
 - (6) Providing outdoor spaces and places for people to gather is strongly encouraged.
 - (7) The City of Fayetteville's Landscape Manual shall be used in support of this chapter to explain specific objectives and principles and to provide a resource for guidance in implementing all landscape plans.

(Ord. 4917, 9-05-06)

177.02 City Of Fayetteville Tree Preservation, Protection And Landscape Manual

The Urban Forester, in cooperation with other members of city staff, shall promulgate and periodically revise forms, procedures and regulations to implement this chapter and publish this information in the *City of Fayetteville Tree Preservation, Protection, and Landscape Manual*.

- (A) Copies of the *Tree Preservation, Protection, and Landscape Manual* are to be made readily available to the public and shall include, but need not be limited to:

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- (1) Specific criteria for gaining city approval of landscape plans;
 - (2) The format and content of reports and plans the applicant must submit to the city pursuant to this chapter;
 - (3) A glossary of important terms used in this chapter;
 - (4) Size and species requirements for trees planted for parking lots, screening or to meet other necessary criteria; and
 - (5) Maintenance of trees (including but not limited to pruning, irrigation, and protection from disease).
- (B) The Tree and Landscape Advisory Committee shall review and may recommend revisions to the *Tree Preservation, Protection, and Landscape Manual* at least every three years to reflect changes in arboricultural and horticultural practices, lists of preferred tree species, city policies, or the content of this chapter.
- (Ord. No. 4340, 10-2-01; Ord. 4917, 9-05-06)
- ### 177.03 Landscape Plan Requirements
- (A) *Applicability.* The provisions of this section shall apply to proposed subdivisions, large scale developments and other development as indicated below required by the Unified Development Code to go through the city's permitting process.
- (1) *Subdivisions and large scale developments.* Applicants seeking approval of proposed subdivisions and large scale developments shall submit a detailed landscape plan.
 - (2) *Building permits.* Landscape plan requirements shall apply to all permit applications for nonresidential construction, and the construction of multi-family residential buildings composed of three or more dwelling units.
 - (3) *Parking lots.* Landscape plan requirements shall apply to all permit applications for the construction of parking lots with five (5) or more spaces.
- (B) *General.* The Landscape Plan required for subdivisions and large scale developments shall be prepared and sealed by a registered Landscape Architect. The Landscape Plan required for building permits and parking lots may be prepared by a landscape designer.
- (C) *Submittal of plans.* The following information shall be included with a landscape plan submittal:
- (1) The date, scale, north arrow, project name, name of Landscape Architect/designer and name of the owner/developer.
 - (2) The location of property lines and the dimensions of the tract.
 - (3) *Site features:*
 - (a) Existing vegetation (See Tree Preservation & Protection Ordinance for specific criteria.)
 - (b) The approximate center line of all existing water courses.
 - (c) The location and size of existing and proposed drive aisles, streets and alleys, parking areas and other improvements to the site.
 - (d) Existing and proposed utility easements and overhead utility lines on or adjacent to the lot.
 - (e) Existing and proposed sidewalks on or adjacent to the lot.
 - (f) Location of all existing and proposed points of access.
 - (g) Existing and proposed structures on the property.
 - (h) Existing topography and proposed grading.
 - (4) *Proposed landscaping.* The landscape plan shall indicate the number and species of all plants, the size of each species at the time of planting, the spacing requirements for each plant, and the type of edging and mulch to be used for the planting areas.
 - (5) The Planting Plan may be incorporated with the Site or Grading/Tree Preservation Plan.
 - (6) *Planting details and/or specifications.* Planting and installation details are to insure compliance with all required landscaping standards.
 - (a) All landscaping shall be planted within areas that minimize maintenance and jeopardy of plant damage: this includes such areas as tree lawns, tree islands, urban tree wells, foundation plantings and free-standing beds.

