ARTICLE V. TREES, SHRUBS AND SCREENING FENCES

DIVISION 1. GENERALLY

Sec. 33-101. Definitions; figures; appendices.

(a) As used in this article, the following terms shall have the meanings ascribed below unless the context of their usage clearly indicates another meaning:

Artificial lot means an area within the contiguous tract(s) or parcel(s) held under common ownership and designated on the building permit application that is delineated by the planning official for the sole purpose of satisfying the requirements of this article.

Association means a natural unit of vegetation characterized by a relatively uniform species composition and often dominated by a particular species.

Block face means that portion of a block that abuts a street between two intersecting streets.

Building setback area means the area of building line restrictions along a street as established by or pursuant to division 3 of article III of chapter 42 of this Code.

Building site means:

(1) The tract or parcel of land which is designated on the building permit application, together with all contiguous tracts or parcels of land held under common ownership and any existing buildings and appurtenant parking, or

(2) If designated, an artificial lot contained therein and delineated by the planning official.

Caliper means the minimum diameter of a tree as measured six inches above the ambient grade for trees up to and including four inches in diameter, 12 inches above the ambient grade for trees having a diameter exceeding four inches but not exceeding eight inches and 54 inches above the ambient grade for trees having a diameter greater than eight inches.

Consumer price index means the "Consumer Price Index for all Urban Consumers" as established by the Bureau of Labor Statistics for the Department of Labor.

Corridor tree means a tree of a species listed on the street tree list that has a caliper of 20 inches or more and is situated in the building setback area along a local street or along a major thoroughfare, other than a portion of a major thoroughfare that has been designated as a green corridor.

Cost adjustment shall be the increase in any cost specified in this article as subject thereto and calculated by the percentage change in the Consumer Price Index for the period from January 2002 to the third month preceding the date the cost is payable where the sum of money is computed to the nearest cent according to the following formula:

$$(A/B-1) \times \text{Cost subject to adjustment}$$

In the foregoing formula:

'A' is the index value of the 'Consumer Price Index for All Urban Consumers, U.S. city average, All Items (1982-1984=100),' as published in the Monthly Labor Review by the Bureau of Labor Statistics of the Department of Labor of the United States of America ('index') applicable to the third month immediately preceding the month during which the computation is required to be performed.

'B' is the index value of such Index applicable to January 2002.

Deciduous plants means those which shed their leaves at one time each year, usually in the autumn.

Designated tree means a specific tree designated by the city council as having particular historical or arboricultural significance under section 33-103 of this Code.

Dripline means an imaginary circle drawn around a tree, extending to the tree's branching limit.

Esplanade means an unpaved area between two paved roadway sections.

Evergreen plants means those that do not lose all of their leaves at one time, though they shed their old leaves intermittently, as new leaves come out.

Existing vegetation to be preserved means any viable grouping of or single existing evergreen or deciduous trees and associated understory for which tree or buffer preservation credit is being requested.

Green corridor means any portion of a major thoroughfare that has been designated as a green corridor under section 33-104 of this Code.

Green corridor tree means a tree of a species listed on the street tree list that has a caliper of 15 inches or more and is situated in the building setback area of a green corridor.

Landscape buffer means the shielding or obscuring of one land use from another by the planting of evergreen trees or shrubs, or both, or the erection of a screening fence designed to minimize the transmission or propagation of noise, light, vibration, or dust, from traffic or other activity on one property to adjoining public or private properties.

Local street means a public street that is not a major thoroughfare.

Mulch means any covering except fresh grass clippings placed on soil to conserve moisture, minimize weed growth and protect plants from extremes in temperature.

Multifamily residential means any building, or portion thereof, which is designed, built, rented, leased, let out or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other, and shall include flats, apartments and a condominium created under chapter 82 of the Texas Property Code.

Nonresidential use means all uses other than single-family or multifamily residential use.

Parking lot means a paved, surfaced or leveled area designed and ordinarily used for accessory or public parking of motor vehicles, including commercial parking areas available for lease and leased premises available for public parking. The term shall not include parking garages.

Parking lot tree means a tree of a species listed on the parking lot tree list and includes both large and small parking lot trees as provided on the list.

Parking lot tree list means a list of trees issued and revised from time to time by the director of parks and recreation, which, based upon recognized arboricultural standards, shall designate trees that are required to be used for planting in parking lots. The director may only decline to include and may only remove otherwise suitable trees on the basis of health or disease concerns or warnings. The list shall be subdivided into large trees and small trees based upon canopy size characteristics.

Parking space means an individual vehicle parking space within a parking lot, which shall be computed on the basis of the provisions of chapter 26 of this Code.

Parkway means the area lying between the street curb or the edge of the roadway paving and the adjacent property line.

Parkway tree means a tree of a species listed on the street tree list that is situated in the parkway area adjacent to any tract or parcel of land that has a caliper of 20 inches or more if the street right-of-way is not in a green corridor, or a caliper of 15 inches or more if the street right-of-way is in a green corridor.

Protected tree means a corridor tree, designated tree, green corridor tree or parkway tree.

Protected tree replacement requirement means the requirement established in section 33-105(b) or section 33-122(c), as applicable, of this Code for replacement of trees where a protected tree is removed.

Protected tree replacement requirement cap is a limitation of the protected tree replacement requirement. The cap is expressed as a maximum number of caliper inches. The cap is computed on the basis of the total acreage of

the tract or parcel of land upon which the protected tree or trees to be removed are situated using the following formula:

(1) Less than three acres—60 caliper inches per acre.

(2) At least three acres but not more than ten acres—180 caliper inches total for the first three acres, plus 30 caliper inches per acre in excess of three acres.

(3) At least ten acres but not more than 20 acres—390 caliper inches total for the first ten acres, plus 18 caliper inches per acre in excess of ten acres.

(4) At least 20 acres but not more than 25 acres—570 caliper inches total for the first 20 acres, plus six caliper inches per acre in excess of 20 acres.

(5) At least 25 acres or more—600 caliper inches total.

Fractions of acres shall be prorated in accordance with the foregoing formula. The burden shall be upon the person seeking application of the cap to credibly provide any land title data and survey information required to establish the ownership and size of the tract or parcel of land.

Public street or *right-of-way* means the entire width between the boundary lines of every way which is held by the city, a county, the state or otherwise by the public in fee or dedication when any part thereof is open to the use of the public for purposes of vehicular travel.

Roadway means that portion of a public street which is improved, designed, or ordinarily used for vehicular travel, exclusive of the curb, berm, or shoulder. In the event that a public street includes two or more separate roadways, "roadway" means each such roadway separately.

Root collar means an encircling structure of bandlike markings or a marked color change (from the tree bark) located at the highest part of the root system joining into the trunk of the tree at or slightly below the surrounding soil line.

Shrub means any plant, deciduous or evergreen, which is generally multistemmed and sold by height or spread and measured in inches or feet.

Sidewalk means the paved portion of a public street right-of-way which is between the curb lines, or the lateral lines of a roadway, and the adjacent property lines and is improved and designed for or is ordinarily used for pedestrian travel.

Single-family residential means a building (attached or detached) designed to contain one or two separate living units with facilities for living, sleeping, cooking or eating.

Specimen tree means an exemplary tree of good health and true to species habit and form, containing a minimum caliper of 1½ inches.

Street tree means a tree of a species listed on the street tree list.

Street tree list means a list of trees issued and revised from time to time by the director of parks and recreation, which, based upon recognized arboricultural standards, shall designate trees that are required to be used for planting adjacent to and within street rights-of-way within the city. The director may only decline to include and may only remove otherwise suitable trees on the basis of health or disease concerns or warnings. The list shall be subdivided into categories of trees that are recommended for planting under power lines and trees that are not so recommended for planting under power lines.

Temporary classroom building means a building(s) built on skids and which is utilized by a public school district for the purpose of eliminating the shortage of classrooms in order to bring the student/teacher ratio into compliance with state law.

Total tree planting requirement means the total number of trees, if any, that must be planted under this article, excluding any which might be planted as part of a landscape buffer and further excluding the protected tree replacement requirement.

Total tree requirement means the total number of trees that must be provided under this

article, excluding any which might be provided as part of a landscape buffer, and further excluding the protected tree replacement requirement. This sum shall be made up of:

(1) Any street and parking lot trees to be planted; and

(2) Planting equivalency credits earned pursuant to section 33-123.

Tree means any evergreen or deciduous tree which at the time of planting has a caliper equal to or greater than 1½ inches as measured six inches above the root collar, which is not less than six feet in height as measured from the root collar, and which meets the Standard for Nursery Stock Specifications as established by the American Association of Nurserymen (1986 ed.).

Understory means the small tree, shrub and grass constituents of a plant association, excluding canopy vegetation.

Visibility triangle means the triangular area adjacent to the intersection of any public street or public alley within which no obstruction may be placed which would block the sight lines for vehicular traffic. The triangle is established by measuring a distance of 45 feet from the intersection of the extended curb or edge of the pavement of major thoroughfares, and 25 feet from the extended edge of the curb or pavement of local streets. A straight line connecting the ends of each measured distance which forms the hypotenuse shall establish the visibility triangle (see figure A). The visibility triangle shall not contain any visual or physical impediments or obstructions to the vertical view between 30 inches and seven feet in height.

(b) All references in this article to letter-designated or letter-and-number designated figures or appendices shall mean the applicable figure or appendix as attached to Ordinance No. 91-1701.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-102. Application.

This article is applicable to all persons, including, without limitation, the city and other governmental agencies and entities, except that its application shall not extend to real property owned or controlled by the State of Texas or the United States of America.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-103. Designation of trees.

(a) The city council may by motion designate a tree that:

(1) Has historical significance arising from any historical event or events that are associated with the tree; or

(2) Has arboricultural significance as listed on the county, state or national tree register by American Forests, the Texas Forest Service, the Park People or an equivalent arboricultural organization.

(b) No tree shall be designated except upon application made or joined by the owner of the tree, which application shall be filed with the planning official in such form as the planning official may require and shall set forth and document the grounds for the requested designation.

(c) The planning official shall review each application that is received and shall return any application that is determined to be incomplete or inconsistent with the requirements of this section. A complete and consistent application that is based upon historical significance shall be submitted for review by the Houston archaeological and historical commission, which shall review the same and provide its response, if any, to the planning official within 45 days. A complete and consistent application that is based upon arboricultural significance shall be submitted for review by the parks and recreation director who shall review the same and provide his response, if any, within 15 days. The planning official shall submit comments of the commission or the parks and recreation director to the city council together with the planning official's own recommendation for approval or denial.

(d) The city council shall consider each application on the basis of the application itself and the recommendations and comments provided. City council shall not be obligated to conduct any hearing on the matter, provided that interested

persons may make an appearance on the matter under city council rule 8 or may submit written comments to the city secretary for distribution to the council members.

