



FAYETTEVILLE CITY COUNCIL
AGENDA
SEPTEMBER 10, 2012
7:00 P.M.
City Hall Council Chamber

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 PLEDGE OF ALLEGIANCE

4.0 APPROVAL OF AGENDA

5.0 PUBLIC FORUM

6.0 CONSENT

6.1 Award Contract for the Purchase of Twenty-four (24) Dodge Charger Police Cars

6.2 Budget Ordinance Amendment 2013-4 (Downtown Development Plan)

6.3 Capital Project Ordinance Amendment 2013-19 (Airport Runway and Taxiway Improvements)

6.4 Proposed Participation in EPA's Ozone Advance Program

6.5 Bid Recommendation- 69kV Transmission Line I-295 Re-Route Installation Project

7.0 PUBLIC HEARINGS

For certain issues, the Fayetteville City Council may sit as a quasi-judicial body that has powers resembling those of a court of law or judge. The Council will hold hearings, investigate facts, weigh evidence and draw conclusions which serve as a basis for its decisions. All persons wishing to appear before the Council should be prepared to give sworn testimony on relevant facts.

7.1 Public Hearing for Assessment Rolls on Soil Street That Have Been Paved.

Presenter(s): Rusty Thompson, PE, Engineering & Infrastructure Director

7.2 Amendment to City Code 30-5 Development Standards and related sections to provide for canopy ('tree save') area, specimen tree preservation and related landscaping standards, and provide incentives or credits as appropriate.

Presenter(s): Eloise Sahlstrom, Urban Designer/Sr. Planner

7.3 Amendment to City Code 30-5 Development Standards and 30-6 Subdivision, to combine open space and parkland requirements, provide options for in-lieu fees, and include incentives or credits as appropriate (and including related changes in 30-3, 30-7, and 30-9)

Presenter(s): Karen S. Hilton, Manager and Eloise Sahlstrom, Urban Designer/Sr. Planner

7.4 Amendment to City Code 30-5 Development Standards and related sections to modify building orientation and parking lot location.

Presenter(s): Karen S. Hilton, AICP, Eloise Sahlstrom, Urban Designer/Sr. Planner

7.5 Amendment to City Code 30-5 Development Standards to consider a permanent easement as access to certain land-locked parcels.

Presenter(s): Scott Shuford, AICP Director, Development Services Dept.

7.6 Amendments to City Code 30-4 and 30-9 to modify use or category definitions, descriptions, and use listings, including Personal Services in the OI district.

Presenter(s): Karen S. Hilton, Manager, Planning and Zoning Div

8.0 ADJOURNMENT

CLOSING REMARKS

POLICY REGARDING NON-PUBLIC HEARING AGENDA ITEMS

Anyone desiring to address the Council on an item that is not a public hearing must present a written request to the City Manager by 10:00 a.m. on the Wednesday preceding the Monday meeting date.

POLICY REGARDING PUBLIC HEARING AGENDA ITEMS

Individuals wishing to speak at a public hearing must register in advance with the City Clerk. The Clerk's Office is located in the Executive Offices, Second Floor, City Hall, 433 Hay Street, and is open during normal business hours. Citizens may also register to speak immediately before the public hearing by signing in with the City Clerk in the Council Chamber between 6:30 p.m. and 7:00 p.m.

POLICY REGARDING CITY COUNCIL MEETING PROCEDURES SPEAKING ON A PUBLIC AND NON-PUBLIC HEARING ITEM

Individuals who have not made a written request to speak on a non-public hearing item may submit written materials to the City Council on the subject matter by providing twenty (20) copies of the written materials to the Office of the City Manager before 5:00 p.m. on the day of the Council meeting at which the item is scheduled to be discussed.

COUNCIL MEETING WILL BE AIRED

September 10, 2012 - 7:00 p.m.

COMMUNITY CHANNEL 7

COUNCIL MEETING WILL BE RE-AIRED

September 12, 2012 - 10:00 p.m.

COMMUNITY CHANNEL 7

***Notice Under the Americans with Disabilities Act (ADA):** The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Ron McElrath, ADA Coordinator, at rmcelrath@ci.fay.nc.us, 910-433-1696, or the Office of the City Clerk at cityclerk@ci.fay.nc.us, 910-433-1989, as soon as possible but no later than 72 hours before the scheduled event.*

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Gloria Wrench, Purchasing Manager
DATE: September 10, 2012
RE: **Award Contract for the Purchase of Twenty-four (24) Dodge Charger Police Cars**

THE QUESTION:

Staff requests approval to award a contract for the purchase of twenty-four (24) Dodge Charger Police Cars.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3 - More Efficient City Government - Cost Effective Service Delivery

BACKGROUND:

On August 30, 2011, the City received and opened formal bids for the purchase of Dodge Charger Police Cars. This bid included a provision which allows the City to purchase additional vehicles from the successful bidder within a three (3) year period, upon the agreement of both parties. Bids were received from two (2) bidders, Ilderton Dodge Chrysler Jeep, High Point, NC and US 1 Chrysler Dodge Jeep, Sanford, NC. The low bidder, Ilderton Dodge Chrysler Jeep, High Point, NC, has agreed to the additional buy clause in the contract for the purchase of twenty-four (24) police cars as follows: Twenty-two (22) Marked Dodge Charger Police Cars \$28,988.00 \$637,736.00 Two (2) Marked Dodge Charger Police Cars with Kennels \$30,238.00 \$60,476.00 Total Cost \$698,212.00

ISSUES:

None

BUDGET IMPACT:

The total amount budgeted for the purchase of these cars is \$803,000.

OPTIONS:

(1) Award contract according to staff recommendation. (2) Not award contract.

RECOMMENDED ACTION:

Award contract for the purchase of twenty-four (24) Dodge Charger Police Cars to Ilderton Dodge Chrysler Jeep, High Point, North Carolina, in the amount of \$698,212.00

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa Smith, Chief Financial Officer
DATE: September 10, 2012
RE: **Budget Ordinance Amendment 2013-4 (Downtown Development Plan)**

THE QUESTION:

Council is asked to approve this budget ordinance amendment which will appropriate \$63,600 to the Community Development Department budget for expenditures associated with the Downtown Development Plan. The source of funds for the amendment is an appropriation of \$63,600 from General Fund fund balance.

RELATIONSHIP TO STRATEGIC PLAN:

Mission Principle 1: Financially Sound City Government
Goal 6: Revitalized Downtown - A Community Focal Point

BACKGROUND:

After a careful selection process involving representatives from the Downtown Alliance and the Arts Council, the consulting firm Studio Cascade has been chosen to update the 2002 Downtown Fayetteville Renaissance Plan and provide strategic visioning services. The expected outcome of the work is a detailed ten-year plan that creates a vision for downtown Fayetteville, developing concrete deliverables for the City of Fayetteville and partnering agencies.

The consultant will work with City staff to:

- Engage stakeholders in the creation of an inspiring vision for the future of downtown Fayetteville creating a framework for the role the City of Fayetteville and partnering agencies will play in realizing that vision;
- Create shared goals for the City of Fayetteville that enable all stakeholders to align programs and services to meet these goals;
- Provide strategic and tactical planning resulting in a specific set of short and long-term strategies and action items over a ten-year period; and
- Assure the plan addresses downtown Fayetteville issues and provides real value to our stakeholders by creating measurable results for the organization.

The fiscal year 2011-2012 General Fund budget included \$60,000 for this purpose that was unspent at the fiscal year end. It is expected that \$63,600 will be needed for this project, to include \$60,500 for project management, an analysis of downtown, planning meetings and the development of plan documents, and \$3,100 for marketing and outreach.

ISSUES:

None

BUDGET IMPACT:

As presented above.

OPTIONS:

- Adopt Budget Ordinance Amendment 2013-4 to move forward with the update of the Downtown Plan.
- Do not adopt Budget Ordinance Amendment 2013-4.

RECOMMENDED ACTION:

Adopt Budget Ordinance Amendment 2013-4 as presented.

ATTACHMENTS:

Budget Ordinance Amendment 2013-4

2012-2013 BUDGET ORDINANCE AMENDMENT
CHANGE 2013-4

BE IT ORDAINED BY THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA:

That the City of Fayetteville Budget Ordinance adopted June 11, 2012 is hereby amended as follows:

Section 1. It is estimated that the following revenues and other financing sources will be available during the fiscal year beginning July 1, 2012, and ending June 30, 2013, to meet the appropriations listed in Section 2.

<u>Item</u>	<u>Listed As</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Fund Balance Appropriation	\$ 4,200,047	\$ 63,600	\$ 4,263,647
All Other General Fund Revenues and OFS	141,112,812	-	141,112,812
Total Estimated General Fund Revenues and Other Financing Sources	<u>\$ 145,312,859</u>	<u>\$ 63,600</u>	<u>\$ 145,376,459</u>

Section 2. The following amounts are hereby appropriated for the operations of the City Government and its activities for the fiscal year beginning July 1, 2012, and ending June 30, 2013, according to the following schedules:

<u>Item</u>	<u>Listed As*</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Community Development	\$ 1,419,402	\$ 63,600	\$ 1,483,002
All Other General Fund Departments	143,893,457	-	143,893,457
Total Estimated General Fund Expenditures	<u>\$ 145,312,859</u>	<u>\$ 63,600</u>	<u>\$ 145,376,459</u>

Adopted this 10th day of September, 2012.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa Smith, Chief Financial Officer
DATE: September 10, 2012
RE: **Capital Project Ordinance Amendment 2013-19 (Airport Runway and Taxiway Improvements)**

THE QUESTION:

This project budget amendment will appropriate an additional \$25,000 for the project.

RELATIONSHIP TO STRATEGIC PLAN:

Principle H: Strong Local Economy

BACKGROUND:

- The airport has been awarded a 2012 Federal Aviation Administration (FAA) grant to construct Runway 4 Safety Area improvements and the Taxiway "A" extension, as well as, design for Runway 4/22 improvements.
- The initial budget for this project was established by City Council in August.
- Since that time, we have determined that an additional \$25,000 from the sale of an airport fire truck should be appropriated for the project, consistent with instructions from the FAA.
- This amendment will appropriate those funds, resulting in a revised project budget of \$ 4,480,189.

ISSUES:

None.

BUDGET IMPACT:

See impact described above.

OPTIONS:

- 1) Adopt Capital Project Ordinance Amendment 2013-19.
- 2) Do not adopt Capital Project Ordinance Amendment 2013-19.

RECOMMENDED ACTION:

Adopt Capital Project Ordinance Amendment 2013-19.

ATTACHMENTS:

Capital Project Ordinance Amendment 2013-19 (AIP 39)

CAPITAL PROJECT ORDINANCE AMENDMENT
CHANGE 2013-19 (CPO 2013-14)

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1. The project change authorized is to Capital Project Ordinance 2013-14, adopted August 13, 2012 for construction of improvements to the Runway Safety Area (RSA) for Runway 4, and Taxiway "A" extension, as well as, design for Runway 4/22 paved shoulders, as authorized in the Federal Aviation Administration Project No. 39.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various agreements executed and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

	Listed As	Amendment	Revised
Federal Grant - Federal Aviation Administration	\$ 4,009,670	\$ -	\$ 4,009,670
Local Match - Airport Operating Fund Transfer	445,519	-	445,519
Sale of Grant Asset - Fire Truck	-	25,000	25,000
	\$ 4,455,189	\$ 25,000	\$ 4,480,189

Section 4. The following amounts are appropriated for the project:

Project Expenditures	\$ 4,455,189	\$ 25,000	\$ 4,480,189
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Section 5. Copies of the capital project ordinance amendment shall be made available to the budget officer and the finance officer for direction in carrying out the projects.

Adopted this 10th day of September, 2012.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Gerald W. Dietzen, Environmental Services Director
DATE: September 10, 2012
RE: **Proposed Participation in EPA's Ozone Advance Program**

THE QUESTION:

Will City Council consider participation in the EPA's Ozone Advance Program along with other municipalities and Cumberland County and will City Council do so by approving a resolution?

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3: Greater Community Unity - Pride in Fayetteville (3) Develop and maintain collaborative working relationships among various governmental units

Goal 4: Growing City, Livable Neighborhoods - A Great Place to Live (4) Manage the City's future growth and development with quality development and redevelopment reflecting plans, policies and standards

BACKGROUND:

The City of Fayetteville participated in the Early Action Compact between 2003 and 2008. This was a partnership between EPA, the North Carolina Department of the Environment and Natural Resources, and Cumberland County, on behalf of local governments and organizations, to implement strategies and policies that would improve the air quality in the area. That program worked to bring the City into compliance with the 1997 air quality ozone standards of 0.08 parts per million and defer a potential non-attainment designation. In the Early Action Compact ("EAC"), a member from each of the County's municipalities and other major organizations, to include Fort Bragg, was nominated to serve on the Air Quality Stakeholders committee. Cumberland County and its municipalities developed a staff committee to make recommendations, do the work and to recommend actionable items for the Air Quality Stakeholders to take back to their respective boards for action. The Cumberland County Air Quality Technical Committee, the Sustainable Sandhills Air Team and the Fort Bragg Air quality committee merged in 2006 to form the Combined Air Team (CombAT). Cumberland County met all of the requirements of the EAC and has managed to remain in attainment even after the standards changed again in 2008 to 0.075 parts per million, most recently confirmed on July 17, 2012.

The EPA is set to lower the ground level Ozone limit in 2014 and implement it in 2016. The new limit amount is not yet available; however, the Clean Air Scientific Advisory Council is looking at recommendations ranging between 0.60 and 0.70 parts per million. The Ozone Advance Program is VOLUNTARY and would allow our community flexibility to select and implement strategies that could help in lowering Ozone precursors. Ozone Advance participants will also receive preferred status under several emission reduction grants.

Should the City fail to meet the new standard by 2016 and become a non-attainment community, that failure will trigger control measures for new businesses and those businesses wishing to expand. Additional restrictions will also apply to transportation projects that increase roadway capacity.

The Ozone Advance Program is similar in nature to the Early Action Compact and allows the County to work with the municipalities to recommend programs that will improve our air quality and attempt to remain in compliance at the onset of the new EPA ground level Ozone requirements in 2014. A preliminary list of possible strategies may include: increased efforts in urban reforestation, promote/support local food efforts, promote alternative energy production, explore use of alternative clean-burning fuels for vehicles and equipment, etc.

ISSUES:

EPA is scheduled to change the ground level Ozone in 2014. Due to our current levels this will most likely put Fayetteville and Cumberland County in "non-attainment" for ground-level Ozone and possibly other toxins.

By entering into the Ozone Advance program, EPA will assist the community in developing a plan to reduce our Ozone and other toxins over time in order for us to ultimately comply with EPA's proposed Ozone levels.

BUDGET IMPACT:

Unknown at this time

OPTIONS:

1. Approve a resolution enabling Fayetteville to participate as a member in the Ozone Advance Program
2. Do not approve a resolution to allow Fayetteville to participated in the Ozone Advance Program

RECOMMENDED ACTION:

1. Approve the resolution enabling Fayetteville to participate as a member in the Ozone Advance Program

ATTACHMENTS:

Ozone Advance Resolution

Ozone Advance Guide - EPA Document

City of Fayetteville

Office of the Mayor and City Council

EPA Ozone Advance Program Resolution

WHEREAS, the City of Fayetteville would like to enter into the EPA's Ozone Advance Program so the community will have flexibility in developing a plan to reduce our Ozone and other toxins in order to comply with EPA's proposed Ozone levels; **AND**

WHEREAS, the EPA is set to lower the ground level Ozone limit in 2014, while the Clean Air Scientific Advisory Council is looking at implementing a new limit amount in 2016; **AND**

WHEREAS, the Ozone Advance Program is voluntary and would allow our community flexibility to select and implement strategies that could help in lowering Ozone precursors, and Ozone Advance participants will also receive preferred status under several emission reduction grants; **AND**

WHEREAS, the Ozone Advance Program is similar in nature to the Early Action Compact, which the City of Fayetteville participated in from 2003 to 2008, implementing strategies and policies that improved the air quality in the area and brought it into compliance with 1997 ozone standards; **AND**

WHEREAS, a preliminary list of possible strategies for the City of Fayetteville to utilize as part of the Ozone Advance Program may include: increasing efforts in urban reforestation, promoting/supporting local food efforts, promoting alternative energy production and exploring use of alternative clean-burning fuels for vehicles and equipment.

THEREFORE BE IT RESOLVED: the Fayetteville City Council and Mayor support City staff in their efforts to enter into the EPA's Ozone Advance Program, so that the City of Fayetteville can promote a higher quality of life, an improved environment, a cleaner city and an even greater place to live for its residents.

Anthony G. Chavonne
Mayor

Ozone Advance

Introduction

Ozone Advance is a collaborative effort by EPA, states, tribes, and local governments to encourage emission reductions in ozone attainment areas nationwide to maintain the 2008 National Ambient Air Quality Standard (NAAQS) for ozone. The goals of the program are to (1) help attainment areas take action in order to keep ozone levels below the level of the ozone NAAQS to ensure continued health protection for their citizens, (2) better position areas to remain in attainment, and (3) efficiently direct available resources toward actions to address ozone problems quickly.

The Ozone Advance program offers participating states, tribes, and local governments the opportunity to work in partnership with EPA and each other within a framework that can help focus participants' efforts to keep their air clean. While participation in the program is not a guarantee that an area will avoid a future nonattainment designation or other Clean Air Act requirements, it can better position the area to comply with the requirements associated with such a designation. For example, emission reduction actions undertaken as part of the program could potentially receive "credit" in State/Tribal Implementation Plans (SIPs/TIPs) in the event an area is eventually designated nonattainment with a Moderate or higher classification, either in terms of reflecting a lower baseline from which additional reductions are needed to meet reasonable further progress goals or, if they occur after the baseline year, as a measure that shows progress toward attainment.¹

Other flexible ozone attainment programs preceded the current Ozone Advance program, including the Flexible Attainment Region (FAR) approach in the 1990s, the 2001 1-hour Ozone Flex Program,² and the 2006 8-hour Ozone Flex Program,³ each of which was focused on taking proactive steps to reduce emissions of ozone precursors in attainment areas in order to ensure continued maintenance of the relevant ozone NAAQS. The Early Action Compact (EAC) program⁴ was distinct from these attainment area programs in that it focused on areas that were violating or close to violating the 1997 NAAQS at the time of designation, but was similar in that it encouraged early action, the use of innovative measures, and the development of stakeholder groups.

This document provides guidance on Ozone Advance, including general applicability, regulatory issues, program participation, and timelines. This program guidance has been developed with the input of

¹ In order to receive emission reduction credit as a measure in a SIP, the measure would need to be quantifiable, surplus (in terms of not being double counted both as part of the baseline and as a control measure in the SIP), federally enforceable, and permanent. It would also need to meet any other relevant requirement in CAA section 110 and/or 172, and if the measure is voluntary, the state would need to make an enforceable commitment to ensure that the estimated emissions reductions are achieved.

² Six areas participated in the 2001 1-hour Ozone Flex program: Austin and Corpus Christi, TX; Little Rock, AR; Shreveport-Bossier City, LA; Tulsa, OK; and Quad Cities Metropolitan Area, IA/IL.

³ Five areas participated in the 2006 8-hour Ozone Flex program: Corpus Christi, TX; Oklahoma City, OK; Tulsa, OK; Austin-Round Rock, TX; and Quad Cities Metropolitan Area, IA/IL.

⁴ Information about the former EAC program can be found at <http://www.epa.gov/ttn/naaqs/ozone/eac/>

stakeholders that include state and local government officials and organizations, tribes and tribal organizations, and environmental and health groups.

Please visit the program website (www.epa.gov/ozoneadvance) or contact Laura Bunte, EPA Office of Air Quality Planning and Standards, at (919) 541-0889 or ADVANCE@epa.gov if you would like additional information about Ozone Advance.

General Applicability

1. What is Ozone Advance?

Ozone Advance is intended to preserve or improve the air quality in ozone attainment areas, particularly in areas that have ambient ozone levels close to the level of the NAAQS and thus are at the greatest risk of violating the standard. The program provides a structure for local actions that reduce emissions, and thus helps areas maintain air quality that meets the 2008 ozone NAAQS or any future revised ozone NAAQS, and offers a means for states, tribes, and local governments to take the initiative in maintaining and improving their air quality.

Local areas can take steps to reduce ozone on their own, and EPA encourages these proactive efforts. However, some states, tribes, or local governments may prefer to pursue reductions within the program framework with closer involvement and support from EPA. Representatives from participating areas will work with EPA to quickly evaluate, select, and implement control measures and programs. EPA can point to available tools and resources that may be used to resolve their issues, provide technical advice and other support, and, where appropriate, may recognize areas that have been especially proactive and successful in pursuing reductions.

The program may assist an area with efforts aimed at (1) reducing air pollution, (2) ensuring continued healthy air quality levels, (3) avoiding violations of the NAAQS that could potentially lead to a nonattainment designation and associated requirements, and (4) increasing public awareness about ground-level ozone as an air pollutant.

2. Why should an area want to take action to reduce emissions that contribute to ozone formation now, if it is not currently required to do so?

Proactive work to address ozone precursors can reduce emissions sooner and avoid violations of the ozone NAAQS that might compromise public health. In addition, if the ozone NAAQS is ever lowered in the future, reductions now could position an area to achieve air quality concentrations that enable it to avoid a nonattainment designation or, if eventually designated nonattainment, could result in a lower classification. A lower classification means fewer mandated control requirements for the area. By acting in the near-term, a local government or state will have greater flexibility to choose control measures that make the most sense and are cost-effective for an area. Once a nonattainment designation is made, specific federal requirements apply, some of which, for Moderate and higher classifications,

relate to specific categories of sources. Early actions to reduce ozone that keep an area in attainment, whether through Ozone Advance or otherwise, are expected to be less resource intensive than waiting until a nonattainment designation occurs before taking action.

Many measures that a local government, tribe or state may choose to implement could result in multi-pollutant benefits. For example, reductions of nitrogen oxides (NO_x) can lead to lower ambient fine particulate matter (PM) levels as well as lower ambient ozone levels. An area interested in taking proactive steps to address ozone has the opportunity to maximize ozone control co-benefits per the area's unique situation.

3. Does EPA also plan to work with PM near-nonattainment areas to achieve emission reductions that will ensure continued maintenance of the PM NAAQS?

The National Research Council of the National Academy of Sciences recommended that an integrated, multi-pollutant approach to managing air quality would be most effective. EPA encourages Ozone Advance participants to maximize multi-pollutant reductions when selecting measures and programs to further reduce ozone. We envision offering a program similar to Ozone Advance to address PM in near-nonattainment areas. Strategies to achieve multi-pollutant (NO_x and PM in particular) reductions related to diesel emissions will be central to this work, as well as efforts to reduce residential wood smoke and other PM sources. Ozone Advance participants that are also near-nonattainment for PM should combine their Advance efforts into one multi-pollutant program that addresses both ozone and PM. In addition, EPA will work with participants to provide information on the multi-pollutant co-benefits associated with transportation, land use, energy efficiency, and climate change programs.

4. Who can sign up to participate in Ozone Advance?

States, tribes, and/or local governments that want to sign up to participate in Ozone Advance must meet the basic program eligibility criteria in A, B, C, and D below.

- A. States, tribes, and/or local governments can sign up to participate with respect to areas that are not designated nonattainment for either the 1997 8-hour or the 2008 ozone NAAQS, including areas that are not yet designated nonattainment for the 2008 ozone NAAQS at the time a sign-up letter is submitted to EPA (i.e., the effective date of final designations for the 2008 ozone NAAQS has not yet arrived).
- B. States, tribes, and/or local governments must generally identify the area(s) with respect to which they are signing up.
- C. Where possible, states, tribes, and/or local governments should identify and be able to report on the air monitor(s) that reflect or best represent the air quality in the area(s); this may require consultation with the state to determine what monitor(s) the state has reported to EPA as being indicative of air quality in the area(s). EPA recognizes that some areas, particularly

in parts of the western U.S., may need to utilize data from outside the given area to track progress. These areas should discuss their situation with EPA prior to signing up for Ozone Advance.

- D. EPA will evaluate a state's compliance with existing emissions inventory requirements before accepting the state into the program. States with reporting responsibilities would need to meet their reporting obligations for the National Emissions Inventory prior to applying for participation in Ozone Advance. Some local agencies' emissions reporting supercedes the state-submitted emissions; where this is the case, the prospective participant(s) should consult EPA prior to signing up for the program.

Other applicants, such as a regional, multi-state, or local council of governments (COG), will be considered by EPA. These organizations should discuss the possibility of their participation with EPA prior to signing up. Whether or not a COG becomes a direct participant in the program, it will be important for state, tribal, and local government participants to coordinate with area COGs to give them an opportunity to provide input during the development of an Ozone Advance "path forward," and to ensure they are kept informed about efforts undertaken within the program.

EPA does not necessarily intend for townships or other similarly small local governments to participate, on their own, in Ozone Advance. However, small local governments will be considered by EPA and should discuss the possibility of their participation with EPA prior to signing up.

States, tribes, and/or local governments that are already signed up and that are participating in Ozone Advance may continue to participate in the program if the area of concern is eventually designated nonattainment and classified Marginal. Such areas would not be exempt from any requirements that apply to them, such as New Source Review, transportation conformity, and the requirements to submit an emission statement rule and a base year actual (i.e., not projected) emissions inventory. Marginal areas do not have specific Clean Air Act-mandated planning requirements. Rather than wait until planning is eventually required, it makes sense for these areas to actively step up their efforts to reduce ozone. This may better position an area to attain within three years after designation, and thereby avoid reclassification to a higher classification. Regardless of a Marginal area's participation in the Ozone Advance program, if the area continues to violate and is not eligible for the Clean Air Act's one-year extensions, it will be reclassified to a higher classification. Although the state, tribe, and/or local government would not be able to continue participating in Ozone Advance with respect to the area, the efforts they pursued under Ozone Advance should not end, but would transition into SIP planning efforts. Areas classified as Moderate or a higher classification have specific attainment planning requirements that are not required for Marginal areas. If a Marginal area participating in Ozone Advance is reclassified to Moderate or a higher classification, the Ozone Advance activities could be helpful in meeting certain SIP requirements. EPA would provide SIP assistance and support as it does for all areas classified as Moderate or higher.

Areas that have been redesignated to attainment for the 1997 8-hour ozone NAAQS and that have an approved maintenance plan may participate in Ozone Advance. However, these areas must implement their maintenance plans as approved. Participation in Ozone Advance would not relieve any area from any requirements to which they are otherwise subject under the Act or EPA's regulations, including the transport regulations issued pursuant to Clean Air Act section 110(a)(2)(D), or from any requirement in an approved SIP. Measures and programs undertaken as part of Ozone Advance would be in addition to those included in the approved SIP, and could provide the area with a buffer against future violations.

An area that is designated nonattainment for the 1997 8-hour and/or 2008 ozone NAAQS, but that is currently attaining the ozone NAAQS may not sign up for Ozone Advance until the area has been redesignated attainment with an approved maintenance plan. However, early progress can still be made. If a state has submitted a maintenance plan to EPA, then pending EPA approval of the plan EPA could consult with you and provide some level of assistance. Full participation in Ozone Advance would not occur until the area has been redesignated attainment with an approved maintenance plan, and has met the other program eligibility criteria (i.e., ensure that emissions inventory reporting requirements are met and, where possible, identify the monitor(s) that reflect the area's air quality).

Ozone Advance is the program EPA is offering to provide assistance to areas interested in taking steps to stay in attainment of the 2008 ozone NAAQS. Former Early Action Compact (EAC) areas and current and former 8-hour Ozone Flex (also called 8-O3 Flex) areas that meet the Ozone Advance program eligibility criteria are encouraged to participate in Ozone Advance.⁵ Some of the action plans developed as part of the 8-hour Ozone Flex program are still in effect, and some of the areas are considering renewing their existing plans in order to be consistent with maintaining the 2008 ozone NAAQS of 0.075ppm. Areas that have current Ozone Flex action plans associated with maintaining the 1997 8-hour ozone NAAQS of 0.08ppm are encouraged to continue working with EPA in the same manner under the auspices of Ozone Advance. EPA expects these areas to operate under Ozone Advance with the same level of rigor as they have been implementing in Ozone Flex, given that the current Ozone Flex areas have demonstrated success in maintaining the 1997 ozone NAAQS.

A state, tribe, or local government that intends to sign up for Ozone Advance should discuss the prospect with the other potentially affected governmental entities, and all of the parties interested in participating should submit one joint sign-up letter together. If a state, tribal, or local government signs up, but other potentially affected governmental entities choose not to participate, the applicant should copy the other potentially affected governmental entities on any sign-up letter submitted to EPA. Once EPA acknowledges the area's acceptance into the program in writing (i.e., an e-mail or letter), the participant(s) should coordinate with the other potentially affected governmental entities to give them an opportunity to provide input during the development of the area's path forward, and to ensure they are

⁵ Ozone Advance participants may be interested in reviewing the types of activities that were pursued by Ozone Flex and EAC areas; information about these efforts will be made available on the Ozone Advance website, www.epa.gov/ozoneadvance. The website will also contain a table comparing the Ozone Flex and Ozone Advance programs.

kept informed about efforts undertaken within the program. Prospective program applicants should also coordinate with EPA and appropriate stakeholders prior to signing up for the program.

5. Who cannot sign up for Ozone Advance?

States, tribes, and local governments cannot sign up for the program if the area of concern is designated nonattainment for the 1997 8-hour and/or 2008 ozone NAAQS. An area that is designated nonattainment for the 1997 8-hour and/or 2008 ozone NAAQS, but that is currently attaining the ozone NAAQS may not sign up for Ozone Advance until the area has been redesignated attainment with an approved maintenance plan. If a state has submitted a maintenance plan to EPA, then pending EPA approval of the plan EPA could begin consulting with you and provide some level of assistance. Full participation in Ozone Advance would not occur until the area has been redesignated attainment with an approved maintenance plan.

Applicants must also be able to generally identify the area(s) with respect to which they are signing up. In addition, emissions inventory reporting requirements must have been complied with prior to sign up and, where possible, applicants should indicate the air monitor(s) that reflect the air quality in the area(s).

6. What is the timing for participation in Ozone Advance?

We encourage states, tribes and local governments to participate in Ozone Advance as early as possible, but there is no requirement that an area commit to the program by a specific date as long as they sign up prior to being designated nonattainment (i.e., prior to the effective date for final designations for the 2008 ozone NAAQS). There is currently no expiration date for enrollment. We recommend that an area commit to Ozone Advance for a five-year term, with the option to renew at the end of the first term and each successive term. An area can choose to end its participation in the program at any time, with notice to EPA.

7. How can an area apply for participation in Ozone Advance?

We encourage interested states, tribes, and local governments to carefully consider participation, reviewing pertinent issues including, but not limited to, projected industrial and population growth, trends and concerns regarding air quality, and support of such a program by the state, tribes, and local governments.

To sign up for the program, submit a brief **“sign-up letter”** to Laura Bunte of the EPA Office of Air Quality Planning and Standards (OAQPS) at ADVANCE@epa.gov and/or to the following address:

Ozone Advance
c/o Laura Bunte, Mail Code C304-01
109 TW Alexander Drive
RTP, NC 27711

The sign-up letter should be signed by the appropriate state, tribal, and/or local government official(s) with the authority to implement the program and to assist in leveraging staff and other resources as needed. A copy should also be sent to the relevant EPA Regional Office. EPA will review to determine that the applicant(s) has/have met the basic program eligibility requirements, and will then indicate by e-mail or letter whether the applicant(s) has/have been accepted into the program.

8. Must a Memorandum of Agreement/Memorandum of Understanding (MOA/MOU) be developed and signed in order to participate in Ozone Advance?

No. However, to the extent a participating state, tribe, or local government would benefit from having a more formal agreement in place, EPA would be willing to work with them to develop an MOA/MOU.

9. What other submissions to EPA are needed?

As a first step toward minimizing the potential for ozone concentrations in excess of the ozone NAAQS, a participating area should evaluate a variety of voluntary and mandatory control options and other programs. EPA can provide advice during this evaluation. No later than one year after signing up for the program, the area should submit a **“path forward letter”** to the EPA program contact via mail per #7 above, or via e-mail to ADVANCE@epa.gov, with a copy to the relevant EPA Regional Office. The path forward letter should fully describe the measures and/or programs the area will implement and provide a schedule for the implementation of each one. Information from these letters and/or the letters themselves may be made available on the program website.

Unlike a formal SIP submission, EPA will not approve or disapprove the commitments made by the state, tribe, and/or local government, and the input provided by EPA during the course of Ozone Advance will not serve as an approval for purposes of any eventual SIP. However, EPA may provide feedback to the area regarding whether commitments are likely to result in emission reductions and/or other public health benefits.

The path forward developed for the area can be submitted by a state and/or a tribe and/or a local government, although preferably it would be submitted jointly by all of the program participants. The letter specifies actions the signatories have agreed to implement to reduce ozone precursor emissions and thereby improve local air quality. The path forward letter is not a federally enforceable document and does not institute any legal or financial obligations on any entity.

10. What happens after a path forward letter is submitted?

The area should begin or continue implementing the selected measures and programs expeditiously. In order to most quickly impact ambient ozone levels, implementation should occur to the extent possible for the ozone season immediately following the path forward letter, recognizing that some

measures/programs may take longer to implement or may have longer lead times until emission reductions are realized.

11. Should participants periodically share information with EPA?

Yes, participants should stay in communication with EPA periodically throughout the program. In addition, at least once a year from the time the path forward letter is sent to EPA, a participating area should briefly and informally summarize the status of each of the area's measures and programs undertaken under Ozone Advance (including a comparison of current status for each measure/program as compared with the schedule laid out in the path forward letter), current air quality, stakeholder meetings/events, and any other information the area would like to highlight. The information should be sent to the EPA program contact via mail per #7 above, or via e-mail to ADVANCE@epa.gov. Information from these annual check-ins may be made available on the program website, www.epa.gov/ozoneadvance.

Regulatory Issues

12. Does Ozone Advance establish new or avoid existing regulatory requirements?

No, this program does not create or avoid any regulatory requirements. As noted previously, participation in Ozone Advance does not allow the participant(s) or regulated entities in those communities to avoid applicable requirements under the Clean Air Act, EPA regulations, or an approved SIP. While the program itself does not establish any regulatory requirements for state, tribal, or local government participants, if, as part of the program, state, tribal, or local authorities adopt regulations, such regulations likely would establish enforceable requirements on the regulated entities (i.e. enforceable by the state or local government; state and local regulations may even become Federally enforceable if they are incorporated into the SIP).

13. What happens if violations of the ozone NAAQS occur despite an area's participation in the program?

The area should quickly evaluate, select, and implement additional measures and programs to mitigate its ozone problem. It is important to note that Ozone Advance does not shield an area from being redesignated nonattainment if the area eventually violates the ozone NAAQS. Should a violation occur, EPA would consider the factors in section 107(d)(3)(A) of the Act. These include "air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate." Where control measures are actively being implemented by program participants, EPA may allow time to determine whether such measures bring the area back into attainment. This is not meant to suggest that participation in Ozone Advance will result in special treatment by EPA should an area begin to measure violations. It is meant to acknowledge that EPA may include an area's active pursuit of control measures and programs as one factor among the set of factors it considers when

exercising its discretion to revise the area's designation to nonattainment, and this would equally be the case whether the area is a participant in Ozone Advance or not.

14. Might the way an area is defined for purposes of participation in Ozone Advance affect future nonattainment boundaries, for example might it result in the eventual designation of partial counties/cities or non-contiguous nonattainment areas?

No. Regulatory decisions regarding nonattainment boundaries will not be impacted by Ozone Advance participants' definition of areas included in the Ozone Advance program.

15. Will states receive SIP "credit" for emission reduction measures undertaken as part of Ozone Advance?

EPA will not, as part of Ozone Advance, review commitments made under Ozone Advance for purposes of approval or disapproval into a SIP. However, if an area participating in Ozone Advance is subsequently designated nonattainment for the 2008 ozone NAAQS or any future revised ozone NAAQS, emission reductions achieved from measures implemented as part of the program could be accounted for in future SIP planning. We describe two ways in which they could potentially be accounted for below in #16.

EPA encourages participating states, tribes, and/or local governments to adopt proven, effective control measures to reduce ozone expeditiously. We also recognize that some of the measures states, tribes, and localities may choose to adopt under the program may be innovative measures. EPA supports flexible approaches that account for the complex nature of ozone formation and in various previous SIP approvals has provided SIP credit for innovative measures that meet SIP approval criteria.⁶ EPA is interested in working with areas to help them identify innovative measures that suit the area's unique needs.⁷

16. How can early reductions achieved as part of Ozone Advance be recognized in any future SIP that the area may need if designated nonattainment with a Moderate or higher classification for the 2008 ozone NAAQS or any future revised ozone NAAQS?⁸

If emission reductions occur through Ozone Advance **prior to** the baseline year for purposes of attainment demonstration modeling or a reasonable further progress demonstration, then the reductions

⁶ EPA encourages states to seek SIP credit for voluntary emission reductions. A variety of guidance materials are available to guide states considering voluntary measures for adoption into a SIP. See Attachment C for some examples; this list is not exhaustive of all guidance on SIP credit.

⁷ In order to receive emission reduction credit as a measure in a SIP, the measure would need to be quantifiable, surplus (in terms of not being double counted both as part of the baseline and as a control measure in the SIP), federally enforceable, and permanent. It would also need to meet any other relevant requirement in CAA section 110 and/or 172, and if the measure is voluntary, the state would need to make an enforceable commitment to ensure that the estimated emissions reductions are achieved.

⁸See also Question #4 above regarding eligibility to participate in Ozone Advance.

would lower the emissions baseline. A lower baseline means that the area would need fewer future emission reductions in order to demonstrate attainment and/or proportionally fewer emission reductions would be needed to show reasonable further progress.

If emission reductions occur through Ozone Advance **after** the baseline year, the area may take credit for those reductions subject to Clean Air Act requirements, such as demonstrating that the reductions are surplus, quantifiable, enforceable, and permanent. Credit earned in this way means that fewer additional emission reductions will be needed to meet reasonable further progress goals and to demonstrate attainment, thereby bringing the finish line of attainment with the ozone NAAQS closer.

For example, if the area must achieve a 15% reasonable further progress reduction in VOC emissions over six years, reductions that occurred before the baseline year for calculating the 15% would be reflected in a reduced baseline; reductions that occur after the baseline year but during the six-year period could be counted toward the 15% reduction requirement.

EPA plans to address the issue of SIP baselines in the ozone implementation rule for the 2008 ozone NAAQS; this rule is expected to be proposed in spring 2012, and finalized by the end of the year. Although the approach that will be taken in the upcoming rule cannot be specified at this point, it is worth noting that in the past EPA has allowed some flexibility in determining the appropriate baseline year.

17. Can EPA guarantee that participating in Ozone Advance will cause an area to remain in attainment?

EPA can provide no guarantees. A participating state, tribe, and/or local government's success in the program depends largely on its/their level of commitment and the effectiveness of the actions taken under Ozone Advance. Evaluating, choosing, and expeditiously implementing measures and programs that result in actual emission reductions will be critical, and in many cases essential, to success. One of the benefits of participating in the program is that governmental entities and citizens become more aware of emission sources and what may cause ozone levels to increase, and may be more likely to react to potential issues before ozone levels rise. Proactive work to address these issues should lead to a greater chance of success in keeping ambient levels of ozone below the level of the NAAQS or, if the area is eventually designated nonattainment, could help prevent a higher classification than the area would otherwise have had (e.g., Marginal instead of Moderate).

18. If Federal measures are likely to provide the reductions needed in order to bring many eventual Marginal areas back into attainment, why should these areas pursue local reductions?