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- (b) Planting beds shall have amended soil to insure the health of the plant materials.
 - (c) All new plantings shall be mulched in accordance with the guidelines established for landscape installation in the Landscape Manual.
 - (d) All sod shall be removed within the planting bed and mulch shall cover the bare soil to ease maintenance.
 - (e) Sod or organic mulch will be allowed in tree lawns and tree islands if no other plant material is included within these areas.
 - (f) A planting bed shall be contained by edging material other than vegetation.
 - (g) Planting details/specifications shall be included on the landscape plan, in accordance with the Landscape Manual.
- (7) *Size and type of plant material.*
- (a) All plant material shall meet the requirements established by the American Standard for Nursery Stock.
 - (b) Deciduous trees shall have a minimum of two (2) inch caliper and evergreen trees shall have a minimum height of eight (8) feet at the time of installation, unless otherwise approved by the Urban Forester.
 - (c) Shrub size at the time of planting shall be a minimum of three (3) gallon containers with an expected height of three (3) feet or more within two (2) years of installation.
 - (d) Plant species installed in vehicular use areas are to be approved by the Urban Forester.
 - (e) Acceptable species of trees are listed within the City of Fayetteville's Landscape Manual.
 - (f) Protective fencing shall be provided for preserved trees and other vegetation during construction, as required by §167 Tree Preservation and Protection.
 - (g) A description of the type of irrigation system used for each required landscape area shall be included.
- (i) An automated irrigation system is encouraged to ensure adequate moisture to plant material.
 - (ii) In landscaped areas without an automated irrigation system, hose bibs (water spigots) shall be installed at a ratio of one for every one hundred (100) feet.
- (D) *Plan Review.* Upon receipt of the landscape plans, the Urban Forester shall make a recommendation to the Planning Commission or an administrative determination, as permitted by the Unified Development Code, with the following results:
- (1) Approve/Recommend the landscape plan as complying with the requirements of this chapter; or
 - (2) Approve/Recommend the landscape plan with conditions which bring it into compliance with the requirements of this chapter; or
 - (3) Reject the landscape plan as failing to comply with the requirements of this chapter.
- (Ord. 4917, 9-05-06)

177.04 Site Development And Parking Lot Landscape Standards

- (A) *Applicability.* A detailed landscape plan is required to be submitted for all development when either new development or expansion of 25% of the existing building square footage occurs and for all new or expanded parking lots containing five (5) or more spaces. Landscape plans shall be submitted with the application for building permit or parking lot permit. Submittals shall conform to the standards established within this chapter.
- (B) *General requirements.*
- (1) *Separation of landscaped areas and vehicles.* All landscaped areas shall be protected from potential damage by vehicles by placing concrete curbs or wheel barriers adjacent to the landscaped area.
 - (2) *Vehicle overhangs.* A portion of a standard parking space may be landscaped instead of paved to meet part of the landscaping requirement. The landscaped area may be up to two feet of the front of the space as measured from a line parallel to the direction of the bumper of the vehicle using the space. Landscaping may only be groundcover plants in the overhang area.

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(3) *Maintenance.* The current owner of the property shall be responsible for the maintenance of all required landscaping.

(a) *Irrigation system.* Some method of irrigation shall be required in landscaped areas. An automated irrigation system is encouraged to ensure adequate moisture to plant material. In landscaped areas without an automated irrigation system the installation of hose bibs (water spigots), installed one for every 100 foot radius, will be required.

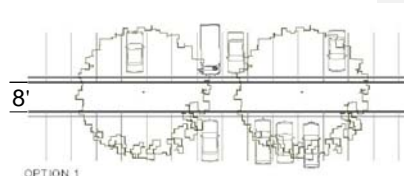
(b) *Planting beds.* All landscaping shall be planted within areas designated as planting beds. Planting beds shall have amended soil to insure the health of the plant materials. All sod shall be removed within the planting bed and mulch shall cover the bare soil to ease maintenance. Sod will be allowed in tree lawns and tree islands if no other plant material is included within these areas.

(c) *Replacement landscaping.* Landscaping that dies or is damaged shall be removed and replaced by the current owner of the property. The owner shall have 60 days from the receipt of written notice issued by the city to remove and replace any required landscaping that dies or is damaged.

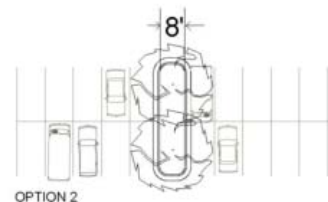
(C) *Interior landscaping requirements.*

(1) *Amount of landscaping.* Parking lots containing ten (10) or more spaces shall be landscaped with one of the following options:

(a) *Option 1. Narrow tree lawn.* A continuous landscape strip between rows of parking. The minimum width of a tree lawn shall be eight feet (8'); the minimum area shall be 300 square feet. One tree every 12 parking spaces or one tree every thirty linear feet, whichever provides more canopy, shall be planted with this option. Trees may be grouped or spaced within the lawn area.



(b) *Option 2. Tree island.* The minimum width of a tree island shall be eight feet (8'); the minimum area shall be 150 square feet. One tree shall be planted for every 12 parking spaces with this option, with a maximum run of 12 parking spaces permitted without a tree island.



(2) *Placement of trees.* Interior trees shall be placed on either side of points of access (entrance drives, exit drives) within tree islands, as indicated in the Landscape Manual.

(3) *Tree planting.* All trees planted to meet these requirements shall be deciduous shade trees. Species selection shall be chosen from the approved list of trees found in the appendices of the City of Fayetteville Landscape Manual. Alternate tree species selections may be approved by the Urban Forester.

(4) *Calculation of area.* Required perimeter landscaping may not be substituted for interior landscaping. However, it is recognized that interior landscaping may join perimeter landscaping. In such cases, landscaping which extends four (4) feet or more into the parking area may be included in the calculation of interior landscaped area.