(e) The city council shall approve or disapprove an application that is referred by the planning official by motion. The decision of the city council shall be final, and if the application is disapproved, another application for designation of the same tree may not be considered for a period of three years.

(f) To the extent permitted by laws governing the filing of documents in county real property records, a notice setting forth each tree designation shall be filed in the real property records of the county in which the tree is situated.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-104. Green corridors.

(a) A green corridor may be designated in accordance with this section.

(b) In this section, a tract or parcel of land and its contiguous parkway that is devoted by actual use or by valid deed restrictions or covenants running with the land to single-family residential use is referred to as a "single-family property." The provisions of this section shall not be construed to prohibit a single-family property from being physically situated within a green corridor. However, a single-family property shall not be subject to any requirement created by the green corridor designation.

(c) Each green corridor shall consist of the right-of-way of a major thoroughfare and building setback areas of abutting and contiguous properties. A green corridor shall be not less than one mile long.

(d) A green corridor may be designated by the city council by motion following a hearing and determination that designation of the green corridor would significantly enhance the beautification of the city. Trees within the green corridor shall be entitled to enhanced protection as provided in this article, and the city council may, in designating the green corridor, specify one or more particular species, varieties, and/or colors of trees to be planted, to the exclusion of others within the green corridor. Additionally, green corridors may be given priority for expenditure of city moneys for street tree planting, to the extent permitted by law.

(e) Petitions for the designation of a green corridor shall be submitted to the city secretary upon a form promulgated by the planning official for that purpose. Each petition shall be joined and signed by the owners of properties representing three quarters of the front footage of tracts or parcels that would abut the major thoroughfare in the proposed green corridor, single-family properties and their owners excluded. All required signatures must be collected within a period of time not exceeding 90 days, and the petition must be filed with the city secretary not later than the fifteenth day after the last date of any property owner's signature on the petition.

(f) The city council shall conduct a hearing regarding each petition within 90 days following the date of its filing. Written notice of the hearing shall be given by the planning official in such manner as the city council may specify in the call for the hearing. Any person may present testimony at the hearing. Additionally, written comments may be provided to the city secretary for distribution to council members. If a petition is disapproved, another petition for designation of the same or substantially the same green corridor shall not be considered for a period of three years.

(g) Nothing in this section shall be construed to prohibit the city council from waiving any irregularity in any petition or from designating any green corridor for which a petition has not been presented.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-105. Removal of protected trees.

(a) The provisions of this section shall be applicable to the removal of a protected tree unless:

(1) The tree is situated upon the site of a construction or enlargement of a building or parking lot such that division 2 of this article is applicable; or

(2) The tree is not a designated tree and is situated upon a tract or parcel of land

devoted by use or by valid deed restrictions or covenants running with the land to single-family residential use;

and the term 'protected tree' is so restricted as used in this section.

(b) No person shall cause a protected tree to be removed without complying with a protected tree replacement requirement, which may be satisfied as follows:

(1) By the planting anywhere on the tract or parcel of land where the protected tree to be removed is situated or in the adjacent parkway area of additional trees on the basis of one caliper inch of tree planted for one caliper inch of tree removed;

(2) By contributing to the fund created under section 33-123(a)(2) of this Code an amount equal to $103.00 per caliper inch of tree removed, which shall be subject to a cost adjustment from January 2002 in accordance with the formula established in the definition of the term "cost adjustment"; or

(3) By a combination of the foregoing;

provided, that the protected tree replacement requirement shall be limited by the protected tree replacement requirement cap, which may be satisfied in either one or a combination of both of the methods specified in items (1) and (2), above. Installation of trees provided shall be subject to the planting standards established in division 2 of this article, and the trees shall be planted within 30 days following the removal of the protected tree unless a documented assurance of planting is provided to the department with the notice, in which case the trees shall be placed within six months of the removal of the protected trees. A documented assurance may be provided in the same manner as under section 33-132(b) of this Code. A variance may be requested in the same manner provided in sections 33-135 through 33-137 of this Code. Additionally, the mitigation provisions of section 33-138 of this Code shall be applicable to trees that are provided in order to satisfy a protected tree replacement requirement.

(c) No person shall cause a protected tree to be removed without first filing with the department a written notice of removal of the protected tree, which must be filed at least 20 days prior to the removal. The notice shall include a map depicting the tract or parcel of land upon which the protected tree or trees to be removed are situated and shall demonstrate the manner in which the protected tree replacement requirement will be provided.

(d) It is an affirmative defense to prosecution under this section that the protected tree sustained damage from fire, wind storm, accident or other cause such that the protected tree became an immediate threat to persons or property, provided that the owner of the tree caused the circumstances to be documented and filed written notice of the removal with the department within ten days following the removal of the tree.

(e) It is a defense to prosecution under this section that the protected tree was removed by or on behalf of a public utility or a governmental entity and that its removal without notice was reasonably required for the maintenance or installation of public facilities or utility systems.

(f) The planning official shall promulgate forms of notices and procedures under this section. A map need not be prepared in the form of a survey map, provided that it shall provide sufficient information to unmistakably identify the protected tree that is to be removed and the location of any tree that is to be planted in order to provide the protected tree replacement requirement, as well as the species and caliper of each tree. If the owner elects to make a contribution to the fund created under section 33-123(a)(2) of this Code, then the contribution shall be tendered with the notice. No provision of this section shall be construed to require city personnel to review any notice filed under this section for accuracy or sufficiency or to perform any site inspection of trees for which notices are filed.

(g) No provision of this article shall be deemed to excuse compliance with article VI of this chapter. If a notice of removal calls for the removal of a tree situated in a public right-of-way that is protected under article VI, then written permission for its removal issued by the department of

parks and recreation shall be submitted with the notice of removal that is required under subsection (c), above.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-106. Cumulative effect.

The protections afforded to trees under this article are cumulative of other provisions of this Code, including, but not limited to, sections 32-6 and 45-17 and Article VI of this chapter. Without limitation of the foregoing, nothing in this article shall be construed to authorize the removal or damaging of a tree growing in whole or in part within a public street that is subject to protection under article VI without full compliance with the provisions of article VI.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-107. Tree protection.

No person shall perform or cause or allow to be performed any construction activity, including, without limitation, construction or repair of buildings or other structures, installation or repair of utilities, or installation or repair of streets or sidewalks within the dripline circle area of any protected tree that is not to be removed, without complying with the applicable provisions of appendix C with respect to any protected tree.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-108. Records.

(a) Notices, maps, applications, landscape plans and other documents received by the city under this article are governmental records, and any person providing a false governmental document shall be subject to prosecution as provided by the Texas Penal Code.

(b) Governmental records received by the city under this article are subject to public inspection and copying as provide by law.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-109. Penalty.

This article is subject to the provisions of section 1-6 of this Code, and violations shall be punishable by a fine of up to $500.00 as provided therein.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-110. Single-family residential properties.

(a) While single family residential properties are not subject to the requirements of division 2 of this article, it is the policy and requirement of the city that no final building permit inspection approval shall be given by the building official for construction of a new single-family residential house unless the property owner has complied with this section by preserving or planting a tree or trees or obtaining credit therefor, as follows:

(1) The required tree or trees, whether planted or preserved, shall be 1½ inches caliper size or larger.

(2) The required tree or trees may be either new trees that are planted in compliance with this article or trees already existing on the building site or abutting street right-of-way as hereinbelow provided that have been preserved in accordance with this article.

(3) The required tree or trees, whether newly planted or preserved, must be of species listed on the street tree list or the parking lot tree list.

(4) Except as provided in subsection (b), below, the requirement for building sites less than 5,000 square feet in size is:

a. Planting or preservation of one tree of 1½-inch caliper or larger;

b. If the tree is an existing tree that is preserved, then it may be situated anywhere on the building site or in the abutting street right-of-way;

c. If the tree is a newly planted tree, then it shall be planted in the abutting street right-of-way, unless the planning official authorizes it to be planted elsewhere on the building site upon determination after consulting with the parks and recreation director or his designee that no suitable planting site exists in the abutting street right-of-way.

(5) Except as provided in subsection (b), below, the requirement for building sites 5,000 square feet or greater in size is:

a. Planting of two new trees of 1½-inch caliper or larger; if this option is selected, then one tree must be planted in the abutting street right-of-way and the other planted either in the abutting street right-of-way or elsewhere on the building site;

b. Planting of one new tree of four-inch caliper or larger; if this option is selected, then the tree shall be planted in the abutting street right-of-way, unless the planning official authorizes it to be planted elsewhere on the building site with the written concurrence of the director of parks and recreation or his designee upon determination that no suitable planting site exists in the abutting street right-of-way;

c. Preservation of one existing tree of 1½-inch caliper or larger and planting of one new tree of 1½-inch caliper or larger; if this option is selected, then one tree must be preserved or planted in the abutting street right-of-way and the other tree shall be preserved or planted in either the abutting street right-of-way or elsewhere on the building site; or

d. Preservation of two existing trees of 1½-[inch] caliper or larger; if this option is selected, then both trees must be situated in the combined area created by the abutting street right-of-way and the building set back area of the building site.

(b) After consulting with the director of parks and recreation or his designee, the director may excuse the planting or preservation of the tree or trees otherwise required under this section and instead authorize the property owner to purchase credits under section 33-123 of this Code upon determination that the size and configuration of the property and the house do not afford sufficient space for the planting or preservation of even one tree.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 04-1015, § 24, 9-27-04)

Secs. 33-111—33-120. Reserved.

DIVISION 2. BUILDING SITES

Sec. 33-121. Application.

(a) The requirements of this division shall only apply to a building site where any of the following conditions is present:

(1) There is new construction of a nonresidential or multifamily residential building for which a building permit is required;

(2) There is an enlargement exceeding 1,000 square feet in area of the exterior dimensions of an existing nonresidential or multifamily residential building for which a building permit is required; or

(3) There is either a new parking lot for which site plans are required for initial construction under the provisions of chapter 26 of this Code or an existing parking lot which is expanded in area to provide additional parking spaces.

(b) The requirements of this division apply to the entirety of the building site if it is completely developed by the new construction of a building (or buildings) and appurtenant surface parking area. In case the entirety of the building site is only partially developed by new construction or enlargement, the requirements of this division shall be applied incrementally, such that trees, shrubs, and landscape buffers are required only with respect to and in proportion to new or increased building area and off-street parking spaces. This subsection shall control over any other conflicting or inconsistent provision.