EPA will continue to promulgate Federal measures that reduce NO_x and VOC emissions and that should lead to improved air quality levels in many areas; however, local action is still needed in some areas in order to attain. Many Marginal areas are expected to attain the 2008 ozone NAAQS within three years of designation due to reductions of ozone precursors resulting from a number of Federal and state emission reduction actions that have already been adopted. Such programs include more stringent

emission standards for on-road and non-road vehicles and equipment (with associated fleet turnover), regional reductions in power plant emissions to address interstate transport, and other rules such as the boiler maximum achievable control technology (MACT) standards. EPA estimates that in about half of the Marginal areas, these reductions in conjunction with other ongoing state and federal controls should be sufficient to bring about attainment. In other areas, additional control measures may be needed for timely attainment. While Federal measures are likely to bring some Marginal areas back into attainment, these areas should consider taking steps to better ensure that once they return to attainment, they will remain in attainment. Among other things, Ozone Advance can facilitate actions that reduce emissions to provide an improved buffer against future nonattainment.

19. How should transported air pollution be accounted for within Ozone Advance?

Ozone Advance is not intended to address transport obligations pursuant to Clean Air Act section 110(a)(2)(D). Ozone Advance participants should be aware of their area's potential to adversely affect downwind air quality, as well as the potential impact of upwind air quality on the area.

20. Can a state seek to incorporate measures into its SIP even if it is not currently subject to nonattainment area planning requirements?

Yes. A state can consider submitting adopted measures as a SIP revision at any time, even if there are no Clean Air Act requirements to do so. Assuming EPA approves the SIP revision, it will strengthen the SIP, ensure that control measures are Federally enforceable, and provide the mechanism to allow credit for the emission reductions associated with the measures for any future RFP or attainment plan requirements, assuming they are not counted in the baseline.

Program Participation

21. What are the steps in participating in Ozone Advance?

Step 1 – Send a Sign-Up Letter to EPA

Participation in Ozone Advance is begun by the state, tribe, and/or local government submitting a sign-up letter to EPA, and EPA accepting them into the program following a review to ensure the eligibility criteria described in #4 above are met. The letter should express the willingness of all of the signatories to coordinate with each other and with EPA and to quickly implement measures and other programs to reduce ozone. Specific measures do not need to be identified in the sign-up letter, although if the applicant would like to highlight any existing measures and programs, they are welcome to do so. The letter should be signed by the appropriate local, state, and/or tribal official(s) with the authority to implement the program and to assist in leveraging staff and program funds as needed.

Step 2 – Identify Available Information Regarding the Area's Ozone Issue

This information could relate to the sources of ozone precursors, the degree of the local contribution to ozone based on available modeling by EPA or others, the appropriate area from which emissions reductions should occur, and existing or upcoming control measures and programs affecting sources in the area.⁹ It would be helpful if this information were shared informally with EPA.

Step 3 – Secure Stakeholder Participation

It is important to identify, contact, and secure the participation of key stakeholders. This is commonly accomplished by the formation of a local air quality committee consisting of representatives from local government, industry, environmental and citizens groups (such as environmental justice organizations), and other interested parties. Stakeholders may need to be added as emissions sources and control measures are identified.

Step 4 – Coordinate Control Strategy Development

Ozone Advance participants should consider a variety of emission reduction measures and programs, which may include traditional control measures as well as other measures, policies, and programs related to, for example, energy efficiency and mobile sources. EPA is available to assist areas that are interested in exploring their options for potential measures and programs that could be included in their Ozone Advance path forward/action plan.

The participating state, tribe, and/or local government will lead coordination efforts with stakeholders and with EPA. EPA will work with the participant(s) early in the process as needed to identify and help them resolve technical and other issues and provide information about emission reduction and public awareness/education options. EPA's technical assistance will generally be in the form of directional advice; EPA does not anticipate, for example, conducting new modeling on behalf of a particular Ozone Advance area. The participant(s) will be the lead on any technical efforts they decide are appropriate, with EPA's guidance. The state should be included in these discussions to ensure technical consistency.

The control measures an area chooses to implement may require businesses, industries, and citizens to comply with ordinances, codes, or other binding state or local regulations, or may encourage voluntary actions that reduce ozone precursors. The geographic area covered by such measures should be based on the location and nature of sources, or other factors important to the area and to achieving reduction of ozone precursor emissions. Other programs that relate to public education and awareness may be considered as well. The process should offer opportunities for discussion and debate among stakeholders; these opportunities should be provided and led by the participating state, tribe, and/or local government(s).

⁹ One source of information on the emissions sources in the area is the National Emissions Inventory (NEI). NEI data can be found at www.epa.gov/ttn/chief/.

States, tribes and EPA can provide valuable information for local governments. It may be helpful to meet with the state/tribal and EPA representatives to discuss issues and options before the path forward letter is submitted. EPA will review and provide comments on the area's preliminary decisions and will work with local technical or policy committees and the state/tribe(s). Local plans should complement current or potential future state/tribal or Federal efforts for the area. Local governments participating in Ozone Advance should identify the state-level controls and programs that may impact local ozone, and, similarly, participating states should identify any local controls and programs that may have an effect in the local area.

EPA suggests that participating areas consider developing an action plan which would provide the area's path forward along with background on the area's ozone issue and additional detail about the area's plans for addressing it. An action plan should include, at a minimum, an executive summary, list of measures to be implemented and a detailed implementation schedule, discussion of roles and responsibilities, and provisions for public/stakeholder involvement. Such a plan is not a requirement for participation in Ozone Advance; however it could serve as a useful blueprint for the area to work from in working with stakeholders and as a focal point for public recognition of the area's efforts to improve air quality. See Attachment A for further information regarding action plans.

Some participating areas may also consider technical work (e.g., emissions inventory development/refinement, air quality modeling, looking at intrastate transport and the effect of planned new sources outside the Ozone Advance area) to support their work to address ozone. Although the development of technical analyses is not a requirement of the program, to the extent a program participant elects to pursue appropriate technical work, EPA encourages these efforts and will be available to provide advice to the program participant(s) who wish to develop these analyses. The development of technical support should be of particular interest to areas that are very close to, or already violating the 2008 ozone NAAQS, in order to best align their efforts under Ozone Advance with any eventual SIP requirements.

Step 5 – Submit a Path Forward Letter to EPA

Once the area has sought stakeholder involvement and input, the area should send a letter to EPA describing the measures/programs the area will implement and providing a schedule for the implementation of each measure/program selected. The area may also describe any measures/programs already in place, in order to provide a fuller view of the efforts underway. If the area developed an action plan (see Attachment A), the area can submit the plan to EPA in lieu of a path forward letter.

Step 6 – Implement Control Strategy Per Schedule and Provide Annual Status Updates

Program participants should begin implementing the measures and programs specified in the path forward letter immediately, per the schedule laid out in the letter. Participants should stay in communication with EPA periodically throughout the program. In addition, each year from the time the path forward letter is sent to EPA, a participating area should briefly summarize the status of each of the

area's measures and programs undertaken under Ozone Advance (including a comparison between current status for each measure/program as compared with the schedule laid out in the path forward letter), current air quality, stakeholder meetings/events, and any other information the area would like to highlight. These status updates should be provided via letter or e-mail to the EPA contact noted in #7 above.

Step 7 – Apply for Federal Grants, if Desired

The Federal grants website <http://www.grants.gov> may be of interest to program participants. The website enables agencies and organizations to electronically find and apply for competitive grant opportunities from all Federal grant-making agencies. Over 1,000 grant programs offered by the 26 Federal grant-making agencies can be accessed from the website, and some of these may be useful in the context of this program.

There is currently no funding associated specifically with the Ozone Advance program, however EPA may provide preferred status to Ozone Advance participants when applying for existing grants programs. One such grant program is EPA's Diesel Emissions Reduction Act (DERA) program, which provides grant funding to eligible entities to reduce diesel emissions by retrofitting, repowering, and replacing older diesel engines. Funding for eligible entities to complete diesel emission reduction projects is periodically offered through a competitive process. For the Fiscal Year (FY) 2012 funding competition, eligible entities may receive additional scoring points within the DERA competition if the proposed projects are located in an area that has been accepted to participate in Ozone Advance by the close of the competition. Additional information on the DERA program, including availability of funding and requirements for applicants can be found at <http://www.epa.gov/cleandiesel/prgnational.htm>.

22. What should an action plan contain, should the participating area elect to develop one?

Attachment A provides suggestions regarding the content of an action plan.

23. Must a participating area undertake emissions inventory refinement or modeling as part of participation in Ozone Advance?

No. Compliance with existing emissions inventory requirements must have occurred prior to acceptance into the program. However, further emissions inventory refinement and modeling are not otherwise necessary prerequisites to participation in Ozone Advance. EPA encourages participating areas to (1) consider existing emissions inventories and modeling information and/or develop new analyses as necessary in order to characterize the nature of the ozone issue in the area (i.e., is the area NO_x or VOC limited, is the area upwind of nonattainment areas, might the area be considered to affect ozone levels downwind in any future revised ozone NAAQS), (2) provide a technical foundation for control selections and schedules, and (3) ensure that available resources are used efficiently and effectively. Attachment B provides a general discussion of emissions inventories, modeling, and controls.

24. What happens if the ozone concentrations in an area violate the ozone NAAQS?

The success of Ozone Advance for a given area will lie in the area's willingness to undertake new measures that result in real emission reductions. EPA recognizes that some areas are affected by the transport of upwind pollution; however, it is still important for local reductions to be achieved, where possible. Similarly, an area's emissions may affect an ozone nonattainment area downwind. As soon as an area determines that the air quality is deteriorating, the area should act quickly to supplement the measures and programs as listed in its path forward letter and/or action plan with additional measures/programs. If the air quality in the area deteriorates and a violation occurs, EPA may revise the area's designation to nonattainment; pending any decision, EPA will continue working with the area to see what additional measures can be taken to help improve the air quality.

25. Must a participating area commit to contingency measures?

No. Ozone Advance does not require that areas commit to adopt and implement specific contingency measures in the event the area violates the ozone NAAQS. EPA has attempted to streamline the program to the extent possible in order to encourage areas to keep their focus on actually taking proactive steps to improve their air quality. The goal is to encourage areas to take action to reduce ozone concentrations even though they are not currently required to do so. In lieu of contingency measures, Ozone Advance participants should consider quickly implementing additional measures should the quality of the air in their area begin to deteriorate; while participants are not required to develop contingency measures, they should begin to consider their options regarding additional measures well before they are needed. Measures undertaken should not be discontinued even if the area continues to remain in attainment, in order to protect against increases in local as well as downwind transported ozone concentrations.

26. What implementation schedule will participating areas follow?

EPA recommends that an area commit to Ozone Advance for a five-year term, with an option to renew at the end of the term and each successive term. An area's ambient air quality over the next several years would potentially affect designations following any possible revisions to the NAAQS in the future; therefore, it is important that the area work to improve air quality for a sustained period in order to best ensure it remains in attainment. The path forward letter should provide a schedule for implementation of the indicated measures. Significant actions that are necessary or may affect control measure implementation, such as required reviews/approvals, acquisition of equipment, etc., should be included in the schedule.

The Ozone Flex program specified the submission of a semi-annual program report, which could become an annual report if the area's design value was maintained or decreased. EPA contemplated eliminating these reports in order to further streamline the administration of Ozone Advance and the level of state/tribal/local resources directed to the program. However, EPA believes that some level of

information sharing is beneficial to ensure that all parties are kept informed about program progress. The intention is that the status updates submitted to EPA each year will be informal (e.g., in the form of a check-in e-mail or letter) and will provide a brief, general summary of the status of each of the area's measures and programs undertaken under Ozone Advance (including a comparison of current status for each measure/program with the schedule laid out in the path forward letter), current air quality, stakeholder meetings/events, and any other information the area would like to highlight.

27. What provisions should be made for public and stakeholder involvement?

Support for the proposed measures in the area's list of Ozone Advance commitments from organizations and institutions in the area is vital. Local officials can determine the best means to seek and respond to input from groups or individuals interested in or affected by the measures. We recommend that the commitments be developed by a local air quality committee that includes environmental, health, and citizens groups, as well as representatives from local industry and government. Input on appropriate measures from environmental and health groups, citizens groups, industry representatives, the general public, states/tribes, and EPA should be given thoughtful consideration by the committee.

28. How long should an area plan on participating in Ozone Advance?

Participation should last for a period of five years or longer as needed/desired. Participants may terminate their involvement in Ozone Advance at any time, with notice to EPA. Similarly, EPA may end a state's, tribe's or local government's participation in the program at any time, such as where a participant does not demonstrate any effort to make air quality improvements during the course of the program.

29. How does the Ozone Advance timeline compare with EPA's current schedules for implementation of the current (2008; 75ppb) ozone NAAQS and the next ozone NAAQS review?

Ozone Advance participants should keep the NAAQS implementation dates in mind when deciding upon the extent and timing of the measures and programs to be put in place. In particular, areas likely to be designated nonattainment with a Marginal classification should be aware of their window of opportunity to effect change before reclassification to a higher classification may occur.

Sample Timeline

Current as of March 2012; All Dates Are Tentative

Spring/Summer 2012	State, tribe, and/or local government submits sign-up letter to EPA
Mid-2012	Effective date of 2008 ozone NAAQS designations
Early 2013	Participant decides on measures/programs, submits intended path forward to EPA
Mid-2014	Completion of next ozone NAAQS review, including any revision of the NAAQS determined necessary
2015	2008 NAAQS Marginal area attainment date

Mid-2015	State recommendations for designations for any revised 2014 ozone NAAQS
Mid-2015	Attainment demonstration/ROP/RFP SIPs due for areas classified as Moderate or higher for the 2008 ozone NAAQS
Mid-2016	Final designations for any revised 2014 ozone NAAQS
Mid-2018	2008 NAAQS Moderate area attainment date
2019	Attainment demonstration/ROP/RFP SIPs due for areas classified Moderate or higher for any revised 2014 ozone NAAQS

30. Who did EPA coordinate with prior to beginning the Ozone Advance program?

OAQPS asked the EPA Regional Offices to talk with their states about our plans to offer Ozone Advance. We briefed the National Association of Clean Air Agencies (NACAA) criteria pollutants committee and the National Tribal Air Association, and described our plans to the Environmental Council of the States (ECOS) and multijurisdictional organizations. We also discussed the program with the American Lung Association and EPA’s Clean Air Act Advisory Committee.

The draft guidance was distributed to states, tribes, local governments; state, tribal, and local organizations; environmental, health, and transportation organizations; and industry representatives for review and comment. During the review period we provided a webinar to summarize the draft guidance and respond to questions; this presentation was attended by over 200 individuals from 44 states and the District of Columbia (including state environmental and transportation agencies, regional organizations and Councils of Government, and local governments); 12 tribes; several state, local and tribal organizations, environmental, health, and transportation organizations, and industry representatives. We also spoke directly with several individual states and local areas who had questions about the program, as well as some of the states and areas participating in the Ozone Flex program.

The draft guidance was modified to reflect the input from these discussions, and this final guidance will be clarified via supplemental questions and answers which we will provide via the program website: www.epa.gov/ozoneadvance.

31. EPA Contacts

Questions about Ozone Advance may be referred to Laura Bunte, Office of Air Quality Planning and Standards (OAQPS), (919) 541-0889 or ADVANCE@epa.gov, or to the appropriate EPA Regional Office. Questions about mobile sources may be directed to Rudy Kapichak, Office of Transportation and Air Quality (OTAQ), (734) 214-4574 or kapichak.rudolph@epa.gov.

EPA Regional Office contacts include:

Region 1	Anne Arnold	(617) 918-1047
Region 2	Paul Truchan	(212) 637-3711

Region 3	Cristina Fernandez	(215) 814-2178
Region 4	Jane Spann	(404) 562-9029
Region 5	Steve Rosenthal	(312) 886-6052
Region 6	Carrie Paige	(214) 665-6521
Region 7	Lachala Kemp	(913) 551-7214
Region 8	Jody Ostendorf	(303) 312-7814
	Scott Jackson	(303) 312-6107
Region 9	John Kelly	(415) 947-4151
Region 10	Claudia Vaupel	(206) 553-6121

Some EPA Regional Offices will serve as the main EPA point of contact for participating areas within the Region and will work with participating states, tribes, and local governments directly, in coordination with OAQPS. In other Regions, OAQPS will serve as the primary EPA point of contact for participating areas and will engage with participants directly, in coordination with the EPA Regional Office.

Attachment A

Ozone Advance Action Plan

The focus of Ozone Advance is on participating areas adopting measures and programs that will achieve emission reductions of ozone precursors to help areas remain in attainment of the 2008 ozone NAAQS and to increase the chances that they will be in attainment for any future revised NAAQS that may be promulgated. The program does not require extensive upfront analysis and planning, such as is required as part of the SIP process. However, participating areas may have an interest in developing a plan that lays out the current status of the area's air quality issues, describes any technical analysis undertaken by the area, such as modeling to understand the area's emission sources and appropriate controls, and indicates the path the area will take to reduce ozone. Although this work is not required as part of participation in the program, EPA encourages participating areas to develop such an action plan. An action plan can serve as the area's blueprint for actions into the future, and can help focus stakeholder and public understanding of the amount of pollution reduction needed in order to ensure the plan will be effective, as well as the steps the area is taking to ensure continued protection of citizens' health.

EPA suggests that the following sections be included in an action plan, at a minimum, if a participating area chooses to develop one:

- Introduction
- Description of the measures and programs to be implemented, responsible parties, how the measure will be implemented
- Implementation schedule for each measure and program
- Provisions for public and stakeholder involvement

A. Introduction

In the introductory section, information should be provided about the area to be covered by the plan, including the rationale for choosing the geographic boundaries. At a minimum, the geographic area should include the urbanized area, where applicable.¹⁰ A map showing the geographic boundaries would be helpful. It is important to include brief information about the participating groups/agencies, and the general objectives of the plan. The executive summary should also identify the plan's duration.

The number and location of ozone monitors, and the number and extent of ozone concentrations above the ozone NAAQS should be provided, along with observed trends in emissions and ozone concentrations. If any modeling has been conducted, it should be mentioned as well.

Information on the sources (i.e., point, area, non-road, and on-road) and the total amounts of emissions should be summarized. It is important to note the extent and availability of information about NO_x and

¹⁰ An urban area generally consists of a large central place and adjacent densely settled census blocks that together have a total population of at least 2,500 for urban clusters, or at least 50,000 for urbanized areas. An urban area can be in a metropolitan or non-metropolitan area.

volatile organic compound (VOC) emissions which contribute to ozone formation in the area. To the extent known, indicate the types of sources of these pollutants and the extent to which each type or specific source contributes to the total emissions in the area. Large sources in adjacent areas should be identified.

B. Description of Measures to be Implemented and Responsible Parties

The specific control measures or programs the local government, state, tribe, and/or community organizations commit to undertake as a result of Ozone Advance should be described in detail. The description for each measure should indicate how, where, when, and by whom the measure will be implemented. At a minimum, the list of measures should be designed to keep ozone levels below the current ozone NAAQS. More stringent air quality targets can be agreed to by the interested parties. Reductions should be achieved as expeditiously as practicable to provide maximum benefits.

The measures and programs may be mandatory or voluntary. The plan should include details about the means of ensuring the implementation of any measures and programs selected by the area, such as regulations, agreed orders, and verification mechanisms. It should also discuss how the effectiveness of voluntary measures might be assessed. The effectiveness of these measures may vary depending on the extent of participation or other circumstances.

Any existing background explaining how the list of measures was selected, such as any technical analysis conducted, would be helpful. Areas should consider developing or refining emissions inventories, assessing whether VOC or NO_x emission controls are most needed, and conducting photochemical modeling. While this work is not required in order to participate in the program, it would be helpful; EPA and Regional Planning Organizations can provide assistance in the direction and scope of these efforts, such that available resources can be used most effectively. If existing modeling is unavailable for reference and new analyses are not conducted by the area, the action plan should explain what means were used to select the measures in the plan. These technical efforts provide a foundation for an area's plan, and can be used to identify and analyze the sources of emissions in the area. Such information will suggest which control strategies may be most effective in reducing emissions that lead to ozone formation, and could help the area most efficiently use its limited resources. Attachment B contains more detailed information about the emissions inventory, modeling, control measures and selection.

EPA encourages use of the latest planning assumptions and emissions models available to evaluate and accurately estimate the benefits that control measures provide. Examples of assumptions include estimates of current and future population, employment, activity, projections and growth factors, and vehicle age and fleet mix. For on-road mobile source emission estimations, the current emissions model is MOVES (Motor Vehicle Emissions Simulator) (<http://www.epa.gov/otaq/models/moves/index.htm>). The most current version should be used. For non-road mobile sources, the current model is NONROAD2008a (<http://www.epa.gov/otaq/nonrdmdl.htm>). Areas in California would use the latest Emission Factors (EMFAC) model.

The measures and programs in the plan should, as a group, achieve emission reductions beyond those already being achieved in the area, given that the program is aimed at taking action to keep ozone levels below the level of the NAAQS. However, participants are encouraged to highlight existing, ongoing measures along with new, planned measures in order to fully represent the proactive work being done to maintain/improve air quality in the area. To the extent possible, the amount of NO_x and/or VOC emission reduction anticipated from each measure or combination of measures should be estimated. The plan should not include measures that are required under state/tribal or Federal law, such as the measures included in approved maintenance plans.

The state, tribe, and/or local government should commit to adjusting the list of measures and programs as appropriate in order to speed up progress in achieving reductions, and to ensure continued attainment in light of any future revised ozone NAAQS.

C. Implementation Schedule

EPA recommends that an area commit to Ozone Advance for a five-year term, with an option to renew at the end of the term and each successive term. See sample timeline in #29 above. The path forward letter should provide a schedule for implementation of the indicated measures. Significant actions that are necessary or that may affect control measure implementation, such as required reviews/approvals, acquisition of equipment, etc., should be included in the schedule.

D. Provisions for Public/Stakeholder Involvement

Support for the proposed measures in Ozone Advance commitments is vital. Local officials can determine the best means to seek and respond to input from groups or individuals interested in or affected by the measures. We recommend that the commitments be developed by a local air quality committee that includes environmental and citizens groups, as well as representatives from local industry and government. Input on appropriate measures from environmental groups, citizens groups, industry representatives, the general public, states/tribes, and EPA should be given thoughtful consideration by the committee.

Attachment B
Ozone Advance
Emissions Inventory, Modeling, and Controls

Emissions inventory (EI) work and source apportionment, dispersion, or other modeling are not required as part of Ozone Advance. However, the use of an emissions inventory and technical support for the selection of control measures is encouraged, and EPA will provide technical advice to participating areas who seek it. The state should be included in these discussions to ensure technical consistency. Areas with well-developed emissions inventories and technical support are better positioned to target and select control measures that maximize emission reductions that will result in air quality improvements given local conditions and characteristics.

Emissions Inventory

One of the first steps in determining how to improve air quality in an area is to gather information on the sources and amounts of emissions. In many cases, existing state, multijurisdictional or regional planning organization (MPO/RPO), and Federal EIs may provide a guide in targeting sources of interest in a particular local area to enable appropriate control selections. Ozone Advance participants are not required to develop a baseline emissions inventory for NO_x and VOCs; however, they are encouraged to do so in order to identify the level of emissions that would represent continued attainment for the area and to monitor growth.

The extent of the geographic area inventoried will vary by community. The EPA recommends evaluating the Metropolitan Statistical Area/Consolidated Metropolitan Statistical Area (MSA/CMSA) (or the county or parish if there is no MSA) and enlarging the area if necessary. Local EIs can help an area identify, target, and obtain emission reductions that are feasible and that are most likely to lead to reduced ozone formation in the area. EPA's protocol for developing an EI and additional information on EIs are available at <http://www.epa.gov/ttn/chief/eiinformation.html>. In particular, information regarding EPA's Emission Inventory Improvement Program (EIIP) can be found at <http://www.epa.gov/ttn/chief/eiip>. While some aspects of this website, such as mobile source information, are out of date, much of the information provided may be useful to participating states, tribes, and local governments that want basic information about how to further develop and refine their EIs.

Emissions are generated by stationary sources (industrial or commercial facilities), mobile sources (on and off-road vehicles, aircraft, ships and locomotives), and area sources (gas stations, dry cleaners, auto body paint shops, etc). Emissions of NO_x and VOC contribute to ozone formation and should be the focus of EI efforts.

Information should be gathered on the number and types of emission sources in the area and the types and amounts of pollutants emitted. It is important to summarize the extent and availability of information on NO_x and VOC emissions which contribute to ozone formation in the area. To the degree

it is known, the extent to which each type of source or specific source contributes to the release of the total emissions in the area should be specified.

Expected emission reductions from planned efforts or controls should be identified and should be quantifiable, to the extent possible. Emission reductions from some measures may be difficult to quantify (e.g., voluntary measures due to unknown levels of participation), but it may be possible to specify a percentage, range, or time-adjusted sequence of anticipated emission reductions from each or a combination of these “hard to estimate” measures.

The following steps outline the process for emissions inventory development:

Step 1: Determine if inventory information currently exists

The state/tribe may have information on the sources and emissions in the area. EPA and MPOs/RPOs may have additional information. EPA compiles the NEI every three years. The most recent NEI includes 2008 emissions. States are required by the Air Emissions Reporting Requirements (AERR) rule to submit emissions inventory information every three years. Ozone Advance participants should identify information sources and compile the information relevant to their area.

Step 2: Determine the extent of available information

The extent of available EI information varies from area to area. The state/tribe or EPA can provide guidance on the types of EI information that has been collected for your area and which may be useful for your local efforts.

Step 3: Gather additional information as necessary

In addition to specific EI data from the state/tribe or EPA, the following information may be of use to local EI development:

Information about VOCs of particular concern in an area:

- National-Scale Air Toxics Assessment (NATA), www.epa.gov/ttn/atw/natamain

Stationary source data:

- VOC/NO_x sources/emissions not included in the state/tribal emissions inventory
- Development of the most current EI possible for a year with high ozone observed in the area

Mobile source data:

- Useful mobile source information that could improve estimates available from other sources such as the NEI
- Non-road vehicle, engine and equipment types, numbers, emissions, hours/frequency of operation
- On-road vehicle types, numbers, emissions, vehicle miles traveled (possible data sources include local Metropolitan Planning Organizations and the local Department of Transportation)

- For additional information on the use of MOVES for estimating on-road emissions and NONROAD for estimating emissions from most types of non-road equipment please see: <http://www.epa.gov/otaq/models.htm>.

Additional useful information regarding EIs is available electronically through <http://www.epa.gov/ttn/chief/>.

Modeling and Data Analysis

Photochemical air quality modeling that can predict the effectiveness of a proposed control strategy or a proposed control measure in reducing the local ozone concentration, and other modeling or data analyses are not required for participation in Ozone Advance. However, these types of analyses could be used as a tool in the program to help areas identify which emissions may be the most beneficial to reduce. Before beginning any modeling effort, an area should contact the state/tribe or EPA Regional Office for suggestions regarding whether sufficient relevant modeling information for the area already exists, and, if not, what types of analyses are appropriate. A review of any existing modeling could add credence to the selection of control measures and could conserve both time and money. If the area intends to perform modeling, it should follow EPA or state-approved modeling protocols; see the EPA modeling information at <http://www.epa.gov/scram/>.

Other considerations include:

A. Photochemical Grid Modeling

If used, photochemical grid modeling should be SIP-quality and developed according to current EPA ozone modeling guidance. This modeling can help answer questions such as:

- Is it more effective for Ozone Advance efforts to concentrate on reductions of VOCs, NO_x, or both?
- If a combination of both VOC and NO_x reductions appears to be called for, what percentage of each would be appropriate?
- What amounts of reductions are necessary to make a difference in ozone concentrations?
- Which control measures will result in emission reductions that would be most effective at reducing ozone concentrations in the area?

Photochemical grid modeling may also be used to assess the effectiveness of a control strategy in helping to reduce ambient ozone levels. In such a demonstration, there may be a need for assessing some future year(s), and for developing future emissions inventories.

B. Air Quality Data Analysis

In some cases, it may be possible to address the questions posed in the previous section without the use of time and resource-intensive photochemical grid modeling via careful statistical analysis of monitored

ambient ozone, ozone precursor, and meteorological data. This analysis is used to produce a meteorologically-adjusted ozone trend that reflects summertime average ozone levels under typical meteorological conditions. Data analysis efforts designed to answer the questions listed below can also be used to support and confirm any modeling results.

- Which meteorological conditions are most often associated with elevated ozone concentrations in the area?
- Does the meteorologically-adjusted trend confirm that summertime average ozone concentrations in the area are decreasing?
- Has there been a relationship in the recent past between local ozone precursor emissions reductions and the meteorologically-adjusted trends?

C. Data and Time Periods of the Assessment

If a participating state, tribal, or local government decides, in consultation with EPA, that analyses are needed in order to understand the area's air quality issues, decisions will need to be made regarding which data will be used, and the period(s) to be modeled. The following questions are among those that would need to be answered:

- How many and which sources should be modeled?
- What types of pollutants and amounts of emissions from each source should be evaluated?
- Are the emissions inventory and other necessary data (i.e., meteorological data) available?
- Should modeling be done for an extended period such as five years or for shorter periods, such as each year?

D. Use of an Appropriate Model

Different models are available to predict air quality impacts. Participating local governments should consult with the state/tribe and EPA regarding which models would be appropriate for the purpose intended as well as the area, pollutants and sources to be evaluated. As stated earlier, a review of existing modeling analyses, if they exist, could simplify the selection of control measures and conserve resources.

Pollution Reduction Measures and Programs

Once the sources and types and amount of emissions are generally known, a list of potential air quality improvement and/or emission pollution reduction options can be developed. These options should be different from actions required by state/tribal or Federal law prior to or during the agreement term. These options may include, for example, public awareness, notification, and participation in local programs; requiring the installation of control devices or implementation of procedures by stationary sources; or mobile source control options. Other options may include voluntarily adopting state/tribal or

certain Federal measures like those designed and mandated for ozone nonattainment areas.¹¹ To the extent that it is possible, these measures could be implemented on a voluntary basis and adapted as necessary. Consideration of multi-pollutant benefits (such as maximizing reductions in both NO_x and PM) should be incorporated into any selection of measures and programs.

Emission reduction measures are specific emission reduction commitments from specific facilities or industrial sources, broader measures applicable to an entire area, measures which target a specific group of emission sources or category of emissions (e.g., sources with VOC emissions greater than 25 tons per year), or voluntary programs such as those that encourage behavior change in order to achieve reductions (e.g., transportation programs that reduce vehicle miles traveled). Public notification and education programs include activities to inform and educate the public of the impact of their daily activities and to encourage them to participate in efforts to improve local air quality and to take actions to protect their health when exposed to poor air quality.

New state/tribal or Federal requirements may impact the emissions in an area. In order to best ensure continued attainment of the ozone NAAQS, Ozone Advance participants may need to consider going beyond Federal and state/tribal requirements that are already in place or that are anticipated in the near term. Consequently, in order to effectively evaluate potential control measures to adopt, local governments should become informed of requirements that already apply or are scheduled to apply within the area. Even where Federal, state, and tribal controls are generally expected to be sufficient to keep an area in attainment, local measures may provide an extra buffer against future violations, and will help to ensure continued public health benefits.

A variety of sources provide information about air quality improvement options that areas may want to explore. These include, for example, the Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate (RACT/BACT/LAER) Clearinghouse (<http://cfpub.epa.gov/RBLC/>), the Ozone Reduction Strategies website (www.epa.gov/airquality/ozonestrategy/), the National Clean Diesel Campaign and Diesel Emissions Reduction program (DERA) grants (www.epa.gov/cleandiesel), and the State and Local Transportation Resources website, www.epa.gov/otaq/stateresources/index.htm. EPA will be available to provide assistance in identifying options that may best suit an area's unique needs and priorities.

Also consider contacting other states, tribes, and/or local governments, particularly those with similar sources and air quality issues, for information on measures they have considered or implemented. A list of some general categories of control measures follows, but Ozone Advance participants are not limited to these categories for sources of controls. Additional information on emission control options for specific sources can be obtained from EPA. Also, see Attachment C for a list of guidance documents that apply to a wide variety of control measures for stationary, area, and mobile sources.

¹¹ Some federal measures are not available for state or local adoption because they are preempted legally. Vehicle emission standards and fuel standards are examples of this. Please consult your EPA Regional Office early in your process for considering measures.

Control Measure Selection

Emissions, modeling, source, and control information can be analyzed to select appropriate control measures that will help achieve emission reductions and prevent ozone levels that may exceed the level of the NAAQS. Specific Ozone Advance action plans can tailor the use, combination, and timing of specific measures to meet local needs. Aside from control measures/programs identified in the plans, the plans may contain public education and awareness programs. Factors which may be considered in selecting control measures include, but are not limited to:

A. Determination of amount/type of emission reductions

The type and amounts of emission reductions impacts the selection of controls. An area with air quality affected predominantly by mobile sources and needing NO_x emission reductions would need different control measures than an area with air quality affected predominantly by large stationary sources of VOCs. Emissions inventory and modeling data may be beneficial in making these determinations.

Considerations include:

- Is ozone formation in the area driven by NO_x or VOC emissions or a combination of the two?
- What are the primary types of NO_x and VOC emissions sources in the area? For example, are mobile or stationary sources emitting most of the NO_x or VOC in the area?
- Are there a few very large emitters of NO_x or VOC, many smaller ones, or a combination?
- Are there additional air quality improvements, such as toxic emissions reductions, that result from implementation of the controls under consideration for this program?
- Are there possible benefits to environmental justice communities?

B. Analysis of available control measures

Even if the types and amounts of emission reductions that would provide the greatest benefits are known, the availability and ease of implementation of emission control options may impact selection of a particular measure. Considerations include:

- What available control technologies/measures would be feasible to implement?
- What is the effectiveness of these control technologies/measures in achieving emission reductions?
- What are the timeframes necessary to implement the measure and see results?
- What is the cost (dollars/resources) necessary to implement the measure?
- What are the challenges to “sell” the measure to specific companies, decision makers or citizens?

It is worth noting that, although local ordinances imposing mandatory control measures may or may not satisfy the requirements associated with eventual SIP “credit,” these measures are certainly acceptable in terms of actions that may be taken as part of a participant’s proactive work under Ozone Advance.

C. Selecting the proposed control measures

The state/tribe and EPA can assist in evaluating data and in reviewing the modeling for control options. Cooperative discussions with stakeholders can help determine the most appropriate control measures. Other states/tribes or local governments with similar sources and air quality issues, could be contacted for additional ideas or measures to consider.

Attachment C
Ozone Advance
Relevant EPA Guidance

A. Websites

1. Ozone Reduction Strategies, <http://www.epa.gov/airquality/ozonestrategy/>
2. State and Local Transportation Resources, <http://www.epa.gov/otaq/stateresources/index.htm>
Note: Includes information concerning a wide variety of policy and guidance, partnership programs, grants and other sources of funding, and calculators and modeling tools.
3. National Clean Diesel Campaign (NCDC), <http://epa.gov/cleandiesel/>
4. Emission Inventory Improvement Program, <http://www.epa.gov/ttn/chief/eiip/techreport/>
5. Heat Island Effect, <http://www.epa.gov/heatisland/>

B. Documents

1. Improving Air Quality with Economic Incentive Programs, EPA-452/R-01-001, Jan. 2001, <http://www.epa.gov/ttncaaa1/t1/memoranda/eipfin.pdf>
2. Incorporating Voluntary Stationary Source Emission Reduction Programs Into SIPs--Final Policy, Jan. 19, 2001, <http://www.epa.gov/ttncaaa1/t1/memoranda/coverpol.pdf>
Note: This guidance has been subsumed in 4, below.
3. Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP), Sept. 2004, http://www.epa.gov/ttncaaa1/t1/memoranda/evm_iev_m_g.pdf
4. Roadmap for Incorporating Energy Efficiency/Renewable Energy Policies and Programs Into State Implementation Plans/Tribal Implementation Plans, External Review Draft, March 30, 2011, <http://www.epa.gov/airquality/pdfs/eeermanual.pdf>
5. Guidance on Incorporating Bundled Measures in a State Implementation Plan, Aug. 16, 2005, <http://www.epa.gov/ttn/caaa/t1/memoranda/10885guideibminsip.pdf>
6. A Toolkit for States: Using Supplemental Environmental Projects (SEPs) to Promote Energy Efficiency (EE) and Renewable Energy (RE), Jan. 27, 2005, http://www.epa.gov/statelocalclimate/documents/pdf/sep_toolkit.pdf

7. Guidance on SIP Credits for Emission Reductions from Electric Sector Energy Efficiency and Renewable Energy Measures, Aug. 5, 2004,
http://www.epa.gov/ttncaaa1/t1/memoranda/ereseerem_gd.pdf
8. Guidance on Airport Emission Reduction Credits for Early Measures Through Voluntary Airport Low Emission Programs, Sept. 30, 2004,
http://www.epa.gov/airprog/oar/genconform/documents/aerc_040930.pdf
9. Policy and Guidance Documents to Assist Areas in Developing Strategies to Reduce Emissions from On-road and Non-road Sources, <http://www.epa.gov/otaq/stateresources/policy/index.htm>
The web page provides access to numerous guidance documents including:

Guidance on Innovative and Voluntary Air Pollution Control Strategies:
Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs), Oct. 27, 1997

Transportation-related Documents:

- Diesel Retrofits: Quantifying and Using Their Benefits in SIPs and Conformity, Guidance for State and Local Air and Transportation Agencies, EPA420-B-06-005, June 2006
- Guidance for Quantifying and Using Long Duration Truck Idling Emission Reductions in State Implementation Plans and Transportation Conformity, Jan. 14, 2004
- Guidance for Quantifying and Using Long Duration Switch Yard Locomotive Idling Emission Reductions in State Implementation Plans, Jan. 14, 2004
- Analyzing Emissions Reductions from Travel Efficiency Strategies
- Information on Developing and Implementing Transportation Control Measures
- Improving Air Quality Through Land Use Activities
- Methodologies for Assessing Transportation and Air Quality Impacts of Brownfields and Infill Development
- SmartWay SIP and Conformity Guidance
- Implementation of Accelerated Retirement of Vehicles Programs

10. Information on clean diesel programs, technologies, emission reduction strategies and a broad array of other related information, including tools and resources can be found at www.epa.gov/cleandiesel. Publications can be found at <http://epa.gov/cleandiesel/publications.htm>

The web page provides access to numerous documents on clean diesel programs that address specific types of vehicles or equipment and other related information including:

School buses

Emission Reduction Technologies

Ports

Cost Effectiveness and Incentives

Construction and Agriculture

SmartWay Transport

Information on grants for diesel emissions reduction activities can be found at

www.epa.gov/cleandiesel/grantfund.htm.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of Council
FROM: Steven K. Blanchard, PWC CEO/General Manager
DATE: September 10, 2012
RE: **Bid Recommendation- 69kV Transmission Line I-295 Re-Route Installation Project**

THE QUESTION:

The Public Works Commission of the City of Fayetteville requests Council approve bid recommendation to award contract for the 69kV Transmission Line I-295 Re-route Installation Project.

RELATIONSHIP TO STRATEGIC PLAN:

Quality utility services

BACKGROUND:

The Public Works Commission, during their meeting of August 22, 2012 approved the bid recommendation to award contract for the 69kV Transmission Line I-295 Re-route Installation Project to Lee Electrical Construction, Aberdeen, NC, lowest responsive, responsible bidder in the total amount of \$890,142.25 and forward to City Council for approval. This project is a budgeted item in FY 2013 CIP-EL65. The original estimated cost for the installation contract was \$900,000. Bids were received July 17, 2012 as follows:

Bidders	Total Cost
Lee Electrical Construction, Aberdeen, NC	\$ 890,142.25
T&D Solutions, Kinston, NC	\$1,490,937.50
C.W. Wright, Chester, VA	\$1,703,369.00

The total amount budgeted for this project is \$2,400,000 (FY 2013 - \$300,000 and FY 2014 - \$2,100,000) with the majority of the work originally expected to occur in FY 2014. NC Department of Transportation has requested that PWC expedite this work in order to accommodate their bridge replacement schedule. Sufficient capital funds have been transferred to cover the cost of this project. This is a NC DOT reimbursable contract.