(5) *Exceptions.* All parking lots used solely for the purpose of providing areas for the display and storage of motor vehicles for sale, lease, and rental shall be exempt from the interior landscaping requirements.

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- (D) *Perimeter landscaping requirement.* Proposed development shall be landscaped meeting the following requirements:
- (1) *Side and rear property lines.* All parking lots shall have five feet (5') of landscaped area between the property line and parking lot. The two foot (2') vehicle overhang option may be included to meet this requirement. Depending on the use and location, additional landscaped area and screening may be required along property lines.
 - (2) *Property lines adjoining street right-of-way.*
 - (a) *Landscape area required.* A fifteen (15) foot wide landscaped area shall be provided along the front property line exclusive of and adjacent to the Master Street Plan right-of-way. Points of access (entrance drives, exit drives) and sidewalks are allowed to cross the fifteen (15) foot landscaped area provided the integrity of the landscaped area is maintained.
 - (b) *Urban Zoning Districts.* Zoning districts that prescribe urban building form (e.g., a build-to zone) permitting front setbacks of less than 15 feet may be permitted to reduce the greenspace to 10 feet parallel to the Master Street Plan right-of-way line. Any development providing less than 10 feet of greenspace shall utilize the street tree planting plan for urban streetscapes.
 - (c) *Residential zones.* Except for permitted entrance drives, every development shall be landscaped for an equal and uniform width of 15 feet parallel to the front property line(s) street right-of-way. Single family residential uses shall be exempt from this requirement.
 - (d) *Nonresidential zones.* Except for permitted entrance drives, every development shall be landscaped for an equal and uniform width of 15 feet parallel to the front property line(s) street right-of-way. Properties developed with an urban streetscape, utilizing urban tree wells as defined herein, shall be exempt from this requirement.
 - (e) *Shade.* All tree planting locations shall attempt to achieve shade for parking lots, cars, benches, pedestrian walkways, etc., by utilizing aspect and locating trees along the south and west boundary of these areas.
 - (f) *Screening.* Parking lots containing five (5) or more spaces shall be screened from the public right-of-way and adjacent properties, where said parking areas are adjacent to residential zones, with shrubs and/or graded berms. If graded berms are used, shrubs are also required.
 - (g) *Perimeter planting location.* All plantings noted herein shall be installed within the required landscape area. Subject to approval by the Urban Forester, required trees and shrubs may be planted within the right-of-way or outside the required landscape area parallel to the street right-of-way only in extenuating circumstances.
- (3) *Tree Planting.*
- (a) Large species trees shall be planted in the required fifteen (15) foot landscaped area containing one (1) tree per thirty (30) linear feet along the front property line. Trees along the perimeter may be grouped to allow flexibility in design. The maximum allowed grouping may be up to twenty-five (25%) percent of the required number of street trees.
 - (b) Species selection shall be chosen from the approved list of trees for landscaping found in the appendices of the City of Fayetteville Landscape Manual. Alternate tree species selections may be approved by the Urban Forester. No more than 25% of trees planted to meet perimeter landscaping requirements may be evergreen.
 - (c) Planted trees shall have a two (2) inch caliper (diameter) measured six (6) inches above ground level at the time of planting.
 - (d) At the request of the developer, the Urban Forester may exempt specific areas from required tree planting where the terrain, existing trees or other physical limitations make the planting of new trees impracticable. In cases of existing overhead power lines, small trees shall be planted that will not interfere with the existing power lines. Species selection shall be approved by the Urban Forester.
- (4) *Shrub Planting.*

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(a) The requirement for a continuous planting of shrubs is intended to lessen the effect of extensive paving. Parking lots that require screening shall have shrubs that are spaced so as to create a seamless row of hedging. A minimum 50% of shrubs shall be evergreen.

(b) Shrub size at the time of planting shall be a minimum of three (3) gallon containers with an expected height of three (3) feet or more within two (2) years of installation.

(5) *Ground Cover Planting.* All landscape areas shall be re-vegetated with appropriate perennial groundcover. Prior to certificate of occupancy, all bare soil shall be adequately covered in accordance with the Unified Development Code.

(Ord. 4917, 9-05-06; Ord. 5312, 4-20-10; Ord. 5337, 8-3-10)

177.05 Street Tree Planting Standards

(A) *Applicability.* All new developments that create or develop along a public or private street shall be required to establish street trees in accordance with the standards and procedures provided for in this section and the adopted policies of the Landscape Manual and Fayetteville's Tree Ordinance.

(1) All Street Tree Planting Plans shall follow the submittal criteria set forth in Ch. 177.03 Landscape Plan Requirements.

(2) *Street Tree Planting Requirements*

(a) Plans shall indicate the spacing of trees along all newly created public and private streets within the development site. At the request of the developer, the Urban Forester may exempt specific areas from required tree planting where the terrain or existing trees make the planting of new trees impracticable. Examples include, but are not limited to:

(i) Where the finish grade slope in the planting area between the top back of the street curb and the property line is in excess of thirty (30%) percent.