(c) The requirements of this division do not apply to:

(1) The reconstruction of an existing building of which 50 percent of the existing building floor area ratio or less was physically

destroyed or ruined by flooding, fire, windstorm or act of God. This exemption shall apply only where reconstruction of that building will not result in an increase in the paving area of the parking facilities to be provided; or

(2) The placement of a temporary classroom building if there is a reasonable likelihood that the condition necessitating a temporary classroom building will not continue for more than five years and an analysis of the public school site and the buildings thereon support the conclusion that timely compliance with the statutory student/teacher ratio cannot be achieved without the installation of the temporary classroom building(s).

(d) Nothing in this division shall be construed to require a landscape plan or landscape plan review for finish work performed by an owner, a tenant or on behalf of a tenant, in a portion of a building unless that tenant finish work or remodeling results in an increase in the paving area of the parking facilities to be provided or in an enlargement of the exterior dimensions of an existing building.

(e) Nothing in this division shall be construed to preclude the filing of a landscape plan where the requirements of this division are not otherwise applicable and the property owner desires to plant trees and obtain a credit under section 33-123(c) of this Code.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-122. Landscape plan required.

(a) A landscape plan for the building site shall be submitted to the department by an applicant for a building permit for approval in accordance with the provisions of this division.

(b) The landscape plan may be depicted on either the development plans or parking lot site plan, provided the drawing scale is sufficient to properly depict the landscape plan requirements. The landscape plan shall identify and show the locations of existing and proposed utility lines (both above and below ground), roadways, sidewalks, street lights, trees, shrubs, understory, natural features, other landscape elements, and planting or construction details. Where credit is being requested for the preservation of existing trees and associated understory, the landscape plan shall also demonstrate the manner in which the requirements for preservation established under section 33-130 are to be satisfied. A plant schedule shall be provided which includes quantities, minimum size at time of planting, and botanical and common names keyed to the plan.

(c) If the building site includes any protected trees, then the landscape plan shall depict the location of each and indicate whether each is to be removed or preserved. If any protected trees are to be removed, then a protected tree replacement requirement shall be applicable, in addition to any other tree planting requirements of this division, which may be satisfied as follows:

(1) By the planting anywhere on the building site or in the adjacent parkway area of additional trees on the basis of one caliper inch of tree planted for one caliper inch of tree removed;

(2) By contributing to the fund created under section 33-123(a)(2) of this Code an amount equal to $103.00 per caliper inch of tree removed, which shall be subject to a cost adjustment from January 2002 in accordance with the formula established in the definition of the term "cost adjustment";

(3) By preservation credits as provided in section 33-123(b) of this Code; or

(4) By a combination of the foregoing;

provided, that the protected tree replacement requirement shall be limited by the protected tree replacement requirement cap, which may be satisfied in any one or a combination of the methods specified in items (1), (2) and (3), above.

(d) The protected tree replacement requirement shall not be applied to trees that must reasonably be removed in order to:

(1) Install or maintain public utilities;

(2) Construct or maintain access drives, streets and sidewalks of a width not exceeding four feet;

(3) Prevent visual impairment in a visibility triangle; or

(4) Prevent visual impairment where a driveway intersects with a street.

(e) Based upon the landscape plan as filed, the department shall review the landscape plan to verify compliance with all requirements of this article prior to the issuance of a building permit. If an artificial lot is delineated, it shall be depicted on the building plans prior to the issuance of the building permit. Nothing in this section shall be construed to require that city personnel perform a site inspection prior to the issuance of the building permit.

(f) No building permit shall be issued by the building official for the construction or alteration of a building within the city unless the planning official approves the landscape plan verifying that the applicant has provided for the planting of trees and shrubs to the extent required in this article. If the landscape plan calls for the removal of any protected tree, then the building permit shall be conditioned such that the protected tree may not be removed until the twentieth day following the date of filing of the landscape plan.

(g) Except as provided in subsection (h) below, no final certificate of occupancy shall be issued by the building official for the occupancy of a new or altered building unless the plantings required by this article have been provided. Prior to the issuance of a certificate of occupancy, the building official shall inspect the planting provided to verify compliance with the approved landscape plan.

(h) A six-month conditional certificate of occupancy may be issued if the owner provides the building official with either the documented assurances specified in section 33-132 or a bond or assigned certificate of deposit as set forth in section 33-133.

(i) No provision of this article shall be deemed to excuse compliance with article VI of this chapter. If a landscape plan calls for the removal of a tree situated in a public right-of-way that is protected under article VI of this chapter, then written permission for its removal issued by the department of parks and recreation shall be submitted with the landscape plan filed under this section.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-123. Tree planting equivalency credits.

(a) The following credits may be claimed against the total tree requirement under this division:

(1) *Credit for planting trees exceeding the minimum caliper required.* Credit toward the total tree requirement shall be given for the planting of trees that exceed the minimum caliper required by this division at the rate of two trees for each tree with a caliper of four inches or more that is planted.

(2) *Credit for depositing with the city's department of parks and recreation a sum of money equal to the cost of planting the required trees.* Money so deposited shall be placed in a special fund designated for the purposes of planting street trees in city parks or public street rights-of-way. The credit shall be calculated based on a planting cost per tree of $155.00 per fifteen-gallon container-grown tree, planted and maintained for a year, subject to a cost adjustment from January 2002 in accordance with the formula established in the definition of the term "cost adjustment." The maximum allowable credit under this option shall not exceed 30 percent of the total tree requirement.

(3) *Credit for preserving existing on-site trees.* Credit for the preservation of existing on-site trees (including any to be transplanted) may be granted when requested and depicted on the landscape plan in accordance with section 33-122. In order to be eligible for credit, an existing tree to be preserved on the site shall have a minimum caliper of 1½ inches, shall be in good condition, and shall be true to species habit and form. Credit for preserving existing trees shall be granted based upon the caliper of the trees preserved, with a credit of one tree to be allowed for each 1½ total caliper inches of eligible trees that are preserved, subject to the limitations otherwise provided in this division.

This item (3) shall not apply to trees situated in the abutting street right-of-way.

(4) *Credit for preserving existing right-of-way street trees.* Credit for the preservation of existing trees situated within the abutting street right-of-way that are designated on the street tree list may be granted when requested and depicted on the landscape plan in accordance with section 33-122 of this Code. In order to be eligible for credit, an existing street tree to be preserved shall have a minimum caliper of 1½ inches, shall be situated in the street right-of-way, be in good condition, and be true to a species listed on the street the list in habit and form. Credit for preserving existing street trees shall be granted on the basis of one street tree preserved for each street tree otherwise required to be planted in the same blockface under this article, with no additional credit being allowed for preservation of a street tree that exceeds 1½ inches in caliper. Preservation methods for the tree must be at a minimum those specified in section 33-130 of this Code.

Provided, however, that:

(5) The combined credit under items (1) and (2) above may not exceed 50 percent of the total tree planting requirement, and

(6) The total number of street trees, whether planted or preserved, shall never be less than 50 percent of the number required in section 33-126 of this Code as applied separately to each side of the property that abuts a street right-of-way and, if any side abuts two or more block faces, then separately to each block face.

(b) A credit may be claimed for up to the entire protected tree replacement requirement for preservation of existing trees in the same manner provided in subsection (a)(3), above, except that the credit shall be based upon one caliper inch of tree preserved for one caliper inch of tree removed. However, a tree or caliper inch portion of a tree preserved may only be used for credit against the total tree requirement or the protected tree replacement requirement, but not both.

(c) Any owner who proposes to plant trees when no planting requirement exists under this division or desires to plant trees in excess of the requirements of this division may, at the time of filing of a landscape plan, request future credit against tree requirements upon the same building site. Upon completion of the work and verification of the unrequired planting or excess in planting by the planning official, a certificate of credit shall be provided by the planning official to the owner.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 04-1015, § 25, 9-27-04)

Sec. 33-124. Artificial lot delineation.

If the building site is over two acres in size, the applicant may request that the planning official designate an artificial lot to satisfy the requirements of this division. If requested, the planning official shall designate an artificial lot consistent with the purposes and policies of this division as determined from the criteria established below. No artificial lot may be delineated by the planning official unless it:

(1) Wholly includes the area on which the construction work is to be done;

(2) Has an area that does not exceed 50 percent of the area of the building site; and

(3) Depicts and includes all proposed and existing buildings and structures, access drives, appurtenant parking required for the building expansion or new building construction, and other areas functionally appurtenant to the buildings or structures.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 04-1015, § 26, 9-27-04)

Sec. 33-125. Review of building permit and certificate of occupancy applications.

(a) The planning official shall review building permit applications for the construction or expansion of a building or parking lot to determine if the proposed landscape plan complies with the provisions of this article.

(b) When a certificate of occupancy is sought, the building official shall determine whether the applicant has complied with this article.

(c) An application for a building permit or certificate of occupancy shall not be issued or approved unless the applicant demonstrates compliance with the provisions of this article.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-126. Street trees required.

(a) Street trees shall be planted within the public street rights-of-way, or on private property within ten feet parallel and adjacent to a local street right-of-way, or on private nonresidential property within 25 feet parallel and adjacent to a major thoroughfare, or in the esplanade pursuant to the requirements of section 33-129(b) (see figure E). When the building site abuts a designated state or federal highway or road or any designated county road and street trees are not otherwise required by law, street trees shall be planted on private property in accordance with this section. The number of street trees planted shall equal the total number of trees (T) required under the following formula:

T = (X/30), where X shall represent the length in linear feet measured along each side of the property line on the public street(s). (See figure B.)

This formula and all resulting planting requirements under this section shall be applied separately to each side of the property that abuts a street right-of-way, and if any side abuts two or more block faces, then separately to each block face.

(b) Street trees planted in accordance with this section shall be of a species listed on the street tree list. In the case of trees planted within the public rights-of-way, trees shall be planted in a location which conforms with the requirements of section 33-129 of this division. The trees shall be planted so as not to interfere with existing utilities, roadways, sidewalks, or street lights.

(c) The planting scheme for street trees shall be such that no street tree is planted closer than 20 feet to any other street tree (whether an existing tree or a tree planted hereunder) with the trees being spaced without extreme variation in distance across each blockface frontage taking into account existing site conditions and driveway locations. The director may authorize a partial waiver under the credit terms of section 33-123 of this Code if he determines that planting all of the otherwise required street trees upon any given side of the property that abuts a street right-of-way or block face would result in excessive tree canopy, based upon existing trees that are to be preserved during construction. Any request for a waiver shall be in writing and shall specify the preservation methods that will be used for the existing trees, which shall meet or exceed the requirements of section 33-130 of this Code. Additionally, the director may authorize the spacing to be reduced from 20 feet to no less than 18 feet if he determines that the conditions in the right-of-way make compliance at 20-foot spacing impracticable.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-127. Parking lot planting of trees and shrubs required.