ISSUES:

There is no SDBE participation. This is a labor only contract. Lee Electrical has certified that they intend to perform all work with their own forces.

BUDGET IMPACT:

PWC Budgeted Item

OPTIONS:

N/A

RECOMMENDED ACTION:

Award contract to Lee Electrical Construction, Aberdeen, NC, lowest responsive, responsible bidder in the total amount of \$890,142.25.

ATTACHMENTS:

Bid Recommendation
Bid History

**PUBLIC WORKS COMMISSION
ACTION REQUEST FORM**

TO: Steve Blanchard, CEO/General Manager DATE: August 15, 2012

FROM: Gloria Wrench, Purchasing Manager

.....
ACTION REQUESTED: Award contract for 69kV Transmission Line I-295 Re-route Installation Project
.....

BID/PROJECT NAME: 69kV Transmission Line I-295 Re-route Installation Project

BID DATE: July 17, 2012 DEPARTMENT: Electric Engineering

BUDGET INFORMATION: FY 2013 CIP EL65 - \$300,000 – Sufficient capital funds have been transferred to cover the installation expense
.....

BIDDERS	TOTAL COST
<u>Lee Electrical Construction, Aberdeen, NC</u>	<u>\$ 890,142.25</u>
<u>T&D Solutions, Kinston, NC</u>	<u>\$1,490,937.50</u>
<u>C.W. Wright, Chester, VA</u>	<u>\$1,703,369.00</u>

.....
AWARD RECOMMENDED TO: Lee Electrical Construction, Aberdeen, NC

BASIS OF AWARD: Lowest responsive, responsible bidder

AWARD RECOMMENDED BY: Booth & Associates, Rick Anderson, and Gloria Wrench
.....

COMMENTS: Bids were solicited from six (6) contractors with three (3) contractors responding. This is a NCDOT reimbursable contract. The original estimated cost for the installation contract was \$900,000. The total amount budgeted for this project is \$2,400,000 (FY2013- \$300,000 and FY2014 - \$2,100,000) with the majority of the work originally expected to occur in FY2014. NCDOT has requested that PWC expedite this work in order to accommodate their bridge replacement schedule.
.....

ACTION BY COMMISSION
APPROVED _____ REJECTED _____
DATE _____

ACTION BY COUNCIL
APPROVED _____ REJECTED _____
DATE _____

BID HISTORY

69kV TRANSMISSION LINE I-295 RE-ROUTE INSTALLATION PROJECT BID DATE: JULY 17, 2012; 2:00 P.M.

Consulting Engineer

Booth & Associates, Raleigh, NC

Advertisement

1. PWC Website 06/19/12 through 07/10/12

List of Organizations Notified of Bid

1. NAACP Fayetteville Branch, Fayetteville, NC
2. NAWIC, Fayetteville, NC
3. N.C. Institute of Minority Economic Development, Durham, NC
4. CRIC, Fayetteville, NC
5. Fayetteville Business & Professional League, Fayetteville, NC
6. SBTDC, Fayetteville, NC
7. FTCC Small Business Center, Fayetteville, NC
8. Fayetteville Area Chamber of Commerce, Fayetteville, NC
9. Carolinas AGC, Charlotte, NC
10. Hispanic Contractors Association, Raleigh, NC

Propsective Bidders List

1. C.W. Wright Construction Company, Chester, VA
2. Coastal Power & Electric, Inc., Currie, NC
3. Lee Electrical Construction, Inc., Aberdeen, NC
4. Pike Electric, Inc., Mount Airy, NC
5. Sumter Utilities, Sumter, SC
6. T&D Solutions, LLC, Kinston, NC

SDBE Participation

None. This is a labor only contract. Lee Electrical has certified that they intend to perform all work with their own forces.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Rusty Thompson, PE, Engineering & Infrastructure Director
DATE: September 10, 2012
RE: **Public Hearing for Assessment Rolls on Soil Street That Have Been Paved.**

THE QUESTION:

- Council is scheduled to conduct a public hearing to hear comments concerning the assessments for the street paving for the following streets: Salisbury Street (from Wilma Street 280 feet to a dead end), Grace Avenue (from Old Wilmington Road 351 feet to a dead end), and Wilma Street (from Roosevelt Street 1128 feet to a dead end)
- Following the public hearing, Council is asked to take action confirming the assessment rolls for the above names streets.

RELATIONSHIP TO STRATEGIC PLAN:

Paving of Soil Streets

BACKGROUND:

- On July 27, 2009 Council ordered the paving of Salisbury Street (from Wilma Street 280 feet to a dead end) with an assessment rate of \$25.00 per foot of property frontage for paving. A total paving cost for the paving is \$28,858.92 with \$14,020.00 being assessed to the owners and \$14,838.92 being paid by the City.
- On July 25, 2011 Council ordered the paving of Grace Avenue (from Old Wilmington Road 351 feet to a dead end) with an assessment rate of \$25.00 per foot of property frontage for paving. A total paving cost for the paving is \$34,501.93 with \$16,742.25 being assessed to the owners and \$17,759.68 being paid by the City.
- On August 8, 2011 Council ordered the paving of Wilma Street (from Roosevelt Street 1128 feet to a dead end) with an assessment rate of \$25.00 per foot of property frontage for paving. A total paving cost for the paving is \$116,653.62 with \$40,302.75 being assessed to the owners and \$76,350.87 being paid by the City.
- On August 13, 2012 Council set September 10, 2012 as the date for the required public hearing to receive comments from property owners along these streets concerning the preliminary assessment rolls.
- Property owners have been mailed Notice of the Preliminary Assessment Rolls and of the Public Hearing.
- Notice has also been published in the Fayetteville Observer on August 22, 2012.

ISSUES:

- Chapter 160A, Article 10 of the North Carolina General Statutes outlines the procedure for special assessments for street paving.
- These procedures require a preliminary assessment roll be completed and a public hearing held.

BUDGET IMPACT:

There is no significant impact to the budget as this item was accounted for in the current budget.

OPTIONS:

- Adopt resolutions confirming assessment rolls as presented.
- Consider other funding options or assessment rates.

RECOMMENDED ACTION:

Adopt the attached resolutions confirming assessment rolls for these streets.

ATTACHMENTS:

Salisbury Resolution

Grace Resolution

Wilma Resolution

Soil Street Paving photos

**RESOLUTION CONFIRMING ASSESSMENT ROLL
AND LEVYING ASSESSMENTS**

WHEREAS, the City Council of City of Fayetteville has on September 10, 2012, held a public hearing after due notice as required by law, on the Assessment Roll for the improvement of Salisbury Street (from Wilma Street 280 feet to a dead end) for paving;

WHEREAS, the City Council has heard all those present who requested to be heard, and has found the said Assessment Roll to be proper and correct;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Fayetteville that:

1. The Assessment Roll for the improvement of Salisbury Street (from Wilma Street 280 feet to a dead end) for paving in the City of Fayetteville, North Carolina, is hereby declared to be correct, and is hereby confirmed in accordance with Chapter 160A, Section 228, of the General Statutes of North Carolina.
2. The City Council of the City of Fayetteville, pursuant to authority conferred by Chapter 160A, Section 216, of the General Statues of North Carolina, and following sections, does hereby levy assessments as contained in the said Assessment Roll. A copy of the Assessment Roll is on file in the City Finance Department and the City Attorney’s office.
3. The City Attorney is hereby directed to deliver to the Deputy Tax Collector the said Assessment Roll.
4. The Deputy Tax Collector is hereby charged with the collection of said assessments in accordance with the procedure established by Chapter 160A, Section 232 and 233, of the General Statues of North Carolina.
5. The Deputy Tax Collector is hereby further directed to publish once on the 1st day of October, 2012, the notice required by Chapter 160A, Section 229, of the General Statues of North Carolina.

ADOPTED this the 10th day of September, 2012.

CITY OF FAYETTEVILLE

BY: _____
ANTHONY G.CHAVONNE, Mayor

ATTEST:

Pamela Megill, City Clerk

**RESOLUTION CONFIRMING ASSESSMENT ROLL
AND LEVYING ASSESSMENTS**

WHEREAS, the City Council of City of Fayetteville has on September 10, 2012, held a public hearing after due notice as required by law, on the Assessment Roll for the improvement of Grace Avenue (from Old Wilmington Road 351 feet to a dead end) for paving;

WHEREAS, the City Council has heard all those present who requested to be heard, and has found the said Assessment Roll to be proper and correct;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Fayetteville that:

1. The Assessment Roll for the improvement of Grace Avenue (from Old Wilmington Road 351 feet to a dead end) for paving in the City of Fayetteville, North Carolina, is hereby declared to be correct, and is hereby confirmed in accordance with Chapter 160A, Section 228, of the General Statutes of North Carolina.
2. The City Council of the City of Fayetteville, pursuant to authority conferred by Chapter 160A, Section 216, of the General Statues of North Carolina, and following sections, does hereby levy assessments as contained in the said Assessment Roll. A copy of the Assessment Roll is on file in the City Finance Department and the City Attorney's office.
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ADOPTED this the 10th day of September, 2012.

CITY OF FAYETTEVILLE

BY: _____
ANTHONY G.CHAVONNE, Mayor

ATTEST:

Pamela Megill, City Clerk

**RESOLUTION CONFIRMING ASSESSMENT ROLL
AND LEVYING ASSESSMENTS**

WHEREAS, the City Council of City of Fayetteville has on September 10, 2012, held a public hearing after due notice as required by law, on the Assessment Roll for the improvement of Wilma Street (from Roosevelt Street 1128 feet to a dead end) for paving;

WHEREAS, the City Council has heard all those present who requested to be heard, and has found the said Assessment Roll to be proper and correct;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Fayetteville that:

1. The Assessment Roll for the improvement of Wilma Street (from Roosevelt Street 1128 feet to a dead end) for paving in the City of Fayetteville, North Carolina, is hereby declared to be correct, and is hereby confirmed in accordance with Chapter 160A, Section 228, of the General Statutes of North Carolina.
2. The City Council of the City of Fayetteville, pursuant to authority conferred by Chapter 160A, Section 216, of the General Statutes of North Carolina, and following sections, does hereby levy assessments as contained in the said Assessment Roll. A copy of the Assessment Roll is on file in the City Finance Department and the City Attorney's office.
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ADOPTED this the 10th day of September, 2012.

CITY OF FAYETTEVILLE

BY: _____
ANTHONY G. CHAVONNE, Mayor

ATTEST:

Pamela Megill, City Clerk



Wilma Street



Salisbury Street



Grace Street

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Scott Shuford, Director, Development Services Dept.
DATE: September 10, 2012
RE: **Amendment to City Code 30-5 Development Standards and related sections to provide for canopy ('tree save') area, specimen tree preservation and related landscaping standards, and provide incentives or credits as appropriate.**

THE QUESTION:

Are the proposed changes to development standards for tree protection and landscaping consistent with public health, safety and welfare? (Also see the attached Commission staff report with seven standards for considering amendments to Chapter 30)

RELATIONSHIP TO STRATEGIC PLAN:

More Attractive City - clean and beautiful
Growing City, Livable Neighborhoods - a great place to live

BACKGROUND:

In December 2010 the City adopted the new development standards. During that process the staff, consultants, Advisory Committee and many other public and private groups worked extensively on tree protection standards and coordination with open space and landscaping. Daily application, however, revealed that certain important caps to mitigation requirements had not carried forward during final revisions to the Code. The recommended changes required significant levels of coordination with the open space, parkland, and landscaping standards. Problems with the existing regulations include:

- Problems with the list of "specimen" trees and associated diameters combined with the mitigation standards have resulted in unreasonable mitigation requirements.
- Standards do not recognize or allow credit for more diverse tree-save approaches where, for instance, the protection of an established cluster of trees may be more important than saving select, often scattered specimen trees.
- There is no option for in-lieu payment for any portion of the required trees.
- There is limited flexibility in applying specimen trees toward other landscaping or open space requirements.
- The tree survey is sometimes a costly and poorly used tool, but other approaches are not clearly accepted.

ISSUES:

Based on discussions with the Commission members, with members of the UDO Advisory Committee, and work sessions testing draft regulations with recent development plans, staff has drafted an ordinance with the following major changes:

- The objective shifts from saving "specimen" trees to protecting or re-establishing stable portions of the urban forest plus significant incentives to protect large specimen trees.
- The minimum "tree-save area" is 10%, much less than what most developers are facing with the current specimen tree standards and required mitigation.
- Aerials and in-the-field flagging can be used in place of a tree survey of the site. Location of specific trees over 30" or those proposed to be saved in addition to the minimum area, and the boundary of the required tree save area must be accurately located, however.
- Credits toward landscaping requirements are available for specimen trees that are protected.
- A "street-yard landscaping" approach replaces the vehicular use screening or perimeter screening of parking lots where parking is located between the building and street. The minimum width of tree planting areas in parking lots is enlarged from 6 to 7' for understory trees and 10' for canopy trees to better fit horticultural requirements and increase survival rate of planted trees.

BUDGET IMPACT:

No direct impact, although these amendments would have a positive effect on some developments that are stalled because of current mitigation standards for removal of specimen trees.

OPTIONS:

1. Approval as presented
2. Approval with modifications
3. Deferral with direction for further research or modifications
4. Denial of the proposed amendment

RECOMMENDED ACTION:

The Planning Commission and staff recommend Option 1, that the City Council move to: APPROVE the amendment to City Code 30-5 Development Standards to provide for canopy ('tree save') area for tree protection and other related changes to landscaping standards, as presented by staff.

ATTACHMENTS:

Excerpt - Evaluation - Tree Protect and Landscpg
Draft Ord - Tree protect and landscpg

EXCERPT – Planning Commission Staff Report 8/21/2012

Proposed Text Amendment to Modify Tree Protection and Landscaping Standards

REQUEST: Amendment to City Code 30-5 and related sections of Chapter 30 to modify specimen tree and landscaping standards including mitigation.

The UDO provides seven standards of review in Section 30-2.C.2(e) for proposed text amendments. Each standard is listed in the following table, along with staff analysis of how each standard applies to the proposed changes. Also, the tree protection approach is related to other major sections of the Code: landscaping, parking, open space, and parkland.

Standard	Analysis
1) Whether and the extent to which the proposed amendment is consistent with all City-adopted plans that are applicable;	The changes are consistent with the City’s Strategic Vision and Goals (Livable Neighborhoods; More Attractive City; More Efficient City Government), goals of the 2030 Vision Plan, and the basic purpose of the development code.
2) Whether the proposed amendment is in conflict with any provision of this Ordinance, and related City regulations;	The proposed changes ensure that consistency is maintained throughout the City’s regulations.
3) Whether and the extent to which there are changed conditions that require an amendment;	Since the adoption of the UDO, the City has learned that the current standards for tree protection are costly and inflexible and have not achieved the desired results.
4) Whether and the extent to which the proposed amendment addresses a demonstrated community need;	The proposed text protects a percentage of the existing tree canopy, ensures a better environment for new trees to reach maturity and reduces potential site conflicts in the interim.
5) Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and would ensure efficient development within the City;	The proposed text provides for an efficient process at a reduced cost, that is both desirable and achievable
6) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern; and	The proposed text furthers the City’s goal to prevent indiscriminant clear-cutting and to create a sustainable urban forest in conjunction with beautified street frontages.
7) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment	Greater environmental benefits will result from the protection of existing trees in mass through the tree save area provision. Trees in mass have greater chance of longevity and will help sustain a greater a diversity of species than what exists under the current regulations.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AMEND PORTIONS OF ARTICLE 30-2.C, ARTICLE 30-3.H, ARTICLE 30-5 SECTIONS A, B, E, F, H, I, AND J, AND ARTICLE 30-9 SECTIONS C AND D TO PROVIDE CANOPY ('TREE SAVE') AREA AND SPECIMEN TREE PROTECTION AND PROVIDE INCENTIVES OR CREDITS AS APPROPRIATE.

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the Unified Development Ordinance adopted December 13, 2010 as Chapter 30 of the Code of Ordinances of the City of Fayetteville and last amended July 9, 2012, be amended as follows:

LEGEND:	
<u>Underline</u>	new text
<u>Black text</u>	moved to new location, no change in substance
<u>Red text</u>	change in wording or reference
Strike-thru	deleted text
<u>Highlight in green (darker gray in b/w)</u>	significant text change

Section 1.0 Amend Article 30-2 Administration, Section C Standards and Requirements for Development Applications, as follows:

Section 1.1 Amend Subsection 30-2.C.9. Clear-Cutting Permit as follows:

(a) Purpose and Intent

It is the purpose of this section to promote and protect the health, safety and general welfare and enhance the quality of life in Fayetteville by providing guidance and regulation in the removal of trees on any development site. This section is intended to ensure that prior to proceeding with development activities, such as clearing and grubbing of a site existing specimen trees are protected and maintained after clear-cutting or other significant land-disturbing activities taking place on land not yet subject to an approved Site Plan, Subdivision Plan, or Building Permit, the property owner shall be made aware of the substantial benefits of trees and the substantial cost savings in retaining on-site trees that will meet the city's development regulations for the establishment of a tree save area over the cost of having to replant and restore a portion of what was unknowingly removed.

The purpose of a Clear-Cutting Permit is to:

- (1) Retain significant trees that contribute to the city's visual and aesthetic quality and ensure that significant trees are not unknowingly eliminated without appropriate consideration; Maintain existing specimen trees that contribute to the City's visual and aesthetic quality;
- (2) Ensure that the property owner is made aware of the value existing trees give to a development and the substantial cost savings associated with retaining trees that will meet the city's development regulations over the cost of having to replant and restore a portion of what was unknowingly removed;
- (3) Retain a buffer of naturally existing vegetation along all boundaries of the property to protect adjacent properties from harmful effects and exposure;
- (4) Retain a percentage of tree canopy as a tree save area in furtherance of the city's effort to maintain and restore tree canopy coverage across the city;
- (5) Enhance air and water quality;
- (6) ~~Buffer incompatible land uses;~~ Minimize heat and noise impacts; and
- (7) Minimize soil erosion and flooding.

(b) Applicability

(1) General

Except for development exempted in accordance with Section 30-2.C.9.b.2, Exemptions, a Clear-Cutting Permit, approved in accordance with the procedures and standards of this section and [Section 30-5.B.3, Protection of Specimen Trees](#), [Section 30-5.B.6, Tree Preservation](#); [Section 30-5.B.7, Tree Preservation Incentives](#); and [Section 30-5.B.8, Tree Protection During Construction](#), is required before any clear-cutting or significant land-disturbing activities that would impact healthy [specimen](#) trees.

(2) Exemptions

The following activities are exempt from the requirement to obtain a Clear-Cutting Permit:

- a.** The removal of vegetation by public or private agencies, including the PWC, within the lines of any right-of-way, easement, or other City-owned lands as may be necessary to ensure public safety.
- b.** Land disturbing activities undertaken on land under agricultural, horticultural, or forestry production and taxed at present-use value in accordance with Sections 105-277.2 through 277.7 of the North Carolina General Statutes, [as long as a vegetated perimeter buffer is retained, as follows:](#)
 - i.** [30-foot wide buffer along all boundaries of the property that adjoin other properties, exclusive of areas required for access connection to adjoining sites; and](#)
 - ii.** [50-foot buffer along public rights-of-way, exclusive of areas required for access to the site or connection to adjoining sites.](#)
- c.** [The removal of a severely diseased, dead or dying tree.](#)

(c) Initiation

An application for a Clear-Cutting Permit may be initiated by any person who may submit applications in accordance with Section 30-2.B.1, Authority to File Applications.

(d) Procedure

(1) Basic Procedures

Except as modified by Sections 30-2.C.9.d.2-4 below, procedures and requirements for the submission, completeness determination, review, recommendation, and decision on applications are as established in Section 30-2.B, Common Review Procedures.

(2) Review and Action by City Manager

The city manager shall review and take action on the application in accordance with the procedures of Section 30-2.B.9, Decision by Technical Review Committee or city manager, and the standards in Section 30-2.C.9(e), Clear-Cutting Permit Standards.

(3) Conditions of Approval

In approving a Clear-Cutting Permit, the city manager may impose appropriate conditions on the approval in accordance with Section 30-2.B.16, Conditions of Approval.

(4) Appeal

An appeal from the city manager's decision on a Clear-Cutting Permit application shall be reviewed and decided by the Board of Adjustment in accordance with Section 30-2.C.18, Appeal.

(e) Clear-Cutting Permit Standards

A Clear-Cutting Permit shall be approved only upon a finding that all of the following standards are met:

- (1)** [No trees proposed for removal are located in areas off limit to development, such as conservation easements, tree save areas, floodplains, stream buffers and wetlands;](#)
- (2)** [No trees proposed for removal are greater than 30 inches in caliper \(see Section 30-5.B.6.e, Specimen Trees Identified\);](#)
- (3)** [No trees proposed for removal are located within the following buffer yards:](#)
 - a.** [30-foot wide buffer along all boundaries of the property that adjoin other properties, exclusive of areas required for access connection to adjoining sites; and](#)
 - b.** [50-foot buffer along public rights-of-way, exclusive of areas required for access to the site or connection to adjoining sites.](#)

~~(4) Plans describe proposed tree barriers and identify the extent and location of all tree protection zones (at the appropriate scale), to ensure that any tree qualifying under (1), (2), &/or (3) above, are protected from damage, consistent with the requirements of Section 30-5.B.8, Tree Protection During Construction.~~

~~(1) A tree protection zone is established around the root zone(s) of all existing specimen trees consistent with the requirements in Section 30-5.B.4, Tree Protection During Construction.~~

~~(2) All specimen trees within the tree protection zone are preserved and maintained during and after any tree removal or land-disturbing activity, or a plan for mitigation consistent with the requirements in Section 30-5.B.3.i, Replacement/Mitigation of Specimen Trees, has been approved by the city manager.~~

~~(3) In the event the tract or site proposed for clear-cutting or other land-disturbing activity contains no specimen trees, the Clear-Cutting Permit shall indicate that no tree protection zones are required.~~

(f) Credit for Tree Protection Zones

~~Tree protection zones shall be credited towards the open-space set-aside requirements of Section 30-5.C, Open Space Set-Asides, if the site or parcel of land becomes the subject of a development application in accordance with this Ordinance.~~

(g) Clearing in Violation

~~Failure to obtain a Clear-Cutting Permit prior to tree removal, or to abide by its conditions, including damage to any tree in a tree save area, or damage to any tree existing specimen trees in a tree protection zone established as part of a Clear-Cutting Permit is a violation of this Ordinance and subject to the remedies and penalties in this section and Article 30-8: Enforcement, remedial action to replace each healthy specimen tree removed. In addition, trees damaged or unlawfully removed shall be replaced with one or more replacement trees, measuring inch-for-inch at least 20 percent of the caliper noted in Table 30-5.B.e with a cumulative caliper equal to the specimen tree(s) removed. The replacement trees shall be replanted within 12 months of the notice removal of the specimen tree. Other applicable remedies and penalties are contained in Article 30-8: Enforcement.~~

Section 1.2. Amend Subsection 30-2.C.14.c. Variance Applicability as follows:

(2) b. Section 30-5.B, Landscaping and Tree Preservation Standards;

Section 2.0 Amend Article 30-3 Zoning Districts, Section H.2 Hospital Area Overlay (HAO) District, as follows:

Section 2.1 Amend Subsection 30-3.H.2.g Parking, as follows:

(2) Location of Parking

New buildings shall have off-street parking spaces located behind the rear building face of the principal building on the lot. Up to 25 percent of parking spaces may be located to the side of the building behind of the front building facade.

Section 2.2 Amend Subsection 30-3.H.2.h. Landscaping Requirements as follows:

(1) General

Ten percent of the total site area must be planted with something other than grass. Required planting materials shall correspond to the city's approved species list ~~approved materials listed~~ in the Administrative Manual, unless alternative materials are proposed as part of an Alternative Landscape Plan (see Section ~~30-5.B.1.h~~ 30-5.B.4.f).

(2) Street Trees

There shall be an approved street tree located ~~every 50 feet of street frontage~~, along both front and side streets, in accordance with Section 30-5.B.4.a, Street Trees.

(3) Parking Lot ~~Shade~~ Trees

No parking space shall be separated from the trunk of a ~~shade or~~ canopy tree by more than 60 feet.

(4) Parking Lot Perimeter Landscape Screen

The edge of all areas containing parking spaces shall be planted with a continuous evergreen landscape screen with a minimum height of 24" above grade at time of planting of a type that will reach 36 inches in height at maturity within five years of building occupancy.

Section 2.3 Amend Subsection 30-3.H.2.i. Buffering Requirements as follows:

(1) ~~Perimeter Buffer~~ Residential Buffer

Where a property line abuts another property zoned or used residentially, there shall be a ten foot wide Type D perimeter landscaping ~~ing~~ buffer along that property line, in accordance with Figure 30-3.H.2.i.1, and the following: ~~No buildings or parking areas may encroach into such perimeter buffer. Permitted encroachments (like walls or fences) are allowed as specified under Permitted Encroachments into Required Setbacks (see Section 30-9.B.1.f.2).~~

(2) Residential Buffer

A combination fence and vegetated buffer shall be required along any property line adjoining a residentially zoned property, in accordance with Figure 30-3.H.2, and the following:

a. Fence or Wall

The finished side of the fence or wall must face the residential lands and be a minimum of six feet in height.

b. Vegetation

Approved vegetation must include evergreen plant material ~~of a type~~ that will provide a completely opaque buffer greater than or equal to 25 feet in height within five years of building occupancy.

c. Encroachments

No buildings or parking areas may encroach into the buffer. Permitted encroachments (like walls or fences) are allowed as specified under Permitted Encroachments into Required Setbacks (see Section 30-9.B.1.f.2).

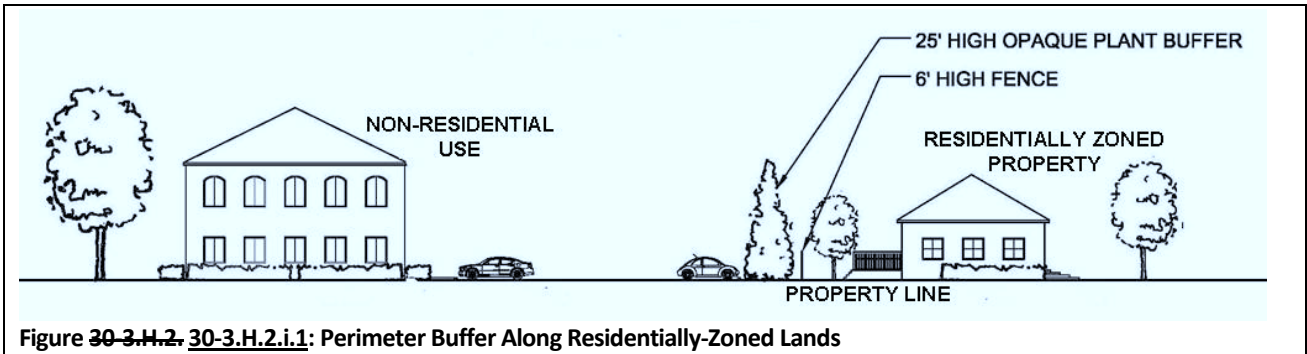


Figure 30-3.H.2, 30-3.H.2.i.1: Perimeter Buffer Along Residentially-Zoned Lands

Section 3.0 Amend Article 30-5, Development Standards, Section A Off-Street Parking, Loading, and Circulation, as follows:

Section 3.1 Amend Subsection 30-5.A.3. General Standards for Off-Street, Stacking, and Loading Areas, as follows:

(i) Landscaping

~~Except for parking areas serving single-family detached, two-to-four-family, or attached residential dwellings of 5,000 square feet or less in gross floor area or less, a~~ All off-street parking lots, stacking lanes, loading, and other circulation areas shall be landscaped to soften their visual impact on adjacent areas, and unless exempted, shall comply with the standards of Section ~~30-5.B.1.e~~ 30-5.B.4.c, Vehicular Use Area Landscaping.

Section 3.2 Amend Subsection 30-5.A.4. Off-Street Parking Standards, as follows:

(i) Minimum Separation

All parking areas shall be separated at least **eight ten** feet from building facades to allow room for sidewalks, landscaping, and other plantings between the building and the parking area. This separation may be eliminated to the rear of buildings in areas designed for service or unloading and loading of materials (see Figure 30-5.A.4.i).

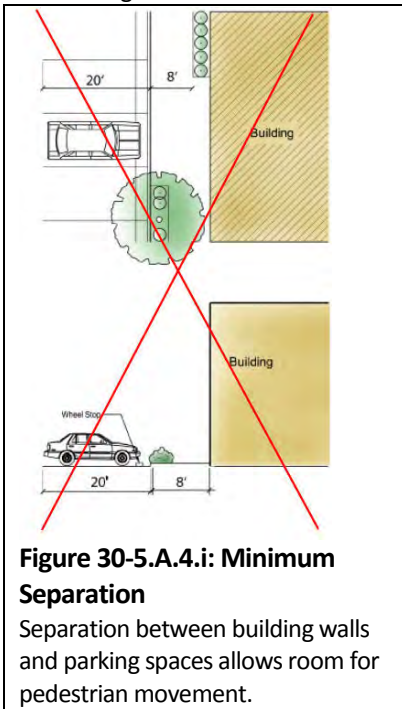


Figure 30-5.A.4.i: Minimum Separation

Separation between building walls and parking spaces allows room for pedestrian movement.

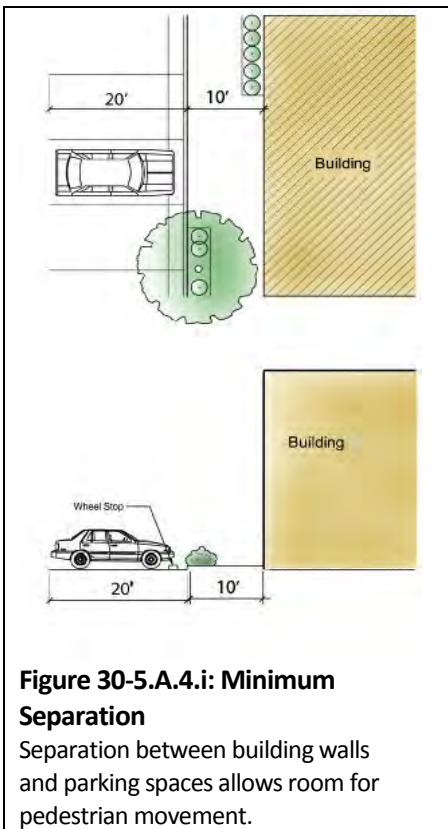


Figure 30-5.A.4.i: Minimum Separation

Separation between building walls and parking spaces allows room for pedestrian movement.

Section 3.3 Amend Subsection 30-5.A.10. Loading Space Standards, as follows:

(b)Standards

(7) Landscaping

Loading spaces shall be screened around the perimeter in accordance with Section ~~30-5.B.1.e.2,30-5.B.4.e,~~
ScreeningPerimeter Landscaping Standards.

Section 3.4 Amend Subsection 30-5.A.11. Off-Street Circulation, as follows:

(e) Primary Drive Aisles

Primary drive aisles within off-street surface parking lots with 500 or more spaces shall be designed to appear as an extension of the public street network extending from the public right-of-way along the full length of the primary facades of structures being served by the drive (see Figure 30-5.A.12, Primary Drive Aisles), and shall meet the following standards:

* * * * *

(4) Street trees shall be provided along both sides of the primary drive aisle in accordance with Section ~~30-5.F.10-30-5.B.4.a,~~ Street Trees, although understory trees may be used adjacent to the building façade within 40 feet of building entrances.

Section 4.0 Amend Article 30-5, Development Standards, Section B Landscaping and Tree Protection Standards (in its entirety) as follows:

1. PURPOSE AND INTENT

1. LANDSCAPING STANDARDS

(a) Purpose and Intent

It is the purpose of this section to promote and protect the public health, safety, and general welfare by ~~providing for the planting, maintenance, and preservation of trees, shrubs, and other plants within the City.~~establishing minimum requirements for the provision and maintenance of functionally adequate, attractive screening and buffering of structures, parking areas, driveways, and other facilities and land uses, while providing standards for the protection of existing and new trees and vegetation and their root zones. The intent of this section is to promote this purpose by:

(a) Recognizing the importance of trees to the visual and natural environments in the City;

(b) Protecting and retaining existing tree canopy and specimen trees during and after development;

(c)~~(1)~~ Ensuring and encouraging the planting, maintenance, restoration and survival of trees, shrubs, and other plants;

(d)~~(2)~~ Contributing to the protection of community residents and visitors from personal injury and property damage, and the protection of the City from property damage, caused or threatened by the improper planting, maintenance or removal of trees, shrubs or other plants;

(e)~~(3)~~ Mitigating against erosion and sedimentation;

(f)~~(4)~~ Reducing stormwater runoff and the costs associated therewith;

(g)~~(5)~~ Encouraging low impact development techniques like bio-retention and other best management practices for dealing with stormwater;

(h)~~(6)~~ Preserving and protecting the water table and surface waters;

(i)~~(7)~~ Restoring soils and land denuded as a result of construction and/or grading;

(j)~~(8)~~ Increasing the tree canopy to provide shade and moderate the effect of urban heat islands;

(k)~~(9)~~ Providing incentives for greater use of sustainable development practices like green roofs, use of native plant materials, and techniques to reduce the need for irrigation;

(l)~~(10)~~ Protecting and enhancing property values and aesthetic qualities;

(m)~~(11)~~ Providing additional improvements to air quality through the carbon dioxide uptake process provided by trees and landscaping; and

~~(n)(12)~~ Providing visual screening, where appropriate.

2. APPLICABILITY

~~(b)~~ Applicability of Landscaping Standards

~~(a)(1)~~ General

Except where expressly exempted, these standards shall apply to all development in the City.

~~(b)(2)~~ Review for Compliance

Review for compliance with the standards of this section shall occur during review of an application for a Clear-Cutting Permit (Section 30-2.C.9), Site Plan (Section 30-2.C.5), Planned Development (Section 30-2.C.3), Subdivision Plan (Section 30-2.C.6.d), Building Permit (Section 30-2.C.12), or Temporary Use Permit (Section 30-2.C.10), as appropriate. Failure to comply with the standards in this section is a violation of this Ordinance, subject to the remedies and penalties in this section and Article 30-8: Enforcement.

3. GENERAL REQUIREMENTS

~~(c)~~ General Requirements for Landscaping

~~(a)~~ PreApplication Meeting and Tree Protection Plan

It is important to identify any characteristics of a site that make it special. Added value to the resulting design may be achieved by identifying and considering these attributes prior to the advancement of the development plans. Wooded sites provide distinct aesthetic, economic and environmental significance and value as a natural resource of the city. Existing vegetation plays a critical role in maintaining aesthetics, water quality, minimizing erosion and downstream flooding, and increasing quality of life as well as reducing site development cost to replant and restore a portion of what was unknowingly removed. Critical to the satisfaction of this portion of the UDO is the identification of existing trees as a resource feature.

(1) Prior to plan development and submittal, the applicant shall meet with the city and provide the city with a graphic depiction on an aerial map, illustrating the existing tree canopy and potential areas for the location of the proposed tree save area, described in Section 30-5.B.6.f. Knowing the location and size of significant trees on the development site, helps the staff evaluate possible modifications to the proposed plans to preserve trees and improve the appearance of the proposed development.

(2) The applicant shall also provide information on the location and species of any trees having a DBH of 30 inches or greater which may currently exist on the site. Potential opportunities for tree preservation will be discussed. Tree preservation is to be determined in conjunction with the city's input.

(3) Once determined, the applicant shall indicate the location of the tree save area(s) and tree protection zones on the development plans. Tree protection areas based on the trees' critical root zones shall be noted and drawn to scale on demolition, grading and erosion control, and landscaping plans. The general type, size and nature of the proposed tree save area(s) and identification of existing trees to be saved and credited toward landscaping requirements shall be included as a table, as well as being graphically illustrated (see Section 30-5.B.6, Tree Preservation and Section 30-5.B.8, Tree Preservation During Construction).

(4) Tree save areas must be described by metes and bounds on the recorded plat, individual recorded deeds, and all property association documents for land held in common.

~~(b)(1)~~ Landscape Plan

(1)~~a~~ To ensure compliance with the standards of this section, a landscape plan demonstrating how landscaping will be planted on a development site shall be included as a part of any development application for Site Plan (Section 30-2.C.5), Subdivision Plan (Section 30-2.C.6.d), Building Permit (Section 30-2.C.12), or Temporary Use Permit (Section 30-2.C.10), as appropriate.

(2)~~b~~ In the event of phased development, a landscape plan shall be required for each distinct phase of the development, and shall depict landscaping associated with the particular phase of development.

(3) The Landscape plan should be prepared by a professional, knowledgeable about plant material and design. Please refer to the City's landscaping guidelines for additional guidance on what is to be included on the landscape plan.

~~(c)(2)~~ Coordination with Stormwater Requirements

Stormwater management facilities required by the City Code of Ordinances may be incorporated into landscaping, resulting in credit towards or open space set aside requirements. When required stormwater management facilities are enhanced as a site amenity (see Section 30-5.C.3.b.6, Stormwater Management Devices), they may qualify as a portion of the required open space/parkland. Determination of credit shall be at the discretion of the city manager.

(d) Coordination with Site Lighting

Coordination is required so that site lighting is located an appropriate distance from trees to minimize future conflict (see Section 30-5.E.5.d).

(e)(3) Planting Standards

(1) Existing Vegetation

Existing healthy, well-formed canopy and/or understory trees as well as healthy shrubs may be credited toward the requirements of this section, provided the vegetation meets or exceeds the minimum size standards and is protected before and during development of the site and maintained thereafter in a healthy growing condition (see Section ~~30-5.b.5~~30-5.B.7, Tree Preservation Incentives).

a. The property owner must include in a tree survey (see Section 30-5.B.6.d, Tree Survey) of all existing trees five-inch caliper or greater proposed to be saved to satisfy a portion of the planting requirements. A tree survey is otherwise not required.

b. Only healthy trees free of invasive species that have been protected during the entire development period, beginning prior to the commencement of site work and continuing through to issuance of the certificate of occupancy in accordance with approved tree protection requirements may satisfy these planting requirements;

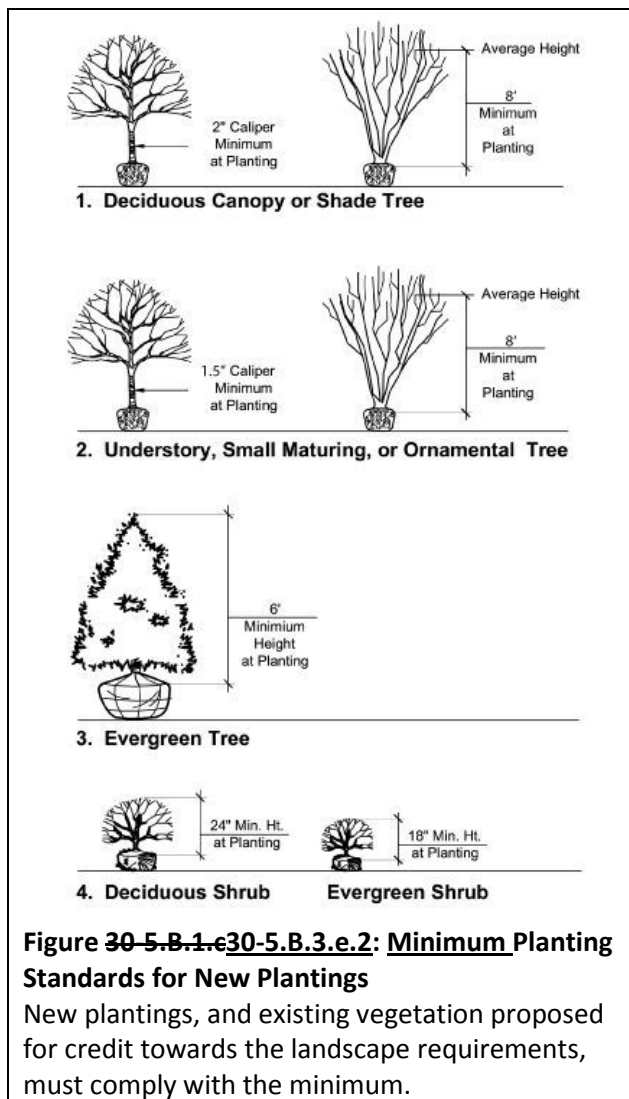
c. Preserved vegetation is to be maintained thereafter in a healthy growing condition free of invasive plant species;

d. If the minimum protection standards are not met, or if trees are observed by the City to be injured or threatened, the vegetation may be deemed ineligible for meeting these requirements.

e. Where existing vegetation is used in buffer yards, supplemental plantings may be required, if the existing vegetation does not provide the same effect that a planted buffer would after five years of normal growth.