(ii) Where bedrock is encountered within thirty (30) inches of finish grade in the planting area between the top back of the curb and the property line.

(iii) Where existing healthy trees that are shown to be preserved within the right-of-way are in such close proximity they would prevent a new tree from establishing a full canopy when mature.

(b) Plans shall identify the species of trees to be planted, which must be selected from the Landscape Manual or otherwise approved by the Urban Forester. Street trees shall be large species canopy trees.

(c) Plans shall identify the size and quality of trees which must meet or exceed the standards adopted in the Landscape Manual.

(d) Indicate the location of all points of access (driveways, sidewalks and public & private utilities) within the proposed development. The developer shall ensure that driveways, sidewalks, utilities, etc. will not endanger the livelihood of the proposed trees, and shall plan accordingly.

(e) A Maintenance Agreement and Landscape Establishment Guarantee shall be established. All plans shall include a binding three (3) year maintenance and monitoring plan, which shall hold the developer responsible for the health of all planted trees.

(f) Approval of a Maintenance Agreement and Landscape Establishment Guarantee shall be contingent upon the Developer depositing with the City of Fayetteville ~~one of the following: currency, bond, irrevocable letter of credit or other surety. The amount shall be equal to that provided in § 167.04(J)(4) a surety or contract, as outlined in 177.10.~~

(g) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether ninety (90%) percent of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City of Fayetteville shall release the currency, bond or letter of credit.

(h) In the absence of such a finding, the developer shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the developer

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does not take remedial steps to bring the property into compliance, the City of Fayetteville shall use the necessary monies from the Landscape Establishment Guarantee to do so.

- (i) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail or lightning strikes, or through the independent actions of their parties, the developer shall be relieved of the responsibility of replanting the tree or trees so affected.
 - (j) Contain such other information as may be required to reflect how the plan addresses the remaining policies within the Landscape Manual.
- (3) Street tree plantings that are above and beyond the requirements as established herein may count as on-site Tree Mitigation, with approval of the Urban Forester.
- (4) *Timing of planting.* The Urban Forester shall recommend to the Planning Commission the option that will potentially result in accomplishing the most objectives of this chapter.
- (a) *Street Tree Planting with infrastructure (subdivisions only).* The developer may choose to provide a landscape plan that conforms to the regulations herein, with all landscaping along streets to be installed prior to final plat approval and acceptance of public improvements associated with the development. If planted prior to final plat approval, the developer shall provide proper measures to ensure the longevity of health of all planted trees during development of individual lots; or
 - (b) *Street Tree Planting with development (subdivisions only).* The developer may choose to provide a landscape plan that conforms to the regulations herein only to the extent that future development on lots created by the subdivision shall be responsible for individual landscape plans as each lot develops.
 - (c) *Street Tree Planting with concurrent development.* Where development approval is requested (large scale, building permit, parking lot permit, etc), the developer shall provide a detailed landscape plan that conforms to the regulation established by this chapter.
- (d) Street Tree Planting Plans shall be submitted with the plans submitted for development or subdivision approval by the Planning Commission, in accordance with the options listed herein.
 - (e) A written description of the method(s) and time frame the project will utilize to track development of each individual lot shall be submitted by the developer to ensure the required street trees are planted and their longevity of health assured.
- (B) *Street Tree Planting Plan Requirements for Proposed Residential and Non-Residential Subdivisions.*
- (1) *Residential Subdivisions.* Submittals for all proposed residential subdivisions shall include a street tree planting plan at the time of final plat submittal.
 - (a) A minimum of one (1) two-inch caliper, large species tree per lot shall be planted.
 - (b) Street trees shall be planted within or along the right-of-way; where possible, between the sidewalk and the curb. Location shall be approved by the Urban Forester. Refer to the Landscape Manual for spacing requirements.
 - (2) *Non-Residential Subdivisions.* Submittals for all proposed non-residential subdivisions shall include a street tree planting plan at the time of final plat submittal, or in accordance with the option approved for Timing of Planting as required by this chapter.
 - (a) A minimum of one (1) two-inch caliper, large species tree per 30 linear feet of frontage shall be planted.
 - (b) Street trees shall be planted within the required landscape area. Location shall be approved by the Urban Forester. Refer to the Landscape Manual for spacing requirements.
 - (3) *Optional Street Tree Planting Plan for Urban Streetscapes.*

The Street Tree Planting Plans of subsections (1) and (2) may be replaced by an urban streetscape including sidewalks at least eight feet wide from curb to building. At the time of developmental submittal, the proposed urban streetscape shall include a

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street tree planting plan in compliance with the following requirements:

- (a) A minimum of one (1) two-inch caliper, large species tree per 30 linear feet of street frontage or every 10 parking spaces, whichever provides the most trees, shall be planted with this option.
- (b) Location of trees shall be approved by the Urban Forester to ensure that adequate spacing, access and visibility are maintained. The spacing of trees may be varied with approval of the Urban Forester.
- (c) Trees shall be planted within urban tree wells. The minimum width of an urban tree well shall be three feet (3'); the minimum area shall be 15 square feet. This option is only permitted to allow trees planted within wide sidewalks, in a downtown/urban fashion. Size and shape of urban tree well shall be approved by the Urban Forester.
- (d) Tree wells shall be covered with either a tree grate or some form of permeable pavers, (block or stone), to be approved by the Urban Forester.
- (e) Structural soil or similar treatment shall be utilized with this option (see Landscape Manual for specifications)
- (f) Street tree planting plans utilizing this option shall follow the construction procedures and details as outlined in the Landscape Manual.
- (g) Development applications approved for the use of Urban Tree Wells shall not be required to provide additional landscaped area exclusive of the right-of-way.

(Ord. 4917, 9-05-06; Ord. 5003, 4-17-07; Ord. 5057, 9-04-07; Ord. 5513, 7-17-12)

177.06 Stormwater Facilities

(A) *Applicability.* All development required to install dry surface stormwater facilities (detention ponds) shall conform to the requirements herein. A landscape plan shall be submitted and approved prior to issuance of a permit or at the time of final plat (whichever is applicable). All required plantings shall be installed prior to issuance of a Certificate of Occupancy or filing of a final plat (whichever is applicable). Development that utilizes retention, underground or parking lot detention, or alternative stormwater

management measures as approved by the Urban Forester and City Engineer shall not be required to meet the requirements of this chapter.

(B) *General Requirements.* It is critical that selected plant materials are appropriate for soil, hydrologic and other existing site conditions.

- (1) All plants within required stormwater facility areas shall be appropriate species selected from the Landscape Manual or approved by the Urban Forester.
- (2) The design for plantings shall minimize the need for herbicides, fertilizers, pesticides or soil amendments at any time before, during and after construction and for a long-term basis.
- (3) Plantings should be designed to minimize the need for mowing, pruning and irrigation. Grass or wildflower seed shall be applied at the rates specified by the suppliers. If plant establishment cannot be achieved with seeding by the time of substantial completion of the stormwater facility portion of the project, the contractor shall plant the area with wildflower sod, plus, container plants or some other means to complete the specified plantings and protect against erosion as approved by the Urban Forester.
- (4) Plantings shall not impede the primary function of the stormwater facility, as identified in the Unified Development Code. Should plantings be proposed that call into question the ability of the stormwater facility to operate to the satisfaction of the City Engineer, the developer shall provide sufficient information (calculations, etc.) for review, at the time of submittal.

(C) *Detention Ponds.* These are stormwater facilities that do not have standing water for more than a few hours per storm event. Vegetation helps improve infiltration functions, protects from rain and wind erosion and enhances aesthetic conditions.

- (1) The Stormwater Facility area is defined to be equivalent to the area of the detention basin, including the bottom and the side slopes, plus a ten (10) foot buffer around the detention basin.
- (2) The developer shall install minimum plant material quantities per 3000 square feet of the stormwater facility area as follows:
 - (a) One (1) evergreen or deciduous tree:

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- (i) Evergreen trees: Minimum height of six (6) feet.
 - (ii) Deciduous trees: Minimum caliper of one and a half (1½) inch at six (6) inches above the base.
 - (b) Four (4) large shrubs/small trees, three (3) gallon containers or equivalent.
 - (c) Six (6) shrubs/large grass-like plants, one (1) gallon containers or equivalent.
 - (d) Ground cover plants, one (1) per twelve (12) inches on center with triangular spacing, unless seed or sod is specified and installed.
 - (e) At least fifty (50%) percent of the facility shall be planted with grasses or grass-like plants, or as otherwise required by the Unified Development Code.
 - (f) Wildflowers, native grasses and ground covers shall be designed to require mowing no more than twice annually.
- (3) Trees planted within stormwater facilities may be utilized to meet on-site Tree Mitigation requirements, subject to approval by the Urban Forester.