(a) In addition to any street trees that may be required pursuant to section 33-126, the owner of a building site included under section 33-121 shall provide one tree for every ten parking spaces, rounding up or down in the case of a fraction to the nearest whole number, but in no case less than one tree. There shall be at least one parking lot or street tree within 120 feet of each parking space as measured from the center of the trunk of the tree to some point on the marked parking space. Not fewer than one-half of the parking lot trees so required shall be large parking lot trees, and the remainder may be either large or small parking lot trees. In the case of a parking lot that is being expanded, the trees required pursuant to this subsection may be planted in the same manner as those required for a new parking lot.

(b) In addition to the street tree and parking lot tree requirements established within section 33-126 and subsection (a), above, the owner of a building site included under section 33-121 shall plant or cause shrubs to be planted along the perimeter of all parking surfaces so that the parking lot is screened from all adjacent public streets, exclusive of driveway entrances, pedes-

trian walkways and visibility triangles. Shrubs shall be maintained at a height of no more than 36 inches nor less than 18 inches as measured from the surrounding soil line. The number of shrubs required under this subsection shall be equal to the total number of street trees required under this division multiplied by ten. No less than 75 percent of the shrubs required under this section shall be planted along the perimeter of the parking surface adjacent to the public street.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-128. Landscape buffer required.

The owner of a building site included under section 33-121 and which is to be developed or expanded for a nonresidential or a multifamily residential use adjacent to any existing single-family residential property shall provide a landscape buffer adhering to at least one of the following two buffer types:

(1) Either a wood, concrete or masonry opaque screening fence with a minimum height of six feet along the entire property line or entire artificial lot line, if any, adjacent to the single-family residential property; or

(2) Evergreen screening on the property line or artificial lot line.

a. The evergreen screening shall contain a minimum width of 15 feet of green space as measured from the property line. This area shall extend along that portion of the property line or artificial lot line where proposed nonresidential and multifamily residential projects abut existing single-family residential developments. The area shall be planted in combinations of compatible evergreen trees and shrubs. The arrangement of plantings in buffer areas shall provide maximum protection to adjacent properties and avoid damage to existing plant material. Possible arrangements include planting in parallel, serpentine, or broken rows. Plant materials shall be sufficiently large and planted in such a fashion as to be capable of forming a continuous year-round screen of at least six feet in height as measured from the root collar or surrounding soil line within three annual growing seasons. All plantings shall be installed and maintained in accordance with the standards contained within appendices B and E. No buildings, structures, storage of materials, or parking shall be permitted within the buffer area; buffer areas shall be maintained and kept free of all debris, rubbish, weeds, and tall grass.

b. The preservation of existing vegetation within the landscape buffer may be used to meet the requirements of this section provided the vegetation is preserved in accordance with section 33-130 of this Code.

(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-129. General planting standards.

(a) Trees and shrubs planted in a parkway shall be planted in accordance with the applicable standards required by appendix B or E. The following additional limitations shall apply:

(1) When located in the visibility triangle, trees shall be headed to a minimum height of seven feet, and shrubs shall be maintained at a maximum height of 30 inches as measured from the surrounding soil line.

(2) For streets with curbs or proposed curbs, trees shall be planted at least three feet from the back of the existing curb or the city's final approved design line of the back of the curb of any public street as measured from the center line of the tree trunk. Provided, the city engineer may in writing authorize the planting distance to be reduced after review of the specific location, with the preference that at least two feet of open space should be maintained between the street side of the tree and the back of the curb.

(3) For streets without curbs or proposed curbs, trees shall be planted at least four

feet behind the roadside drainage ditch as measured from the back (private property) side of the top of the roadside drainage ditch bank to the center line of the tree trunk. Provided, the city engineer may in writing authorize the planting distance to be reduced, after review of the specific location, with the preference that the roots not interfere with ditch maintenance.

(b) In addition to the tree and shrub planting standards contained within appendices B and E, trees and shrubs in esplanades shall be planted according to the following requirements as illustrated in figure C:

(1) Trees in any major thoroughfare street esplanade shall not be planted closer to the end of the esplanade than 75 feet.

(2) Trees in any local street esplanade shall not be planted closer to the end of the esplanade than 50 feet.

(3) Trees planted in any esplanade shall be located not closer than 50 feet from any mid-block opening in the esplanade.

(4) Shrubs planted in any esplanade shall not be planted closer to the end of the esplanade than 25 feet or closer than three feet from the back of the curb or the final approved design line for the curb of any public street. Use of ground covers or annuals and perennials conforming with the height restrictions of a visibility triangle shall not be restricted.

(5) Trees planted in the esplanade shall not be located closer than five feet from the back of the curb or the final approved design line for the curb. Trees shall not be spaced at intervals of less than 30 feet.

(c) Any tree located within a parking lot must be planted and maintained within a permeable area which has a radius of not less than three feet. No tree shall be planted closer than three feet from a curb or tire stop.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-130. Preservation of existing trees and associated understory.

(a) The following procedure shall be required where credit for the preservation of existing trees and associated understory is being requested to be applied toward the total tree planting requirement pursuant to section 33-123(a) of this Code or the protected tree replacement requirement. Where such credit is being requested, the applicant shall also supply to the building official for review with the building plans a tree and associated understory preservation plan, which shall be integrated into the proposed landscape plan and shall include:

(1) Delineation of proposed limit of clearance and establishment of tree protection zones which shall extend to just outside the dripline of the tree and understory to be protected, if any;

(2) Proposed soil stabilization practices, i.e., silt fence, hay bales;

(3) The species of each tree to be preserved and for which credit is being requested;

(4) The proposed finished grade and elevation of land within six feet of or within the dripline of any tree to be preserved, whichever is greater, shall not be raised or lowered more than three inches unless compensated for by welling or retaining methods;

(5) Existing and proposed location of all trees and plant materials to be relocated at the drawing scale;

(6) A landscaping tabulation, and itemized credit requests for existing trees to be preserved which have a minimum of four inches in caliper and greater;

(7) Tree and associated understory preservation details; and

(8) Specification of ground plane treatment as either turf or sod. If a combination of both is utilized, the limit of each shall be indicated.

(b) The following tree relocation information shall be provided on the landscape plan or in a report for the transplantation of existing specimen trees when preservation credit is being re-

quested for them. This information shall include an assessment of the cost of transplanting the trees as opposed to the potential mortality rate which may result from the attempted transplantation. If relocation is elected, the following information shall be provided:

(1) Transplanting techniques;

(2) Equipment to be utilized;

(3) Locations of existing trees and proposed locations for transplanted trees;

(4) Genus, species, caliper, height and general condition of the existing tree;

(5) Pruning and maintenance schedule and methods to be followed; and

(6) Which form of assurance of performance will be provided, i.e., executed contract, bond or assigned certificate of deposit.

(c) If preservation credit is requested, the trees shall be protected and preserved as set forth in appendix C.

(d) The department shall make recommendations to minimize damage to existing vegetation during the site construction phase. The department shall also suggest possible uses for those trees removed as a result of development such as the creation of wood chip mulch from removed hardwood trees.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-131. Duty; affirmative defenses.

(a) All owners of building sites included under section 33-121 shall plant or cause the planting of trees or shrubs required in sections 33-126 and 33-128 or secure the planting equivalency credits allowed in section 33-123, and if protected trees are being removed, shall further satisfy the protected tree replacement requirement in accordance with this division.

(b) All owners and lessees of new or expanded parking lots on building sites included under section 33-121 shall additionally plant trees or shrubs in compliance with section 33-127, and if protected trees are being removed, shall further satisfy the protected tree replacement requirement in accordance with this article.

(c) It shall be an affirmative defense to prosecution under this section that:

(1) The actor caused the tree or shrub to be planted and maintained in accordance with this article, but the tree or shrub died more than two years after the issuance of the certificate of occupancy;

(2) The actor caused the tree or shrub to be planted and maintained on the public right-of-way in accordance with this article, but the tree or shrub died and was removed by the owner with the written permission of the department of parks and recreation obtained under article VI of this chapter, or the period allowed by this article for replacing the tree or shrub has not yet elapsed;

(3) The actor caused the tree or shrub to be planted or maintained on private property in accordance with this article but the tree or shrub died and the period allowed by this article for replacing the tree or shrub has not yet elapsed;

(4) The building permit for the actor's property is for single-family residential use;

(5) The actor's property has an unexpired conditional certificate of occupancy, and the actor has provided an executed contract or a bond or assigned certificate of deposit in accordance with this article; or

(6) A variance or waiver was secured for the building site in conformity with the requirements of this article.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-132. When required landscaping (trees, shrubs or fences) must be installed; documented assurance.

(a) Except as otherwise provided in subsection (b) and section 33-133, all proposed landscaping must be installed in accordance with the approved landscape plan prior to issuance of a final certificate of occupancy on a building site.

(b) The property owner may elect to provide the building official with documented assurances that the landscaping will be completed within a six-month period. If so, a conditional certificate of occupancy may be issued by the building official for six months. For purposes of this section, 'documented assurance' shall mean a copy of an executed contract for the proper installation of the required landscaping in accordance with the approved landscape plan within a six-month period.

(c) The property owner is responsible for notifying the building official when the landscape installation is complete. If the property owner fails to notify the building official within the prescribed six-month period, the building official shall revoke the conditional certificate of occupancy.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-133. Bond; assigned certificate of deposit.

(a) Prior to the issuance of any conditional certificate of occupancy, any applicant who has not provided the documented assurance set forth in section 33-132 shall file with the planning official a bond which bond shall be executed by the applicant as principal and by a good and sufficient corporate surety company licensed to do business in the State of Texas. The bond in the sum of one and one-quarter times the proposed cost to install the required landscaping improvements and fences, based upon the adjusted costs established in appendix F, shall be payable to the city and conditioned that the principal and surety will pay all amounts required to install the landscaping and fences required by this division. The bond shall provide that it will remain in full force and effect until released by the planning official pursuant to this division.

(b) In lieu of such bond, an applicant for a conditional certificate of occupancy may, upon payment to the city of a nonrefundable fee of $100.00, assign an account with a financial institution insured by the Federal Deposit Insurance Corporation to the city. Such account shall have a deposit of not less than the amount required under subsection (a). Under such an assignment, the financial institution must agree not to release, make payment from, or otherwise divert or dispose of the funds in such account, except it shall agree to disburse all or such portion of the funds in the account as may be directed by city council resolution.

Upon installation and inspection of the required landscaping, the city shall release the assigned deposit to the property owner.

When requesting a conditional certificate of occupancy, the owner must grant the city permission to enter upon his land for the purpose of installing the required landscaping if the owner does not fulfill his obligation to install the required landscaping within the specified six-month period. If permission is not granted, the owner's application for a conditional certificate of occupancy shall be denied.

(c) In the event that any holder of a conditional certificate of occupancy who has previously furnished an account assignment under subsection (b) elects to furnish a bond under subsection (a) instead, then the holder shall be entitled to disbursement of the account proceeds in the same manner and under the same terms provided in subsection (b).
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-134. Appeal of denial of building permits.