(2)~~a~~ New Plantings

The City shall maintain and make available, a list of recommended plant material hardy to the Fayetteville area. Plant material not on the list may be approved by the City on a case-by-case basis. In the absence of a list for the City, the list published by the North Carolina Cooperative Extension Service shall serve as the list of recommended trees. Plantings shall comply with the following standards (see Figure ~~30-5.B.1.e~~30-5.B.3.e.2, Minimum Planting Standards for New Plantings, below):



~~a.i.~~ Deciduous canopy or shade trees shall be a minimum of two inches in caliper at the time of planting, as determined in the American Standard for Nursery Stock, ANSI Z60.1-2004, as amended, and shall be a minimum of eight feet in height above ground level at the time of planting.

~~b.ii.~~ Understory, ~~small maturing,~~ or ornamental trees shall have a caliper of one and-one-half inches at time of planting, as determined in the American Standard for Nursery Stock, ANSI Z60.1-2004, as amended, and shall be a minimum of eight feet in height above ground level at the time of planting.

~~c.iii.~~ Evergreen trees, except Longleaf Pines, shall be a minimum of six feet in height at the time of planting. Longleaf Pines shall be a minimum of three feet in height at time of planting.

~~d.iv.~~ At least 50% of the shrubs shall be a minimum 5-gallon container size at time of planting.

Deciduous shrubs, which are upright in nature shall be a minimum of 24 inches in height at the time of planting, and evergreen shrubs shall be a minimum of 18 inches in height at the time of planting.

~~v.~~ In cases where an aggregate caliper inch (ACI) requirement is utilized to derive a required amount of vegetation, and the ACI figure includes a fraction, an applicant may:

~~A.~~ Utilize a tree or trees with a caliper inch measurement exceeding the minimum size at time of planting standard of this subsection in order to meet the required ACI; or

~~B.~~ Round the ACI figure upwards until the figure corresponds with a whole number of trees meeting the minimum size at time of planting standard. When trees exceeding the

~~minimum size at time of planting standard are proposed, the minimum calipers of such trees shall be clearly noted on the Site Plan or Subdivision Plan, as appropriate.~~

~~e.vi.~~ In cases where application of the requirements in this subsection result in a fraction in the number of shrubs to be provided, the minimum number of shrubs or trees to be provided shall be rounded upwards to the next highest whole number.

~~f.vii.~~ All landscape plant materials shall conform to the latest version of the American Standard of Nursery Stock (ANSI Z60.1, as amended). Plant material shall be of ~~standard~~ specimen quality or better, true to name and type of species or variety.

~~g.viii.~~ The use of native, drought tolerant vegetation is encouraged to reduce dependency upon irrigation. Fifty percent of all new trees planted shall be native.

~~h.ix.~~ To curtail the spread of disease or insect infestation in a plant species, and to add interest to the landscape, species variety shall be in proportion to the number of trees and shrubs planted ~~new plantings shall comply with the following standards:~~

~~A. When fewer than 20 trees are required on a site, at least two different species shall be utilized, in roughly equal proportions.~~

~~B. When more than 20 but fewer than 40 trees are required to be planted on site, at least three different species shall be utilized, in roughly equal proportions.~~

~~C. When 40 or more trees are required on a site, at least four different species shall be utilized, in roughly equal proportions.~~

~~D. Nothing in this subsection shall be construed so as to prevent the utilization of a larger number of different species than specified~~ above in Table 30-5.B.3.E.2.H, Species Variety, below:

<u>REQUIRED NUMBER OF TREES OR SHRUBS</u>	<u>MINIMUM NUMBER OF SPECIES</u>
<u>1-10</u>	<u>1</u>
<u>11-20</u>	<u>2</u>
<u>21-30</u>	<u>3</u>
<u>31-40</u>	<u>4</u>
<u>41+</u>	<u>5</u>

~~i.x.~~ All planting materials shall correspond to the city's approved species list ~~materials listed in the Administrative Manual, unless alternative materials are proposed as part of an Alternative Landscape Plan (Section 30-5.B.1.h-30-5.B.4.f).~~

(3) ~~b.~~ Minimum Planting Area ~~Existing Vegetation~~

~~Existing healthy, well-formed canopy and understory trees as well as healthy shrubs shall be credited toward the requirements of this section, provided the vegetation meets the minimum size standards and is protected before and during development of the site and maintained thereafter in a healthy growing condition (see Section 30-5.B.5, Tree Preservation Incentives).~~

Based on arboricultural research, a canopy tree requires an absolute minimum soil volume of 400 to 600 cubic feet for it to be able to approach its normal size at maturity. This equates to 274 square feet of area (measured from back of curb to back of curb), with amended soils 18 to 24 inches in depth. An understory tree may be planted in 180 square feet of area. Any planting area bounded by an impervious surface shall be at least ten feet wide when planted with canopy trees, or seven feet wide when planted with understory trees.

(4) Suitable Backfill

All gravel, concrete and construction debris shall be removed from planting areas to a depth of 18 to 24 inches. Prior to backfill, areas shall be checked to ensure that they drain properly. Areas shall be backfilled with amended soil or topsoil meeting the requirements included in the City's landscaping guidelines, prior to planting.

(5)e. Stabilization

a.i. All landscape planting areas shall be stabilized and maintained with ground covers, mulches, or other approved materials to prevent soil erosion and allow rainwater infiltration.

b.ii. Groundcover located within three feet of a building base shall comply with applicable State of North Carolina Fire Codes.

(6)d. Berms

All berms shall comply with the following design standards:

a.i. The slope of all berms shall not exceed a two-to-one (2:1) ratio (horizontal to vertical), shall have a top width at least one-half the berm height, and a maximum height of eight feet above the toe of the berm.

b.ii. All berms, regardless of size, shall be stabilized with a ground cover or other suitable vegetation.

c.iii. Berms proposed to be placed along street right-of-way shall be designed and constructed to provide adequate sight distances at intersections and along the street.

d.iv. Berms shall not be located within the critical root zone of any ~~damage the roots of~~ existing healthy vegetation designated to be preserved.

(7)e. Limitations on Landscaping Placement

a.i. Within Easements

i.A. Nothing except groundcover shall be planted or installed within any underground or overhead utility, drainage, or gas easement, without the prior written consent of the utility provider, the City, or as provided for by the applicable easement agreement. Minimum clear separation distances required by the current adopted version of the North Carolina Fire Code shall be maintained for any fire protection system.

ii.B. Where required landscaping material is damaged or removed due to utility activity within an easement, the landowner shall be responsible for replanting all damaged or removed vegetation necessary to ensure required landscaping meets the standards in this Ordinance.

b.ii. Near Functional Fire Protection

Nothing except groundcover shall be planted or installed within three feet of a fire protection system without the prior written consent of the City. Under no circumstances shall plantings violate the State of North Carolina Fire Code.

c.iii. Near Underground Meter Utility-Owned Facilities

i. Nothing except groundcover shall be planted or installed within three five feet of an underground meter, without the prior written consent of the utility owner provider or the City.

ii. Nothing except groundcover shall be planted or installed within ten feet of water and sewer main lines, without the prior written consent of the utility owner.

d.iv. Beneath Overhead Utilities

Canopy trees shall not be planted beneath or adjacent to above ground and/or overhead utilities facilities. Understory trees or other landscaping may be planted beneath or adjacent to above ground and/or overhead utilities with prior consent from the utility owner. easement holder, or as provided for by the applicable easement agreement.

e. Change of Use and Expansion

Any additions or expansions, shall meet the requirements of Section 30-7, Nonconforming Sites.

f. Sight Distance Triangle Protection

Landscaping shall not obstruct the view of motorists using any street, private driveway, parking aisles, or the approach to any street intersection so as to constitute a traffic hazard and shall be in compliance with the sight triangle visibility standards located in Section 30-5.F.4.c.

(8) Time for Installation of Required Landscaping

a. Time Limit

All required landscaping (including mulching and seeding) shall be installed in accordance with the required planting standards set forth in this section prior to issuance of a Certificate of Occupancy unless the city manager grants an extension to this time limit in accordance with Section 30-5.B.3.e.8.b, Extensions, below.

b. Extensions

i. The city manager may, for good cause shown, grant **one or more extensions of up to 90 days each** from the date a Certificate of Occupancy is issued to install required landscaping.

Circumstances that may warrant an extension include, but are not limited to, the following:

A. Unusual environmental conditions, such as drought, ice, or oversaturated soil (deep mud);

B. It is not yet the appropriate planting season for the approved plant species;

C. Credible evidence that the approved plant species or required plant sizes are not commercially available and cannot be substituted within a reasonable time despite an applicant's diligent effort to secure the required materials; or

D. Completion of utility work occurring in a proposed landscaped area is incomplete or delayed.

ii. No extension to the time limit shall be granted unless a performance guarantee in accordance with the requirements in Section 30-6.C, Performance and Maintenance Guarantees, is in place to ensure that all required landscaping installation will be completed at a predetermined later date.

c. Multi-Phase Development

Multi-phase development shall only be required to provide the landscaping directly associated with development in the active phase(s).

(9) Maintenance of Landscaping Materials

The owner shall be responsible for the maintenance of all landscape areas not in the public right-of-way. Such areas shall be maintained in accordance with the approved Landscape Plan or Alternative Landscape Plan and shall present a healthy and orderly appearance free from refuse and debris. All plant life shown on an approved Landscape Plan or Alternative Landscape Plan shall be replaced **in compliance with the minimum standards of this section**, if it dies, is seriously damaged, or removed. This section is not intended to prevent normal, routine maintenance.

a. Damage Due to Natural Occurrence

In the event that any vegetation or physical element functioning to meet the standards of this section is severely damaged due to an unusual weather occurrence or natural catastrophe, or other natural occurrence such as damage by wild or domestic animals, the owner or developer may be required to replant if the landscaping standards are not being met. The owner shall have one growing season to replace or replant. The city manager shall consider the type and location of the landscape buffer or required vegetation area as well as the propensity for natural re-vegetation in making a determination on the extent of replanting requirements.

b. Protection During Operations

The owner or developer shall take actions to protect trees and landscaping from unnecessary damage during all facility and site maintenance operations. Plants shall be maintained in a way that does not obstruct sight distances at roadway and drive intersections, obstruct traffic signs or devices, or interfere with the use of sidewalks or pedestrian trails.

c. Prohibition Against Severe Tree Pruning Maintain Shape

All required trees (whether canopy or understory) shall be maintained in their characteristic natural shape, and shall not be severely pruned, sheared, topped, or shaped as shrubs. Trees (including, but not limited to Crape Myrtles) that have been severely pruned, sheared, topped, shaped as shrubs, such that they no longer serve the intended buffering or screening function, shall be

considered as damaged vegetation in need of replacement in accordance with Section 30-5.B.3.e.9.a, Damage Due to Natural Occurrence, and shall be replaced within one growing season.

d. Removal of Invasive Species

Regular maintenance shall include regular removal of invasive plant species. For purposes of this section, invasive plant species are considered removed if they are no longer living in the tree canopy. Subsequent property owners are required to maintain this condition for compliance with the chapter.

e. Natural Death

The natural death of existing vegetation within any required landscape area does not necessarily constitute a violation and does not require re-vegetation to replace the plant material unless the required landscape area no longer complies with the standards of this section. In no instance shall this provision be construed to prevent re-planting if, in the opinion of the city manager, the required performance standard of the landscaping is not being met.

(10) Monitoring of Compliance with Landscaping Standards

a. Inspections Prior to Certificate of Occupancy

The city manager shall inspect the site prior to the issuance of a Certificate of Occupancy for the development and such Certificate shall not be issued if the landscaping required under this section is not living or healthy, is not installed in accordance with the approved Landscape Plan or Alternative Landscape Plan and the standards in this section, or is not subject to an extension granted in accordance with Section 30-5.B.3.e.8.b, Extensions.

4. LANDSCAPING REQUIREMENTS

(a) Street Trees

Street trees shall be required to serve all development in the City in accordance with the following:

(1) Where Required

Except where exempted in (b) below, street trees shall be required along both sides of all streets ~~with a service level of collector or above.~~

(2) Exemptions

Street trees shall not be required for:

a. Agricultural uses in the AR district, except when agricultural land is subdivided for new residential development; or

b. Single-family lots, provided each lot includes ~~six ACI of canopy trees~~ one or more canopy trees between the dwelling and the ~~public~~ right-of-way. Spacing shall be in accordance with Section 30-5.B.4.a.5, Maximum On Center Spacing, below. Existing healthy, well-formed trees located within twenty feet of the back of curb may be credited toward the requirement of this section, provided the trees meet the requirements of Section 30-5.B.7.a, Tree Preservation Credits and are adequately protected during construction (see Section 30-5.B.8, Tree Protection During Construction). ~~Four shrubs may be utilized in place of up to two caliper inches.~~

(3) Location

a. Except where authorized by an Alternative Landscape Plan (see Section 30-5.B.4.f), or indicated in the Engineering and Infrastructure Department’s approved cross-section diagrams for utility installations, all street trees shall be planted between the back of the curb and the sidewalk.

b. In cases where street trees can not be planted between the curb and the sidewalk, applicants shall contact the City Engineering and Infrastructure Department for utility installation cross sections which depict approved street tree locations in the public right-of-way.

c. Street trees shall be located to avoid utilities (both overhead and underground), in accordance with the utility’s requirements for clearance, unless specific written consent from the utility owner is provided.

(4) Configuration

- a. Street trees shall be canopy trees except beneath overhead utilities or other projections into the public right-of-way, where understory trees shall used instead.
- b. In locations directly under overhead utility lines, two understory trees may be substituted for each required canopy tree.
- c. Within the DT district, other urban areas, or redevelopment areas, street trees may be located within reduced planting strips or tree pits of at least 25 square feet in size, with irrigation and drainage sytems or as part of an adopted streetscape masterplan. Tree pits may be located adjacent to the back of the curb.
- d. All trees planted along NCDOT right-of-way shall conform to NCDOT guidelines.

(5) Maximum On-Center Spacing

- a. Understory trees shall be spaced between 20 and 3015 to 25 feet on center, depending upon the species size at maturity.
- b. Canopy trees shall be spaced between 40 and 5025 to 40 feet on center, depending upon the species size at maturity.
- c. Wherever possible, small and medium trees shall be placed between large trees to accommodate the canopy growth of large trees over time.
- d. Alternative layout may be considered through the Alternative Landscape Plan procedure in Section 30-5.B.4.f.

(b)(d) Site and Building Landscaping

(1) General

Site landscaping, for the purpose of this section, is landscaping that is not:

- a. Required vehicular use area landscaping;
- b. Located within a required perimeter buffer strip; or
- c. Required screening.

(2) Purpose

Site and building landscaping material is intended to soften the visual impact of the building base and provide for the even dispersal of trees and other plantings across a development site.

(1)(3) Site Landscaping Standards

Except for substations and lift stations, single-family detached dwellings and properties in the Downtown (DT) district, site and building landscaping shall be required for all development, and shall be supplied in the amounts identified in Table 30-5.B.1.D30-5.B.4.B, Required Site Landscaping Plantings, below, and Figure 30-5.B.1.d30-5.B.4.b, Site and Building Landscaping Placement. Site landscaping shall meet the minimum size standards for new planting specified in Section 30-5.B.1.c.330-5.B.3.e, Planting Standards.

TABLE 30-5.B.1.D4.B: REQUIRED SITE & BUILDING LANDSCAPING PLANTINGS	
TYPE OF USE [1]	REQUIRED PLANTINGS PER SITE [2]{3}
Detached single-family residential uses	Exempt from the requirements of this Section 30-5.B.1(d)30-5.4.b, Site & Building Landscaping.
Other household living uses; group living uses	8 caliper inches of Four canopy trees (including at least 1one evergreen trees) per acre + at least 1one shrub per each 5five feet of outer building perimeter
All other uses	4 caliper inches of Two canopy trees (including at least 1one evergreen tree) per acre, + at least 1one shrub per each 5five feet of outer building perimeter

NOTES:

[1] See Table 30-4.A, Use Table.

[2] At least one-half of the required shrubs shall be of an evergreen variety.

[3] Each evergreen tree meeting the minimum size standards of this section (see Section 30-5.B.1(c)(3)iii) shall count

TABLE 30-5.B.1-D4.B: REQUIRED SITE & BUILDING LANDSCAPING PLANTINGS

TYPE OF USE [1]

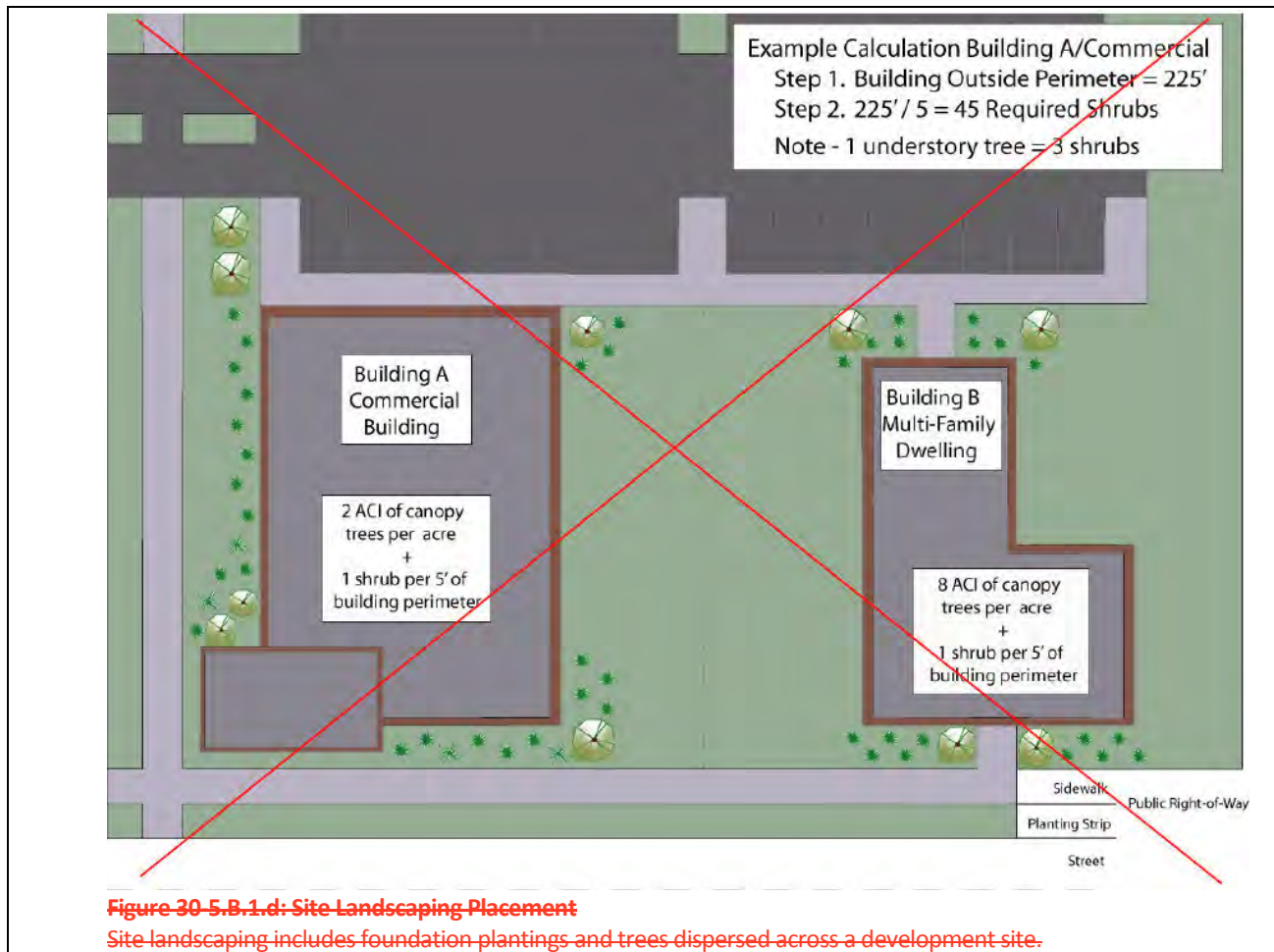
REQUIRED PLANTINGS PER SITE [2][3]

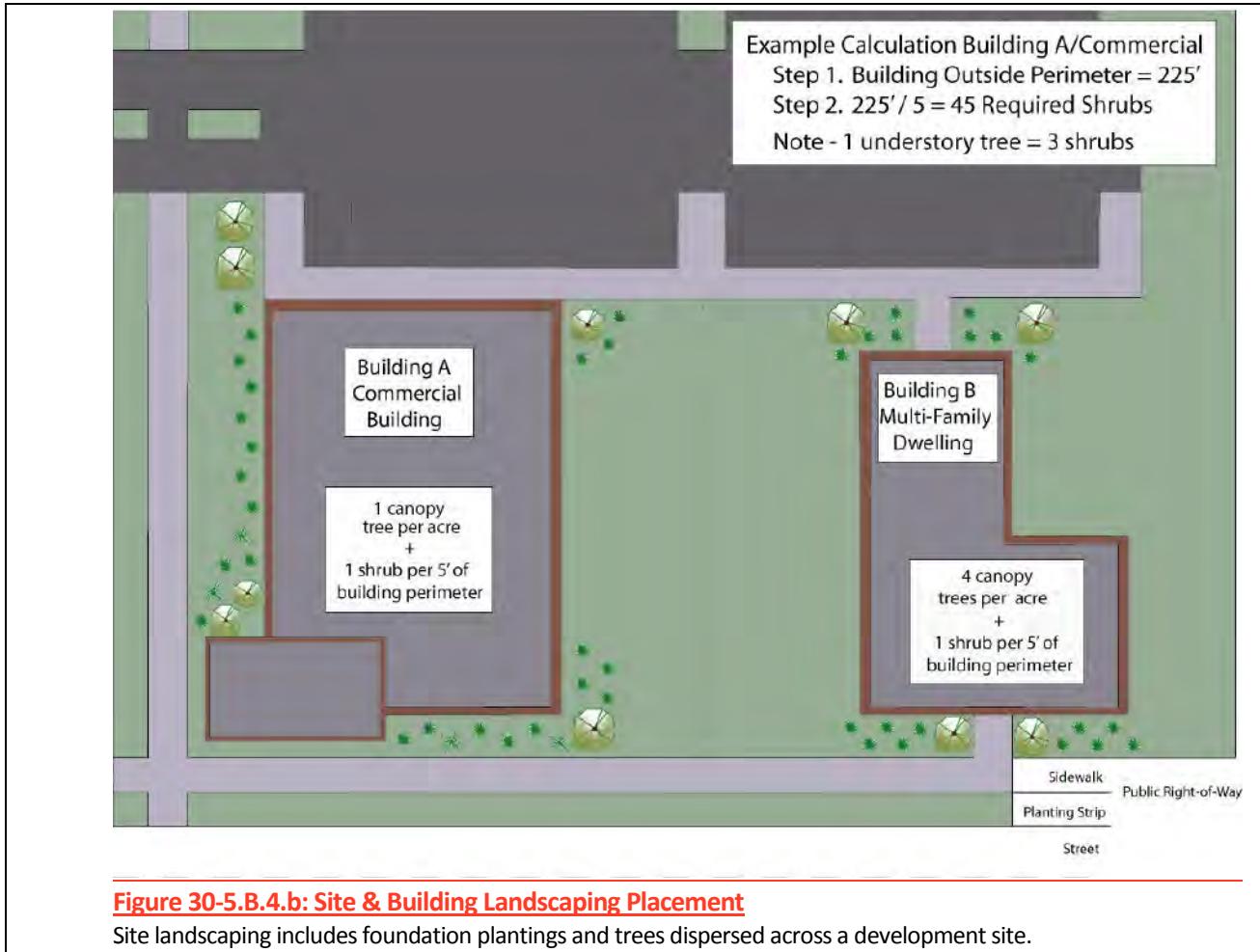
as two caliper inches towards the total number of required canopy tree caliper inches.

[4] Understory trees may be substituted for up to 50% percent of the required number of shrubs at the substitution rate of one understory tree for three shrubs.

(2)(4) Location

Required shrubs shall be planted around the building perimeter, minimum of three feet from the building, with emphasis placed on building bases visible from the public right-of-way. Required shrubs may be planted within a five foot planting strip adjacent to the building or up to 15 feet from the building provided there is a sidewalk located between the planting area and the building wall. Fifty percent of the required shrubbery may be dispersed around the site.





(c)(e) Vehicular Use Area Landscaping

All vehicular use areas shall include landscaping, both within the interior of the vehicular use area and around its perimeter (see Figure 30-5.B.1.e-30-5.B.4.c, Vehicular Use Area Landscaping), as a means of mitigating the parking area’s microclimate and visual impacts.

(1) Purpose and Intent

It is the intent of this section to visually modify the appearance and break the blight created by large expanses of vehicular use areas; filter and reduce the glare of reflected sunlight from parked automobiles onto adjacent properties and the public street right of way; separate the public from the ill effects of fumes and dust; and provide shade, noise attenuation, and filtering of the air of particulate and gaseous pollutants.

(2) Applicability

The vehicular use area landscaping standards in this section shall apply to all new development, except single family detached development, two to four family dwellings, and attached residential development of four or fewer units. These standards shall apply to all development in the City with on-site vehicular use areas, except single family detached, and duplex, triplex or quadraplex dwellings on a single lot.

a. single family detached, and duplex, triplex or quadraplex dwellings on a single lot.

b. parking areas for less than ten motorized vehicles;

c. parking garages, depending upon street frontage design; and

(3)(2) Interior Vehicular Use Area Landscaping Standards

All parking lots/areas with more than twelve or more spaces in a row shall provide and maintain landscaped planting areas within the interior of the parking lot in accordance with the standards

in this subsection. These standards shall not apply to parking structures, or automotive sales or display lots vehicle display areas.

a. Planting Area Size

Each planting area shall contain sufficient area to accommodate the root growth of the plant material used. The size of the planting area, size of plant material at maturity, and placement of plant material shall allow for a two-and-one-half foot bumper overhang from the face of the curb.

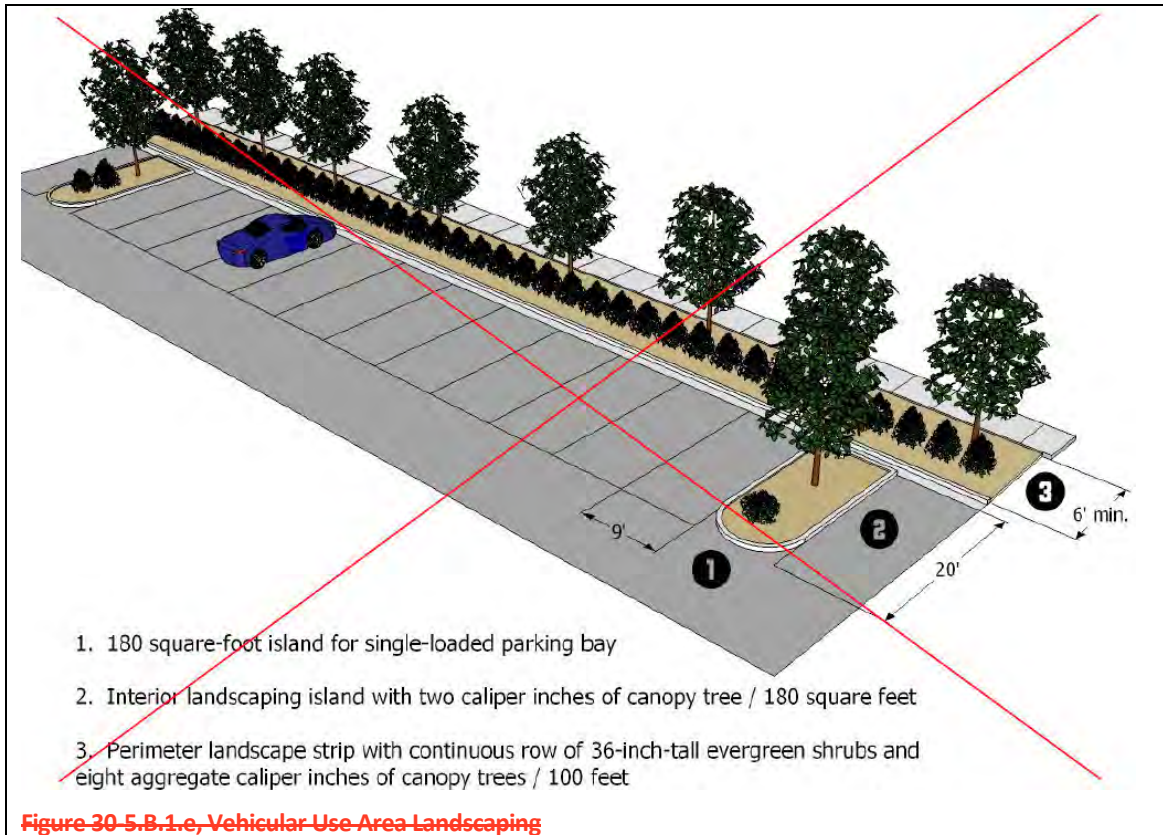


Figure 30-5.B.1.e, Vehicular Use Area Landscaping

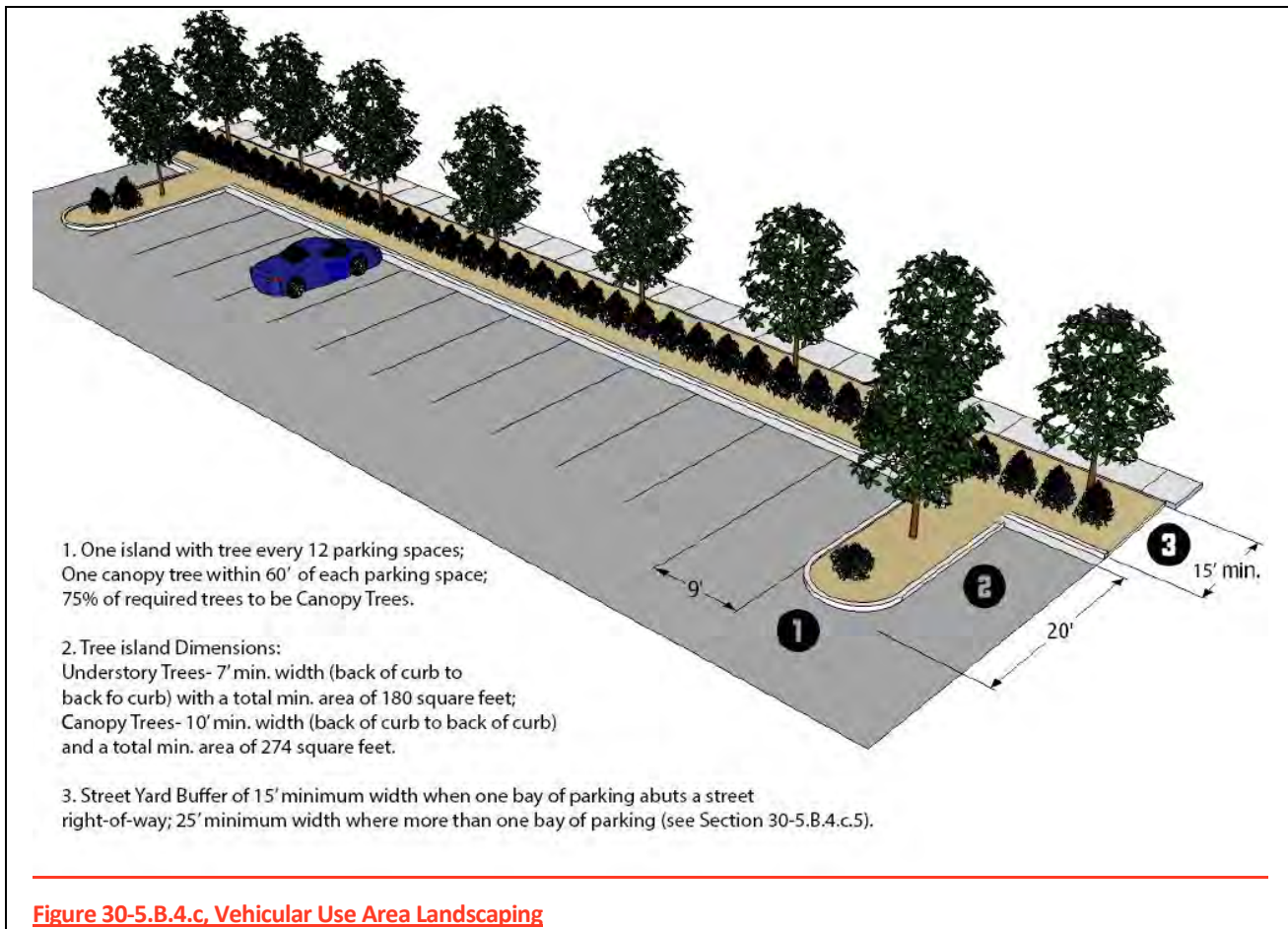


Figure 30-5.B.4.c, Vehicular Use Area Landscaping

b. Design

Unless altered through an Alternative Landscape Plan (see Section 30-5.B.1.h), interior planting areas shall be designed in accordance with the following standards:

a. Landscaped planting areas shall be distributed throughout the parking area for the purpose of heat abatement.

b.i. Islands shall be located at the end of parking bays and have a minimum size of 180 square feet for single loaded parking bays, and a minimum size of 360 square feet for double loaded bays. All rows of parking shall be terminated by a tree planted within a landscape island.

c. Each island shall contain one canopy tree for every island, except for locations directly under overhead utilities, where one understory tree may be substituted for each required canopy tree. One tree shall be required for every 12 parking spaces. All vehicular parking spaces must have at least one canopy tree within 60 feet of each parking space, or one understory tree within 30 feet. Trees planted within perimeter vehicular use landscaping strips may be used to satisfy this requirement.

d. At least 75 percent of all trees required by this section shall be canopy trees.

e.ii. Each planting area shall contain sufficient area and backfill soil to accommodate the root growth of the plant material used as discussed in the General Requirements in Section 30-5.3.e.3.

f. Off-street surface parking areas with 200 or more spaces shall be organized into a series of smaller modules visually separated by a median landscaped islands that are located at least every six parking rows bays and are at least nine feet wide, which includes a ten foot wide landscaping strip planted with canopy trees (spaced 25 to 40 feet apart, depending on the mature size of the selected species) and a pedestrian pathway. As a design option, the pedestrian pathway may bisect the median (as illustrated in Section 30-5.A.13, Pedestrian Pathways), as long as each adjoining

landscape strip is at least seven feet wide and is planted with understory trees (spaced 15 to 25 feet apart based upon selected species).

~~iii.~~ Landscaped planting areas shall be distributed throughout the parking area for the purpose of heat abatement.

~~iv.~~ No parking space shall be separated from the trunk of a shade or canopy tree by more than 60 feet. Perimeter vehicular use area landscaping or other required landscaping may be used to meet this requirement.

~~v.~~ Where an existing easement prohibits compliance with these standards, an applicant may propose an Alternative Landscape Plan in accordance with Section 30-5.B.1.h, Alternative Landscape Plan.

c. Planting Rate

Each interior planting island shall contain trees at the minimum rate of two aggregate caliper inches (ACI) of canopy tree for every 180 square feet of island area, except for locations directly under overhead utilities, where 1.5 ACI of understory trees may be substituted for each required canopy tree.

d. Suitable Backfill

Soil utilized in parking lot islands, driveway medians, and other areas internal to a vehicular use area shall be free of debris and appropriate for planting prior to deposition in planting areas.

g.e. Protection of Planting Areas

All planting areas shall be protected from vehicle damage by the installation of curbing, wheel stops, or other comparable methods. The size of the planting area, size of plant material at maturity, and placement of plant material shall allow for a two-and-one-half foot bumper overhang from the face of the curb when wheel stops are not used. This standard shall not prohibit the use of planting areas as stormwater management devices.

h. For expansion or renovation projects where the application of these requirements is infeasible or unworkable, the applicant may propose an alternative landscape plan as outlined in Section 30-5.B.4.f, Alternative Landscape Plan.

(4)(3) Perimeter Vehicular Use Area Landscaping Strips

Where a vehicular use area (such as a parking lot) abuts a street right of way, vacant land, or any other development (except another parking lot), perimeter landscaping strips shall be provided and maintained between the vehicle use area and the abutting right of way or property line in accordance with the following standards. Vehicular use areas shall be separated and screened from all adjoining (developed and vacant) properties by a landscape strip.

a. Minimum Width

The landscape strip shall be at least ten feet wide.

b.a. Continuous Visual Screen

Evergreen shrubs with a minimum height of 24 inches above grade at time of planting ~~Perimeter landscaping for vehicular use areas~~ shall be used to form a continuous visual screen ~~with a minimum height 36 inches above grade~~ excluding required sight clearances at driveways and near intersections. Canopy trees shall be spaced 25 to 40 feet apart, depending on mature size of selected tree species. Where overhead utility lines prevent the use of canopy trees, understory trees may be substituted with a spacing of 15 to 25 feet on center.

b. Protection of Landscaping Strip

The perimeter landscaping strip shall be protected from vehicular damage by the installation of curbing, wheel stops, extra width in the landscaping strip, or other method approved by the City Manager.

c. Location

Perimeter landscaping strips shall be located on the property, and shall be placed to assure visibility and safety of pedestrians on the public street, as well as those within the vehicular use area.

d. Minimum Width

The minimum width of a perimeter landscaping strip serving a vehicular use area shall be six feet.

e. Required Materials

- ~~i.~~ Evergreen shrubs shall be used to form the continuous visual screen in the perimeter landscaping strip.
- ~~ii.~~ In addition to the evergreen shrub requirements, each perimeter landscaping strip shall include at least eight aggregate caliper inches (ACI) of canopy trees per 100 linear feet of landscaping strip. Understory trees may be used beneath overhead utilities.

c. Adjacent to Off-Street Surface Parking on Other Lots

Where two or more off-street surface parking lots are located adjacent to one another, but upon different lots, the **vehicular use area** perimeter landscaping strip **may be eliminated, if the abutting parking lots are combined or interconnected with motor vehicular and pedestrian access, and as long as each parking space is not separated from the trunk of a canopy tree by more than 60 feet** (see Section 30-5.B.4.c.3, Interior Vehicular Use Area Landscaping Standards).

d.f. Credit Towards Property Perimeter Landscape Buffer Requirements

Perimeter landscape strips associated with a vehicular use area may be credited towards perimeter buffer standards (see Section ~~30-5B.1.f~~30-5.B.4.d, below), provided the minimum applicable buffer standards of this section are met, and provided the vehicular use area perimeter landscaping is within the area **to be** occupied by the **property** perimeter landscape buffer.

g. Adjacent to Off-Street Surface Parking on Other Lots

~~Where two or more off-street surface parking lots are located adjacent to one another, but upon different lots, no perimeter landscaping strip shall be required between the two parking lots. Nothing in this section shall be construed to waive the requirement for perimeter landscape buffers in Section 30-5.B.1.f.~~

e. Parking Lot Entrance Aisles and Stacking Lanes

Driveways into parking areas shall include a landscape strip at least ten feet wide along each side of the driveway. At a minimum, the driveway landscape strip shall include one canopy tree for every 25 to 40 linear feet of drive or one understory tree for every 15 to 25 linear feet of drive. A minimum of one shrub shall be planted for every five linear feet of driveway entrance. Plant material may be grouped as an entrance feature rather than planted as a linear border.