(Ord. 4917, 9-05-06)

177.07 Landscaping For Erosion Control

- (A) *Applicability.* Those developments requiring a grading permit shall conform to the following requirements.
- (B) *General Requirements.* Erosion control measures shall be installed as soon as practical and prior to the final approval. Prior to vegetation controls, all other appropriate erosion control strategies should be in place.
 - (1) The faces of cut and fill slopes which measure five (5) feet or greater in vertical height shall be treated and maintained to control against erosion for the protection of the public health, safety and welfare.
 - (2) Landscape materials on graded slopes shall be designed to be compatible with adjacent natural vegetation and shall be suitable for the climatic, soil and ecological characteristics of the area. Non-invasive, drought tolerant materials shall be selected as approved by the Landscape Administrator.
- (C) *Temporary Seeding.* Temporary Seeding is required where exposed soils are not to be fine graded for periods of twenty (20) days or more. Such areas include denuded areas, soil stockpiles, dikes, sides of sediment basins, temporary roadbanks and parking areas, storage areas, etc.
 - (1) Seeds shall be evenly applied.
 - (2) Mulching shall be used to reduce water runoff, windblow and increase moisture conditions of seedlings.
 - (3) Re-seeding is required in areas which fail to establish vegetation – after investigating and remediation of such failure.
- (D) *Permanent Seeding.* Permanent seeding is required where disturbed areas will be permanent and where long lived vegetative cover is needed to stabilize soils. Rough graded areas which will not be brought to final grade for one (1) year or more shall also required long lived vegetative cover.
 - (1) In order to establish a good stand of vegetation, seedbeds shall consist of appropriate soil texture, structure, moisture, nutrient content, depth and internal drainage.
 - (2) Seeds shall be evenly applied.
 - (3) Mulching shall be used to reduce water runoff, windblow and increase moisture conditions of seedlings.
 - (4) Re-seeding is required in areas which fail to establish vegetation – after investigating and remediation of such failure.
- (E) *Sodding.* Grass sod shall be installed where disturbed areas require immediate vegetative covers or where sod is preferred to other forms of grass establishment.
- (F) *Vegetative Streambank Stabilization.* Re-vegetation shall be required where banks in creeks, streams and rivers, subject to erosion from excess runoff, have been eroded from land disturbance due to the development.
 - (1) Revegetation shall be consistent with all other required erosion control measures.
 - (2) Landscape materials shall be designed to be compatible with adjacent natural vegetation and shall be suitable for the climatic, soil and ecological characteristics of the area.

(Ord. 4917, 9-05-06)

177.08 Timing Of Installation

Required landscaping shall be installed prior to the issuance of a final Certificate of Occupancy or filing of the Final Plat, whichever development procedure is most applicable. A 90-day temporary certificate of occupancy may be issued or a final plat may be filed once the owner deposits, with the city, U.S. currency or an irrevocable letter of credit in an amount equal to 150% of the estimated cost of the uninstalled plant material. The letter of credit must be from a bank or banking institution doing business within the State of Arkansas which is a member of the Federal Deposit Insurance Corporation.

177.10 Tree Maintenance Agreements

(A) *Maintenance agreement and landscape establishment guarantee.* All plans requiring street trees per 177.05 shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.

(1) Approval of a plan requiring street trees shall be contingent upon the applicant depositing with the city either currency, bond irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor of trees at the time of planting. The bond, irrevocable letter of credit, or other surety must cover the entire three year maintenance and monitoring period. The applicant shall submit cost estimates to the urban forester.

(2) Upon completion of the three year landscape establishment period, the urban forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the city shall release the currency, bond, or letter of credit.

(3) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the urban forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary monies from the landscape establishment guarantee to do so.

(4) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.

(5) However, in lieu of cash surety, letter of credit, or bond, the monitoring and maintenance requirement may also be met through proof of a three year tree maintenance contract with a landscape contractor approved by the Urban Forester. The contract shall name the City of Fayetteville as a third party beneficiary. This fully executed contract shall contain:

(a) itemized proof of payment or charge for 3 years of watering and maintenance for each required tree.

(b) a clause that requires that if the approved contract is breached, the developer shall either immediately supply an acceptable replacement maintenance contract or shall deposit into the City's tree escrow account the normal original amount set forth in section 167.04(J)(4).

(c) after inspection by the Urban Forester at the end of the three year period, if the Urban Forester determines that less than 90% of the trees are found healthy and with a reasonable chance of surviving to maturity, the trees shall be replaced by the developer within 60 days of notice from the Urban Forester. If the developer fails to comply, the City would recover losses as outlined in the contract."

177.0911-177.99 Reserved

Commented [LD1]: 177.09 has been reserved for the 177.09 Invasive Plant Species amendment, anticipated for introduction to Council at the November 3rd meeting by Sustainability & Resilience staff.

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CHAPTER 167: TREE PRESERVATION AND PROTECTION**

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refund becomes due. The sending by regular mail of the notices to the Applicant shall be sufficient to satisfy the requirement of notice.

- (h) The refund shall be made on a pro rata basis, and shall be paid in full no later than ninety (90) days after the date certain upon which the refund becomes due.
- (i) At the time of the contribution to the Tree Escrow Account, the Urban forester shall provide the Applicant with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any contribution to the Tree Escrow Account under this Ordinance.