Appeals from the denial of a building permit for noncompliance with this division shall be reviewed in the same manner as appeals from development plat disapprovals under section 42-87 of this Code.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-135. Variance procedure.

(a) An applicant for a building permit may make written application to the planning official for a variance from the requirements of this division other than those which may be made the basis of a request for a waiver under section 33-139. A completed application for a variance shall include:

(1) Completed application on form supplied by the city; and

(2) A nonrefundable fee of $200.00.

This application package shall be reviewed by the department.

(b) Within seven days of the date the application is accepted, the planning official shall forward a copy of the application to the traffic engineer who shall file his report and recommendations regarding the proposed variance with the secretary of the commission.

(c) A staff report regarding the variance request shall be provided to the commission prior to the meeting at which the variance shall be considered.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-136. Standards for variance.

(a) The commission is authorized to consider and grant variances from the provisions of this division by majority vote of those members present and voting, when the commission determines that the first four of the following conditions exist, and if applicable, the fifth condition, exists:

(1) The imposition of the terms, rules, conditions, policies and standards of this division would deprive the owner or applicant of the property of reasonable use of the land or building;

(2) The circumstances supporting the granting of the variance are not the result of a hardship imposed or created by the applicant, and the general purposes of this division are observed and maintained; and

(3) The intent of this article is preserved;

(4) The granting of such a variance will not be injurious to the public health, safety or welfare; and

(5) For a development that is subject to the requirements of article VII, chapter 33, of this Code, the granting of the variance is necessary to accomplish the purposes of a certificate of appropriateness issued pursuant to article VII of chapter 33 of this Code.

(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-137. Applicability of variance.

Any variance granted under the provisions of this section will apply only to the specific property and use upon which the commission was requested to grant a variance by the applicant. All variances as granted shall be in writing, shall be signed by the secretary of the commission and maintained as a permanent record of the commission.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-138. Mitigation for loss of installed and preserved vegetation.

(a) All proposed, existing or relocated vegetation shall be maintained in accordance with this article and appear healthy for a minimum of two years from the issuance of the final certificate of occupancy. Dying, damaged or removed trees shall be replaced at the owner's expense with another living plant that complies with the approved landscape plan. The tree replacement quantity shall be equal to or greater than the original or credited quantity for the tree in question.

(b) The planning official shall notify the owner of a building site in writing when a plant is discovered which does not meet the requirements of subsection (a), above. The owner shall then replace the plant within one year from receipt of the written notice or between November 1st and April 1st, whichever period is less.
(Ord. No. 03-159, § 5, 2-12-03)

Sec. 33-139. Interference with existing utilities, curbs, sidewalks, drainage facilities, roadways, street lights, appeal of denial of waiver.

(a) The planning official shall grant a waiver when requested in the application if the area in which the planting is required by this division is too small to accommodate the required planting without damage to existing utilities, curbs, sidewalks, roadways, street lights or drainage facilities, and the planting requirements of this division may not be otherwise satisfied pursuant to this division.

(b) A waiver shall be granted where the planning official finds the following:

(1) That a literal application of this division will result in damage to existing utilities, roadways, street lights, curbs, sidewalks or drainage facilities;

(2) The waiver, if granted, will not be contrary to the public interest;

(3) The waiver, if granted, will not be detrimental to the public health, safety, or welfare; and

(4) The waiver, if granted, will not result in a violation of any other applicable ordinance, regulation or statute.

(c) No later than the thirtieth calendar day following the filing of the required application for a waiver, the planning official shall issue to applicant a written notice that the waiver has been granted or refused. Any notice of refusal of an application for a waiver must include a written report explaining in detail the reasons for such refusal. The issuance of a written notice to the applicant shall be complete upon deposit of such notice in the United States mail, first class postage paid, addressed to the applicant at address given on the application for the waiver.

(d) The applicant may appeal the denial of a waiver to the commission in the manner provided in section 33-134 of this Code.
(Ord. No. 03-159, § 5, 2-12-03)

Secs. 33-140—33-150. Reserved.

ARTICLE VI. PROTECTION OF STREET TREES

Sec. 33-151. Definitions

As used in this article, the following words shall have the meanings ascribed in this section:

Caliper means the minimum diameter of a tree as measured six inches above the ambient grade for trees up to and including four inches in diameter, 12 inches above the ambient grade for trees having a diameter exceeding four inches but not exceeding eight inches and 54 inches above the ambient grade for trees having a diameter greater than eight inches.

Director means the director of parks and recreation or the director's designee.

Street means the entire width between the boundary lines of a publicly maintained street right-of-way any part of which is open to the use of the public for vehicular travel.

Tree means and includes:

(i) Any tree of a size 20 caliper inches or more of any species; or

(ii) Any tree of a size of 1½ caliper inches or more of any species included on the street tree list that is promulgated under article V of this chapter.

Part (ii) above shall be applied in such a manner that any species listed in the street tree list as being recommended for planting under power lines shall be included even if it is not situated under power lines, and in such a manner that any species listed in the street tree list as being recommended for planting generally shall be included even if it is situated under power lines.
(Ord. No. 03-159, § 7, 2-12-03)

Sec. 33-152. Removal of or damage to a tree.

It shall be unlawful for any person to remove or damage any tree or to cause, permit or suffer the removal or damaging of any tree that is situated in whole or in substantial part within a street. The determination of whether the tree is situated in whole or in substantial part in the street shall be based upon the location of the trunk of the tree at ground level. For purposes of the foregoing requirements, a tree shall be considered to be in substantial part within a street if one-half or more of the area of the trunk of the tree is situated in the street as determined at the point where the trunk intersects the ground.
(Ord. No. 03-159, § 7, 2-12-03)

Sec. 33-153. Permission from director.

It is an affirmative defense to prosecution under section 33-152 of this Code that the actor

had the prior written permission of the director for the action taken and that the action taken was consistent with the terms of the director's written permission.
(Ord. No. 03-159, § 7, 2-12-03)

Sec. 33-154. House movers.

It is an affirmative defense to prosecution under section 33-152 of this Code that the actor is a house mover who holds a license under article III of chapter 10 of this Code, and that the actor removed or caused damage to a tree in order to move a house, provided that the house was being moved in accordance with all applicable requirements of the said article upon a route authorized in a permit issued by the building official thereunder, and further provided, with respect to any tree that is removed, that the removal is authorized by the director. This defense shall extend to agents and employees of the house mover.
(Ord. No. 03-159, § 7, 2-12-03)

Sec. 33-155. Procedure for permission.

A permission for purposes of sections 33-153 or 33-154 of this Code may be obtained by making written application through the director. The application shall be made in accordance with regulations promulgated for that purpose by the director and in a form provided in the regulations. In considering whether or not to grant the approval, the director shall consider the age and condition of the tree. The director shall consult with the planning official and shall also consider whether the requested action is reasonably required, considering other alternatives that may exist, if the request is for the purpose of installing or maintaining public utilities and access lines thereto, constructing or maintaining driveways, alleys or streets, constructing or maintaining sidewalks or preventing visual obstruction of a street or driveway intersection. The director, in consultation with the planning official, may also authorize the removal of a tree to facilitate development of the abutting property if the tree extends in part beyond the building set back line established by law or deed restriction and the director and the planning official determine that the requested action is reasonably required in order to make beneficial use of the property. In the event that the director proposes to deny an application, then the director shall ensure that the applicant is afforded the opportunity for an informal hearing to be conducted as provided in the director's regulations before the decision to deny the application is made final.
(Ord. No. 03-159, § 7, 2-12-03)

Sec. 33-156. Educational intent.

The intent of this article is to result in compliance through public assistance and education. Upon request, the director shall, without charge therefor, provide assistance in identifying tree species, training and/or instructional materials with respect to proper practices for tree pruning and other reasonable assistance for the purpose of ensuring compliance with this article.
(Ord. No. 03-159, § 7, 2-12-03)

Sec. 33-157. Provisions cumulative.

The provisions of this article are cumulative of state laws and are also expressly made cumulative of the provisions of article V of this chapter. To the extent that any tree governed by this section is also subject to regulation under article V, then both the provisions of this article and of article V shall be applicable. The director and the planning official shall establish procedures under which removal notices and landscape plans that are required to be filed under article V may be combined with or jointly filed with applications filed under section 33-155 of this Code, above.
(Ord. No. 03-159, § 7, 2-12-03)

Sec. 33-158. Penalty; civil remedies.

Violation of this article shall be punishable by a fine of up to $500.00, as more particularly provided in section 1-6 of this Code, and each tree that is unlawfully removed or damaged shall constitute a separate offense. Criminal prosecution shall not preclude civil action by the city to recover for the damage to or loss of the tree, and the city attorney is hereby authorized, without further authorization from city council to institute and prosecute a lawsuit against any person who removes or damages a tree without permis-

sion or authorization as required under this section to recover the reasonable value of the tree or damage thereto.
(Ord. No. 03-159, § 7, 2-12-03)

Sec. 33-159. Deferred disposition.

In keeping with the policy of education and street tree protection that is the underlying purpose of this article, the municipal courts are urged to consider deferred dispositions under article 45.54 of the Texas Code of Criminal Procedure whenever the circumstances warrant deferred dispositions. Conditions of deferral may include the defendants' replacing or repairing damaged trees wherever practicable and participating in community service programs for the planting and care of street trees.

Secs. 33-160—33-200. Reserved.

ARTICLE VII. HISTORIC PRESERVATION*

DIVISION 1. GENERALLY

Sec. 33-201. Definitions.

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

Alteration means any change to the exterior of a building, structure, object or site. Alteration shall include, but is not limited to, changing to a different kind, type or size of roofing or siding materials; changing, eliminating, or adding exterior doors, door frames, windows, window frames, shutters, fences, railings, columns, beams, walls, porches, steps, porte-cocheres, balconies, or ornamentation; or the dismantling, moving or removing of any exterior feature. Alteration does not include ordinary maintenance and repair.

Archaeological means relating to the study of past human behavior through use of material remains of historic and prehistoric origin.

Archaeological site means property or a location designated by the city council on which there exists material remains of past life or past life activities that occurred on the property or at the location.

Block means one or more lots, tracts, or parcels of land bounded by streets, easements, rights-of-way, or other physical features or a combination thereof.

Blockface means the portion of a block that abuts a street.

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Building permit means an official document or certificate issued by the building official authorizing performance of a specified activity, including the alteration, restoration, rehabilitation, construction, relocation or demolition of a building, structure or object.

Certificate of appropriateness means a current and valid permit issued by the HAHC or the planning official, as applicable, authorizing the issuance of a building permit for construction, alteration, rehabilitation, restoration, relocation or demolition required by this article.