(5) Street Yard Buffer

a. Purpose and Intent

The purpose of the street yard buffer is to enhance the streetscape and public environment by abating glare and moderating temperatures of impervious areas; filtering air of fumes and dust; providing shade; attenuating noise; and reducing the visual impact of large expanses of pavement through the provision of a visually modifying screen of plants. The intent is to provide at a minimum an opaque buffer at the ground level up to three feet, with open views available through and between taller plant material. Existing vegetation should be used to satisfy these planting requirements where possible.

b. Applicability

A street yard buffer shall be required for all vehicular use areas that are established within fifty feet of any street right of way (including controlled access highways) unless separated by an intervening building. When buildings are moved up to the street, the street yard requirement is eliminated.

c. Minimum Requirements

The depth of the street yard varies, based upon the size of the adjacent parking lot as described below:

TABLE 30-5.B.4.C.5: STREET YARD BUFFER REQUIREMENTS		
Street	Application	Materials

TABLE 30-5.B.4.C.5: STREET YARD BUFFER REQUIREMENTS

<u>Yard Depth</u>		<u>A mix of species may be used to create visual interest and diversity</u>
<u>5 Feet</u>	<u>Downtown (DT) Zoning District with < 70 feet of street frontage</u>	<u>Continuous evergreen hedge planted with min. 24 inch height above grade at time of planting; OR a 30" masonry wall supplemented with ground cover/low shrubbery</u>
<u>10 Feet</u>	<u>Downtown (DT) Zoning District with > 70 feet of street frontage; Constrained Redevelopment Sites; Automobile Sales or Display Lots</u>	<u>Continuous evergreen hedge planted with min. 24 inch height above grade at time of planting + canopy trees spaced 25-40 feet apart or understory trees 15 to 25 feet apart, depending upon mature size of species [same as Perimeter Vehicular Use Area Landscaping Strip Requirement (Section 30-5.B.4.c.4)]</u>
<u>15 Feet</u>	<u>1-2 rows of parking [one bay] or pavement with a depth less than 70 feet</u>	<u>35 shrubs per 100 linear feet (75% evergreen) + 3 canopy trees and 1 understory tree per 100 linear feet</u>
<u>25 Feet</u>	<u>>2 rows of parking [one bay] or pavement with a depth more than 70 feet</u>	<u>55 shrubs per 100 linear feet (75% evergreen) + 5 canopy trees and 3 understory trees per 100 linear feet</u>

(d)(f) Property Perimeter Landscape Buffers

(1) Purpose and Intent

Perimeter landscape buffers are intended to mitigate potential negative effects of contiguous uses in differing zoning districts by protecting and preserving the appearance, character and value of property within the city. The objective is to exclude visual contact, create spatial separation and to minimize any adverse impacts on adjacent properties. Where topographical changes, the size and shape of existing lots of record, or other spatial considerations exist which would make adherence to the basic requirement either impossible or ineffective in meeting the purpose of the buffer yard, alternate buffer yard plans will be considered or may be required.

(2) Applicability

All development shall provide a property perimeter landscape buffer at the edge of the development to separate it from differently-zoned adjacent property in accordance with Table ~~30-5.B.1.F.330-5.B.4.D.4~~, Buffer Types, and Table ~~30-5.B.1.F.430-5.B.4.D.5~~, Buffer Type Application.

(3) Use of Existing Trees

Existing healthy, well-formed existing trees located at the property perimeter shall remain undisturbed (except for the removal of dead wood and invasive vines) and may be credited toward the requirement of this section, in accordance with Section 30-5.B.7.a , Tree Preservation Credits. Additional trees and shrubs may be required to bring the natural buffer up to the full perimeter buffer requirements.

(4) Types of Buffers

~~a-~~ Table ~~30-5.B.1.F.330-5.B.4.D.4~~, Property Perimeter Buffer Types, describes ~~three~~ different buffering options in terms of their function, opacity, width, and planting requirements. Where a particular buffer type is required in Table ~~30-5.B.1.F.430-5.B.4.D.5~~, Buffer Type Applications, the requirement may be met with the combination of minimum buffer width and minimum screening requirements specified under either Option 1 or Option 2 ~~(or Option 3 in the Downtown district)~~. Trees and shrubs within a 25 foot wide buffer shall be spread in a staggered, off-set pattern to establish a full and opaque buffer. Where an option utilizing a berm or fence is selected, the berm or fence shall comply with the standards of Section ~~30-~~

5.B.1c.3.d30-5.B.3.e.6, Berms, or Section 30-5.D, Fences and Walls, as appropriate. All exposed areas of soil within the buffer area must be covered with mulch, groundcover vegetation, or grass.

TABLE 30-5.B.1.F.30-5.B.4.D.4: PROPERTY PERIMETER BUFFER TYPES

ACI = AGGREGATE CALIPER INCHES





BUFFER TYPE AND CONFIGURATION	DESCRIPTION	MINIMUM SCREENING REQUIREMENTS WITHIN PERIMETER BUFFER [1]		
		OPTION 1: MINIMUM WIDTH 25 FEET {4}{2}{3}	OPTION 2: MINIMUM WIDTH 10 FEET {4}{2}{3}	DT-DISTRICT MINIMUM WIDTH 5 FEET {1}{2}
TYPE A: BASIC				
	This perimeter buffer functions as basic edge demarcating individual properties with a slight visual obstruction from the ground to a height of ten feet.	6 ACI of Three canopy trees + 6 ACI of three understory trees per 100 linear feet	2 ACI of One canopy trees + 10 ACI of five understory trees + 15 shrubs per 100 linear feet	One 5-foot high solid fence + 25 shrubs per 100 linear feet
TYPE B: AESTHETIC				
	This perimeter buffer functions as an intermittent visual obstruction from the ground to a height of at least 20 feet, and creates the impression of spatial separation without eliminating visual contact between uses.	8 ACI of Four canopy trees + 10 ACI of five understory trees + 15 shrubs per 100 linear feet	2 ACI of One canopy trees + 14 ACI of seven understory trees + 35 shrubs per 100 linear feet	One 5-foot high high-solid fence + 2 ACI of canopy trees + 16 ACI of understory trees per 100 linear feet
TYPE C: SEMI-OPAQUE				

TABLE 30-5.B.1.F.330-5.B.4.D.4: PROPERTY PERIMETER BUFFER TYPES

ACI – AGGREGATE CALIPER INCHES

BUFFER TYPE AND CONFIGURATION	DESCRIPTION	MINIMUM SCREENING REQUIREMENTS WITHIN PERIMETER BUFFER [1]		
		OPTION 1: MINIMUM WIDTH 25 FEET {4} {2}{3}	OPTION 2: MINIMUM WIDTH 10 FEET {4} {2}{3}	DT-DISTRICT MINIMUM WIDTH 5 FEET {1} {2}
	<p>This perimeter buffer functions as a semi-opaque screen from the ground to at least a height of six feet.</p>	<p>12 ACI of Six canopy trees + 14 ACI of seven understory trees + 25 shrubs per 100 linear feet</p>	<p>One 4-foot-high berm or one 4-foot-high solid fence + 2 ACI of two canopy trees + 16 ACI eight understory trees + 10 shrubs per 100 linear feet</p>	<p>One 3-foot-high continuous evergreen hedge + 2 ACI of canopy trees + 20 ACI of understory trees per 100 linear feet</p>
TYPE D: OPAQUE				
	<p>This perimeter buffer functions as an opaque screen from the ground to a height of at least six feet. This type of buffer prevents visual contact between uses and creates a strong impression of total separation.</p>	<p>18 ACI of Nine canopy trees + 20 ACI of ten understory trees + 55 shrubs per 100 linear feet</p>	<p>One 6-foot-high solid fence + 12 ACI of six canopy trees + 25 shrubs per 100 linear feet</p>	<p>One 6-foot-high solid fence + 14 ACI of canopy trees per 100 linear feet</p>

NOTES:

- [1] ~~Where a tree save area is located adjacent to a property line, no additional buffer is required along that portion of the property line.~~
- [2] Any required perimeter buffer width can be reduced to five feet with the provision of a solid masonry wall at least six feet in height, along with ten shrubs per every 100 linear feet located outside the wall.
- [23] Perimeter buffer widths (but not vegetation amounts) may be reduced in accordance with Section ~~30-5.B.1.f.330-5.B.4.f.~~ Alternative Landscape Plan.

~~(5)~~(4) Buffer Type Application

Table ~~30-5.B.1.F.430-5.B.4.D.5~~, Buffer Type Application, below, specifies the type of perimeter landscape buffer that new development shall provide between it and adjacent property, based on the zoning district of the development site and that of the adjacent property. The buffer type is indicated by a letter corresponding to one of the four buffer types depicted in Table ~~30-5.B.1.F.330-5.B.4.D.4~~, Property Perimeter Buffer Types.

TABLE 30-5.B.1.F.430-5.B.4.D.5: BUFFER TYPE APPLICATION [1]							
A = TYPE A BUFFER B = TYPE B BUFFER C = TYPE C BUFFER D = TYPE D BUFFER							
N/A = NOT APPLICABLE (NO BUFFER REQUIRED)							
ZONING CLASSIFICATION OF PROPOSED DEVELOPMENT SITE [2]	ZONING CLASSIFICATION OF ADJACENT PROPERTY						
	CD AR	SF-15, SF-10, SF-6 OR EXISTING SINGLE-FAMILY DEVELOPMENT	MR-5 MH	OI NC MU	LC CC	LI	HI
CD, AR	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SF-15, SF-10, SF-6	N/A	N/A	N/A	N/A	N/A	N/A	N/A
MR-5, MH [3]	A	A	N/A	N/A	N/A	N/A	N/A
OI, NC, MU	B	B	A	N/A	N/A	N/A	N/A
LC, CC	D	D	C	A	N/A	N/A	N/A
LI	D	D	C	B	A	N/A	N/A
HI	D	D	D	D	B	N/A	N/A

NOTES:

[1] Letters in cells correspond to the buffer types depicted in Table ~~30-5.B.1.F.330-5.B.4.D.4~~, Property Perimeter Buffer Types.

[2] Development in PD districts is subject to perimeter buffer requirements in the PD district standards. In cases where development is proposed next to an existing PD district having no perimeter buffer, the proposed development shall provide a perimeter buffer that is consistent with the type of buffer required if the adjacent use was in a differing base district appropriate for the type of use.

[3] Mobile home parks shall provide a perimeter buffer around the park in accordance with the standards in Section 30-4.C.2.a.4, Manufactured Home Parks.

[4] Where a tree save area is located adjacent to a property line, no additional buffer shall be required along that portion of the property line.

(6)(5) Responsibility for Buffer Installation

a. Vacant Parcels

Where a developing parcel is adjacent to a vacant parcel and a perimeter buffer is required in accordance with this section, the developing parcel ~~shall~~ may provide a reduce the planting schedule indicated in Table 30-5.B.4.D.4, Property Perimeter Buffer Types, by one-half.

b. Existing Land Uses

Where a developing parcel is adjacent to an existing use and a perimeter buffer is required in accordance with this section, the developing parcel shall provide the full perimeter buffer required adjacent to the existing use in accordance with Table ~~30-5.B.1.F.330-5.B.4.D.4~~, Property Perimeter Buffer Types, and Table ~~30-5.B.1.F.430-5.B.4.D.5~~, Buffer Type Application, unless a portion or all of a perimeter buffer that complies with the standards of this section already exists between the lots. Where part of a perimeter buffer exists, but the buffer does not fully comply with the standards of this section, the developing parcel may reduce the planting schedule indicated in Table 30-5.B.4.D.4, Property Perimeter Buffer Types by one-half, shall be responsible for providing a only the additional planting material on site necessary to meet the standards of this section.

(7)(6) Location of Buffers

Perimeter buffers required by this section shall be located along the outer perimeter of the parcel(s) under development and shall extend to the parcel boundary line. In the case of parcel boundary lines along a public right-of-way, solid fencing in excess of 36 inches, if provided, shall not encroach beyond the building setback line unless part of an approved Alternative Landscape Plan. A perimeter buffer may be located along shared access easements between parcels in nonresidential developments. If a utility or drainage easement is needed along a property line where a buffer is required, the buffer will be repositioned to align with the outer edge of the easement, rather than the property line, in order to accommodate both purposes without conflict. No trees are to be planted within a drainage or utility easement.

(8)(6) Development within Required Buffers

- a. Unless permitted in this section, the required buffer shall not contain any development, impervious surfaces, or site features that do not function to meet the standards of this section or that require removal of existing vegetation.
- b. Sidewalks and trails may be placed in perimeter buffers if all required landscaping is provided and damage to existing vegetation is minimized, to the maximum extent practicable according to Section 30-5.B.8, Tree Protection During Construction.
- c. Overhead and underground utilities may cross a perimeter buffer, but shall not be configured to run parallel with and inside a perimeter buffer unless the landscaping located within the buffer remains undisturbed, or is replaced, if damaged.
- d. If required landscaping material is damaged or removed due to utility activity within a required buffer, the landowner shall be responsible for replanting all damaged or removed vegetation necessary to ensure the buffer meets the standards in this Ordinance, unless otherwise provided for by the subject easement agreement.

(8) Credit for Existing and Required Vegetation

- ~~a. Existing vegetation meeting the size standards of Section 30-5.B.1.c.3.a, New PlantingsXXXX, located within the perimeter buffer area may be preserved and credited toward the perimeter buffer standards.~~
- ~~b. Vehicular use area landscaping within an area to be occupied by a perimeter landscape buffer may be credited towards the perimeter landscape buffer standards.~~

(e)(g) Screening

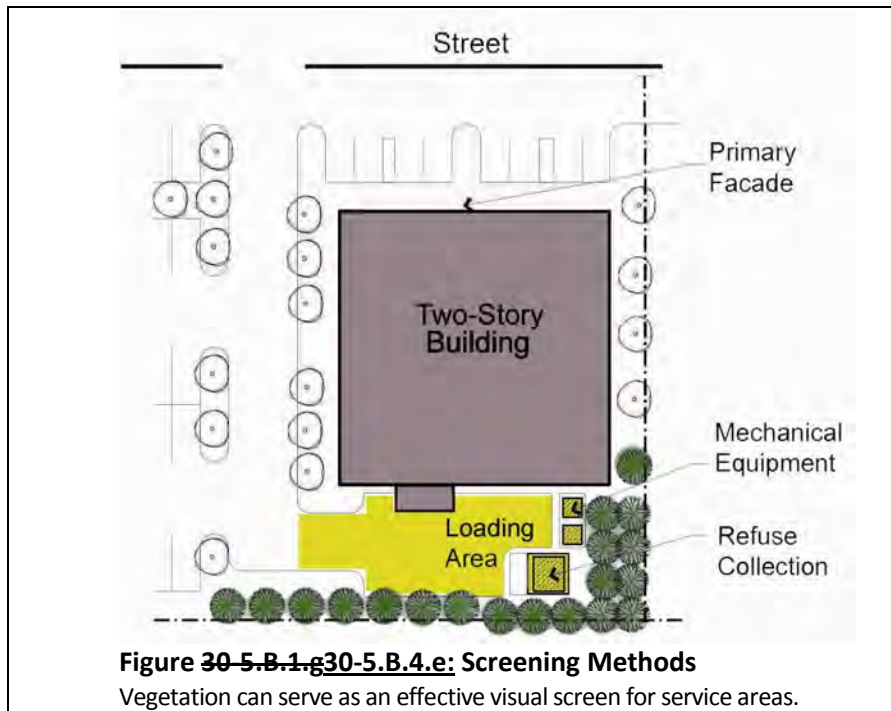
(1) General Requirements

~~In addition to the site landscaping, vehicular use area landscaping, and perimeter buffer standards in this section, s~~Screening shall be required to conceal specific areas of high visual or auditory impact or hazardous areas from both on-site and off-site views (see Figure ~~30-5.B.1.g~~30-5.B.4.e, Screening Methods). Such areas shall be screened at all times, unless otherwise specified, regardless of adjacent uses, districts, or other proximate landscaping material.

(2) Items to Be Screened

The following areas shall be screened from off-site views in accordance with this section:

- a. Large waste receptacles (dumpsters) and refuse collection points (including cardboard recycling containers);
- b. Loading and service areas;
- c. Outdoor storage areas (including storage tanks); and
- d. To the extent feasible given access requirements, ground-based utility equipment in excess of 12 cubic feet; and
- e. Ground level mechanical units, from public streets only.



(3) Screening Methods

The following items are permitted for use as screening materials. Alternative screening materials that are not listed may be used if it is determined they are comparable to these screening materials.

- a. Vegetative materials that meet the minimum vegetative screening requirements for a Type D buffer (see Table 30-5.B.1.F-30-5.B.4.D.4, [Property Perimeter Buffer Types](#)) and the size standards of Section 30-5.B.1.c.3.a-30-5.B.3.e.2, New Plantings;
- b. An earthen berm that is at least two feet in height, covered with grass, and planted with other landscaping materials consistent with the function of and requirements for a Type D buffer (see Table 30-5.B.1.F-30-5.B.4.D.4, [Property Perimeter Buffer Types](#))—provided, however, that a berm shall not be used in the DT district or if it will replace existing trees of six inches in caliper or more;
- c. An ~~opaque solid~~ fence constructed of treated or rot-resistant wood (such as cypress or redwood), or a plastic or vinyl fence ~~designed to look like an opaque wooden fence~~, of a minimum height necessary to fully-screen the object being screened; or
- d. A masonry wall that is the minimum height necessary to fully-screen the object being screened, and that is constructed of brick, textured concrete masonry units, or stuccoed block.
- e. Use of chain link fencing with wooden or plastic slats ~~does not qualify as a screen~~ shall be limited to access gates only.

~~(f)(h)~~ Alternative Landscape Plan

(1) General

Alternative Landscape Plans, materials, or methods may be justified due to natural conditions, such as streams, natural rock formations, topography, and physical conditions related to the site. Lot configuration and utility easements may justify an alternative landscape plan, as well as impractical situations that would result from application of Section 30-5.B, Landscaping and Tree Protection Standards, or when replacing a tree accidentally damaged in accordance with Section 30-5.B.2-30-5.B.8, Tree Protection During Construction Standards.

(2) Preparation

The alternative landscape plan should be prepared by someone who is knowledgeable about plant material.

(3) Allowable Deviations

With input from the TRC or the city arborist, the city manager shall approve an Alternative Landscape Plan if it meets the purpose and intent of the landscaping standards in this section. Allowable deviations from the standards of this section include, but are not limited to the following:

a. Reduced Planting Rates due to Public Facilities

An adjustment to planting locations or reduction of up to 20 percent in the type or total number of ~~required-caliper-inches-plant-material~~ may be allowed ~~at when~~-underground ~~and/or above ground facilities operated and maintained by a utility, unless specific written consent is provided by that utility. An adjustment or reduction may also be allowed where connections to public facilities or public utilities, or~~ public easements or right-of-way, are located upon or in close proximity to the parcel.

b. Reduction in Standards due to Nature of Parcel

A reduction in the count, spacing, or species diversity standards by up to 20 percent may be allowed where the reduction is desirable in terms of protection of existing natural resources, better consistency with the goals of the comprehensive plan, or a site design that exceeds the quality of what would otherwise result under a strict application of the standards in this Ordinance.

c. Redevelopment of Nonconforming Sites

The installation of required landscaping during redevelopment of existing nonconforming sites shall occur in accordance with Section 30-7.F, Nonconforming Sites.

d. Location of Street Trees

- i.** Deviations in the placement, on-center spacing, or tree type (understory vs. canopy) are allowable from the standards in Section ~~30-5.F.1030-5.B.4.a~~, Street Trees, when the deviation is consistent with existing street trees placement along the same or adjacent block faces.
- ii.** An applicant may request, or the City may require payment in-lieu of street trees in cases where a development’s frontage is subject to an approved streetscape plan.

(j) Other Landscape Standards

(1) Time for Installation of Required Landscaping

a. Time Limit

~~All required landscaping (including mulching and seeding) shall be installed in accordance with the required planting standards set forth in this section prior to issuance of a Certificate of Occupancy unless the City Manager grants an extension to this time limit in accordance with Section 30-5.B.1.i.1.b, Extensions.~~

b. Extensions

~~**i.** The City Manager may, for good cause shown, grant an extension of up to 90 days from the date a Certificate of Occupancy is issued to install required landscaping. Circumstances that may warrant an extension include, but are not limited to, the following:~~

- ~~**A.** Unusual environmental conditions, such as drought, ice, or oversaturated soil (deep mud);~~
- ~~**B.** It is not yet the appropriate planting season for the approved plant species;~~
- ~~**C.** Credible evidence that the approved plant species or required plant sizes are not commercially available and cannot be substituted within a reasonable time despite an applicant’s diligent effort to secure the required materials; or~~
- ~~**D.** Completion of utility work occurring in a proposed landscaped area is incomplete or delayed.~~

~~**ii.** No extension to the time limit shall be granted unless a performance guarantee in accordance with the requirements in Section 30-6.C, Performance and Maintenance Guarantees, is in place to ensure that all required landscaping installation will be completed at a predetermined later date.~~

c. Multi-Phase Development

~~Multi-phase development shall only be required to provide the landscaping directly associated with development in the active phase(s).~~

~~(2) Maintenance of Landscaping Materials~~

~~The owner shall be responsible for the maintenance of all landscape areas not in the public right-of-way. Such areas shall be maintained in accordance with the approved Landscape Plan or Alternative Landscape Plan and shall present a healthy and orderly appearance free from refuse and debris. All plant life shown on an approved Landscape Plan or Alternative Landscape Plan shall be replaced if it dies, is seriously damaged, or removed. This section is not intended to prevent normal, routine maintenance.~~

~~a. Damage Due to Natural Occurrence~~

~~In the event that any vegetation or physical element functioning to meet the standards of this section is severely damaged due to an unusual weather occurrence or natural catastrophe, or other natural occurrence such as damage by wild or domestic animals, the owner or developer may be required to replant if the landscaping standards are not being met. The owner shall have one growing season to replace or replant. The City Manager shall consider the type and location of the landscape buffer or required vegetation area as well as the propensity for natural re-vegetation in making a determination on the extent of replanting requirements.~~

~~b. Protection During Operations~~

~~The owner or developer shall take actions to protect trees and landscaping from unnecessary damage during all facility and site maintenance operations. Plants shall be maintained in a way that does not obstruct sight distances at roadway and drive intersections, obstruct traffic signs or devices, or interfere with the use of sidewalks or pedestrian trails.~~

~~c. Maintain Shape~~

~~All required trees (whether canopy or understory) shall be maintained in their characteristic natural shape, and shall not be severely pruned, sheared, topped, or shaped as shrubs. Trees (including, but not limited to Crape Myrtles) that have been severely pruned, sheared, topped, shaped as shrubs, such that they no longer serve the intended buffering or screening function, shall be considered as damaged vegetation in need of replacement in accordance with Section 30-5.B.1.i.2.a, Damage Due to Natural Occurrence, and shall be replaced within one growing season.~~

~~d. Natural Death~~

~~The natural death of existing vegetation within any required landscape area does not necessarily constitute a violation and does not require re-vegetation to replace the plant material unless the required landscape area no longer complies with the required standards of this section. In no instance shall this provision be construed to prevent re-planting if, in the opinion of the City Manager, the required performance standard of the landscaping is not being met.~~

~~(3) Monitoring of Compliance with Landscaping Standards~~

~~a. Inspections Prior to Certificate of Occupancy~~

~~The City Manager shall inspect the site prior to the issuance of a Certificate of Occupancy for the development and such Certificate shall not be issued if the landscaping required under this section is not living or healthy, is not installed in accordance with the approved Landscape Plan or Alternative Landscape Plan and the standards in this section, or is not subject to an extension granted in accordance with Section 30-5.B.1.i.1.b, Extensions.~~

5.2. PUBLIC TREE PROTECTION STANDARDS

(a) Section Organization

These tree protection standards are organized into four main sections:

- (1)** Section 30-5.B.2.b, Public Trees, includes the standards for trees within public right-of-way or other public lands;
- (2)** Section 30-5.B.2.c Protection of Specimen Trees, contains the standards for retention of specimen trees and mitigation for their removal;
- (3)** Section 30-5.B.2.d, Tree Protection During Construction, sets out the protection standards for trees being retained during and after development; and
- (4)** Section 30-5.B.2.e, Tree Preservation Incentives, includes the landscaping credit and parking reduction incentives for protecting existing trees.

~~(b)~~ Public Trees

~~(a)~~(1) Purpose

~~(1)~~a- The purpose of this section is to recognize the valuable asset the City has in the trees planted by public entities over the years and to encourage the protection of trees along streets and on City grounds within the City limits, because they are a continuing asset to the sound development of the City.

~~(2)~~b- To accomplish this purpose, this section:

~~a~~i- Establishes standard procedures and practices for the treatment of trees on public property, when conditions require that they be pruned or removed, and of trees on private property, when City crews are required to correct or abate certain conditions set out in this section;

~~b~~ii- Defines those situations in which trees growing on private property may constitute a public nuisance; and

~~c~~iii- Encourages the planting of trees on public property in conformity with these standards.

~~(3)~~c- This section is not intended to be punitive or to cause hardship to any person who uses care and diligence to protect public trees.

~~(b)~~(2) Applicability

This section pertains to all trees that exist on public lands and within public right-of-way.

~~(c)~~(3) Exemptions

Installation and maintenance activities conducted by utility providers within utility easements, public lands, or public right-of-way shall be exempt from the standards in this section when in conflict with service and/or easement maintenance requirements.

~~(d)~~(4) Tree Board

~~(1)~~a- Creation and Establishment

There is hereby created and established a City Tree Board. The Joint Appearance Commission members appointed by City Council shall hereby be designated as the City's Tree Board.

~~(2)~~b- Duties and Responsibilities

~~a~~i- It shall be the responsibility of the Tree Board to ~~assist in the~~ study, ~~investigate, counsel and~~ develop ~~ment and preparation of~~ ~~or update annually, and administer~~ a written plan for the care, replacement, maintenance, and removal or disposition of trees and shrubs in parks, along streets and in other public areas.

~~b~~ii- The Tree Board, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

~~c~~iii- ~~A The city~~ arborist shall be used as advisor when difficulties arise. ~~A list of possible resources shall be kept by the City Manager.~~

~~(5) Street Tree Species to be Planted~~

~~The City shall maintain a list of recommended trees for planting in public areas that is available to residents of the City upon request to aid in the selection of trees for private properties. The list of recommended trees shall be updated periodically to reflect new developments or species that affect the population of the community forest. In the absence of a list for the City, the list published by the North Carolina Cooperative Extension Service shall serve as the list of recommended trees for planting in public areas.~~

~~(e)~~(6) Public Tree Care

~~(1)~~a- The city manager or PWC shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the right-of-way or bounds of all streets, alleys, lanes, squares, and public grounds, or any that extend into the right of way, if it endangers the safety of the public, or if it harbors disease or insects in order to preserve or enhance the beauty of such public places.

~~(2)~~b- Pruning of trees shall be in conformance with ANSI (American National Standards Institute) pruning standards as published by the International Society of Arboriculture (ISA).

~~(3)~~c- The city manager or PWC may remove or cause to be removed by the appropriate agency/contractor, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to

sewers, electric power lines, gas lines, water lines, or other public improvements, or is seriously affected with any injurious insect or disease.

~~(f)(7) Trees on National Register of Big Trees~~

~~No tree designated on the National Register of Big Trees, as so designated by the State Division of Forest Resources, shall be pruned or removed without prior permission from the Tree Board.~~

~~(f)(8) Permit Required~~

No person shall plant or remove a street tree or other public tree without first obtaining a permit from the City Manager. An encroachment agreement may also be needed for NCDOT maintained roads. No permit shall be required by any public service or city employee during such work in the pursuit of their public service endeavors.

~~(g)(9) Tree Topping~~

It shall be unlawful for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstruction where other pruning practices are impractical may be excepted from this section at the determination of the Tree Board.

~~(h)(10) Clearances over Streets and Walkways~~

The city manager or PWC may, in the interest of public health and safety, prune any tree that overhangs into any street or right-of-way within the city, so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet above the surface of the walkways, a clear space of 13½ feet above the surface of streets, and a clear space of at least 17 feet above highways. The city and the PWC will notify, in writing or in person, any property owner whose trees will be pruned, no later than 24 hours prior to pruning. Pruning of trees shall be to the standards set forth in by the city arborist and this ordinance.

~~(i)(11) Abuse of Public Trees~~

No person shall intentionally damage, cut, carve, transplant, or remove any tree, attach any rope, wire, nails, advertisements, posters, or other contrivance to any public tree, allow any gaseous liquid, or solid substance which is harmful to such trees to contact with them, or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree covered under this section.

~~(j)(12) Protection of Public Trees~~

All public trees shall be protected during construction in accordance with the following.

~~(1)a-~~ A tree on any street or other publicly owned property whose crown is within five feet of any excavation or construction of any building, structure, or street work, shall be guarded with a ~~good~~ substantial fence, frame, or box. The construction tree guard shall be not less than four feet high and eight feet square, or at a distance in feet from the trunk equal to the diameter of the trunk at breast height (DBH) in inches, whichever is greater. All building material, dirt, or other debris shall be kept outside the construction tree guard.

~~(2)b-~~ No person shall change natural drainage, excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten feet from any public tree without first obtaining a written permit from the city manager.

~~(3)c-~~ Land-disturbing activities within five feet of a public tree shall incorporate protection for tree root areas in accordance with best practices accepted by the City Manager.

~~(k)(13) Dead or Diseased Trees~~

The City may remove or cause to be removed any dead or diseased tree within the City limits that is declared by the City Arborist to be a public health nuisance pursuant to North Carolina General Statute Section 160A-193. The City will notify in writing the owner of such trees, and removal shall be in accordance with Section 30-8.E.4.b, Notice of Violation. If the owner does not abate the public health nuisance within a reasonable time, the City Manager may proceed without notice to abate the unlawful conduct and charge the actual cost of abatement, which shall be a lien upon the property in accordance with Section 160A-193.

~~(l)(14) Removal of Stumps~~

All stumps of public trees within the public right-of-way shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

(m)(15) Interference with ~~the Tree Board~~ Maintenance

It shall be unlawful for any person to prevent, delay, or interfere with ~~the Tree Board~~ or any of the City's ~~its~~ representatives or agents, ~~or the City or its representative~~, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any tree within the community forest, as authorized by this section.

(n)(16) Privilege License and Insurance

(1)a- It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating or removing any publicly-owned tree without first obtaining a privilege license. The license fee shall be set by the City Council. No permit shall be required by any PWC, public service, or City employee.

(2)b- Before a privilege license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$1,000,000 for bodily injury or death, and \$100,000 property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavors as described in this article.

(o)(17) Appeal

The Board of Adjustment shall have the right to review the conduct, acts, and decisions of the Tree Board. Any person may appeal within 30 days from any ruling or order of the Tree Board to the Board of Adjustment who may hear the matter and make a final decision in accordance with Section 30-2.C.18, Appeal.

(p)(18) Enforcement of Violations

The City Manager is hereby authorized to enforce the provisions of this section, and issue appropriate citations in accordance with Article 30-8: Enforcement.

(q)(19) Notice of Violation

If any person shall violate the provisions of this section, it shall be the duty of the City Manager to give notice of violation to the property owner or to any person in possession of the subject property, in accordance with Article 30-8: Enforcement. The notice shall set forth that an unlawful condition exists thereupon, specify a reasonable time period within which the violation must be abated, and where if the same is not abated, that the owner will be subject to a civil penalty or other enforcement action.

(r)(20) Service of Notice

The notice required by Section 30.8.E.4.b, Notice of Violation, shall be served upon the owner of the property either personally or by first class mail, followed by delivery confirmation if the first notice is returned within two weeks of the date of mailing. Any such notice may be served by any authorized representative of the Development Services Department or by any authorized police officer of the City.

(s)(21) Civil Penalty

(1)a- Civil penalties for violations of this Ordinance may be applied in accordance with Section 30-8.F, Remedies and Penalties.

(2)b- If, as the result of the violation of any provision of this Ordinance, the injury, mutilation or death of a tree, shrub or other plant located on public property is caused, the cost of repair or replacement, based on the appraised dollar value of such tree, shrub or other plant shall be borne by the party in violation. The value of trees and shrubs shall be determined in accordance with the latest revision of Guide for Plant Appraisal, as published by the International Society of Arboriculture.

(t)(22) Emergencies

In case of emergencies, such as windstorms, ice storms, floods, hurricanes, major interruptions of utility service or other disasters, any requirement of this section, which would hamper private or public work to restore order to the City, shall be waived during the emergency work so as to prevent injury or damage to the public. Within a reasonable time after the emergency, the City Manager shall be notified of the location and nature of any emergency maintenance affecting public trees. This shall not be interpreted to be a general waiver of the intent of this section.

6.3. PROTECTION OF SPECIMEN TREES TREE PRESERVATION

(a) Purpose and Intent

The purpose and intent of this section is to:

- (1) Recognize the importance of the existing tree canopy and natural features such as native tree groves and stands of hardwood trees;
- (2) Recognize the importance of ~~mature specimen~~ existing trees to the visual and natural environments in the City; and
- (3) Protect and retain significant tree masses and specimen trees during and after development;
- (4) Establish the criteria for removal of a healthy specimen tree; and
- (5) Set out the required mitigation for removal of a healthy specimen tree.

(b) Applicability

(1) General

All development in the City, except that exempted in accordance with Section 30-5.B.3.b.2, Exemptions, shall be required to protect ~~specimen~~-trees in accordance with this section.

(2) Exemptions

The following development shall be exempt from these standards:

- a. Land within the Downtown (DT) district;
- b. Existing single-family detached residential dwellings on lots of record established prior to the effective date of this Ordinance; and
- c. Installation and maintenance activities conducted by the PWC utility providers within utility easements, public lands, or public right-of-way.

~~(3) Exempted Trees~~

~~The following trees, regardless of their size, shall be exempted from the requirements in this section:~~

- ~~a. Southern Yellow Pine;~~
- ~~b. Bradford Pear;~~
- ~~c. Mulberry;~~
- ~~d. Sweetgum; and~~
- ~~e. Silver Maple.~~

(c) Review for Compliance

Review for compliance with the standards of this section shall occur as part of an application for a Clear-Cutting Permit (Section 30-2.C.9), Site Plan (Section 30-2.C.5), Planned Development (Section 30-2.C.3), or Subdivision Plan (Section 30-2.C.6), as appropriate.

(d) Tree Survey Required

~~Unless waived by the City Manager, applications for a Clear-Cutting Permit, Site Plan, Planned Development, or Subdivision Plan shall include a tree survey, prepared by a licensed landscape architect, surveyor, arborist, registered forester, or engineer registered in the State, that depicts by location, species, DBH, and condition. Generally a tree survey is only required to illustrate the location, species, caliper, and condition of existing trees on the development site, which the developer is proposing to save and for which he/she shall receive landscaping credit (see Section 30-5.B.7, Tree Preservation Incentives) and any tree having a 30" caliper or greater. In addition, a tree survey is required for the purposes of documenting any tree having a caliper of 30 inches or greater.~~ This information is used by the city manager in determining the exact location and extent of the required tree protection zone. The establishment of the required tree save area (see Section 30-5.B.6.f) does not require a tree survey submittal.

(e) Specimen Trees Identified

~~Any tree with a caliper measurement meeting or exceeding 30 inches shall be considered to be a specimen tree. Trees with a caliper measurement meeting or exceeding the corresponding minimum caliper in Table 30-5.B.3.E, Specimen Trees, shall be considered specimen trees in accordance with this section.~~

TABLE 30-5.B.3.D: SPECIMEN TREES

COMMON TREE NAME	MINIMUM CALIPER (INCHES) [1]
CANOPY TREES	
Ash	18
Cherry	24
Elm	18
Live-Oak	18
Locust	30
Long-Leaf Pine	12
All other Pine (except Southern Yellow Pine)	30
Red-Maple	18
Sassafras	20
Southern Red-Oak	32
Sycamore	30
Walnut	18
White-Oak	18
Willow-Oak	18
UNDERSTORY TREES	
Bald-Cypress	10
Cedar	6
Dogwood	10
River-Birch	10
Wax-Myrtle	6
NOTES:	
[1] Minimum caliper is the diameter of the tree trunk. See Article 9, Definitions, 'caliper', for how that diameter is measured.	

(f) Tree Save Area Established

(1) Percentage of gross acreage required.

A minimum of ten percent of the gross acreage of any development site must be set aside and preserved as a tree save area. Tree save areas may also qualify as meeting other landscaping requirements, based on the location within the site and determination of staff.

a. Tree save area with existing tree canopy.

Whenever the existing tree canopy of a development site is at least ten percent of the total property area, a tree save area equal to ten percent of the gross property acreage shall be set aside as part of the development of the site. The tree save area shall be composed of existing trees clustered at a rate of at least 36 trees/acre*, with undisturbed soils and with no proposed grading changes required for stormwater or other purposes. [*Each canopy tree with at least a 30 inch caliper that is included in a tree save area may be counted as five trees; See Table 30-5.B.7.A, Existing Tree Credits, for additional credits; however, tree credits cannot be used to qualify an area with less than 18 trees/acre.] If the existing tree canopy is insufficient to qualify, supplemental plantings from the City's approved species list shall can be used to reach the required ratio; however areas with less than 18 existing trees/acre do not qualify as tree save areas under this subsection. (See Section 30-5.B.6.f.1.b, Tree Save Area with only Partial Tree Canopy). Supplemental plantings from the City's approved species list shall be used to reach the required ratio as follows:

- i. One hundred percent native canopy and understory trees;**
- ii. At least two inch caliper in size, except that 30 percent of the supplemental trees may be longleaf pine saplings; and**

iii. Spaced at an average of 35 feet apart (canopy trees generally having a greater distance with understory trees having a smaller distance), with a natural clustering preferred.

b. Tree save area with only partial tree canopy.

Whenever the existing tree canopy of a development site is less than 10% of the total property area due to participation in a state recognized farm program, or includes an area with less than 18 existing trees/acre, a tree save area equal to 10% of the gross property acreage shall be replanted and set aside as part of the development of the site. The tree save area shall be composed of existing and replanted trees clustered at a rate of 36 trees/acre*, with undisturbed soils, or if soils are disturbed, then with amended soils. (See Section 30-5.B.3.e.4, Suitable Backfill.) [*Each canopy tree with at least a 30" caliper that is included in a tree save area may be counted as five trees; See Table 30-5.B.7.A, Existing Tree Credits, for additional credits.] Supplemental plantings from the City's approved species list shall be used to reach the required ratio as follows:

i. 100% native canopy and understory trees with 75 percent of the replanting in canopy trees;

ii. At least two-inch caliper in size;

iii. Spaced at an average of 35 feet apart (canopy trees generally having a greater distance with understory trees having a smaller distance), with a natural clustering preferred.

c. No existing tree canopy.