~~(5) Maintenance agreement and landscape establishment guarantee. All plans requesting on-site mitigation or off-site forestation shall include a binding three-year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.~~

~~(a) Approval of a plan requesting on-site mitigation or off-site forestation shall be contingent upon the applicant depositing with the city either currency, bond irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor of trees at the time of planting. The bond, irrevocable letter of credit, or other surety must cover the entire three-year maintenance and monitoring period. The applicant shall submit cost estimates to the urban forester.~~

~~(b) Upon completion of the three-year landscape establishment period, the urban forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the city shall release the currency, bond, or letter of credit.~~

~~(c) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the urban forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary monies from the landscape establishment guarantee to do so.~~

~~(d) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.~~

- (K) *Tree preservation plan review form.* The urban forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.

(1) The form shall clearly indicate whether the urban forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.

(2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.

(3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.

(4) The urban forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.

- (L) *Continuing preservation and protection under approved tree preservation plans.*

(1) In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of an approved tree preservation plan, tree preservation areas shall be clearly depicted on the easement plats for large scale developments and the final plats for nonresidential subdivisions. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the urban forester. Lots in residential subdivisions are expressly exempt from these requirements. If it is impractical to include the actual depiction of the canopy to be preserved on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.

Commented [LD1]: This is under the heading **LD1: Review for off-site forestation**, but it is a requirement that clearly applies to both on-site AND off-site forestation. I think this would make more sense and flow more accurately if it were in its own sub-section. See new 167.10.

**TITLE XV UNIFIED DEVELOPMENT CODE
CHAPTER 177: LANDSCAPE REGULATIONS**

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177.08 Timing Of Installation

Required landscaping shall be installed prior to the issuance of a final Certificate of Occupancy or filing of the Final Plat, whichever development procedure is most applicable. A 90-day temporary certificate of occupancy may be issued or a final plat may be filed once the owner deposits, with the city, U.S. currency or an irrevocable letter of credit in an amount equal to 150% of the estimated cost of the uninstalled plant material. The letter of credit must be from a bank or banking institution doing business within the State of Arkansas which is a member of the Federal Deposit Insurance Corporation.

177.10 Tree Maintenance Agreements

(A) Maintenance agreement and landscape establishment guarantee. All plans requiring street trees per 177.05 shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.

- (1) Approval of a plan requiring street trees shall be contingent upon the applicant depositing with the city either currency, bond irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor of trees at the time of planting. The bond, irrevocable letter of credit, or other surety must cover the entire three year maintenance and monitoring period. The applicant shall submit cost estimates to the urban forester.
- (2) Upon completion of the three year landscape establishment period, the urban forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the city shall release the currency, bond, or letter of credit.
- (3) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the urban forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary monies from the landscape establishment guarantee to do so.
- (4) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.

(5) However, in lieu of cash surety, letter of credit, or bond, the monitoring and maintenance requirement may also be met through proof of a three year tree maintenance contract with a landscape contractor approved by the Urban Forester. The contract shall name the City of Fayetteville as a third party beneficiary. This fully executed contract shall contain:

- (a) Itemized proof of payment or charge for 3 years of watering and maintenance for each required tree.
- (b) a clause that requires that if the approved contract is breached, the developer shall either immediately supply an acceptable replacement maintenance contract or shall deposit into the City's tree escrow account the normal original amount set forth in section 167.04(J)(4).
- (c) after inspection by the Urban Forester at the end of the three year period, if the Urban Forester determines that less than 90% of the trees are found healthy and with a reasonable chance of surviving to maturity, the trees shall be replaced by the developer within 60 days of notice from the Urban Forester. If the developer fails to comply, the City would recover losses as outlined in the contract."

Commented [LD1]: 177.09 has been reserved for the 177.09 Invasive Plant Species amendment, anticipated for introduction to Council at the November 3rd meeting by Sustainability & Resilience staff.

177.0011-177.99 Reserved

Fayetteville Code of Ordinances

- (a) The requirement for a continuous planting of shrubs is intended to lessen the effect of extensive paving. Parking lots that require screening shall have shrubs that are spaced so as to create a seamless row of hedging. A minimum 50% of shrubs shall be evergreen.
 - (b) Shrub size at the time of planting shall be a minimum of three (3) gallon containers with an expected height of three (3) feet or more within two (2) years of installation.
 - (5) *Ground Cover Planting.* All landscape areas shall be re-vegetated with appropriate perennial groundcover. Prior to certificate of occupancy, all bare soil shall be adequately covered in accordance with the Unified Development Code.
- (Ord. 4917, 9-05-06; Ord. 5312, 4-20-10; Ord. 5337, 8-3-10)