Conservation plan means an inventory and analysis of historic resources within a geographic area of the city designated or proposed for designation as an historic district pursuant to the provisions of this article that contains standards for alteration, rehabilitation, restoration, construction, relocation and demolition of buildings, structures, objects or sites in an historic district.

Construction means the act of expanding an existing building, structure or object or the erection of a new building, structure or object on a lot, site or other property.

Contributing means a building, structure, object or site that reinforces the cultural, architectural or historical significance of the historic district in which it is located.

*Editor's note—Formerly, Art. VI. Ord. No. 03-159, § 6, adopted February 12, 2003, renumbered said article from Art. VI to Art. VII.

Contributing structure means a building, structure, object or site that is identified as contributing upon the designation of the historic district in which it is located.

Demolition means an act or process that destroys in whole or in part any building, structure, object or site.

Designation means the formal recognition by the city council of a building, structure, object, site or district as historically, architecturally, culturally or archaeologically significant to the city, state, nation or region.

Excavation means to expose, uncover, or remove by digging, cutting or hollowing out.

Exterior feature means an element of the architectural character and general arrangement of the external portion of a building, structure or object, including building material, that is visible from a public right-of-way.

HAHC means the Houston archaeological and historical commission.

Historic district means a geographical area designated by the city council that possesses a significant concentration, linkage or continuity of buildings, structures, objects or sites united by historical, cultural, architectural or archaeological significance to the city, state, nation or region.

Landmark means any individual building, structure, object or site designated by the city council for its historical, cultural, architectural or archaeological significance in the city, state, nation or region.

Mandatory repair means a repair of a building or structure that is necessary to comply with article IX of chapter 10 of this Code as evidenced by an order of the hearing official or the building and standards commission or by a citation.

Noncontributing means a building, structure, object or site that does not reinforce the cultural, architectural or historical significance of the historic district in which it is located.

Noncontributing structure means a building, structure, object or site that is identified as noncontributing upon the designation of the historic district in which it is located.

Nonprofit organization means an entity organized for religious or not-for-profit purposes that holds a determination letter from the Internal Revenue Service that it is exempt from taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, by virtue of section 501(c)(3) of that Code.

Object means a material thing of a functional, aesthetic, cultural, historical or scientific value that may be moveable by nature or design, yet related to a specific setting or environment.

Ordinary maintenance and repair means any work to correct or prevent deterioration, decay or damage to a building, structure, object or site (or any part thereof), provided that the work does not change the design, character, texture or material of any exterior feature or constitute an "alteration" as defined above.

Potentially contributing means a building, structure, object or site with incompatible alterations or deteriorating conditions that, if reversed, would reinforce the cultural, architectural or historical significance of the historic district in which it is located.

Potentially contributing structure means a building, structure, object or site that is identified as potentially contributing upon the designation of the historic district in which it is located.

Paleontological means relating to the study of all fossil remains of organisms that existed in the past.

Public right-of-way means an area, at grade level, of a minimum 40 feet in width, dedicated to the public for the passage of people or goods.

Qualified curatorial association means an organized and permanent non-profit institution, essentially educational or aesthetic in purpose, with professional staff, that owns and utilizes tangible objects, cares for them, and exhibits them to the public on some regular schedule, provided that the institution meets the requirements of the Council of Texas Archaeologists' Guidelines (Curation Standards and Procedures), 1992 edition, as may be amended or updated from time to time.

Real property records means the applicable records of a county in which conveyances of real property are recorded.

Rehabilitation means the act or process of returning a building, structure, object or site to a state of utility that makes possible an efficient contemporary use while preserving those portions or exterior features that are historically, architecturally and culturally significant.

Relocation means any change in the location of a building, structure or object.

Restoration means the act or process of accurately recovering the form and details of a building, structure, object or site and its setting as it appeared at a particular period of time by means of the removal of later work, or by the replacement of missing earlier work or both.

Site means property upon which a significant event occurred, including, but not limited to, any land, building or natural resource where prehistoric or historic occupations or activities occurred and the location of buildings and structures, whether standing, ruined, demolished or relocated, where the location retains historical, architectural or archaeological value and integrity.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Tract means a contiguous parcel of land under common ownership.

Working day means a day other than a Saturday, Sunday or official city holiday.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-202. Scope.

(a) The provisions of this article apply to the alteration, rehabilitation, restoration, construction, relocation and demolition of any building, structure, object or site that is designated as a landmark or that is located within an historic district or an archaeological site and to the excavation of any archaeological site.

(b) Nothing in this article shall be construed to authorize the city to regulate the use of any building, structure or property.

(c) Nothing in this article shall be construed to authorize the city to regulate the interior characteristics of any building or structure, provided that any change in the interior characteristics of a landmark or contributing structure in an historic district that has the effect of changing any exterior feature shall be subject to the terms of this article. Other provisions of this Code, the Construction Code, the Fire Code or state or federal law or regulation that are applicable to any building, structure, object or site that is subject to the provisions of this article shall continue to apply.

(d) This article does not abrogate or annul any restrictive covenant contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the county real property records, map records or deed records. Any property designated as a landmark or archaeological site or included within an historic district shall remain subject to the provisions of any restrictive covenants applicable to the property, and the restrictive covenants shall remain fully enforceable.

(e) The provisions of this article shall apply to buildings, structures, objects or sites that are owned by the United States of America, the State of Texas or a political subdivision of the State of Texas; provided such entities are not otherwise exempted from this article by law.

(f) Prior to any amendment of this article, the HAHC and the commission each shall conduct one public hearing to solicit public comments on the proposed amendments. The HAHC and the commission may make recommendations to the city council with respect to the proposed amendments. The provisions of this subsection shall not apply to any amendment to correct clerical errors or to make nonsubstantive changes in this article.
(Ord. No. 95-228, § 2, 3-1-95; Ord. No. 02-399, § 78, 5-15-02)

Sec. 33-203. Enforcement and penalties; remedies cumulative; other action not limited.

(a) The procedures set forth in this article are cumulative of all other remedies available to the city relating to the subject matter hereof. Specif-

(e) No person shall relocate any building, structure or object within, into or out of an archaeological site without a certificate of appropriateness.

(f) No person shall relocate any building, structure or object within or into an historic district or relocate a contributing structure out of an historic district without a certificate of appropriateness, provided that a certificate of appropriateness shall not be required to relocate a noncontributing structure to a location outside of the historic district in which it is located.

(g) No person shall demolish any landmark or any building, structure or object within an historic district without a certificate of appropriateness.

(h) No person shall conduct any mandatory repair of a landmark or of a building, structure or object within an historic district or archaeological site without a certificate of appropriateness.

(i) It shall be unlawful for any person to alter, rehabilitate, restore, construct, relocate or demolish any landmark or any building, structure or object in an historic district or archaeological site, or excavate any archaeological site without complying with the provisions of this article. It is a defense to prosecution under this section that the director of public works and engineering or a deputy director or an assistant director having supervisory responsibilities over the issuance of building permits has determined (1) that the work to be performed is necessary to correct conditions that are in violation of the life safety requirements for existing buildings as set forth in Appendix L of the Building Code; (2) that the work to be performed is the only means for achieving compliance with the life safety requirements; and (3) that, based upon the nature of the life safety violations and the risks associated with their continuation, the provisions of this article should be waived to the extent of the life safety requirements.

(j) Any application for amendment to a pending certificate of appropriateness application or building permit application or a certificate of appropriateness or building permit that has been issued under the provisions of this section that would affect any part of the work that is within the scope of this article, as set forth in section 33-202 of this Code, shall be considered as though it were an original application for the purposes of this division.
(Ord. No. 95-228, § 2, 3-1-95; Ord. No. 98-613, § 62, 8-5-98; Ord. No. 02-399, § 79, 5-15-02; Ord. No. 04-1015, § 27, 9-27-04)

Sec. 33-237. Exemption.

A certificate of appropriateness is not required for ordinary maintenance and repair. The operation of this section shall constitute an affirmative defense to prosecution under section 33-236 of this Code.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-238. Application.

An application for a certificate of appropriateness may be filed before, at the same time as or after the filing of an application for a building permit, but the 90-day period provided for in section 33-250 of this Code shall not begin until a completed application for a certificate of appropriateness is filed with the planning official. An applicant for a building permit may request the building official to review and process the application for a building permit during the 90-day period provided for in section 33-250 of this Code, but no building permit shall be issued until the applicant for the building permit presents a certificate of appropriateness or a 90-day waiver certificate issued pursuant to section 33-250 of this Code.

Application for a certificate of appropriateness shall be made by the owner of the property for which the application is requested or by the owner's agent. When necessary for the city to enforce the provisions of article IX of chapter 10 of this Code, the neighborhood protection official shall apply for any necessary certificate of appropriateness. Applications shall be filed with the planning official and shall contain the following information:

(1) The name, address and daytime telephone number of the owner and the applicant, if different from the owner;

(2) The address and general description of the property that is the subject of the application;

(3) A statement of whether the intended action by the applicant is:

a. Demolition;

b. Relocation;

c. Alteration;

d. Restoration;

e. Rehabilitation;

f. New construction;

g. Excavation; or

h. Mandatory repair;

(4) A current photograph of the subject of the application; and

(5) Either:

a. A rendering of the exterior of the subject of the application as it will appear upon completion of the proposed activity; or

b. A description of the work intended to be done, the materials to be used and the changes to be made.

If any plans and specification are required to secure a building permit, a copy of the plans and specifications shall be submitted with the application for certificate of appropriateness. There shall be no fee for the filing of an application for a certificate of appropriateness.
(Ord. No. 95-228, § 2, 3-1-95; Ord. No. 04-1015, § 28, 9-27-04)

Sec. 33-239. Procedures.

The HAHC shall consider an application for certificate of appropriateness at a regular meeting within 35 days of the date the application for certificate of appropriateness is filed with the planning official or at a later time mutually agreed upon in writing by the planning official and the applicant. The HAHC may continue its consideration of an application for a certificate of appropriateness to its next regular meeting upon finding that specific information is needed by the HAHC to enable it to reach its decision or upon agreement with the applicant for a continuance. If the HAHC does not act upon an application for a certificate of appropriateness within the later of 70 days from the date the application is filed with the planning official or 35 days after the date mutually agreed on by the applicant and planning official for review of the application by the HAHC, the application shall be deemed approved, unless the applicant consents in writing to an extension to a specified date.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-240. Criteria for issuance of certificates of appropriateness—General.