In the event that there is no existing tree canopy or if the existing tree canopy cannot be protected as part of the development of the site, the replanted tree save area shall be increased by 150% of the tree canopy removal to a maximum tree save area of 15% of the gross acreage of the development site. Otherwise, the tree save area shall be 10% of the gross acreage. The tree save area shall be composed of replanted trees clustered at a rate of 36 trees/acre, with amended soils as specified in the City's landscaping guidelines. All proposed grading shall be completed prior to replanting.

i. One hundred percent native canopy and understory trees with 75 percent of the replanting in canopy trees;

ii. Fifteen percent of the total plantings shall be at least four inch caliper in size; The remaining plantings shall be at least two inch caliper in size; and

iii. Spaced at an average of 35 feet apart (canopy trees generally having a greater distance with understory trees having a smaller distance), with a natural clustering preferred.

(2) Stream, River and Lake Buffers Areas. Stream, river or lake areas included within the gross property acreage shall be subtracted from the gross acreage prior to calculating the ten percent tree save area. Stream or lake buffer areas beyond the thirty foot minimum buffer may qualify as tree save areas.

(3) Conservation Easements. Established conservation easements are already protected and cannot be counted toward the tree save area.

(4) Wetland areas with tree canopy may be utilized as tree save areas.

(5) Tree save areas shall also be:

a. Free of invasive plant species. If an area proposed as a tree save area contains invasive plant species at the time of such proposal, such invasive plant species shall be removed prior to the issuance of final certificate of occupancy for commercial or multi-family properties or at final plat approval for subdivisions. (Invasive plant species are considered removed if they are no longer living in the tree canopy). Subsequent property owners are required to maintain this condition for compliance with the UDO;

b. Free of potential construction activity, having no existing or proposed underground infrastructure lines, utility easements or rights-of-way and not located within 50' of any overhead electrical transmission line, or within 15' of the center line of any overhead electrical distribution line; and no proposed or existing structures within 10';

c. Ground cover of mulch or native vegetation. Turfgrass is prohibited, except as authorized by the city manager;

d. A single contiguous area is preferred. No dimension should be less than 30', unless special site conditions exist, based on the discretion of the city manager. Tree save areas are not intended to be given the last consideration or be leftover remnants having no value to the community;

- e. Graphically depicted on an aerial map including the area required for each tree's critical root zone [The critical root zone is typically represented by a concentric circle centering on the tree trunk with a radius of at least one foot for every inch of trunk diameter (DBH) taken at 4½ feet above grade.] If large trees are on the edge of tree save areas, then extra effort (such as adjusting grades, additional protection, or retaining walls) may be required in order to include them. If root disturbance or construction activities occur within the drip line of any tree designated as protected in the tree protection plan, only the area actually being protected will be included in the calculated tree save area;
 - f. Prior to acceptance the Tree save area must be staked/flagged in the field for verification.
 - g. Described and recorded on the final plat with a metes and bounds description and a notation restricting building location within 10'; and
 - h. Tree save area(s) with tree protection measures shall be depicted on demolition and construction plans.
- (6) Exceptions. The following exceptions apply:
- a. Single Family subdivisions with three or fewer lots are exempt.
 - b. Two and four family developments with six or fewer units are exempt.
 - c. Downtown (DT) zoned parcels are exempt.
 - d. Any area already designated as conservation easement.
 - e. Any area already designated or proposed as open space/parkland dedication.
 - f. Payment of fee in lieu of all or a portion of the tree save area.

(g) Payment in Lieu of Tree Save Area.

When circumstances prevent locating a portion, or the entire tree save area on a development site, and approval by the city manager is granted, the developer will contribute to a tree fund/bank set up by the city for the protection, planting and maintenance of such trees elsewhere in the city. The payment in lieu of tree save area provides an alternative to the designation of a tree save area and is particularly important as an option for a site that has limited flexibility, or which is constrained in its acreage.

(1) Single Family Residential Development.

The payment in lieu may be utilized for any percentage of the required tree save area; however, single family subdivision and multi-family development may not participate in a payment in lieu of tree save area for more than fifty percent of the required tree save area, unless authorized by the city manager.

(2) Amount of Payment

The payment-in-lieu shall be calculated based upon the square footage of land required for the tree save area. The land value factor contained in the fee schedule adopted annually by the city council will be applied to the land area required for dedication to arrive at the payment-in-lieu amount.

(3) Use of Funds

Funds collected shall be maintained in a separate account and shall be used only for the acquisition or protection of tree canopy within reasonable proximity to the property from which the funds are collected.

(f)-Champion Big Trees

No tree listed in the North Carolina Big Trees List, the American Forest Association's Champion Tree list or any tree that would measure 80 percent of the points of a tree on the North Carolina Big Trees List shall be pruned or removed without prior permission from the city arborist.

(f) Tree Protection Zone Established

- ~~(1) Specimen trees, and the root zone within an area one foot beyond the tree's drip line, shall be designated as a tree protection zone on lots or sites subject to the standards in this section.~~
- ~~(2) Specimen trees within a tree protection zone shall be subject to the standards in Section 30-5.B.3.g, General Requirements.~~
- ~~(3) The location of all specimen trees to be retained in a tree protection zone shall be depicted on the Master Plan, Site Plan, Landscaping Plan, or other plan, as appropriate.~~

(g) General Requirements

No specimen tree within a tree protection zone may be removed, except in accordance with Section 30-5.B.3.h, Removal of a Specimen Tree. In addition, all specimen trees in a tree protection zone shall have the following protections, whether located on public or private land:

(1) Cutting, Removal, or Harm Prohibited

Specimen trees shall not be cut, removed, pushed over, killed, or otherwise harmed.

(2) Paving or Soil Compaction Prohibited

The area within the tree protection zone of any specimen tree shall not be subject to paving or soil compaction.

(h) Removal of a Specimen Tree

Specimen trees may be removed from a tree protection zone if the landowner demonstrates to the City Manager one of the following conditions:

(1) Removal of a Healthy Specimen Tree

A specimen tree is in healthy condition, and all of the following standards are met:

- ~~a. The landowner is otherwise in compliance with this section;~~
- ~~b. The specimen tree prevents development of a lot platted prior to the effective date of this Ordinance in a way that limits building area to less than otherwise allowed, or hinders compliance with the standards in Article 30-3: Zoning Districts, Article 30-5: Development Standards, or Article 30-6: Subdivisions;~~
- ~~c. Mitigation is provided in accordance with Section 30-5.B.3.i, Replacement/Mitigation of Specimen Trees; and~~
- ~~d. When the majority of a lot is covered with specimen trees, the open space set aside standards in Section 30-5.C shall govern the maximum area of specimen trees required to be retained.~~

(2) Removal of a Severely Diseased, High Risk, or Dying Specimen Tree

Tree

A specimen tree certified by an arborist or other qualified professional as severely diseased, high risk, or dying may be removed. Removal of a severely diseased, high risk, or dying specimen tree shall not require mitigation in accordance with Section 30-5.B.3.i, Replacement/Mitigation of Specimen Trees.

(i) Replacement/Mitigation of Specimen Trees

Those causing the removal of a healthy specimen trees within a tree protection zone shall be responsible for the following mitigation:

(1) Replacement Trees Required

Each healthy specimen tree removed from an established Tree Protection Zone shall be replaced with one or more replacement trees, measuring at least 20 percent of the caliper noted in Table 30-5.B.3.d, Specimen Trees, with a cumulative caliper equal to the specimen tree(s) removed. The replacement trees shall be replanted within 12 months of the removal of the specimen tree.

(2) Location of Replacement Trees

Replacement trees shall be either planted on the parcel of land from which the specimen tree was removed, if sufficient space is available, or placed on nearby lands in accordance with Section 30-5.B.1.h, Alternative Landscape Plan.

(3) Establishment Period

Replacement trees shall be maintained through an establishment period of one year. The applicant shall guarantee the survival and health of all replacement trees during the establishment period and guarantee any associated replacement costs (see Section 30-6.C, Performance and Maintenance Guarantees). If the replacement trees do not survive the establishment period, the applicant shall purchase and install new replacement trees.

(j) Responsibility for Compliance

Failure to comply with the standards in this section is a violation of this Ordinance, subject to the remedies and penalties in this section and Article 30-8: Enforcement.

7.5. TREE PRESERVATION INCENTIVES

(8) Credit for Existing and Required Vegetation

- ~~a. Existing vegetation meeting the size standards of Section 30-5.B.1.c.3.a, New PlantingsXXXXX, located within the perimeter buffer area may be preserved and credited toward the perimeter buffer standards.~~
- ~~b. Vehicular use area landscaping within an area to be occupied by a perimeter landscape buffer may be credited towards the perimeter landscape buffer standards.~~

(a) Tree Preservation Credits

~~The preservation of specimen trees and other existing trees within the site and existing trees at the property perimeter and on-site is strongly encouraged. As an incentive in order to encourage the preservation of as many trees as practical on a development site, credit towards the minimum landscaping requirements may shall be applied to all existing trees in good health and condition which are retained on a site that are not specimen trees or located within a an open space set aside. Credits are offered only for trees that are not required to be retained by other sections of this Ordinance, as long as the intent and applicable standards of this Section are fully met.~~ Credits shall be granted in accordance with the following standards:

(1) Qualifying Attributes Credit Amount

~~Preserved vegetation must be in good health and condition, and must be protected as described in Section 30-5.B.8, Tree Protection During Construction.~~

a. Canopy Trees

~~Canopy trees, whether deciduous or evergreen, of five inches in caliper or greater, measured six inches above ground level.~~

b. Understory/Ornamental Trees

~~Understory or ornamental trees, whether deciduous or evergreen, of three inches in caliper or greater, measured four inches above ground level.~~

(2) Credit Applied Towards Required Plantings

~~The credit shall be applied to the aggregate tree caliper inch standards for site landscaping (table 30-5.B.4). In no case shall credits substitute for more than 75 percent of the required landscaping material.~~

(2) Exempted Trees

~~The following trees, regardless of their size, shall be exempted from the requirements in this section and do not qualify as tree save credit.~~

- ~~a. Southern Yellow Pine;~~
- ~~b. Bradford Pear;~~
- ~~c. Mulberry; and~~
- ~~d. Sweetgum; and~~
- ~~e. Silver Maple.~~

(3) Additional Credits

~~Each existing tree retained that is not part of a tree save area may A credit of one and one quarter (1.25) multiplied by the aggregate caliper of existing trees to be retained shall be credited and applied towards the site landscaping tree planting requirements of standards in Section 30-5.B.1.d, Site Landscaping, when the trees that are saved complies with the following minimum size standards; according to Table 30-5.B.7.A, Existing Tree Credits, below:~~

TABLE 30-5.B.7.A: EXISTING TREE CREDITS	
SIZE OF EXISTING TREE	NUMBER OF TREES TO BE CREDITED
<u>Five inch up to (but not including) 12 inch caliper</u>	<u>1</u>
<u>12 inch up to (but not including) 18 inch caliper</u>	<u>2</u>
<u>18 inch up to (but not including) 24 inch caliper</u>	<u>3</u>

24 inch up to (but not including) 30 inch caliper	4
30 or greater caliper inches	5

(4) Tree Death

If a preserved tree dies within twenty-four months of the completion of the landscape project, it must be replaced with the total number of trees which were credited to the existing tree, and the size of the new tree must comply with the size requirements for new trees as established in this section.

(b) Credit Toward Open Space/Parkland

If significant trees are preserved and protected during development of the site (beyond those included in a required tree save area or credited toward landscaping requirements), credit may be applied toward the required open space/parkland acreage by calculating the area of the critical root zone circumference and multiplying that square footage by two, deriving a 200 percent credit.

(c) Reduction in the Minimum Number of Required Parking Spaces

Up to a five percent reduction in the number of off-street parking spaces required on a development site shall be allowed if the reduction in the amount of required pavement will preserve the root zones of existing healthy specimen trees with a DBH of eight inches or greater. The amount of reduction can be determined only after taking into consideration any unique site conditions and the impact of the reduction on parking needs for the use, and must be agreed upon by both the applicant and the city manager. Alternative paving materials (see Section 30-5.A.8.h, Alternative Materials) may be required by the city manager in cases where required parking areas encroach upon critical root zones.

* * * * *

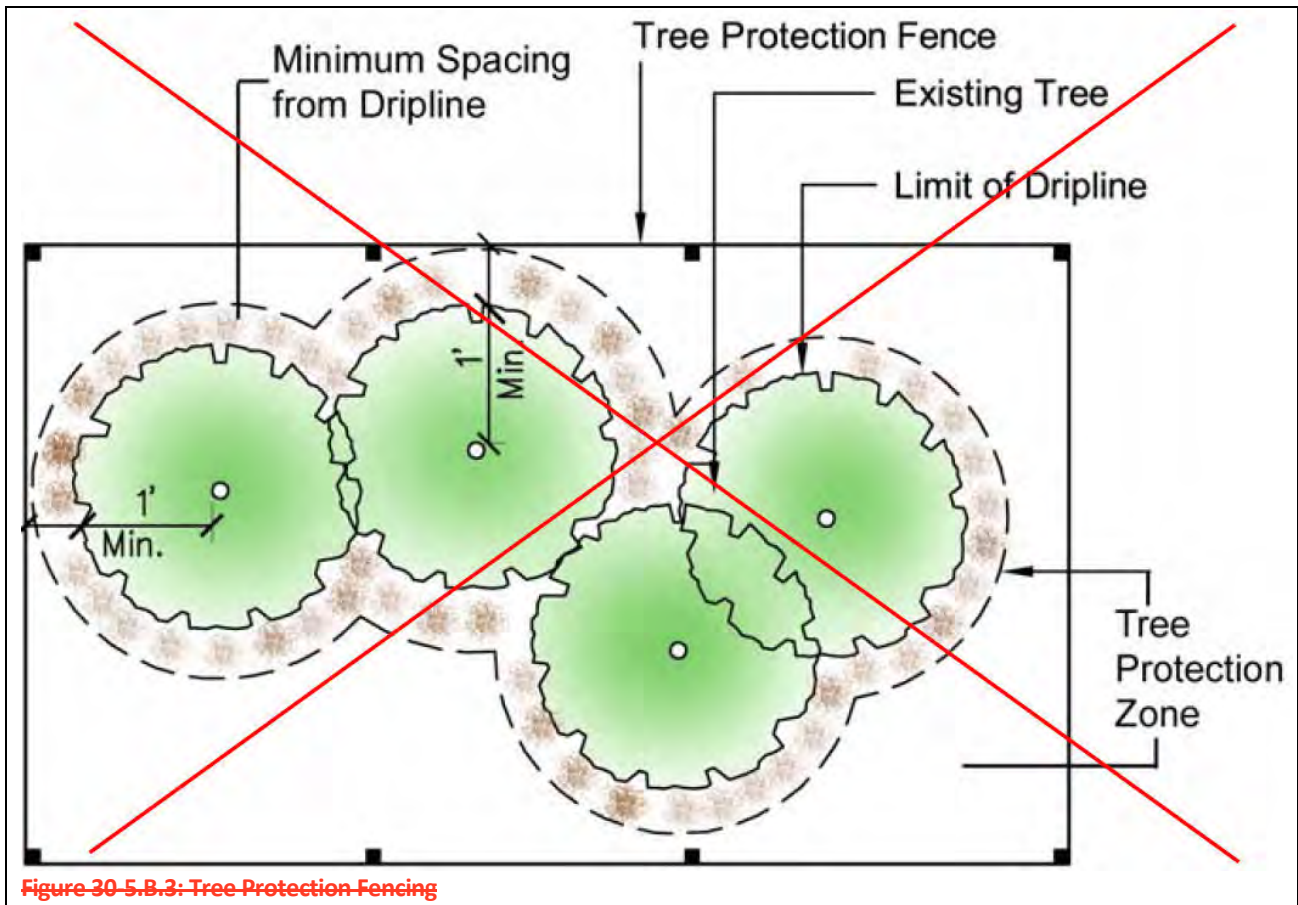
8.4. TREE PROTECTION DURING CONSTRUCTION

(a) Owner's Responsibility for Compliance

No grading or other land-disturbing activity shall occur on a site with existing trees, until protective barriers are installed by the owner or his/her representative, except in cases where no trees are being preserved. During development, the owner or developer shall be responsible for the erection of any and all barriers necessary to protect any existing or installed vegetation from damage both during and after construction. All protective barriers must be maintained throughout site and building construction. Failure to comply with the standards in this section is a violation of this Ordinance, subject to the remedies and penalties in this section and Article 30-8: Enforcement.

(b) Critical Root Zone

Critical to the tree's survival is protection of the critical root zone. The critical root zone is the minimum area beneath a tree that must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The critical root zone is generally 18-24 inches deep and typically represented by a concentric circle centering on the tree trunk with a radius of at least one foot for every inch of trunk diameter taken at 4½ feet above grade (DBH). Approximately 50 percent of a tree's root system is in the top 12 inches of soil with 90-95 percent of the root system within the top three feet. For example, a ten-inch diameter tree requires a protective barrier with a minimum ten-foot radius. Proposed buildings shall not be located within ten feet of the critical root zone of any existing tree proposed to be preserved.



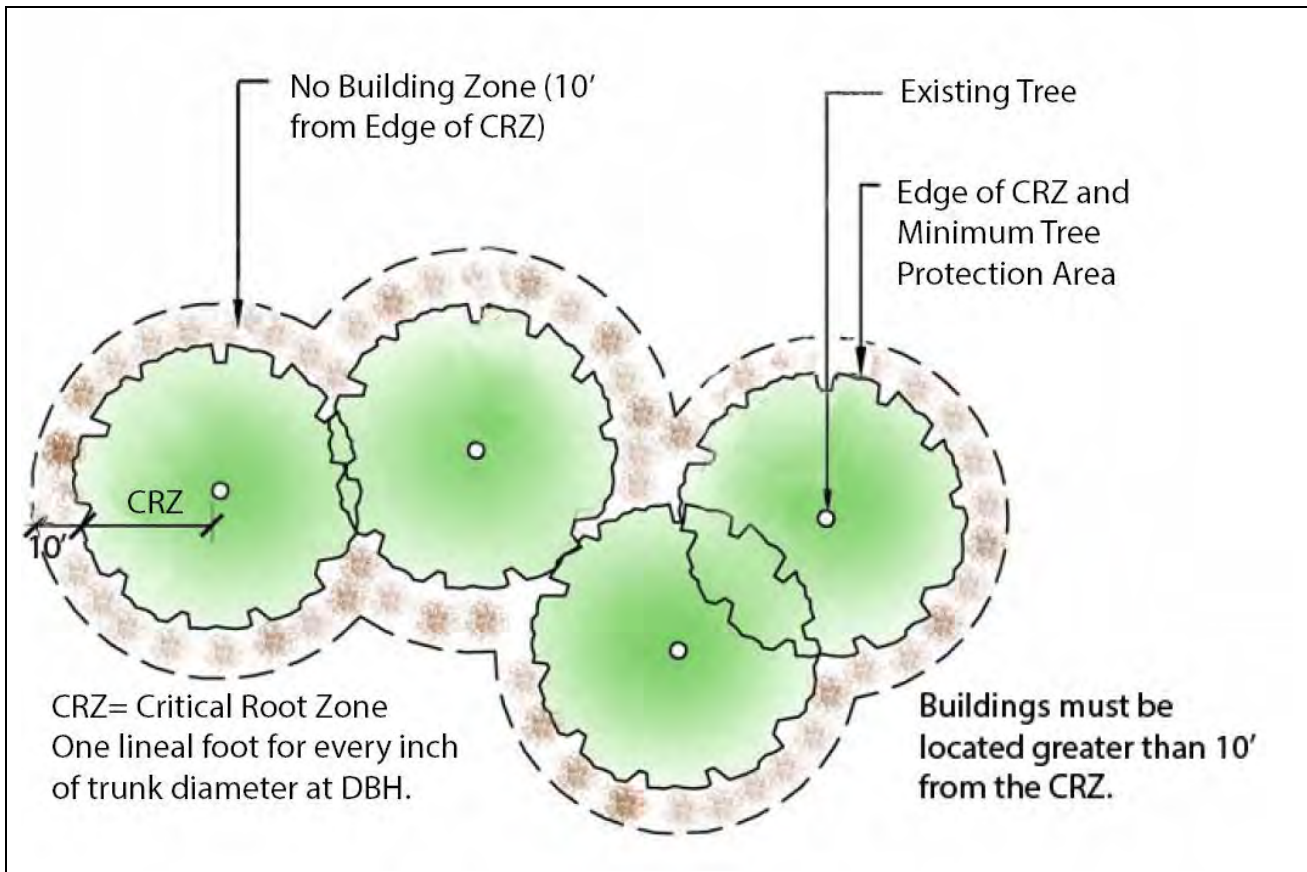


Figure 30-5.B.8.b: Critical Root Zone and Minimum Tree Protection Fencing

(c) Tree Protection Fencing

Without protection, trees will be damaged and killed by construction activity; however, such damage is not immediately evident. The protective fencing indicates the areas that are off limits to any land disturbing activity, and storage of equipment, building material, soil, and other debris.

(1) When and Where Required

All trees designated for preservation must be protected by barrier before demolition, grading, or any other land disturbing activity begins. Protective barriers shall be installed when the critical root zone of any trees to be preserved are within fifty feet of any proposed grading or construction activity.

Specimen trees and other existing trees being used for credit towards landscaping requirements in accordance with Section 30-5.B.5.a.2 Credit Applied Towards Required Plantings, shall be fenced with a sturdy and visible fence before grading or other development activity begins. Fencing shall be erected no closer than one linear foot to the tree's drip line (see Figure 30-5.B.3, Tree Protection Fencing). Areas located inside of tree protection fencing are considered as Tree Protection Zones.

(2) Illustrated on Plans

Tree protection areas based on the trees' critical root zones shall be noted and drawn to scale on demolition plans, grading and erosion control plans, and landscaping plans. Demolition plans shall include a detail of the tree barrier fencing to be erected and a note that site clearing is not to commence until tree protection barriers are in place and have been inspected by the city. Construction areas shall be located outside of tree protection areas, as noted by limit of construction barriers. Any proposed change of grade within a required tree protection zone must be avoided, but when absolutely necessary, shall be clearly conveyed on the plans. Any anticipated disturbance to the tree protection zone must be approved prior to construction, otherwise the tree will not qualify as preserved and penalties will ensue. Additionally, all tree save areas must be described by metes and bounds on the recorded plat, individual recorded deeds, and all property association documents for land held in common.

(3) Type of Fencing and Noticing

All fencing required by this section shall be a minimum of four feet high, visible, and of durable construction with signage indicating "Keep Out." Protective barriers shall consist of either:

- a. A fence which is at least four feet high and constructed in a post and rail configuration, using two by four rails; or
- b. A fence with two by four posts placed a maximum distance of ten feet apart covered with four foot orange polyethylene laminar safety fencing.

(4)(2) Inspection

All tree protection measures may be subject to inspection. Failure to have tree protection measures in place prior to the start of demolition and land clearing activity commencement of construction is a violation of this Ordinance. Protective tree barriers shall be maintained until after the final site inspection.

(3) When Required

No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced area. Fencing shall be maintained until after the final site inspection.

(d)(e) Encroachments into Tree Protection Zones

No credit will be allowed for any tree proposed to be retained, if there is any encroachment within the tree protection zone, except as noted herein. For the purpose of this section, an encroachment is defined as any change in the natural grade, construction of impervious surfaces, trenching or excavation, storage of equipment, chemicals, materials or earth and the temporary or permanent parking or circulation of vehicles or equipment.

Encroachments into tree protection zones shall occur only when no other alternative exists. If such an encroachment is anticipated, a written request must be made to the city manager for allowance of encroachment. Request must detail preventative measures to be taken.

(1) Soil Compaction

Where compaction might occur due to construction traffic or materials delivery through a tree protection zone, the area must first be mulched with a minimum four inch layer of wood chips. Equipment or materials storage shall not be allowed within a tree save area.

(2) Fill

No fill shall be placed within a tree protection zone without appropriate horticultural measures ~~adequate venting~~ to allow air and water to reach the roots.

(3) Chemical Contamination

Trees located within a tree protection zone shall be protected from chemical contamination from liquids or other materials, including but not limited to paint, chemical solvents, gasoline, oil, diesel fuel, hydraulic fluid, concrete spoils, or rinse water from vehicle cleaning, including rinsing of concrete truck tanks and chutes.

(4) Paving Limitations

~~Except for driveway access points, sidewalks, curb, and gutter, no paving shall occur within five feet of a tree protection zone unless authorized through an Alternative Landscape Plan (Section 30-5.B.1.h).~~

Construction of sidewalks or permeable parking or driveway access points may encroach into tree protection zones, so long as such areas are approved by the city manager and the following conditions are met:

- a. No more than ten percent of the protected ground area (including any additional landscape planting area) may be covered by sidewalks, up to twenty percent of this area may be covered by permeable parking areas or driveway access points or a combination of sidewalks and permeable parking or driveway access areas;
- b. Sidewalks shall be raised to avoid root damage; private sidewalks may be constructed with asphalt if a concrete or brick sidewalk would damage the tree's roots; and
- c. Permeable paving shall provide water and gaseous exchange to the tree roots, and the existing grade shall not be lowered or raised, except that the finished paved surface may be an average of six inches above the existing grade.

Section 5.0 Amend Article 30-5, Development Standards, Section D Fences and Walls, as follows:

Section 5.1 Amend reference in Table 30-5.D.4 Maximum Fence and Wall Height, as follows:

TABLE 30-5.D.4: MAXIMUM FENCE AND WALL HEIGHT			
FENCE OR WALL TYPE [1]	MAXIMUM HEIGHT BY LOCATION		
	IN FRONT AND CORNER SIDE YARDS (FEET) [3]	IN INTERIOR SIDE AND REAR YARDS (FEET)	IN SIGHT TRIANGLES
Solid fence or wall serving an individual development	3 Front yard; 6 Corner & side yard	6	30 inches
Non-solid fence or wall	6	6	
Chain link fence	4	6	
Fence or wall serving a development perimeter (solid & non-solid)	6	6	Prohibited
Screening fence or wall in accordance with Section 30-5.B.1.g 30-5.B.4.e, Screening	Minimum height necessary to achieve screening function		
Recreational fencing [2]	N/A	N/A	
NOTES: [1] All heights are measured from the finished grade adjacent to the fence or wall. [2] Only allowed as part of an approved tennis court, athletic field, or similar recreational amenity. [3] Fences or walls used to screen service or operational areas on the side or rear of commercial, office, or mixed-use developments may have a maximum height of eight feet.			

Section 5.2 Amend Subsection 30-5.D.9 Appearance, as follows:

(d) Landscape Screening

(1) As a means of softening the appearance of fencing and walls visible from public streets, all fences and walls exceeding four feet in height (including fences in single-family districts), if located within 15 feet of a public right-of-way, shall be supplemented with landscape screening in accordance with the following standards.

a. Landscaping Required

i. Landscaping consistent with the buffer standards noted in Table ~~30-5.B.1.F.3~~30-5.B.4.e.4, Property Perimeter Buffer Types shall be installed between the fence and the public right-of-way. A Type A perimeter landscaping buffer shall be installed between masonry walls and the public right-of-way. Fences made from all other materials require a Type B perimeter landscaping buffer between the fence and the public right-of-way.

ii. Where fences are installed that are less than 25 percent opaque above 48 inches, the planting schedule may be reduced by one half.

iii. For single-family and two- to four-family dwellings, front yard fences meeting other requirements contained in this Ordinance are exempt from this landscaping requirement.

b. Substitution of Understory Trees

One understory or ornamental tree may be substituted for every three evergreen shrubs provided that the tree meets the size standards of Section ~~30-5.B.1.c.3~~30-5.B.3.e, Planting Standards.

c. Integration with Other Required Landscaping

Required landscape screening for fences or walls may be integrated into the landscaping required for vehicular use area screening or perimeter buffers, provided the standards in ~~each s~~Section 30-5.B.1, ~~Landscaping Standards~~, are maintained.

d. Setback from Right-of-Way

Fences and walls subject to the standards of this subsection shall be located no closer than six feet from the edge of the public right-of-way to ensure adequate room for required landscape screening.

(2) Fences and walls located along interior side lot lines ~~and within the DT District~~ shall be exempt from these landscape screening requirements.

(e) Maintenance Required

All fences and walls and associated landscaping shall be maintained in good repair...

Section 6.0 Amend Article 30-5 Development Standards, Section E Exterior Lighting, Subsection 5 Design Standards for Exterior Lighting, as follows:

(d) Coordination with Tree Locations

~~Site lighting must be designed to consider proposed tree locations. The location and size of parking lot islands is based on requirements in Section 30-5.B.4.c, Vehicular Use Area Landscaping. Site lighting must be located no closer than fifteen feet from the trunk of a tree.~~

Section 7.0 Amend Section 30-5 Development Standards, Section F Community Form Standards, as follows:

Section 7.1 Amend Subsection 30-5.F.1, Purpose and Intent as follows:

(c) Incorporate design features ~~like street trees and street configurations designed~~ to enhance the visual quality of the streetscape;

Section 7.2 Delete Subsection 30-5.F.10 Community Form Standards, Street Trees in its entirety.

Section 8.0 Amend Article 30-5 Development Standards, Section H Multi-Family Design Standards, Subsection 4 Multi-Family Design Standards, as follows:

(e) Parking Location

(1) ~~When visible from a public right-of-way, no~~ No off-street surface parking lot associated with a two- to four-family residential, attached residential, or multifamily development shall be located between the structure and the ~~public~~ street fronting the development, unless ~~Type B, C, or D buffer is provided a landscape buffer is provided in accordance with Section 30-5.B. 4.c.5, Street Yard Buffer.~~

Section 9.0 Amend Article 30-5 Development Standards, Section I Commercial, Office, and Mixed-Use Design Standards

Section 9.1 Amend reference in Subsection 30-5.I.3.b Outparcel Development, as follows:

(4) Parking areas between buildings on outparcels shall provide at least 25 percent more landscaping material than is required for other off-street surface parking areas in Section ~~30-5.B.1.e~~ 30-5.B.4.c, Vehicular Use Area Landscaping.

Section 9.2 Amend Subsection 30-5.I.3.c Building Facades, as follows:

(2) Side Facades

Street-facing side facades shall be fully screened from off-site views through fences, walls or landscaping of at least eight feet in height, or be configured with the same three of the same façade details as provided on the front façade.

Section 10.0 Amend Article 30-5 Development Standards, Section J Large Retail Design Standards, as follows:

Section 10.1 Amend Subsection 30-5.J.4 Design Standards as follows:

(b) Landscaping

Landscaping requirements included in this section are in addition to the requirements of Section 30-5.B, Landscaping and Tree Protection. To compliment the large scale of the structure(s) and parking areas, the following shall be included:

- (1) Trees planted under this section shall be a minimum of 2.0 caliper and specimen quality as certified by the American Standard of Nursery Stock (ASNS), except that at least 20 percent of the required trees shall be a minimum of 4.0 caliper. Park grade trees are prohibited.
- (2) Vehicular use area landscaping shall be provided in accordance with the standards in Section ~~30-5.B.1.e, 30-5.B.4.c,~~ Vehicular Use Area Landscaping, except that a minimum of 30 percent of the required parking lot landscape islands as described above shall be a minimum of 15 feet wide and eighteen 18 feet long. These larger islands are encouraged to be placed in proximity to the front of the building(s).

Section 10.2 Amend Subsection 30-5.J.5 Façade Treatments, as follows:

(b) Required Façade Features

All facades shall have at least five of the following eleven design features. If either of the public art options are selected, each would count as meeting two design features (see Figure 30-5.J.5.2, Large Retail Facades). The city manager may allow for minor deviations to the full requirement of each chosen item if the applicant can adequately demonstrate that the overall intent and spirit of this section continues to be adhered to an overall development design:

* * * * *

(9) A pedestrian plaza, which incorporates gathering and sitting opportunities adjacent to the main entrance or on the front façade equivalent to two percent of the gross square footage of that building. Such an area shall include a seating area with benches or tables and chairs at a minimum rate of one seat per 15,000 gross square feet, and shall include at least one of the following features:

- a. Kiosk(s);
- b. Outdoor playground area;
- c. Water feature;
- d. Gazebo; or
- e. Clock tower or other such focal feature and amenity that enhances the public space.

Plazas shall provide on grade planting flush with plaza paving for a minimum of 10 percent of the paved plaza area adjacent to the primary facades intended for public view. Planted areas shall be provided in accordance with the soil volume standards in Section 30-5.B.3.e.3, Minimum Planting Area ~~Fifty percent of these planted areas shall contain an ornamental or shade tree, but not with no~~ less than one tree for each 40 feet of building façade.

Section 10.3 Amend Subsection 30-5.J.7 Entrances, as follows:

(a) A pedestrian plaza configured in one of the following ways:

- (1) Single tenants occupying more than 50,000 square feet shall provide for a plaza area of at least 20 feet in depth immediately in front of their entrance(s). It is encouraged that this area be large enough to include

one or more planters with enough soil volume to support plant shade trees (see Section 30-5.B.3.e.3, Minimum Planting Area);

Section 10.4 Amend Subsection 30-5.J.8 Parking and Circulation, as follows:

(c) At a minimum, one internal continuous sidewalk of at least five feet wide (clear) shall be provided from the public street to the entrance(s). ~~In addition, Additionally, at least four five~~ feet wide walkways shall connect focal points of pedestrian activity, such as transit stops, street crossings or store entry points, and shall feature adjoining landscaped areas ~~(four feet minimum landscape depth)~~ to provide a separated and pedestrian friendly access route for no less than 50 percent of their overall length.

Section 11.0 Amend Article 30-9 Definitions, as follows:

Section 11.1 Amend Section 30-9.C Table of Abbreviations as follows:

TABLE 30-9.C: ABBREVIATIONS	
ABBREVIATION	ASSOCIATED TERM
ACI	Aggregate-caliper-inch

Section 11.2 Amend Section 30-9.D Definitions as follows:

CALIPER

A horticultural method of measuring the diameter of a tree trunk for the purpose of determining size. The caliper of the trunk is measured six inches above the ground for trees up to and including four inches in diameter, 12 inches above the ground for trees greater than four inches and up to ten inches in diameter, and diameter at breast height (4½ feet) for trees ten inches or greater in diameter. Trees with multiple trunks should be treated as multiple trees and the DBH for each trunk added to aggregate diameter measurement.

* * * * *

CRITICAL ROOT ZONE

See "Root Zone." The minimum area beneath a tree that must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The critical root zone is generally 18-24 inches deep and typically represented by a concentric circle centering on the tree trunk with a radius of at least one foot for every inch of trunk diameter (DBH) taken at 4½ feet above grade.

* * * * *

INVASIVE PLANT SPECIES

Plant species that spread rapidly with little or no assistance. For purposes of the UDO, the following species are considered invasive: Bushkiller-*Cayratia japonica*, Chinese wisteria- *Wisteria sinensis*, English Ivy- *Hedera helix*, Japanese wisteria- *Wisteria floribunda*, Japanese honeysuckle- *Lonicera japonica*, Kudzu- *Pueraria montana*.

* * * * *

LAND VALUE FACTOR

For the purposes of determining a payment-in-lieu of Tree Save Area or Open Space/Parkland or Open Space Dedication, each year the value of single family land in the city subdivided over the previous three years will be averaged to arrive at a Land Value Factor.

* * * * *

PLANTING STRIP AND PLANTING AREA

Ground surface free of impervious cover and/or paved material which is reserved for landscaping purposes. Areas intended for the placement of vegetation within the interior of vehicular use areas or along street right-of-way edges, typically between the back of the curb and the inside edge of the sidewalk.

* * * * *

ROOT ZONE

The area inside the dripline of a tree that contains its roots. See "Critical Root Zone".

* * * * *

SITE LANDSCAPING

Required vegetative material consisting of trees and shrubs that exist or that are placed on a development site to soften built edges and provide transitions (see Section 30-5.B.1.d).

* * * * *

SPECIMEN TREE

A tree considered to be an important community asset due to its unique or noteworthy characteristics or values and which meets ~~Any tree meeting~~ the minimum size thresholds included in Section 30-5.B.6.e, Specimen Trees Identified for its species in Table 30-5.B.3.D, Specimen Trees.

* * * * *

STREET YARD

An area required to be landscaped with (new or existing) trees and shrubs from the front or side lot line of a corner lot to a depth not to exceed the designated zoning setback, when off street parking or vehicular circulation is located adjacent to the street. The depth of the street yard varies based on the number of bays within the adjacent (size of the) parking lot. When buildings are moved up to the street, the street yard requirement is eliminated.

* * * * *

TOPPING

The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Also see "Severe Pruning".

* * * * *

TREE, SHADE

See "Canopy Tree."

* * * * *

TREE, ORNAMENTAL

See "Understory Tree."

TREE PROTECTION ZONE

A designated area around a tree or group of trees to be saved, which is set off from construction activity by the use of a fence or other protective barrier thereby keeping the critical root zone of the tree protected and free from unwanted harmful activities. The area of the Tree Protection Zone should be equal to or greater than the Critical Root Zone. The portion of a development site that includes the portion of the "existing tree canopy" (and the

associated roots of the retained trees) that are required to be retained and protected in accordance with Table 30-5.B.2.b.8.c, Tree Canopy Retention Standards. See Section ~~30-5.B.2.b.8.d, Establishment of~~ 30-5.B.6.h, Tree Protection Zone Established.

TREE SAVE AREA

An area with a minimum of 36 trees/acre (or equivalent credit based on tree size, see Table 30-5.B.7.A, Existing Tree Credits) of clustered canopy and understory trees comprising a certain percentage of the development site, which is set-aside for protection as part of the development process, and which is described by metes and bounds and recorded on the final plat, and which limits the location of buildings to greater than ten feet from the tree save area. (see Section 30-5.B.6.f, Tree Save Area Established).

* * * * *

UNDERSTORY OR ORNAMENTAL TREE

A tree that has an expected height at maturity of no greater than 30 feet.

* * * * *

VEHICULAR USE AREA LANDSCAPING, INTERIOR

Vegetative material, structures (walls or fences), berms, and associated ground cover located within the interior of a parking lot, or other vehicular use area for the purposes of providing visual relief and heat abatement. (See Section ~~30-5.B.1.e.1~~ 30-5.B.4.c.3)

VEHICULAR USE AREA LANDSCAPING, PROPERTY PERIMETER

Vegetative material, structures (walls or fences), berms, and associated ground cover located around the perimeter of a parking lot, or other vehicular use area when such areas are adjacent to a street right-of-way or land in a residential district or residentially developed lands, used property for the purposes of screening the vehicular use area from off-site views. (See Section ~~30-5.B.1.e.2~~ 30-5.B.4.c.4.)

Section 12.0 Several MuniCode references should be changed throughout Chapter 30; while most of these have been incorporated in the preceding modifications, additional instances may still exist. To that extent, certain changes authorized throughout Chapter 30 are:

MUNICODE REFERENCE NOTES:

All References to:

- “Section 30-5.B.1.c.3, Planting Standards” are REVISED to read “Section 30-5.B.3.e, Planting Standards”
- “Figure 30-5.B.1.c: Planting Standards for New Plantings” are REVISED to read “Figure 30-5.B.3.e.2: Minimum Planting Standards for New Plantings”
- “Figure 30-5.B.1.d, Site Landscaping Placement” are REVISED to read “Figure 30-5.B.4.b: Site and Building Landscaping Placement”
- “Section 30-5.B.1.e, Vehicular Use Area Landscaping” are REVISED to read “Section 30-5.B.4.c, Vehicular Use Area Landscaping”
- “Figure 30-5.B.1.e, Vehicular Use Area Landscaping” are REVISED to read “Figure 30-5.B.4.c, Vehicular Use Area Landscaping”
- “Section 30-5.B.1.f, Perimeter Landscape Buffer” are REVISED to read “Section 30-5.B.4.d, Property Perimeter Landscape Buffer”
- “Table 30-5.B.1.F.3: Buffer Types” are REVISED to read “Table 30-5.B.4.D.4: Property Perimeter Buffer Types”
- “Table 30-5.B.1.F.4: Buffer Type Application” are REVISED to read “Table 30-5.B.4.D.5: Buffer Type Application”
- “Section 30-5.B.1.g, Screening” are REVISED to read “Section 30-5.B.4.e, Screening”
- “Figure 30-5.B.1.g, Screening Methods” are REVISED to read “Figure 30-5.B.4.e: Screening Methods”
- “Section 30-5.B.1.h, Alternative Landscape Plan” are REVISED to read “Section 30-5.B.4.f, Alternative Landscape Plan”
- “Figure 30-5.B.3: Tree Protection Fencing” are REVISED to read “Figure 30-5.B.8.b: Critical Root Zone and Minimum Tree Protection Fencing”
- “Section 30-5.B.3.d, Tree Survey Required” are REVISED to read “Section 30-5.B.6.d, Tree Survey”

"Table 30-5.B.3.D: Specimen Trees" are to be DELETED.