177.05 Street Tree Planting Standards

- (A) *Applicability.* All new developments that create or develop along a public or private street shall be required to establish street trees in accordance with the standards and procedures provided for in this section and the adopted policies of the Landscape Manual and Fayetteville's Tree Ordinance.
 - (1) All Street Tree Planting Plans shall follow the submittal criteria set forth in Ch. 177.03 Landscape Plan Requirements.
 - (2) *Street Tree Planting Requirements*
 - (a) Plans shall indicate the spacing of trees along all newly created public and private streets within the development site. At the request of the developer, the Urban Forester may exempt specific areas from required tree planting where the terrain or existing trees make the planting of new trees impracticable. Examples include, but are not limited to:
 - (i) Where the finish grade slope in the planting area between the top back of the street curb and the property line is in excess of thirty (30%) percent.
 - (ii) Where bedrock is encountered within thirty (30) inches of finish grade in the planting area between the top back of the curb and the property line.
 - (iii) Where existing healthy trees that are shown to be preserved within the right-of-way are in such close proximity they would prevent a new tree from establishing a full canopy when mature.
 - (b) Plans shall identify the species of trees to be planted, which must be selected from the Landscape Manual or otherwise approved by the Urban Forester. Street trees shall be large species canopy trees.
 - (c) Plans shall identify the size and quality of trees which must meet or exceed the standards adopted in the Landscape Manual.
 - (d) Indicate the location of all points of access (driveways, sidewalks and public & private utilities) within the proposed development. The developer shall ensure that driveways, sidewalks, utilities, etc. will not endanger the livelihood of the proposed trees, and shall plan accordingly.
 - (e) A Maintenance Agreement and Landscape Establishment Guarantee shall be established. All plans shall include a binding three (3) year maintenance and monitoring plan, which shall hold the developer responsible for the health of all planted trees.
 - (f) Approval of a Maintenance Agreement and Landscape Establishment Guarantee shall be contingent upon the Developer depositing with the City of Fayetteville ~~one of the following: currency, bond, irrevocable letter of credit or other surety. The amount shall be equal to that provided in § 167.04(J)(4) a surety or contract, as outlined in 177.10.~~
 - (g) Upon completion of the three (3) year landscape establishment period, the Urban Forester shall inspect the site and determine whether ninety (90%) percent of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such a finding, the City of Fayetteville shall release the currency, bond or letter of credit.
 - (h) In the absence of such a finding, the developer shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the Urban Forester. If the developer

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(D) *Removal by city.* If the conditions described in a notice given, as set forth above, are not removed or corrected within 20 days after such notice given, the mayor, or his/her duly authorized representative, is hereby authorized to enter upon the property and do whatever is necessary to correct or remove the conditions described in the notice. The costs of correcting said conditions shall be charged to the owner or owners of the property and the city shall have a lien against such property for the costs. Enforcement of the lien shall be set forth in §95.03 of the *Fayetteville Code of Ordinances*. Such action shall not be taken if the owner has evidenced a willingness to comply by hiring a qualified tree service before the expiration of the 20 day period.

(Code 1991, §162.06; Ord. No. 3699, §6, 4-20-93; Ord. No. 3963, §4, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4340, 10-2-01)

167.09 Local Disaster Emergency

If it becomes necessary for the mayor to declare a local disaster emergency pursuant to A.C.A. §12-75-108(b)(2), the provisions of this chapter may be suspended for up to 30 days, if strict compliance with its provisions would prevent, hinder, or delay actions necessary to cope with the disaster emergency.

(Ord. No. 4316, 6-5-01; Ord. No. 4340; 10-2-01)

167.10 Tree Maintenance Agreements

(A) *Maintenance agreement and landscape establishment guarantee.* All plans requesting on-site mitigation or off-site forestation shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.

(1) Approval of a plan requesting on-site mitigation or off-site forestation shall be contingent upon the applicant depositing with the city either currency, bond irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor of trees at the time of planting. The bond, irrevocable letter of credit, or other surety must cover the entire three year maintenance and monitoring period. The applicant shall submit cost estimates to the urban forester.

(2) Upon completion of the three year landscape establishment period, the urban forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the city shall release the currency, bond, or letter of credit.

(3) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the urban forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary monies from the landscape establishment guarantee to do so.

(4) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.

(5) However, in lieu of cash surety, letter of credit, or bond, the monitoring and maintenance requirement may also be met through proof of a three year tree maintenance contract with a landscape contractor approved by the Urban Forester. The contract shall name the City of Fayetteville as a third party beneficiary. This fully executed contract shall contain:

(a) itemized proof of payment or charge for 3 years of watering and maintenance for each required tree.

(b) a clause that requires that if the approved contract is breached, the developer shall either immediately supply an acceptable replacement maintenance contract or shall deposit into the City's tree escrow account the normal original amount set forth in section 167.04(J)(4).

(c) after inspection by the Urban Forester at the end of the three year period, if the Urban Forester determines that less than 90% of the trees are found healthy and with a reasonable chance of surviving to maturity, the trees shall be replaced by the developer within 60 days of notice from the Urban Forester. If the developer fails to comply, the City would recover losses as outlined in the contract."

167.1011-167.99 Reserved

CD167:15

Provided in lieu of original, as correction.