Except as provided in sections 33-248 and 33-249 of this Code, the HAHC shall review and approve, approve with conditions, or disapprove a certificate of appropriateness pursuant to the applicable specific criteria in this division or, if a conservation plan for an historic district has been approved pursuant to section 33-268 of this Code, the criteria in the conservation plan. The applicant for a certificate of appropriateness shall have the burden of demonstrating that the application satisfies the criteria applicable to the issuance of the certificate of appropriateness. To approve or disapprove an application for a certificate of appropriateness, the HAHC shall consider and make findings with respect to the relationship between the proposed activity and the applicable criteria. The HAHC shall take into consideration the current needs of the applicant and shall be sensitive to the property owner's financial condition in determining whether to issue a certificate of appropriateness.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-241. Same—Alteration, rehabilitation, restoration and construction.

(a) The HAHC shall issue a certificate of appropriateness for the alteration, rehabilitation, restoration or construction of an exterior feature of (i) any landmark, (ii) any building, structure or object in an historic district, or (iii) any building,

structure or object that is part of an archaeological site, upon finding that the application satisfies the following criteria, as applicable:

(1) The proposed activity must retain and preserve the historical character of the property;

(2) The proposed activity must contribute to the continued availability of the property for a contemporary use;

(3) The proposed activity must recognize the building, structure, object or site as a product of its own time and avoid alterations that seek to create an earlier or later appearance;

(4) The proposed activity must preserve the distinguishing qualities or character of the building, structure, object or site and its environment;

(5) The proposed activity must maintain or replicate distinctive stylistic exterior features or examples of skilled craftsmanship that characterize the building, structure, object or site;

(6) New materials to be used for any exterior feature must be compatible with the materials being replaced in composition, design, texture and other visual qualities;

(7) The proposed replacement of missing exterior features, if any, should be based on accurate duplication of features, substantiated by available historical, physical or pictorial evidence, where that evidence is available, rather than on conjectural designs or the availability of different architectural elements from other structures;

(8) Proposed additions or alterations must be done in a manner that, if removed in the future, would leave unimpaired the essential form and integrity of the building, structure, object or site;

(9) The proposed design for alterations or construction must not destroy significant historical, architectural or cultural material and must be compatible with the size, scale, material and character of the property and the area in which it is located;

(10) The setback of any proposed construction or alteration must be compatible with existing setbacks along the blockface and facing blockface(s); and

(11) The proposed activity will comply with any applicable deed restrictions.

(b) In reviewing applications for certificates of appropriateness under this section, the HAHC shall also consider any elements of the proposed activity that may be necessary to enable the property to comply with any other applicable city ordinances or state or federal law so as to facilitate compliance with this ordinance and other applicable laws.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-242. Same—New construction in historic district.

The HAHC shall issue a certificate of appropriateness for new construction in an historic district upon finding that the application satisfies the following criteria:

(1) The new construction must be compatible with the setbacks along the blockface and facing blockface(s);

(2) The exterior features of new construction must be compatible with the exterior features of structures along the blockface or facing blockface(s); and

(3) The proportions of the new construction, including height, width, length and roofline, must be compatible with structures and objects along the blockface or facing blockface(s).

Nothing in the foregoing shall be construed to require or impose a single architectural style in any historic district.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-243. Same—Relocation of landmark, contributing structure or potentially contributing structure.

(a) The HAHC shall issue a certificate of appropriateness for the relocation of any landmark, contributing structure or potentially contributing structure upon finding that the application satisfies one or more of the following criteria:

(1) The landmark, contributing structure or potentially contributing structure:

a. Has architectural or historical value independent of its physical location that will not be diminished with relocation;

b. Can be moved without significant damage to its physical integrity;

c. Will be relocated to an area that is compatible with the historical and architectural character of the landmark, contributing structure or potentially contributing structure; and

d. If located in an historic district, can be relocated without significantly diminishing the integrity of the historic district in which it is located.

(2) The relocation is necessary to protect the landmark, contributing structure or potentially contributing structure from demolition resulting from a public improvement project;

(3) The applicant has established an unreasonable economic hardship pursuant to the criteria of section 33-247(a)(1) of this Code; or

(4) The applicant has established unusual or compelling circumstances pursuant to section 33-247(a)(3) of this Code.

(b) Alternatively, the HAHC shall issue a certificate of appropriateness for relocation if relocation of the landmark, contributing structure or potentially contributing structure has been identified as an alternative to demolition pursuant to section 33-247(b)(2) of this Code.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-244. Same—Relocation of noncontributing structure.

The HAHC shall issue a certificate of appropriateness for the relocation of a noncontributing structure within or into an historic district upon finding that the application satisfies the criteria in section 33-242 of this Code as if it were new construction.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-245. Same—Relocation of a building, structure or object on archaeological site.

The HAHC shall issue a certificate of appropriateness for the relocation of a building, structure or object within, into or out of an archaeological site upon finding that the application satisfies the following criteria:

(1) The relocation will not destabilize any archaeological resources within or on the archaeological site; and

(2) The relocation will comply with the requirements of section 33-246 of this Code.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-246. Same—Excavation.

The HAHC shall issue a certificate of appropriateness for the excavation of an archaeological site upon finding that the application meets the following criteria:

(1) The excavation must be conducted so as to protect and preserve archaeological resources affected by, or adjacent to, the excavation; and

(2) The applicant must commit to make reasonable efforts to mitigate and stabilize archaeological resources if they are disturbed.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-247. Same—Demolition of landmark, contributing structure, potentially contributing structure or within archaeological site.

(a) The issuance of a certificate of appropriateness for the demolition of a landmark, a contributing structure or a potentially contributing struc-

ture or for demolition of a building, structure or object on or in an archaeological site shall be subject to the establishment by the applicant of an unreasonable economic hardship or the establishment of an unusual and compelling circumstance.

(1) Determination of an unreasonable economic hardship shall be based upon the following criteria:

a. That the property is incapable of earning a reasonable return, without regard to whether the return is the most profitable return, including without limitation, whether the costs of maintenance or improvement of the property exceed its fair market value;

b. That the property cannot be adapted for any other use, whether by the current owner, by a purchaser or by a lessee, that would result in a reasonable return; and

c. That efforts to find a purchaser or lessee interested in acquiring the property and preserving it have failed.

(2) With respect to a nonprofit organization, the city council recognizes that the determination of unreasonable economic hardship may depend on factors that are not applicable to an individual or a for-profit enterprise. To assist the HAHC in determining whether a nonprofit organization has met the criteria of item (1) above, the nonprofit organization may present and the HAHC may consider the following information:

a. The amount paid for the property, the date of purchase, and the party from whom the property was purchased, including a description of the relationship, whether business or familial, if any, between the owner and the person from whom the property was purchased;

b. The assessed value of the land and improvements thereon according to the most recent assessment, or, if the property is exempt from local property taxes, a certified appraisal of the value of the property conducted by a qualified real estate appraiser;

c. Financial information for the previous two years, which shall include, at a minimum, the annual gross income of the nonprofit organization; itemized operating and maintenance expenses; real estate taxes or payments made in lieu of real property taxes, if any; annual debt service; and annual cash flow;

d. All appraisals obtained by the owner in connection with the acquisition, purchase, donation, or financing of the property, or during the ownership of the property;

e. All listings of the property for sale or rent, price asked and offers received, if any;

f. Any consideration by the owner of uses and adaptive reuses of the property;

g. Identification of reasonable reuses for the property within the context of the property and its location;

h. Rehabilitation cost estimates for the identified uses or reuses, including the basis of the cost estimates;

i. The current standard of building and maintenance costs for the performance of the mission or function of the nonprofit corporation, particularly in the Houston and Texas areas;

j. A comparison of the cost of performance of the mission or function of the nonprofit organization in the existing building and in a new building, and a comparison of the cost of rehabilitation of the existing building with the demolition of the existing building and the construction of a new building;

k. The impact of the reuse of the existing building on the financial condition of the nonprofit organization;

l. The impact of the reuse of the existing building on the organization's program, function or mission;

m. The additional cost, if any, attributable to the building of performing the nonprofit organization's function within the context of costs incurred by comparable organizations, particularly in the Houston area;

n. Grants received, applied for or available to maintain or approve the property;

o. The nonprofit organization's budget for the current and immediately past fiscal years; and

p. Consideration, if any, given by the nonprofit organization to relocation.

(3) Determination of the existence of an unusual or compelling circumstance shall be based upon the following criteria:

a. That current information does not support the historic or archaeological significance of the building, structure or object or its importance to the integrity of an historic district, if applicable;

b. Whether there are definite plans for reuse of the property if the proposed demolition is carried out and what effect such plans have on the architectural, cultural, historical or archaeological character of the surrounding area; and

c. Whether reasonable measures can be taken to save the building, structure or object from further deterioration, collapse, arson, vandalism or neglect.

If the HAHC determines that the applicant has demonstrated an unreasonable hardship or the existence of an unusual or compelling circumstance by a preponderance of credible evidence, the HAHC shall issue a certificate of appropriateness for demolition.

(b) If the HAHC does not issue a certificate of appropriateness for demolition pursuant to subsection (a), the planning official and the applicant shall explore alternatives to demolition. It shall be the duty of an applicant for a certificate of appropriateness for demolition to participate in good faith in a diligent effort to identify alternatives to demolition. The HAHC, the planning official and the applicant may consult with recognized historic preservation organizations and other civic groups, public agencies and interested citizens to determine the feasibility of:

(1) Public or other acquisition of the property, structure, building or object;

(2) Relocating one or more of the structures or features of the property if to do so would preserve its historic or architectural value; or

(3) Any other reasonable means of preserving the property, structure, building or object's historic or architectural value.

(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-248. Same—Demolition of noncontributing structure.

The planning official shall issue a certificate of appropriateness for demolition of a noncontributing structure upon determining that the building, structure or object for which the certificate of appropriateness is requested was identified as a noncontributing structure upon the designation of the historic district in which it is located.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-249. Same—Mandatory repair.

(a) The planning official shall issue a certificate of appropriateness for mandatory repair of a landmark or of a building, structure or object within an historic district or archaeological site upon application and review of the order or citation requiring the mandatory repair if the planning official finds that the proposed mandatory repair is necessary to comply with the order or citation and will not result in a change in the

architectural, historical, archaeological or cultural character of the landmark, or of the building, structure or object in the historic district or archaeological site that existed prior to the issuance of the order or citation. The planning official shall consider the criteria in section 33-241 in reviewing the application and making the findings required by this section.

(b) If the planning official does not issue a certificate of appropriateness for mandatory repair within three working days following receipt of the application or a later date mutually agreeable to the applicant and the planning official, or if the planning official denies the application, the application shall be submitted to the HAHC for consideration as if it were an application for a certificate of appropriateness for alteration, rehabilitation, restoration or construction pursuant to section 33-241 of this Code.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-250. Ninety-day waiver certificate.

If for any reason a certificate of appropriateness has not been issued on or before the ninetieth day following the filing of a complete application for a certificate of appropriateness with the planning official, then the applicant, upon request to the planning official, shall be entitled to the immediate issuance of a 90-day waiver certificate, which shall for all purposes be the equivalent of a certificate of appropriateness.