"Section 30-5.B.3.e, Specimen Trees Identified" are REVISED to read "Section 30-5.B.6.e, Specimen Trees Identified"

"Section 30-5.F.10, Street Trees" are REVISED to read "Section 30-5.B.4.a, Street Trees"

Section 13.0 **The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future text amendments as long as doing so does not alter the material terms of the Unified Development Ordinance.**

Section 14.0 **It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.**

ADOPTED this the 10th day of September, 2012.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Scott Shuford, Director, Development Services Department
DATE: September 10, 2012
RE: **Amendment to City Code 30-5 Development Standards and 30-6 Subdivision, to combine open space and parkland requirements, provide options for in-lieu fees, and include incentives or credits as appropriate (and including related changes in 30-3, 30-7, and 30-9)**

THE QUESTION:

Are the proposed changes to development standards for parklands and open space consistent with public health, safety and welfare? (Also see the attached Commission staff report with seven standards for considering amendments to Chapter 30)

RELATIONSHIP TO STRATEGIC PLAN:

More Attractive City - clean and beautiful
Growing City, Livable Neighborhoods - a great place to live

BACKGROUND:

In December 2010 the City adopted the new development code. During that process, staff, members of the Advisory Committee, the consultants, and many others from the environmental and development sectors had worked extensively on the details and coordination required for tree protection, recreational areas, and other open space provisions. Nonetheless, in daily application some significant issues emerged that require changes in the standards. Issues include:

- Parkland requirements are unevenly – even unfairly -- applied, affecting only properties involving a subdivision.
- Some specific aspects of the parkland requirements, such as options for small residential projects, need adjustment to be effective for both public and private interests.
- Open space set aside areas are too frequently the leftover remnants or only the stormwater facilities; they are not helping with tree preservation; they are not given priorities as community assets; and they are used infrequently as a development tool for natural resource protection.
- With open space, parkland, landscaping and tree preservation so separated in the current ordinance, there is less flexibility than is usually needed on individual projects to respond to unique site conditions and opportunities.

ISSUES:

The major changes are summarized below. The draft has benefited from input over the past several months from a wide variety of professionals within and outside City government. There appears to be broad agreement that, while specific measures may need subsequent adjustment based on practice, the proposed changes are in the right direction and manageable.

- Open space and parkland requirements, currently in Articles 5 and 6, respectively, are combined and coordinated to better achieve both community and developer goals – more environmentally responsive, sustainable, usable open space/parkland, with greater flexibility and added value.
- Up to 50% of stormwater facilities can be counted toward open space/parkland requirements under certain conditions.
- The preference for location of open space is shifted toward a single site or a few well-located substantially-sized areas.
- Conservation features may be counted (wildlife corridors, floodplain, wetlands, historic or archaeological resources, large specimen trees not a part of tree-save areas, for instance).
- At least 50% of the open space/parkland must be usable for recreational facilities and improved with those facilities [or conveyed to the Parks and Recreation Department with any agreed upon

improvements].

- A maximum of 50% of water bodies may be counted.
- An option for in-lieu fees is added.
- Up to 50% of private recreational facilities may be counted.

BUDGET IMPACT:

No direct impact. However, in conjunction with changes in tree preservation standards, development currently stalled on some sites becomes feasible.

OPTIONS:

1. Approval as presented
2. Approval with modifications
3. Deferral with direction for further research or modifications
4. Denial of the proposed amendment

RECOMMENDED ACTION:

The Planning Commission and staff recommend Option 1, that City Council move to: APPROVE the amendment to City Code 30-5 Development Standards and 30-6 Subdivision, including related changes in 30-3, 30-7, and 30-9, to modify open space and parkland requirements, as presented by staff.

ATTACHMENTS:

Excerpt - Evaluation - OpSp Pkland
Draft Ord OpSp and Pkland rev 9-5

**EXCERPT: Planning Commission Staff Report 8/21/2012
Open Space and Parkland Standards**

REQUEST: Amendment to City Code 30-5 and related sections of Chapter 30 to modify the requirements and standards related to open space and parkland.

The UDO provides seven standards of review for proposed text amendments. Each standard is listed in the following table, along with staff analysis of how each standard applies to the proposed changes.

Standard	Analysis
1) Whether and the extent to which the proposed amendment is consistent with all City-adopted plans that are applicable;	The proposed changes to the open space and parkland dedication requirements allow more flexibility, while being more equitable in achieving the City’s Strategic Vision and Goals (Livable Neighborhoods; More Attractive City), goals of the 2030 Vision Plan, and the basic purpose of the development code.
2) Whether the proposed amendment is in conflict with any provision of this Ordinance, and related City regulations;	The proposed changes ensure that consistency is maintained throughout the City’s regulations.
3) Whether and the extent to which there are changed conditions that require an amendment;	The consolidation of open space set asides and parkland dedication into one requirement removes the double jeopardy provision currently in place for residential subdivision development.
4) Whether and the extent to which the proposed amendment addresses a demonstrated community need;	The proposed changes allow flexibility in application (including a payment-in-lieu option), while ensuring that open space and parkland continues to be provided.
5) Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and would ensure efficient development within the City;	The proposed text will improve compatibility among uses through the dedication of open space/parkland.
6) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern; and	The changes will support better planning and land development, resulting in a logical and orderly development pattern.
7) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment	The proposed language provides numerous options for greater natural resource protection, as well as incentives to encourage additional tree preservation.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AMEND PORTIONS OF CITY CODE ARTICLES 30-5 AND 30-6 TO COMBINE OPEN SPACE AND PARKLAND REQUIREMENTS, PROVIDE OPTIONS FOR IN-LIEU FEES, AND INCLUDE INCENTIVES OR CREDITS AS APPROPRIATE (AND INCLUDING RELATED CHANGES IN ARTICLES 30-3, 30-7 AND 30-9)

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the Unified Development Ordinance adopted December 13, 2010 as Chapter 30 of the Code of Ordinances of the City of Fayetteville and last amended July 9, 2012, be amended as follows:

LEGEND :	
<u>Underline</u>	new text
<u>Black text</u>	moved to new location, no change in substance
<u>Red text</u>	change in wording or reference
Strike thru	deleted text
Highlight in green (darker gray in b/w)	significant text change

Section 1. Amend Section 30-3.G.2 GENERAL STANDARDS FOR ALL PLANNED DEVELOPMENT DISTRICTS to modify item (a) as follows, including renumbering as needed:

(a) Planned Development Master Plan

The Master Plan shall:

- (1)** Include a statement of planning objectives for the district;
- (2)** Identify the natural features and defining characteristics of the site such as site's natural amenities, significant trees (both individually and in mass), vegetation, and topography.
- (3)** Identify the general location of individual development areas, identified by land use(s) and/or development density or intensity;
- (4)** Identify for the entire PD district and each development area the acreage, types and mix of land uses, number of residential units (by use type), nonresidential floor area (by use type), residential density, and nonresidential intensity;
- (5)** Identify the general location, amount, and type (whether designated for active or passive recreation) of open space/parkland;
- (6)** Identify the location of environmentally sensitive lands, wildlife habitat, and stream corridors;

- (7) Identify the on-site transportation circulation system, including the general location of all public and private streets, existing or projected transit corridors, pedestrian and bicycle pathways, and how they will connect with existing and planned city systems;
- (8) Identify the general location of on-site potable water and wastewater facilities, and how they will connect to city systems;
- (9) Identify the general location of on-site stormwater management facilities, and how they will connect to City systems; and
- (10) Identify the general location of all other on-site public facilities serving the development, including but not limited to ~~park~~, schools, and facilities for fire protection, police protection, EMS, ~~stormwater management~~, and solid waste management.

Section 2. Amend Section 30-3.G.2 GENERAL STANDARDS FOR ALL PLANNED DEVELOPMENT DISTRICTS to modify item (g) as follows, including renumbering as needed:

(g) Planned Development Terms and Conditions

The Terms and conditions document shall incorporate by reference or include, but not be limited to:

- (4) Provisions addressing how multimodal transportation, potable water, wastewater, stormwater management, open space/parkland, and other public facilities will be provided to accommodate the proposed development;

Section 3. Amend Section 30-5.A.8 ALTERNATIVE PARKING PLAN to modify item (b)(3) as follows:

8. (b) Provision Under the Minimum Required

(3) Site Plan Requirements for less than Minimum Amount Required

In cases where less than the minimum number of spaces is provided, the Site Plan shall set aside land area~~extra open space~~ strategically located for conversion to parking in the event there is a subsequent change in use. The additional ~~open space~~ set-aside shall enable the development of enough parking spaces to satisfy the minimum number of spaces required by this Ordinance for the use contemplated under the original development.

Section 4. Amend Section 30-5.B.3 GENERAL REQUIREMENTS to modify item 3(h) as follows:

3. (h) Coordination with Stormwater Requirements

Stormwater management facilities required by the City Code of Ordinances may be incorporated into landscaping, resulting in credit towards landscaping or open space set-aside requirements. When required stormwater management facilities are enhanced as a site amenity (see Section 30-5.C.3.b.6, Stormwater Management Devices), they may qualify as a portion of the required open space/parkland. Determination of credit shall be at the discretion of the city manager.

Section 5. Amend Section 30-5.C in all subsections beginning with renaming of the Section and renumbering as needed.

Section 5.1 Revise the section title as follows: “30-5.C OPEN SPACE/PARKLAND SET-ASIDE DEDICATION”

Section 5.2 Modify Section 30-5.C.1 as follows:

1. PURPOSE AND INTENT

The purpose of this section is to:

(a) Establish the standards under which residential, nonresidential, and mixed-use development shall ~~set aside~~dedicate a portion of the development area as open space/parkland set-aside lands for the retention and protection of natural resources (e.g., specimen trees, mature hardwood forests, wetlands, riparian areas, and other significant resources), recreation, and other lands;

(b) ~~Set out the minimum ownership and maintenance standards for open space set-asides;~~ Describe the procedure for determining the composition of open space/parkland set-aside dedication lands; and,

(c) ~~Set out the maximum requirements for the provision of open space set-aside lands.~~ Innovative combinations of land dedication and actual development of public recreation facilities may be proposed for consideration; and

(c) Set out the minimum ownership and maintenance standards for open space/parkland dedication.

Section 5.3 Modify Section 30-5.C.2 as follows:

2. APPLICABILITY

(a) ~~General~~ The provisions of this section shall apply to development of all land in the City subject to a Subdivision Plan (Section 30-2.C.6), Planned Development (Section 30-2.C.3), Site Plan (Section 30-2.C.5), or Building Permit (Section 30-2.C.12), as appropriate except that conservation subdivisions are exempt from these open space/parkland standards, but remain subject to the conservation area standards of Section 30-6.D, Conservation Subdivisions. Additionally, development in the Downtown (DT) district and new residential development of three or fewer dwelling units shall be exempt from these standards. The term development shall include redevelopment sites subject to the provisions in Section 30-7, Nonconformities.

(b) All development in the City subject to these standards shall provide open space/parkland set-aside dedication in accordance with Table 30-5.C.3, Required Open Space/Parkland Set-Aside Dedication.

(c) The exact composition of ~~the~~ open space/parkland set-aside dedication on an individual lot or site may differ will vary from ~~another sites to site~~ based upon the proposed use and context of the parcel, presence or absence of natural resources, the number of residential dwelling units, and the parkland dedication requirements in 30-6.E, Parkland.

Section 5.4 Modify Section 30-5.C.3 as follows, including Table 30-5.C.3 and Figure 30-5.C.3.b.2:

3. OPEN SPACE/PARKLAND SET-ASIDE STANDARDS

All areas proposed for dedication as open space/parkland shall meet the following standards:

(a) Amount of Open Space/~~Parkland Set-Aside~~ Required

Development shall provide at least the minimum amounts of open space/~~parkland set-aside~~ identified in Table 30-5.C.3, Required Open Space/~~Parkland Set-Aside~~ Dedication, below:

TABLE 30-5.C.3: REQUIRED OPEN SPACE/PARKLAND SET-ASIDE DEDICATION		
USE CLASSIFICATION [1]	MINIMUM OPEN SPACE/PARKLAND SET-ASIDE AREA (AS PERCENTAGE OF DEVELOPMENT SITE AREA)	
	DOWNTOWN (DT) & HLO ZONING DISTRICTS NOT WITHIN DOWNTOWN (DT) [2]	ALL OTHER ZONING DISTRICTS
Residential [3]	5%	10%
Public and Institutional Use	5%	10%
Commercial and Mixed-Use	5%	10%
Industrial	5%	5%
All allowed uses in the CD district	50%	

NOTES:

[1] See Table 30-4.A, Use Table.

[2] Downtown (DT) district including any HLO district within it is exempt from the open space ~~set-aside area~~ dedication requirements.

[3] New residential development with three or fewer units shall be exempt from these requirements, as well as conservation subdivisions. Conservation subdivisions remain subject to the conservation area standards of Section 30-6.D, Conservation Subdivisions.

(b) Nature of Open Space/~~Parkland to be Dedicated~~ ~~Calculation of Open Space Set-Aside~~

For the purposes of complying with this section: Composition of the Open Space/~~Parkland~~ may include a variety of features and facilities as described below:

(1) ~~Required Tree Protection Zones~~

~~Tree protection zones associated with specimen trees shall be counted towards the requirements for open space set-asides.~~

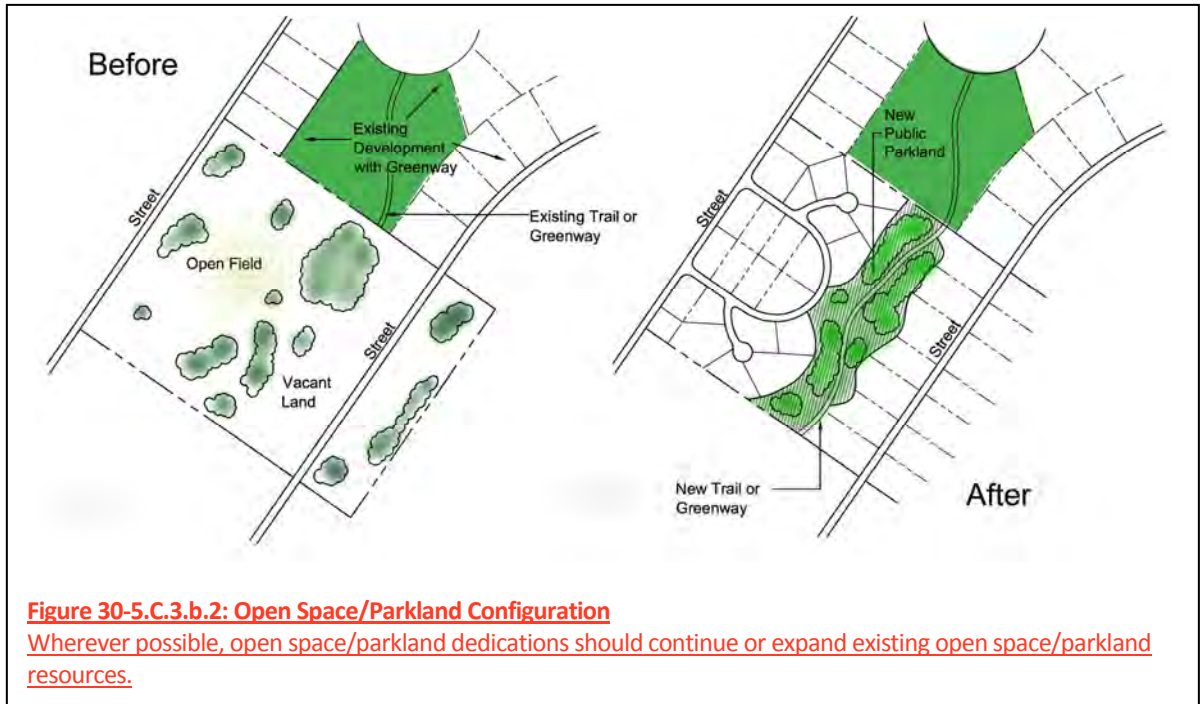
(1) Usability of Dedicated Land

At least 50 percent of the dedicated land is to be usable for active or passive recreational facilities and shall be planned and improved with those facilities which support such use.

Facilities may include, but are not limited to, tennis courts, swimming pools, clubhouses, athletic fields, basketball courts, play grounds, open play areas, community gardens, roof gardens, green roofs, multi use trails, picnic facilities, and urban features such as plazas and fountains. If in question, the usability of the dedicated land shall be at the determination of the city manager.

(2) Size and Location

a. The open space/~~parkland~~ dedication should generally be concentrated in a single tract of land, regardless of whether the development is occurring in phases or sections. Larger projects may provide open space/~~parkland~~ in multiple areas, provided no one area is less than one-half acre in size. Exceptions may be provided at the discretion of the city manager based upon a determination that multiple or smaller tracts better serve the development or the interests of the city.



b. The city manager may require that the land dedicated be located on the periphery of the development in order to allow enlargement by combining the open space/parkland areas with adjacent development of park facilities when deemed to be in the best interest of the city's current and/or long-range parks and recreation plans (see Figure 30-5.C.3.b.2, Open Space/Parkland Configuration).

(3) Access

Access shall be free, easy, and convenient to and from the open space/parkland area.

a. In residential areas, the access shall be provided by means of streets or walkways or trail, with access being a minimum width of 20 feet. Rights-of-way for this access shall be shown on the Site Plan or Subdivision Plan.

b. All publicly dedicated open space/parkland areas shall have access by way of a public street. Dedicated areas that do not have frontage on a public street but are adjacent to existing or proposed public open space/parkland with access are exempt from this requirement.

(4)(2) Conservation Unique Features

Conservation features such as the following may be counted toward the open space/parkland requirement:

- a.** The 100-year floodplain;
- b.** Wetlands under the jurisdiction of the Army Corps of Engineers or the State of North Carolina;
- c.** Non-jurisdictional wetlands not under the jurisdiction of the Army Corps of Engineers or the State of North Carolina;
- d.** Wildlife corridors or habitat utilized by endangered or threatened species;
- e.** Steep slopes; Tree protection zones associated with the preservation of significant trees beyond those included in required tree save areas (see Section 30-5.C.4.d);
- f.** Natural fields and meadows;
- g.** Prime agricultural lands that remain in agricultural use;
- h.** Scenic corridors and views;
- i.** Historic, archeological, and cultural resources; and/or

j. Areas that could serve to extend existing public facilities, such as greenways, trails, parks or recreation areas.

Natural features (areas with mature trees over 10 inches in DBH, specimen trees, riparian areas, wetlands, wildlife corridors, steep slopes, etc.), natural hazard areas (floodplains, etc.), water features (lakes, natural ponds, streams, rivers, etc.), and wildlife habitat areas for threatened and endangered species shall be counted towards the requirements for open space set-asides.



Figure 30-5.C.3.b Figure 30-5.C.3.b.6: Stormwater Amenities
Stormwater management devices configured as a site amenity may be credited towards the open space set-aside dedication requirements.

(3) Active Recreational Areas

Land occupied by active recreational uses such as pools, playgrounds, ball fields, tennis courts, jogging trails, and clubhouses used primarily for recreation purposes may be counted towards the requirements for open space set-asides.

(4) Passive Recreational Areas

Passive recreation areas shall be counted towards the requirements for open space set-asides.

(5) Urban Features

Plazas, fountains, roof gardens, atriums, and pedestrian seating/gathering areas may be counted towards the requirements for open space set-asides in the NC, MU, OI, LC, CC, and MR-5 districts.

(5) Open Water Areas

No more than 50 percent of the total open space/parkland set-aside may be comprised of open water (lakes, natural ponds, streams, rivers, etc.).

(6) Stormwater Management Devices

a. Up to fifty percent of land area occupied by unfenced stormwater management devices, (including retention ponds, fully vegetated detention basins, and other bio-retention devices, (but not underground storage devices) shall may be counted towards the total open space/parkland dedication set-aside requirements. In order to qualify, the feature must be when such features are enhanced to function treated as a site amenity, and support passive or active recreational uses by providing access (even when fencing is utilized) as an integrated site feature. Slopes shall be no greater, when gentle slopes less than three-to-one (3:1) are used, and the feature shall include landscaping with native trees, shrubs, and littoral plantings as appropriate, and pedestrian elements such as pathways with benches and similar aspects are provided (see Figure 30-5.C.3.b.6, Stormwater Amenities). An example of an amenity would be a lighted aerating fountain as an aesthetic focal point.

b. A living green roof may be installed and maintained to satisfy all or a portion of the open space/parkland dedication. The owner may be required to submit an annual inspection and maintenance report as outlined in the city's landscaping guidelines.

(c) (7) Not Counted as Open Space/Parkland

The following areas shall not be counted as open space/parkland set-asides dedication:

- (1) Remnants of land having no significance to the design of the site;
- (2) Land occupied by required landscaping;
- (3) Private yards not subject to an open space/parkland or conservation easement;
- (4) Public street rights-of-way or private street easements, including sidewalks located within those rights-of-way or easements;
- (5) Open-Parking areas and driveways ~~for dwellings;~~
- (6) Land covered by structures not designated for active recreational uses; ~~and~~
- (7) Designated outdoor storage areas ~~;~~
- (8) Any area already designated as conservation easement;
- (9) Any significant tree(s) already taken as credit under Table 30-5.B.7.a, Tree Preservation Credits; and
- (10) Any area already designated or proposed as a tree save area.

(c) Prioritization of Open Space Set Asides

To the maximum extent practicable, the open space set asides shall be located and organized to include, protect, or enhance as many of the following open areas and features as possible:

- (1) ~~Lands intended for preservation as open space on the City’s Park and Recreation Plan, or lands that may extend or enhance existing park, bicycle and/or pedestrian pathways or other open space or community facilities;~~
- (2) ~~For residential development not subject to the parkland dedication requirements in Section 30-6.E, Parkland, a minimum of 40 percent of the open space set-aside required shall be comprised of active recreation areas;~~
- (3) ~~Tree protection zones associated with specimen trees;~~
- (4) ~~Natural features such as stands of mature trees, riparian areas, wetlands, wildlife corridors, steep slopes, rock outcroppings, and natural hazard areas;~~
- (5) ~~Water features such as drainages, lakes, natural ponds, and retention and detention ponds (when configured as an amenity); and~~
- (6) ~~Natural or geologic hazard areas or soil conditions, such as unstable or potentially unstable slopes, faulting, landslides, rockfalls, expansive soils, or floodplains.~~

(d) Provision in Multi-Phase Developments

- (1) Multi-phase development shall preserve open space/parkland set asides in phases, so that the first phase of development does not contain 100 percent of the open space/parkland acreage allotted for the entire development, but does contain, at a minimum, its pro rata share of the total amount of required open space set-aside acreage. One hundred percent may be provided in the initial phase if the open space/parkland is central to the overall Site Plan and configured such that all phases will have reasonable access to the open space/parkland facilities.
- (2) ~~Open space set asides shall be apportioned among phases such that the total amount of open space set-aside in a phase and any previously approved phases meets the open space set-aside standard as applied to the total area of the phase and previously approved phases.~~

(e) Allowable Uses in Open Space Set Asides

Open space set-aside areas shall not be disturbed, developed, or improved with any structures except for the following limited purposes:

(1) Active Recreation Uses

Structures for active recreation purposes—including pedestrian scaled lighting; gazebos or other decorative structures; fountains or other water features; play structures for children; gardens or seasonal planting areas; or ball fields used primarily for recreational purposes (equipment or structures shall be indicated on the Subdivision Plan (Section 30-2.C.6), or Site Plan (Section 30-2.C.5).

(2) Passive Recreational Uses

Facilities for passive recreational, environmental education, wildlife habitat protection, and natural area preservation purposes—including, but not limited to: undisturbed land; walking, jogging, and biking paths or trails; benches or other seating areas; tables, shelters, grills, and other picnicking facilities; open and unimproved fields or lawn areas; docks and other facilities for fishing; and environmental guides and exhibits.

(3) Conservation Lands

Areas of undisturbed land and vegetation.

(e) ~~(h)~~ Maintenance of Open Space/Parkland Dedicated Areas~~Set-Asides~~

The owner of the land shall be responsible for maintenance of all open space/parkland dedicated~~set-aside~~ areas. Failure to maintain open space/parkland set-aside areas or other community facilities in accordance with the approved Final Plat (Section 30-2.C.6.e) or Site Plan (Section 30-2.C.5) shall be a violation of this Ordinance subject to the remedies and penalties in Article 30-8: Enforcement.

Section 5.5. Insert two new sections as shown below, numbered Section 30-5.C.4 and 30-5.C.4, as follows:

4. REDUCTIONS IN REQUIRED OPEN SPACE/PARKLAND DEDICATION

The amount of land required to be designated for open space/parkland dedication may be reduced in the following situations:

(a) If public parks or public recreational facilities are constructed consistent with a plan acceptable to the city within the development, the open space/parkland acreage may be reduced in proportion to the value of the improvements made by the applicant, as determined by the city manager.

(b) If the land proposed for designation as open space/parkland adjoins or is otherwise immediately accessible and connected to public open space/parkland, the acreage may be reduced by up to a maximum of 25 percent of the total.

(c) If substantial active recreational facilities (e.g., a pool and clubhouse) are provided to serve the residents of the development, the open space/parkland acreage may be reduced in proportion to the value of the improvements made by the applicant up to a maximum of 50 percent of the total required acreage as determined by the city manager.

(d) If significant trees are preserved and protected during development of the site (beyond those included in a required tree save area or credited toward landscaping requirements), credit may be applied toward the required open space/parkland acreage by calculating the area of the critical root zone circumference and multiplying that square footage by two, deriving a 200 percent credit.

5. DENSITY BONUS AVAILABLE

A density bonus over and above the density otherwise allowed may be approved by the city manager provided that the petitioner increase the percentage of the total project area to be dedicated to common open space. This bonus may be granted only if specifically requested by the petitioner. Any such bonus shall consist of a one percent increase in allowable density for every one percent of land area devoted to common open space in

addition to the ten percent required herein. The increase in density shall be achieved through administrative adjustment to lot area and lot width to allow clustering. In no event shall the bonus exceed 20 percent of the otherwise allowable density.

Section 5.6 Renumber and modify former Section 30-5.C.3.f as follows:

6. (F.) DETERMINING JOINT OR COMMON OWNERSHIP OF OPEN SPACE/PARKLAND SET-ASIDES DEDICATION OR PAYMENT IN LIEU

The city manager shall review all proposals concerning open space/parkland dedication with consideration given for relevant park plans adopted by the city and shall decide whether a payment-in-lieu of dedication or whether one of the following ownership options for dedicated acreage is acceptable:

(a) Ownership Options

The open space/parkland dedication shall be clearly conveyed on the Site Plan, or the Final Plat, through recorded easement or separate tract, as appropriate.

(1) (g) Retained on Private Lots

All required open space/~~parkland dedicated~~~~set-aside~~ areas to be retained under private ownership~~maintained~~ on an individual building lots shall be maintained ~~as open space set-asides~~ through the use of a recorded easement prohibiting future development of the open space/~~parkland set-aside~~ except in accordance with this section. ~~Any open space set-aside areas subject to such an easement shall be credited against any open space set-aside required.~~ Such open space/~~parkland dedication set-aside~~ shall be clearly marked on the Site Plan, or the Subdivision Plan, and Final Plat, as appropriate.

(2) (1) Homeowners or Property Owners Association

Developments having over 20 lots, shall designate ~~Whenever possible, all~~ open space/~~parkland set-aside dedicated~~ areas ~~not held by a single owner shall be owned jointly or in common by the owners of the development and as a separate tract on the Subdivision Plan and Final Recorded Plat, to be held in joint or common ownership,~~ through a recognized homeowners or property owners association, ~~which should be~~ established in accordance with the following:

- a. The landowner shall submit documents for the creation of the homeowners or property owners association to the city for review and approval, including the association's bylaws, all documents governing ownership, maintenance, and use restrictions for the open space/~~parkland dedication set-aside~~, and a legal description of open space/~~parkland dedication set-aside~~ areas.
- b. The landowner shall agree that the association shall be established by the landowner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before ~~issuance approval~~ of the first ~~Final Plat or~~ Building Permit, ~~whichever occurs first.~~
- c. Membership in the association shall be automatic (mandatory) for all purchasers of land, dwelling units, or structures in the development, and their successors in title.
- d. The association shall be responsible for liability insurance and local taxes on common open space/parkland owned by it. Any fees levied by the association that remain unpaid will become a lien on the individual property in accordance with procedures established under the dedication or organization document. The covenants and easements shall also prohibit future development of any common open space, for other than open space or recreational purposes, and shall provide for continued maintenance of any common open space and recreational facilities.

(3) (2) Nonprofit Organization

The landowners may ~~decide to convey open space/parkland set aside~~ to a nonprofit organization such as a land trust or land conservancy for management and maintenance if the City is provided adequate assurance the ~~set-aside~~ dedication will be properly managed and maintained.

(4) Public Dedication and Conveyance

The landowners may convey open space/parkland dedication to the city for public use, maintenance and management. This option requires the consent of the city manager to accept the open space/parkland area for public use.

(b) Timing

The process to dedicate open space/parkland acreage or pay a fee-in-lieu for all or a portion of the open space/parkland requirements must be completed prior to the issuance of the first Building Permit (Section 30-2.C.12). All open space/parkland improvements must be completed no later than the date on which certificates of occupancy are issued for the first 50 percent of the total number of dwelling units to be constructed within the project area.

(c) Voluntary Payment-In-Lieu

(1) Procedure for Approval

a. The payment of such fees-in-lieu shall be reviewed and approved as part of the Site Plan (Section 30-2.C.5), or Final Plat (Section 30-2.C.6.e), as appropriate. Any developer desiring to make such in-lieu fee payment shall attach a formal written request to the city manager.

b. Upon receipt of the application, the city manager shall review the request and decide if it is in the best interest of the community to require dedication of open space/parkland or a payment-in-lieu based on the standards in Section 30-5.C.3, Open Space/Parkland Standards.

c. Appeals of the decision of the city manager or the Technical Review Committee on the provision of open space/parkland dedication shall be decided by the city council in accordance with Section 30-2.C.18, Appeal.

(2) Amount of Payment

a. The payment-in-lieu shall be calculated based upon the square footage of land required for dedication, consistent with the requirements of Table 30-5.C.3, Required Open Space/Parkland Dedication. The land value factor contained in the fee schedule adopted annually by the city council will be applied to the land area required for dedication to arrive at the payment-in-lieu amount.

b. For developments and subdivisions containing more than 20 residential units, the payment-in-lieu option may only be used for up to 50% of the open space/parkland requirements in order to ensure that these larger projects provide on-site open space/parkland for their residents.

(3) Use of Funds

Funds collected shall be maintained in a separate account and shall be used only for the acquisition or development of open space, greenway, trails, park, and recreation areas and/or to implement features of the Parks and Recreation Master Plan of the City of Fayetteville. Where practical, the collected fees for each project shall be designated for specific parks and recreation acquisitions and/or enhancements by the city manager.

Section 6. Modify Section 30-5.G SINGLE-FAMILY DESIGN STANDARDS, Subsection 3 Design Standards, as follows, including deletion of former Figure 30-5.G.3: Fronting Open space:

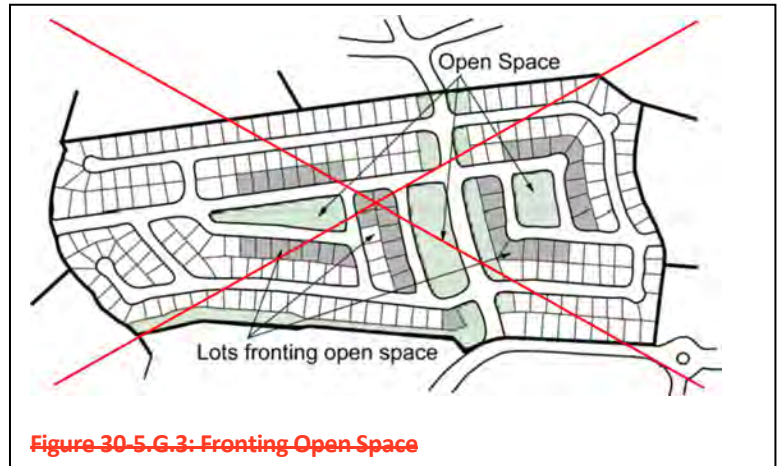
3. DESIGN STANDARDS

(a) Building Orientation

* * * * *

(1) Fronting Open Space/Parkland

a. Except for single-family detached or attached development in a subdivision approved prior to July 1, 2011, or proposed as part of a zero lot line development of three acres or less, at least ten percent of all single-family dwellings shall front upon an open space/parkland set-aside/dedicated area when part of a single-family detached or attached development ~~(see Figure 30-5.G.3, Fronting Open Space).~~



b. As an alternative to subsection (a) above, a developer may propose access to open space/parkland facilities within or adjacent to a development via a right-of-way 20 feet wide in order that the open space/parkland be ~~that is~~ reasonably accessible to all residents in a development.

Section 7. Modify Section 30-6.D CONSERVATION SUBDIVISION Subsection 4 as follows:

4. CONSERVATION SUBDIVISION STANDARDS

(b) Required Conservation Area

Set-aside/Dedicate a minimum of 50 percent of the total acreage of the site as conservation area to be permanently maintained and protected;

Section 8. Modify Section 30-6.D CONSERVATION SUBDIVISION Subsection 5 as follows:

5. DELINEATION OF CONSERVATION AREAS AND DEVELOPMENT AREAS WITHIN THE CONSERVATION SUBDIVISION

(c) Ownership

The conservation area shall be considered as an open space/parkland dedication-set-aside, and it shall comply with the ownership requirements in Section 30-5.C.f, joint or common Ownership of Open Space Set-Asides 30-5.C.5.a, Ownership Options.

Section 9.

Delete former Section 30-6.E PARKLAND in its entirety [it is relocated and modified elsewhere in the revised Open Space/Parkland standards.].

~~30-6.E. PARKLAND~~

New residential development of four or more dwelling units subject to the standards in Article 30-6: Subdivisions, shall be required to dedicate a portion of land, or pay a fee-in-lieu thereof, for public park development, in accordance with the standards of this section.

~~1. PARKLAND DEDICATION~~

New residential development of four or more units shall dedicate land to the City for use in the development of parkland to serve the recreational needs of the residents of the subdivision or development. Table 30-6.E.1 Parkland Dedication Requirements, sets out the minimum parkland dedication requirements per new dwelling unit.

TABLE 30-6.E.1: PARKLAND DEDICATION REQUIREMENTS	
TYPE OF LAND TO BE DEDICATED	MINIMUM LAND DEDICATION AMOUNT PER DWELLING UNIT (SQ. FT.) [1]
Upland	800
Land within a Floodplain	1,000
Water body (e.g., lake, pond, or riparian area) [2]	2,000

~~NOTES:~~

~~[1] No credit towards the parkland dedication requirements shall be given for land subject to mandatory preservation, such as the flood damage prevention requirements of Chapter 12, water supply watershed requirements of Chapter 29, and stormwater requirements of Chapter 23 of the City Code of Ordinances.~~

~~[2] No more than 50 percent of the total dedication may be comprised of water bodies.~~

~~2. PROVISION OF FACILITIES~~

Innovative combinations of land dedication and actual development of public recreation facilities for dedication may be proposed for consideration, provided the City receives equal value in facilities and land as the value of the land required for dedication.

~~3. LANDS ADJACENT TO EXISTING PARKLAND~~

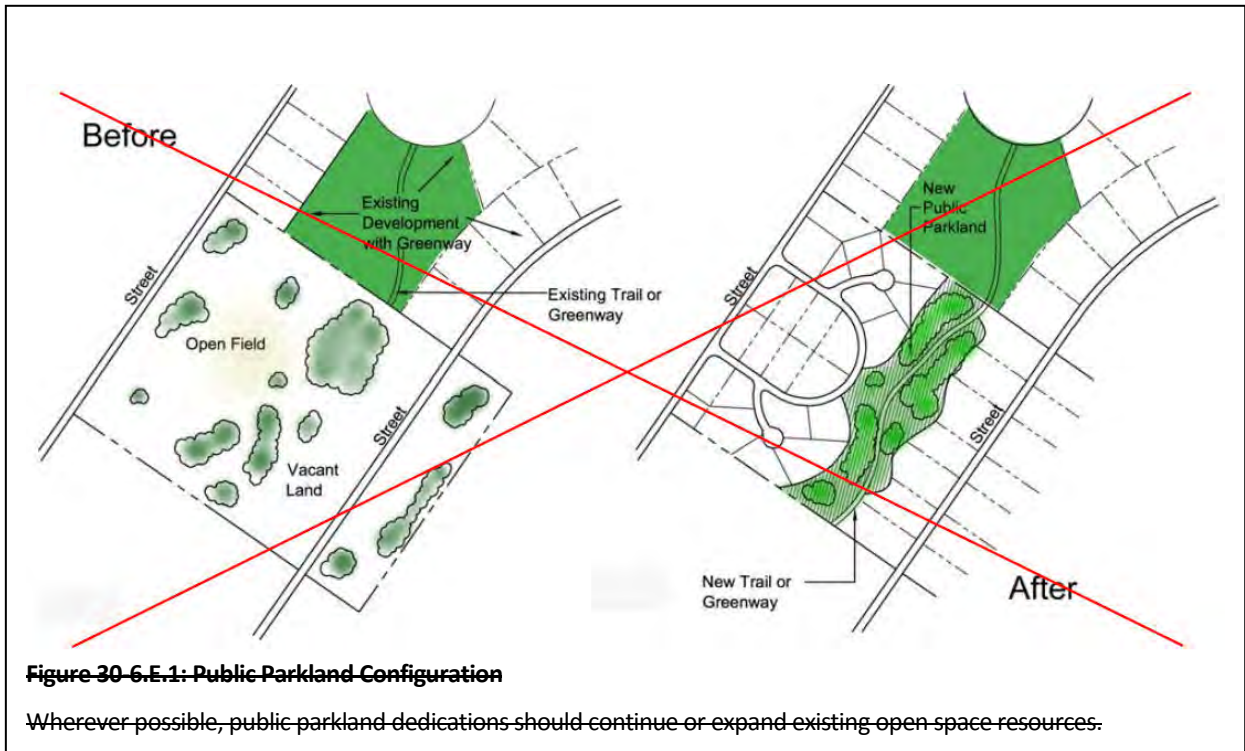
In cases where parkland exists adjacent to a development, the City may require a tract of land adjacent to the existing parkland be dedicated in order to create a larger single park site.

~~4. NATURE OF PARKLAND TO BE DEDICATED~~

All areas proposed for dedication as parkland shall meet the following standards:

~~(a) Unity~~

The dedicated land shall be a single parcel of land, whether or not the development is developed in phases or sections, except where it is determined by the City manager that multiple parcels would better serve the residents of the development and the public.