Before the expiration of the 90 days, the applicant shall consult with department staff to explore alternatives to the actions proposed by the applicant to mitigate the reasons for which the certificate was denied. Notwithstanding the foregoing, any property for which a 90-day waiver certificate is granted pursuant to the provisions of this section shall not be eligible for any tax exemptions or other financial benefit authorized by the city council for the property based on its designation pursuant to this article.
(Ord. No. 95-228, § 2, 3-1-95; Ord. No. 04-1015, § 29, 9-27-04)

Sec. 33-251. Emergency action; securing dangerous buildings.

Nothing in this division shall limit the ability of the city to demolish, to order the demolition of, or to order any other action with respect to, any building, structure or object that the building official determines to be an imminent danger to the health, life or safety of any person. No certificate of appropriateness shall be required for a demolition or other action ordered by the building official pursuant to section 10-431 of this Code or for the securing of a building pursuant to section 10-377 of this Code.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-252. Conditions.

In granting any certificate of appropriateness, if the HAHC has reason to believe that the activity for which the certificate of appropriateness is required may result in the disturbance of any archaeological or paleontological resource, the HAHC may require, as a condition of the certificate of appropriateness, that the applicant submit a construction plan demonstrating actions that the applicant will undertake to mitigate the disturbance and loss of archaeological or paleontological resources.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-253. Appeal.

(a) An applicant aggrieved by a decision of the HAHC with respect to any certificate of appropriateness may appeal to the commission by filing a written notice of appeal, stating the grounds for the appeal, with the planning official within ten days following the date the HAHC renders its decision.

(b) The commission shall consider the appeal at its first regularly scheduled meeting for which required notice can be given. The commission shall consider the application, the findings of the HAHC and any evidence presented at the meeting at which the appeal is considered. The commission shall reverse or affirm the decision of the HAHC based upon the criteria applicable to the certificate of appropriateness. The decision of the commission shall be final. If the commission does not make a decision on the appeal within 30 days following the commission's hearing on the appeal, the decision of the HAHC with respect to the application for the certificate of appropriateness shall be deemed affirmed.

(c) The planning official shall provide the applicant with notice of the time and place of the meeting at which the appeal will be considered by mail no less than ten days before the date of the meeting.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-254. Validity.

A certificate of appropriateness shall be valid for one year from its effective date.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-255. Amendment.

A certificate of appropriateness may be amended, modified or extended only in accordance with the procedures and criteria established for its original approval.

Secs. 33-256—33-265. Reserved.

DIVISION 5. CONSERVATION PLANS

Sec. 33-266. Plan optional.

The applicant for the designation of an historic district may prepare and submit a proposed conservation plan as part of the application.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-267. Requirements.

The proposed historic district conservation plan shall contain:

(1) A map and description of the proposed historic district, including boundaries; photographs of buildings in the district; an inventory of the age, setting, character and architectural, cultural or historical significance of structures in the district; and objectives to be achieved in the historic district;

(2) A statement of the architectural, cultural or historical significance of the proposed historic district and a description of structures and features to be preserved; and

(3) A set of specific standards for reviewing applications for certificates of appropriateness for demolition, construction, alteration, rehabilitation, restoration and relocation that will preserve the integrity of the historic district.

(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-268. Approval; effect of approval; amendment.

(a) The proposed conservation plan shall be considered as part of the application for the designation of the proposed district and shall require the approval of the city council.

(b) After approval, the HAHC and the commission shall use the conservation plan criteria for granting or denying applications for certificates of appropriateness for applicable activities within the boundaries of the historic district.

(c) A conservation plan may be amended from time to time in the same manner and following the same procedures used in the original approval of the conservation plan and designation of the district. No amendment shall be effective unless it is approved by the city council.
(Ord. No. 95-228, § 2, 3-1-95)

Sec. 33-269. Staff assistance.

When the city is the applicant for the designation of an historic district, the department shall prepare any proposed conservation plan.
(Ord. No. 95-228, § 2, 3-1-95)

Secs. 33-270—33-300. Reserved.

ARTICLE VIII. SUPER NEIGHBORHOOD INITIATIVE

DIVISION 1. GENERALLY

Sec. 33-301. Definitions.

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

Alliance means the super neighborhood alliance.

CIP means the city's annual capital improvement program.

Representative means a super neighborhood council's president, chair or other council appointee assigned to serve on the alliance.

SNAP means super neighborhood action plan, an annual action plan or update of priority community projects proposed by a super neighborhood council.

Stakeholders means the residents, civic clubs, non-profit associations, community development corporations, business associations, school districts or systems, faith-based institutions, and other institutional organizations located or operating in a super neighborhood.

Super neighborhood means a grouping of contiguous neighborhoods based on a geographic framework established by the director and shown on a super neighborhood map maintained in the office of the director.

Super neighborhood council means a representative group of stakeholders from a super neighborhood that have joined together for the purposes set forth in this article and have been formally recognized by the mayor.
(Ord. No. 03-1025, § 2, 11-5-03)

Sec. 33-302. Super neighborhood initiative.

The super neighborhood initiative is hereby recognized as a program within the department.
(Ord. No. 03-1025, § 2, 11-5-03)

Sec. 33-303. Super neighborhoods established.

The 88 super neighborhoods identified on the map or maps created by the director and placed on file in the director's office on or before November 5, 2003, are hereby established as the initial super neighborhoods of the city for purposes of this article. The director may create additional super neighborhoods and adjust the boundaries of a super neighborhood from time to time to reflect changes in physical characteristics, community demographics or changes in the corporate limits of the city. The official list of super neighborhoods and maps of their boundaries shall continue to be maintained by the director.
(Ord. No. 03-1025, § 2, 11-5-03)

Sec. 33-304. Assistance by city departments and employees.

The mayor shall appoint city employees to serve as the city's general liaison to each recognized super neighborhood council as appropriate and necessary, and as the budget allows.
(Ord. No. 03-1025, § 2, 11-5-03)

Secs. 33-305—33-310. Reserved.

DIVISION 2. SUPER NEIGHBORHOOD COUNCILS

Sec. 33-311. Formation of super neighborhood councils.

(a) The super neighborhood councils previously established and recognized by the mayor on or before November 5, 2003, are hereby recognized for purposes of this article as super neighborhood councils.

(b) Additional super neighborhood councils may be recognized by the mayor upon determination that the requestors have satisfied the following:

(1) Identification of stakeholders within the super neighborhood and demonstration of efforts to invite them to participate in the formation of the proposed council;

(2) Demonstration that no stakeholder was denied representative participation on the proposed super neighborhood council;

(3) Creation of an organizational structure that will provide representative participation on the council by all stakeholders desiring to participate; and

(4) Adoption of written by-laws that address the manner in which the business of the proposed council is to be conducted and the procedures for election of officers.

The director shall promulgate written guidelines that further describe how super neighborhood stakeholders can satisfy the criteria listed

above. In addition, the director shall recommend to the mayor whether stakeholders of a proposed super neighborhood council have satisfied the criteria needed to achieve recognition. The mayor shall make the determination regarding recognition.

(c) The director shall maintain a list of recognized super neighborhood councils for public inspection.
(Ord. No. 03-1025, § 2, 11-5-03)

Sec. 33-312. Objectives and duties of a super neighborhood council.

(a) The objective of a super neighborhood council is to serve as a forum where stakeholders may identify and discuss broad-based issues that affect their super neighborhood, develop a consensus on community priorities for action, and formulate a plan to address the issues and priorities.

(b) A super neighborhood council may undertake various activities, including but not limited to the following:

(1) Development of a written SNAP for review and consideration by appropriate city departments;

(2) Assisting the district council member in the scheduling and conducting of CIP public hearings;

(3) Designation of a representative to serve on the alliance; and

(4) Submission of the SNAP to the alliance for inclusion in the alliance's annual report to the mayor and city council.
(Ord. No. 03-1025, § 2, 11-5-03)

Sec. 33-313. Compensation of members; conflicts of interest.

Members of a super neighborhood council shall serve without compensation. Super neighborhood councils do not constitute covered persons for the purpose of article X of chapter 2 of this Code. Each member of a council shall abstain from voting upon matters in which there is or may be a conflict of interest, shall not participate in any activity of a super neighborhood council or the alliance in which there is or may be a conflict of interest, and shall not participate in any city contract that relates to the duties of the super neighborhood councils or the alliance.
(Ord. No. 03-1025, § 2, 11-5-03)

Secs. 33-314—33-320. Reserved.

DIVISION 3. THE ALLIANCE

Sec. 33-321. The alliance is hereby recognized.

The super neighborhood alliance as heretofore created under auspices of the mayor and the director is hereby recognized as the alliance for purposes of this article. Its membership is composed of the representatives of the super neighborhood councils.
(Ord. No. 03-1025, § 2, 11-5-03)

Sec. 33-322. Purpose.

The alliance is an advisory board to the mayor and city government on community matters and its purpose is to provide a mechanism for bringing together the voices of the individual super neighborhood councils. The alliance may coordinate on issues of citywide significance or otherwise affecting community participation in city decision-making that may have local significance and facilitate the communication of neighborhood priorities to the mayor and city council.
(Ord. No. 03-1025, § 2, 11-5-03)

Sec. 33-323. Objectives and duties of the alliance.

The alliance shall advise and make recommendations to the mayor and city council on the priorities for neighborhood projects from the SNAPs of the super neighborhood councils. The alliance shall prepare and submit a written report to the mayor and city council by March 31st of each year regarding the status of SNAPs during the current CIP year and recommending to the mayor and city council a list of priority projects for the next year's CIP, as such projects are specified and prioritized by each of the recognized super neighborhood councils that participate in the alliance. The mayor and city council shall consider the

recommendations of the alliance when making final decisions regarding projects included in the CIP and the city's annual operating budget.
(Ord. No. 03-1025, § 2, 11-5-03)

Sec. 33-324. Meetings.

The alliance shall conduct meetings in accordance with the memorandum of understanding adopted by the alliance in March 2003, a true copy of which has been placed on file in the office of the city secretary. A majority vote of the alliance members present and voting, constituting a quorum, shall establish the recommendations and advice of the alliance.
(Ord. No. 03-1025, § 2, 11-5-03)

Sec. 33-325. Compensation of members; conflicts of interest.

Members of the alliance shall serve without compensation. The alliance does not constitute a covered person for the purpose of article X of chapter 2 of this Code. Each member of the alliance shall abstain from voting upon matters in which there is or may be a conflict of interest, shall not participate in any activity of a super neighborhood council or the alliance in which there is or may be a conflict of interest, and shall not participate in any city contract that relates to the duties of the alliance.
(Ord. No. 03-1025, § 2, 11-5-03)

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