(b) Usability

A maximum of one-half of the dedicated park, recreation, or open space area may be a water body. When one-half of the dedicated area is a water body, the remaining land must be usable land for a park. The usability of a dedicated park area shall be determined by the City manager.

(c) Shape

The dedicated area shall be usable for recreation facilities including, but not limited to, tennis courts, swimming pools, clubhouses, athletic fields, basketball courts, swings, slides, play apparatus, open play areas, and picnicking.

(d) Location

(1) The dedicated land shall be located to reasonably serve the recreation and open space needs of the residents of the City. The City manager may require that the land dedicated be located on the periphery of the development in order to allow enlargement by combining the parkland areas with adjacent development or park facilities, existing or planned (see Figure 30-6.E.1, Public Parkland Configuration).

(2) The City manager may negotiate the location of parkland to be dedicated, or the amount of fee in lieu, when it is deemed in the best interest of the City's long-range parks and recreation plan.

(e) Access

All dwelling units in the development shall have free, easy, and convenient ingress and egress to and from the dedicated area within the development provided by means of streets or public walkways or trail, with one access being a minimum width of 20 feet. Rights of way for this access shall be shown on the Subdivision Plan. All dedicated land areas shall have access by way of a public street. Dedicated areas that do not have frontage on a public street but are adjacent to existing or proposed public parkland with access are exempt from this requirement.

~~5. DETERMINING DEDICATION OF PARKLAND OR PAYMENT IN LIEU~~

~~(a) Designation of Land to be Dedicated~~

~~The developer, upon submission of a subdivision application, shall identify the land proposed for dedication or declare the preference to pay a fee in lieu thereof.~~

~~(b) Review of Parkland to be Dedicated~~

~~The City manager shall review any and all requests concerning parkland dedication, and decide if it is in the best interest of the community to require dedication of parkland or accept payment in lieu based on Section 30-6.E.4 Nature of Parkland to be Dedicated, or relevant park plans adopted by the City.~~

~~(c) Timing~~

~~The process to either dedicate land or pay a fee in lieu must be completed prior to filling of Final Plat.~~

~~6. PAYMENTS IN LIEU OF PARKLAND~~

~~(a) General~~

~~Requests for a payment of fees in lieu for parkland may be accepted at the request of the developer with approval of the City manager, based on the criteria in 30-6.E.4 Nature of Parkland to Be Dedicated, and on a finding that:~~

- ~~(2) The parkland needs of the proposed development can be met by other acquisition or development of recreation, park, and open space sites by the City, within reasonable proximity to the development;~~
- ~~(3) The amount of parkland to be dedicated is too small to provide adequate recreational, park, and open space opportunities or to be efficiently maintained; or~~
- ~~(4) Existing recreation, park, and open space sites in the area are adequate to serve the development.~~

~~(b) Procedure for Approval~~

- ~~(1) The payment of such fees in lieu shall be reviewed and approved as part of a Master Plan, Subdivision Plan, or Site Plan, as appropriate. Any developer desiring to make such in lieu fee payment shall attach a formal written request to the City manager.~~
- ~~(2) Upon receipt of the application, the City manager shall review the request and decide if it is in the best interest of the community to either require dedication of parkland or a payment in lieu based on the standards in Section 30-5.C, Open Space Standards.~~
- ~~(3) Any appeals of the City manager’s decision to accept a payment in lieu, or the amount of the payment in lieu shall be decided the City Council in accordance with Section 30-2.C.18, Appeal.~~

~~(c) Time of Payment~~

~~The fees in lieu shall be paid prior to recording the first Final Plat for the subdivision for which the in lieu fees are paid.~~

~~(1) Amount of Payment~~

~~The payment in lieu shall be calculated based upon the square footage of land required for dedication, consistent with the requirements of Table 30-6.E.1 Parkland Dedication Requirements. The land value~~

factor contained in the fee schedule adopted annually by the City Council will be applied to the land area required for dedication to arrive at the payment in lieu amount.

~~(2) Use of Funds~~

~~In lieu fees received in accordance with this subsection shall be used only for the acquisition or development of recreation, park, and open space sites that serve the development consistent with the requirements of North Carolina General Statutes Section 160A-372(c).~~

(d) Credit for On-Site Amenities

The following credits towards the parkland dedication requirement shall be allowed for facilities developed as part of a project. The percentages apply to the financial obligation when a payment in lieu is requested and approved. In no case shall the credit for any category exceed the actual cost of design and construction of the amenity. The cumulative total available credit shall not exceed 20 percent.

- ~~(1) Walking trails/pathways greater than 1,320 linear feet in length if not connecting to an off-site public facility such as open space, a park or school (5 percent);~~
- ~~(2) Walking trails/pathways greater than 500 feet in length if connecting to an off-site public facility such as open space, a park, or school (10 percent);~~
- ~~(3) Dog park (5 percent);~~
- ~~(4) Basketball courts when constructed to recreation league standards (10 percent);~~
- ~~(5) Tennis courts when constructed to regulation size and standards (10 percent); and~~
- ~~(6) Swimming pools (20 percent).~~

Section 9. Modify Section 30-7.F introductory comments and Subsections F.1-F.3 as follows:

Section 9.1 Modify introductory comments in 30-7.F. NON-CONFORMING SITES as follows:

Interior or exterior remodel, expansion of uses or structures, or a change in use on a lot or site that does not comply with the off-street parking, landscaping, perimeter buffer, screening, tree save area, open space/parkland, and signage requirements of this Ordinance shall comply with the following standards:

Section 9.2 Modify Section 30-7.F.1, including subsection items (a)(2) and (a)(3) as follows:

1. INTERIOR AND EXTERIOR REMODELING OF BUILDINGS OR STRUCTURES

If a Building Permit is required for interior or exterior remodeling of the building or structure, the remodeling or redevelopment shall require correction of existing on-site nonconforming off-street parking, landscaping, perimeter buffer, screening, tree save area, open space/parkland, and signage standards in accordance with this section.

(a) Off-Street Parking, Landscaping, Perimeter Buffers, Screening, Tree Save Area, Open Space/Parkland, and Signage and Screening

* * * * *

(2) More Than 25 Percent but Less Than 75 Percent of Structure Value

Remodeling in any continuous 12-month period that costs more than 25 percent but less than 75 percent of the current fair market or assessed value of the structure (at the option of the applicant) shall require that a

corresponding percentage of the off-street parking, landscaping, perimeter buffer, ~~and~~ screening, [tree save area](#), [and open space/parkland](#) standards of this Ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance. (For example, if a site has 20 of 30 required parking spaces (66 percent of the required parking) and the cost of the remodeling is 30 percent of the value of the building, then 30 percent of the total amount of required off-street parking shall be provided, or nine additional spaces, bringing the parking to 96 percent of the total amount of off-street parking required under this Ordinance).

(3) 75 Percent or More of Structure Value

Remodeling projects that cost 75 percent or more of the current fair market value of the structure shall require 100 percent compliance with the off-street parking, landscaping, perimeter buffer, screening, [tree save area](#), [open space/parkland](#) and signage standards of this Ordinance.

Section 9.3 Modify Section 30-7.F.2, ADDITIONS AND EXPANSIONS, items (a)(1) and (a)(2) as follows:

(a) Off-Street Parking, Landscaping, Perimeter Buffers, Signage and Screening

(1) Expansion of 50 Percent or Less of Gross Square Footage Over Five Years

Expansions in any continuous five-year period, which result in a 50 percent or less increase in the gross square footage of the existing structure (measured at the beginning of the five-year period), require that a corresponding percentage of the off-street parking, landscaping, perimeter buffer, ~~and~~ screening, [tree save area](#), [and open space/parkland](#) standards of this Ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance. (For example, if the addition is 25 percent of the area of the existing structure and the site contains only 50 percent of the required landscaping, 25 percent of the required landscaping for the entire site must be provided, thereby bringing the landscaping on the site to 75 percent of the total required.) Existing landscaping on the site shall be retained or replaced but shall not count toward the required percentage of new landscaping.

(2) Expansion of Greater Than 50 Percent of Gross Square Footage Over Five Years

Expansions over any continuous five-year period, which result in a greater than 50 percent increase of the gross square footage of the existing structure (measured at the beginning of the five-year period), require the entire property to meet all of the off-street parking, landscaping, perimeter buffer, screening, [tree save area](#), [open space/parkland](#) and signage standards of this Ordinance.

Section 9.4 Modify Section 30-7.F.3 CHANGES IN USE as follows:

3. CHANGES IN USE

Any change in use shall require the entire property to meet all of the off-street parking, landscaping, perimeter buffer, screening, [tree save area](#), [open space/parkland](#), and signage standards of this Ordinance.

Section 10. Modify Section 30-9. DEFINITIONS to create or modify the following definitions: Land Value Factor; Open Space, Open Space, Active; Open Space, Common; Open Space, Passive; Open space, Private; Open space/Parkland Dedication; Park, Public and Private; Public Square or Plaza; all as follows:

LAND VALUE FACTOR

For the purposes of determining a payment-in-lieu of Tree Save Area or Open Space/Parkland ~~or Open Space~~ Dedication, each year the value of single family land in the city subdivided over the previous three years will be averaged to arrive at a Land Value Factor.

OPEN SPACE

Space suitable for passive recreation, gardens or landscaping which may include areas left in their natural state, trails, ponds, stream banks, recreation areas, areas of excessive slopes, low-lying areas, marshland, and environmentally-sensitive areas, and required landscaping areas. Such space must be free of automobile traffic and parking, and be readily accessible to all those for whom it is required.

OPEN SPACE, ACTIVE

Space suitable for active forms of recreation, including athletic fields, playgrounds, swimming pools, courts, tracks, and similar uses that are well served by streets, parking facilities, spectator areas, restroom facilities, and exterior lighting where appropriate.

OPEN SPACE, COMMON

An open space area owned privately or in common for use by all members of the public.

OPEN SPACE, PASSIVE

Required open space areas designated for passive recreation uses including multi-use walking trails, pathways, gazebos, picnic areas, fountains and pools, plazas with fountains, and similar areas. Such areas may also include undisturbed natural vegetation.

OPEN SPACE, PRIVATE

Space on each building lot within an open space easement that is for the private use of inhabitants.

OPEN SPACE/PARKLAND DEDICATION SET-ASIDE

Portion of a proposed development required for reservations set-aside and recorded as permanent open space/parkland by Section 30-5.C, Open Space/Parkland Dedication Set-Asides.

PARK, PUBLIC AND PRIVATE

Land used for recreation, exercise, sports, education, rehabilitation, or similar activities, or a land area intended to enhance the enjoyment of natural features or natural beauty, specifically excluding commercially operated amusement parks.

PUBLIC SQUARE OR PLAZA

Open space/parkland generally open and readily accessible to the public and used by pedestrians for passive recreation and as an outdoor meeting or gathering place. Such uses are improved, may be provided with amenities such as shelters, seating, fountains, public art, and landscaping.

Section 11. Several MuniCode references should be changed throughout Chapter 30; while most of these have been incorporated in the preceding modifications, additional instances may still exist. To that extent, certain changes authorized throughout Chapter 30 are:

MUNICODE REFERENCE NOTES:

All References to:

“Section 30-6.E, Parkland” are REVISED to read “Section 30-5.C, Open Space/Parkland Dedication”.

“Figure 30-5.G.3: Fronting Open Space” are to be DELETED.

“Figure 30-6.E.1: Public Parkland Configuration” are REVISED to read, “Figure 30-5.C.3.b.2: Open Space/Parkland Configuration”.

“Table 30-6.E.1: Parkland Dedication Requirements” are REVISED to read, “Table 30-5.C.3: Required Open Space/Parkland Dedication”

Section 12. The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future text amendments as long as doing so does not alter the material terms of the Unified Development Ordinance.

Section 13. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the 10th day of September, 2012.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Scott Shuford, Director, Development Services Dept.
DATE: September 10, 2012
RE: **Amendment to City Code 30-5 Development Standards and related sections to modify building orientation and parking lot location.**

THE QUESTION:

Are the proposed changes to development standards for building orientation and parking location consistent with public health, safety and welfare? (Also see the attached Commission staff report with seven standards for considering amendments to Chapter 30)

RELATIONSHIP TO STRATEGIC PLAN:

More Attractive City - clean and beautiful
Growing City, Livable Neighborhoods - a great place to live

BACKGROUND:

In December 2010 the City adopted the new development code. Staff anticipated a number of changes as everyone worked with the codes on a daily basis. This proposed amendment responds to concerns about the current general off-street parking location standards and the unintended impacts on building location or orientation. The approach being recommended is coordinated with other recommended changes in landscaping and open space standards.

ISSUES:

Following are some of the key concerns or issues with current standards:

- There is a disconnect between these standards and two key goals of the UDO - locating buildings closer to the street and avoiding the appearance of a "sea of parking" between the street and the building.
- Since current regulations allow parking relative to the number of parking bays (rows), there is an unintended and inequitable design consequence that favors parking placed parallel rather than perpendicular to the street.
- Most districts require at least 25 foot front (and corner side) setbacks. There is a missed opportunity to use incentives [reduced building setback] to encourage both efficient use of that area and a building orientation that invites pedestrian activity in an increasingly urban community.
- There is little guidance on how to address parking on corner and double frontage lots.
- There is a disconnect between special parking standards for large retail (big box) uses and other uses with similarly sized footprints.

The resulting ordinance is coordinated with the work on tree protection, landscaping, parkland and open space. The major changes are:

- Offer an incentive that allows the building to be placed with only a minimal setback (15') from the street if parking is to the side or rear. This option appears in Article 3 district tables.
- In Commercial Design Standards, an increased screening area referred to as "street yard" is required for parking between the building and a street. The street yard standard is in the proposed amendments for tree protection and landscaping standards but that portion is attached for reference here. Clustering of landscaping to provide views is allowed.
- Other large scale non-residential uses meeting the size standards for Large Retail must meet the same parking standards as Large Retail uses.

Illustrations are provided for recommended parking and building orientation on double-frontage sites (corner and through lots).

BUDGET IMPACT:

No direct impact.

OPTIONS:

1. Approval as presented.
2. Approval with modifications
3. Deferral [to a specific date] with direction for further research or modifications
4. Denial of the proposed amendment

RECOMMENDED ACTION:

The Planning Commission and staff recommend Option 1, that the City Council move to: APPROVE the proposed amendment to City Code 30-5 Development Standards and related sections, to modify building orientation and parking lot location, as presented by staff.

ATTACHMENTS:

Excerpt - Evaluation - Bldg and Pkg location

Draft Ord - Bldg Orient and Pkg Location

EXCERPT – Planning Commission Staff Report 8/21/2012
Proposed Text Amendment to modify building
orientation and parking lot location

REQUEST: Amendment to City Code 30-5 to modify building orientation and parking lot location, screening and related standards.

The following table provides an analysis of the proposed text amendment with the standards of approval for such amendments as listed in Section 30-2.2(e) of the City code.

Standard	Analysis
1) Whether and the extent to which the proposed amendment is consistent with all City-adopted plans that are applicable;	The changes would be consistent with the City’s Strategic Plan – Beauty by Design – since the focus is on a more attractive public realm and particularly on what is seen from the streets. The most relevant area plans are those that have been developed for corridors, and the Vision 2030 Policy Plan; these changes would be consistent with all of those plans and strategies: - urban form and density/intensity - more attractive city, especially our urban corridors - use of incentives as much as possible
2) Whether the proposed amendment is in conflict with any provision of this Ordinance, and related City regulations;	The proposed changes would resolve some minor conflict with other portions of the development code or community goals. Additional coordination may be required with final tree protection, mitigation, and open space amendments.
3) Whether and the extent to which there are changed conditions that require an amendment;	The change is in the understanding of what is not being achieved – current standards are not fostering an attractive public realm as seen from our streets or the urban form and density that supports pedestrian activity and de-emphasizes the automobile.
4) Whether and the extent to which the proposed amendment addresses a demonstrated community need;	In nearly every long range plan, in several different ways, the community has urged changes toward higher quality, more attractive design and efficient development. The proposed changes should better achieve the urban form, appearance and development efficiencies being sought as the community evolves.
5) Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and would ensure efficient development within the City;	Providing incentives for locating parking in a less prominent position, linked to other landscape and parkland changes, results over time in a much more attractive, sustainable and efficient development pattern.
6) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern; and	Providing incentives for locating parking in a less prominent position, linked to other landscape and parkland changes, results over time in a much more attractive, sustainable and efficient development pattern.
7) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment	No significantly adverse impacts are expected. The landscaped screening of parking areas may be reduced, but more land would be available for the development keeping parking to the side or rear. Other perimeter and interior landscaping would still be provided.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AMEND PORTIONS OF ARTICLE 30-3 SECTIONS D AND E, ARTICLE 30-4 SECTION C, AND ARTICLE 30-5 SECTIONS A AND H, TO MODIFY BUILDING ORIENTATION AND PARKING LOT LOCATION.

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the Unified Development Ordinance adopted December 13, 2010 as Chapter 30 of the Code of Ordinances of the City of Fayetteville and last amended July 9, 2012, be amended as follows:

LEGEND:	
<u>Underline</u>	new text
<u>Black text</u>	moved to new location, no change in substance
<u>Red text</u>	change in wording or reference
Strike thru	deleted text
Highlight in green (darker gray in b/w)	significant text change

Section 1.0 Amend Section 30-3.D RESIDENTIAL BASE ZONING DISTRICTS, Subsection 5 MIXED RESIDENTIAL 5 (MR-5) DISTRICT to modify text within the table, footnotes, and associated figures as follows:

MR-5 MIXED RESIDENTIAL 5 DISTRICT	PURPOSE					
	The Mixed Residential 5 (MR-5) district is established and intended to meet the diverse housing needs of City residents by accommodating a wide variety of residential housing types and arrangements at moderate to high densities, including single-family detached dwellings, two- to four-family dwellings, multi-family dwellings, and other residential development that may include single-family attached dwellings, and zero lot line development subject to the requirements of this Ordinance. All development in the district shall comply with the design standards in Article 30-5: Development Standards. MR-5 districts may also include centrally-located open space, complementary institutional uses (e.g., religious institutions, post offices, police sub-stations), day care facilities, and limited small-scale neighborhood-serving convenience retail uses.					
DIMENSIONAL STANDARDS						
DIMENSIONAL STANDARD	SINGLE-FAMILY DETACHED DWELLINGS	SINGLE-FAMILY ATTACHED DWELLINGS	TWO-TO FOUR-FAMILY DWELLINGS	MULTI-FAMILY DWELLINGS	ALL OTHER PRINCIPAL USES [1]	ACCESSORY STRUCTURES
Lot area per unit, min. (sq ft) [2]	5,000 for 1 st unit, then 4,000	4,000		15,000+ 1,000 per unit	5,000	n/a
Lot width, min. (ft)	50					n/a
Gross residential density, max. (dwelling units/acre) [3]	18; 20 for zero lot line development				8	n/a

Lot coverage, max. (% of lot area)	55		[4]
Height, max. (ft) [3]	Lesser of: 4 stories or 60		25; 15 where abutting a single-family zoning district or use with setback less than 10 feet
Front and corner side setback, min. (ft) [5]	The greater of 25 feet or 50 feet from centerline of private streets		Not allowed in front, side, or corner side setbacks
Side setback, min. (ft) [5]	10		
Rear setback, min. (ft) [5]	30		5
Spacing between buildings, min. (ft)	n/a	20	5
Zero lot line development standards	Zero lot line development shall comply with the maximum gross residential density standards. Setbacks and lot area for lots abutting the perimeter of the development shall meet the district minimums; otherwise no setbacks, lot area, lot coverage, or building spacing requirements shall apply. [6]		

NOTES:

[1] Including live/work units and upper-story residential development.

[2] In cases where lot area and gross density conflict, the standard resulting in the lesser number of dwelling units shall control.

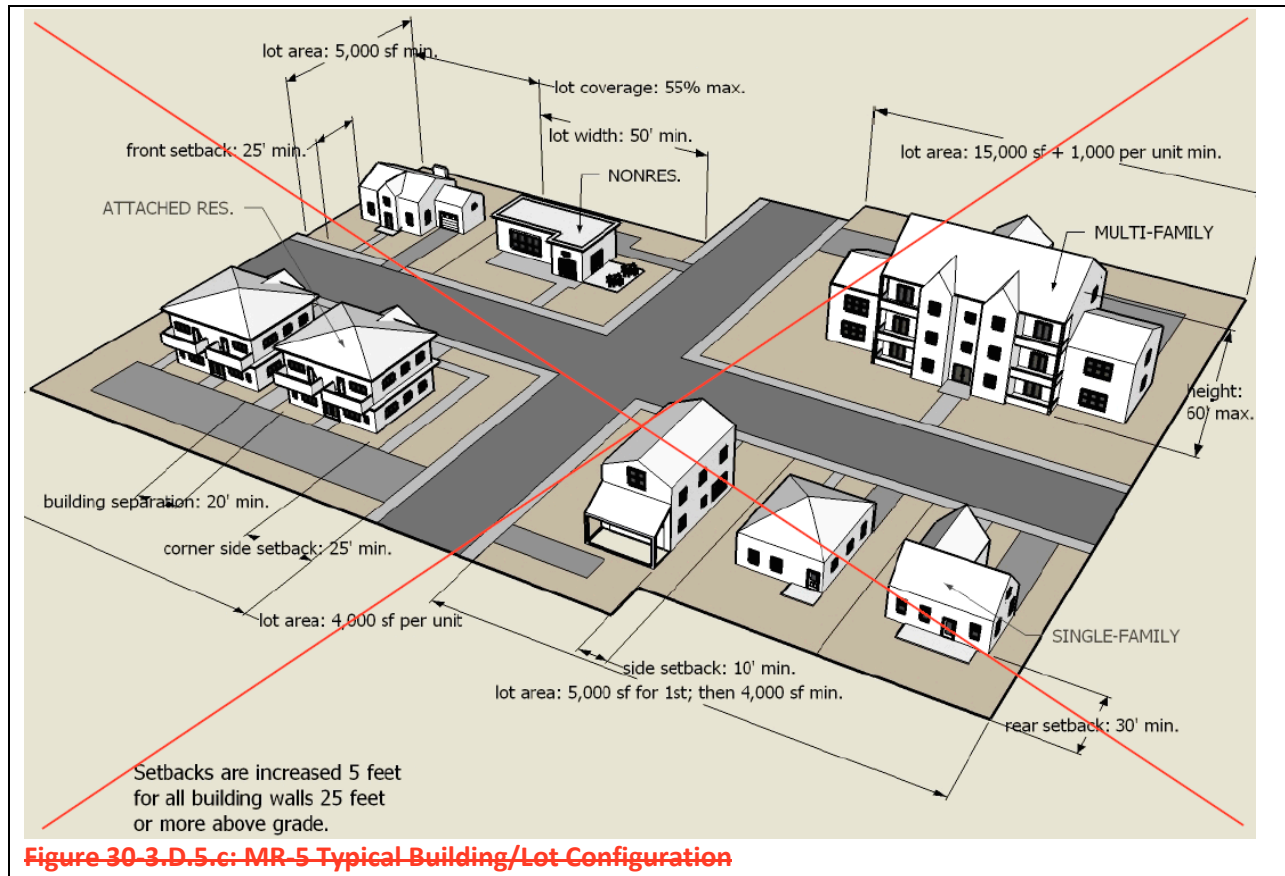
[3] Gross residential density and maximum height may be increased through provision of sustainable development features in accordance with Section 30-5.N, Incentives for Sustainable Development Practices.

[4] Accessory structures/use areas shall not exceed the lesser of: 1,200 square feet in size or 25 percent of the allowable lot coverage.

[5] Minimum front (and corner side) setbacks for multi-family and nonresidential uses may be reduced to 15 feet when off street parking is located to the side or rear of buildings and buildings are located proximate to the street (or corner) right-of-way(s) shall be increased by five feet for all building walls 25 feet or more above grade.

[6] Zero lot line development on a tract or site of three acres in area or less in a developed area of the City shall require Special Use Permit approval (see Section 30-2.C.7, Special Use Permit).

* * * * *



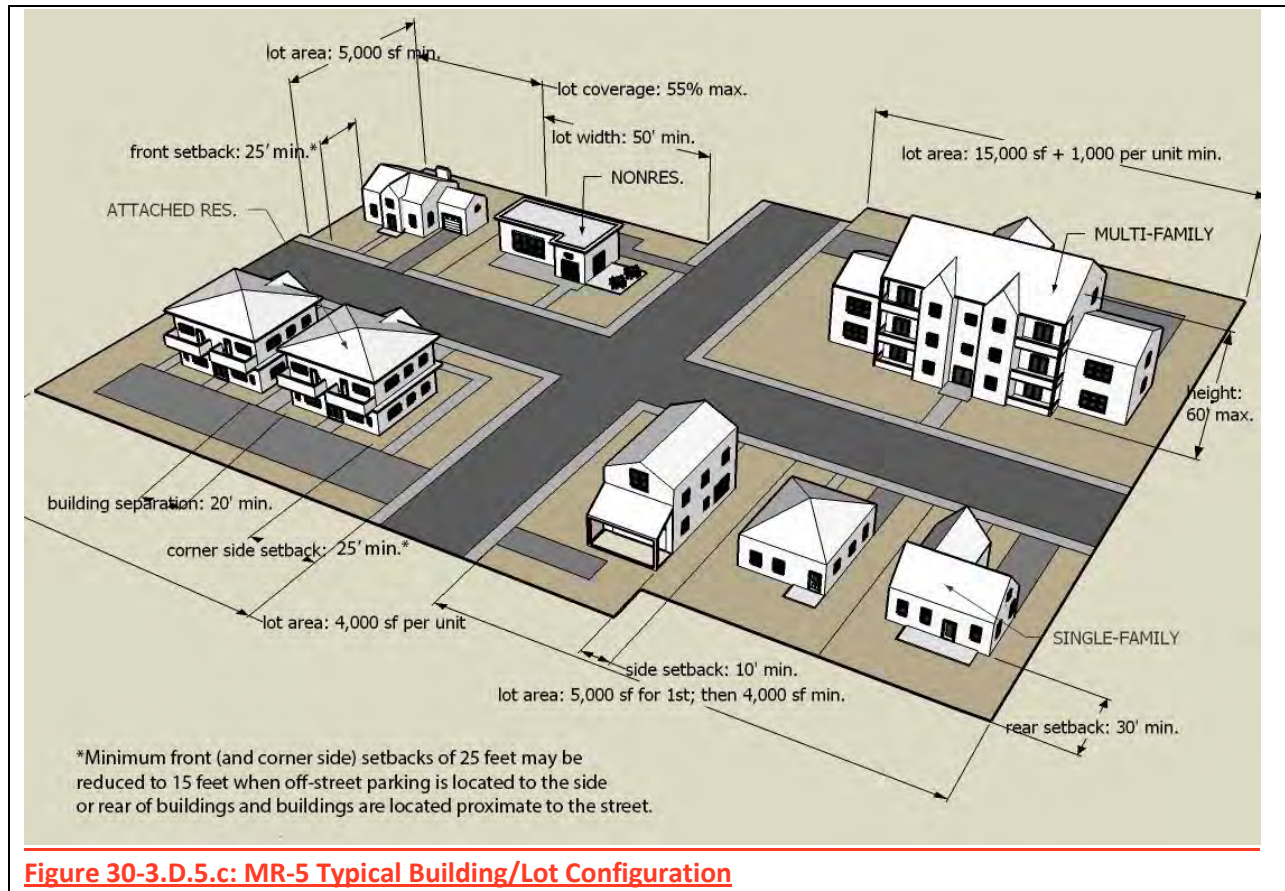


Figure 30-3.D.5.c: MR-5 Typical Building/Lot Configuration

Section 2.0 Amend Section 30-3.E BUSINESS BASE ZONING DISTRICTS, as follows:

Section 2.1 Amend Subsection 2 OFFICE AND INSTITUTIONAL (OI) DISTRICT to modify text within the table, footnotes, and associated figures as follows:

OI OFFICE & INSTITUTIONAL DISTRICT		PURPOSE		
		The Office & Institutional (OI) District is established and intended to accommodate a mix of small-scale, low-intensity professional and business offices and institutions, together with limited service uses, single-family detached, single-family attached, and multi-family residential uses in close proximity to one another, subject to design and compatibility standards. The districts are generally near residential neighborhoods and often serve as a buffer or transition between neighborhoods and more intense business districts. Uses in the district are subject to the design standards in Article 30-5: Development Standards. In many cases, OI districts are evolving from land that was once primarily residential in character, and as such, office and institutional uses should be configured for consistency with surrounding residential uses in physical design, scale, and character.		
		DIMENSIONAL STANDARDS		
DIMENSIONAL STANDARD	NONRESIDENTIAL, MULTI-FAMILY, & MIXED-USE	SINGLE-FAMILY ATTACHED & DETACHED	ACCESSORY STRUCTURES	
Lot area, min. (sq ft)	10,000 for nonresidential; 2,000 per unit	8,000 per unit	n/a	
Lot width, min. (ft)	50		n/a	

Gross residential density, max. (dwelling units/acre)	12	8	n/a
Lot coverage, max. (% of lot area)	55	45	[2]
Height, max. (ft)	SF Residential 35; 60 for others		25; 15 where abutting single-family zoning district or use with setback less than 10 feet
Front and corner setback, min. (ft) [3]	The lesser of 25 feet or 60 feet from street centerline of private streets		Not allowed in front, side, or corner side yard areas
Side setback, min. (ft) [3]	3; 15 when abutting single-family zoning or use	15	
Rear setback, min. (ft) [3]	25; 20 for corner lots or lots served by alleys		5
Spacing between buildings, min. (ft)	20		
Zero lot line development standards	Zero lot line development shall comply with the applicable maximum gross residential density standards. Setbacks and lot area for lots abutting the perimeter of the development shall meet the district minimums; otherwise no setbacks, lot area, lot coverage, or building spacing requirements shall apply. [4]		

NOTES:

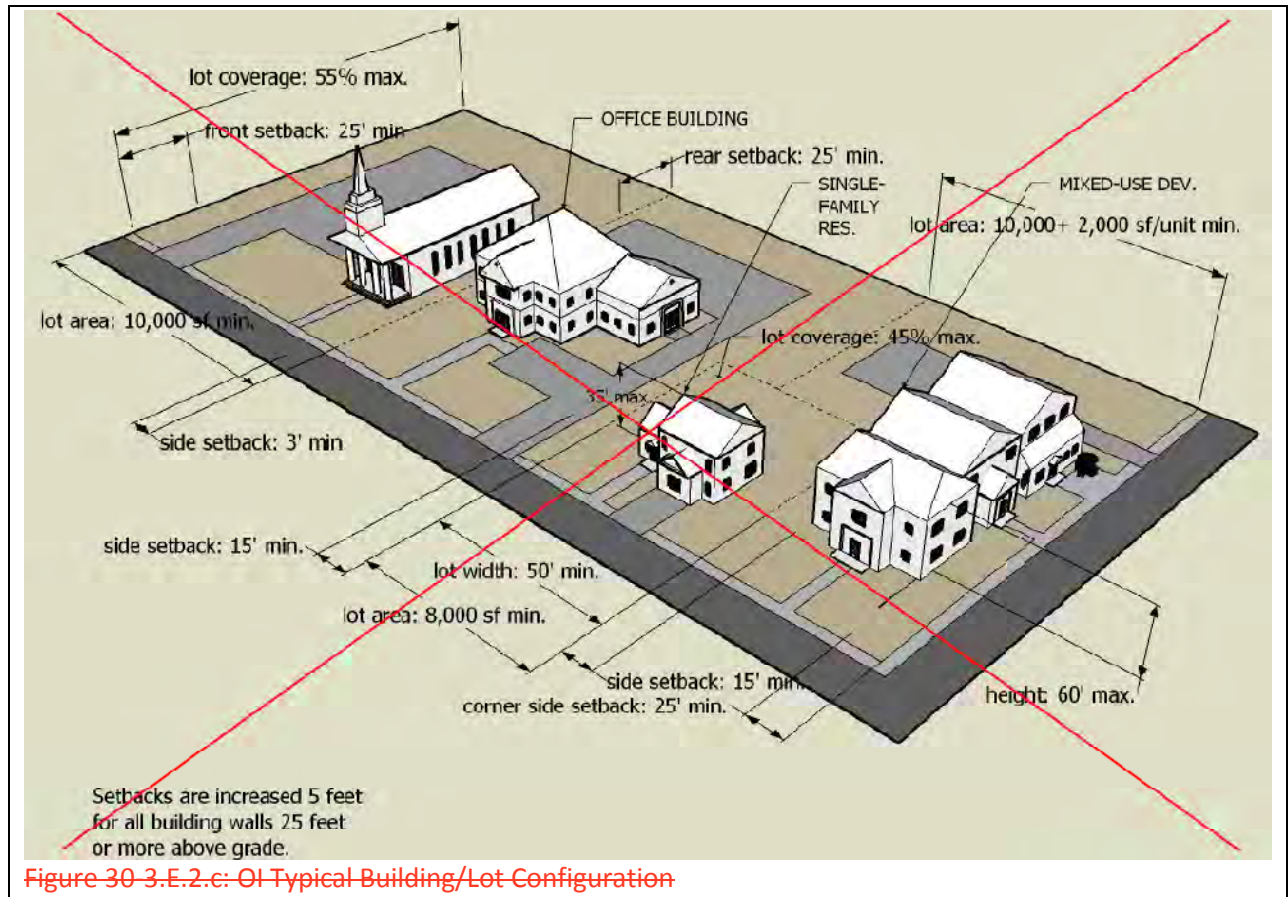
[1] Reserved

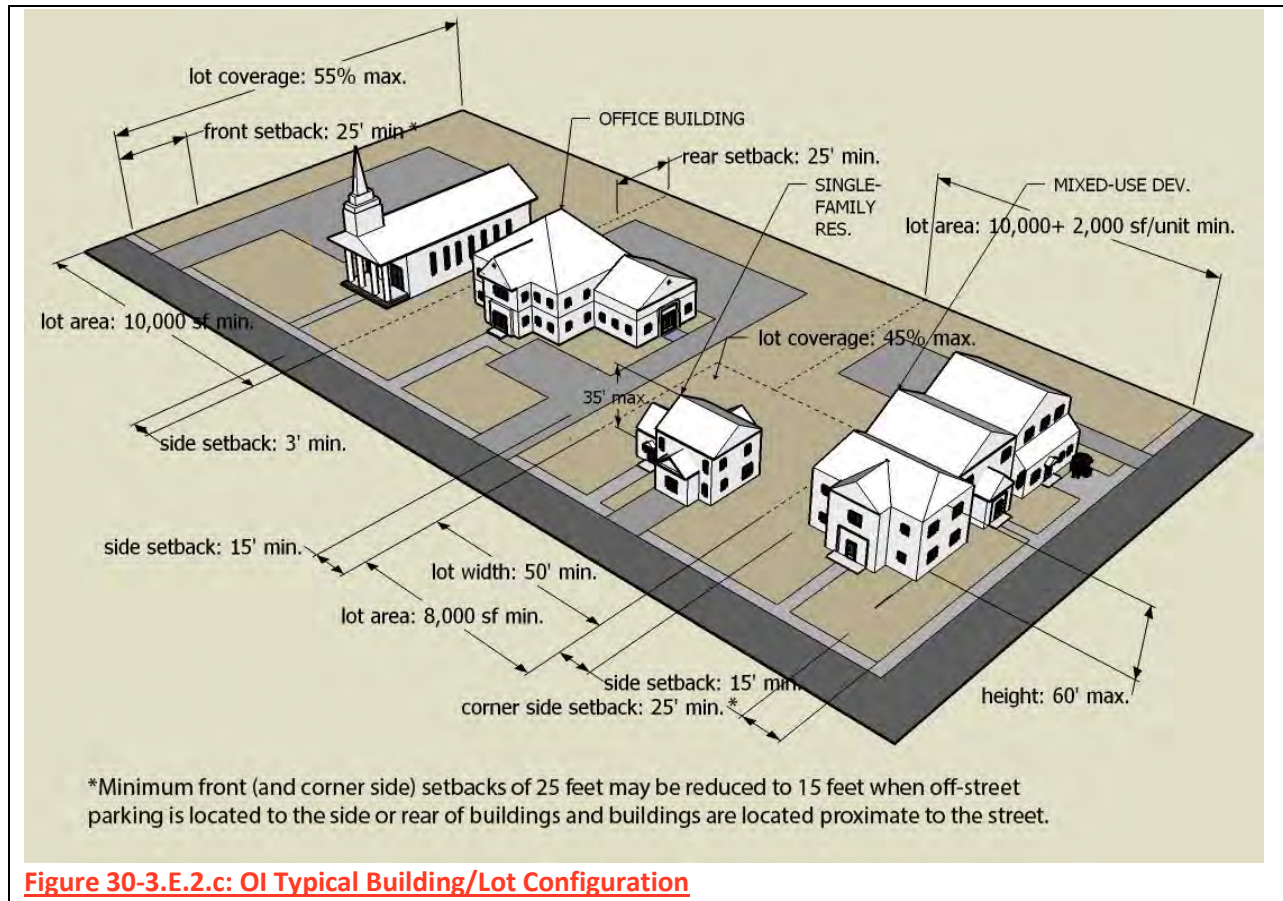
[2] Accessory structures/use areas shall not exceed the lesser of: 1,200 square feet in size or 25 percent of the allowable lot coverage.

[3] Minimum front (and corner side) setbacks for nonresidential, multi-family, and mixed-uses may be reduced to 15 feet when off street parking is located to the side or rear of buildings and buildings are located proximate to the street (or corner) right-of-way(s) shall be increased by five feet for all building walls 25 feet or more above grade.

[4] Zero lot line development on a tract or site of three acres in area or less shall require Special Use Permit approval (See Section 30-2.C.7, Special Use Permit).

* * * * *





Section 2.2 Amend Subsection 3 NEIGHBORHOOD COMMERCIAL (NC) DISTRICT to modify text within the table, footnotes, and associated figures as follows:

NC NEIGHBORHOOD COMMERCIAL DISTRICT	PURPOSE				
	The Neighborhood Commercial (NC) District is established and intended to accommodate small-scale, low-intensity, and “convenience” retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood (e.g., personal service uses, small restaurants, and limited retail). Development in the district should not include uses of a size that is out of scale with a residential neighborhood, or that attracts traffic from outside the surrounding neighborhood. Individual retail uses over 2,500 square feet without obtaining a Special Use Permit (See Section 30-2.C.7.). Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is consistent with the neighborhood scale and compatible with surrounding uses and the design standards in Article 30-5: Development Standards.				
DIMENSIONAL STANDARDS					
DIMENSIONAL STANDARD	NONRESIDENTIAL	MIXED-USE	SINGLE-FAMILY DWELLINGS	ALL OTHER RESIDENTIAL USES	ACCESSORY STRUCTURES
Lot area, min. (sq ft) [1]	10,000	8,000	5,000 per unit	15,000 per site	n/a
Lot width, min. (ft)	45			60	n/a
Gross residential density, max. (dwelling units/acre)	8	10	8	6	n/a

Lot coverage, max. (% of lot area)	55	45	[2]	
Height, max. (ft)	50	35	25; 15 where abutting a single-family zoning district or use with setback less than 10 feet	
Front and corner side setback, min. (ft) [3]	Within 5 of average for lots on same block face, but no less than 10		Not allowed in front, side, or corner side yard areas	
Side setback, min. (ft) [3]	3; 15 when abutting single-family zoning or use	5		10
Rear setback, min. (ft) [3]	20		5	
Spacing between buildings, min. (ft)	20	n/a	20	5
Zero lot line development standards	Zero lot line development shall comply with the applicable maximum gross residential density standards. Setbacks and lot area for lots abutting the perimeter of the development shall meet the district minimums; otherwise no setbacks, lot area, lot coverage, or building spacing requirements shall apply. [4][3]			

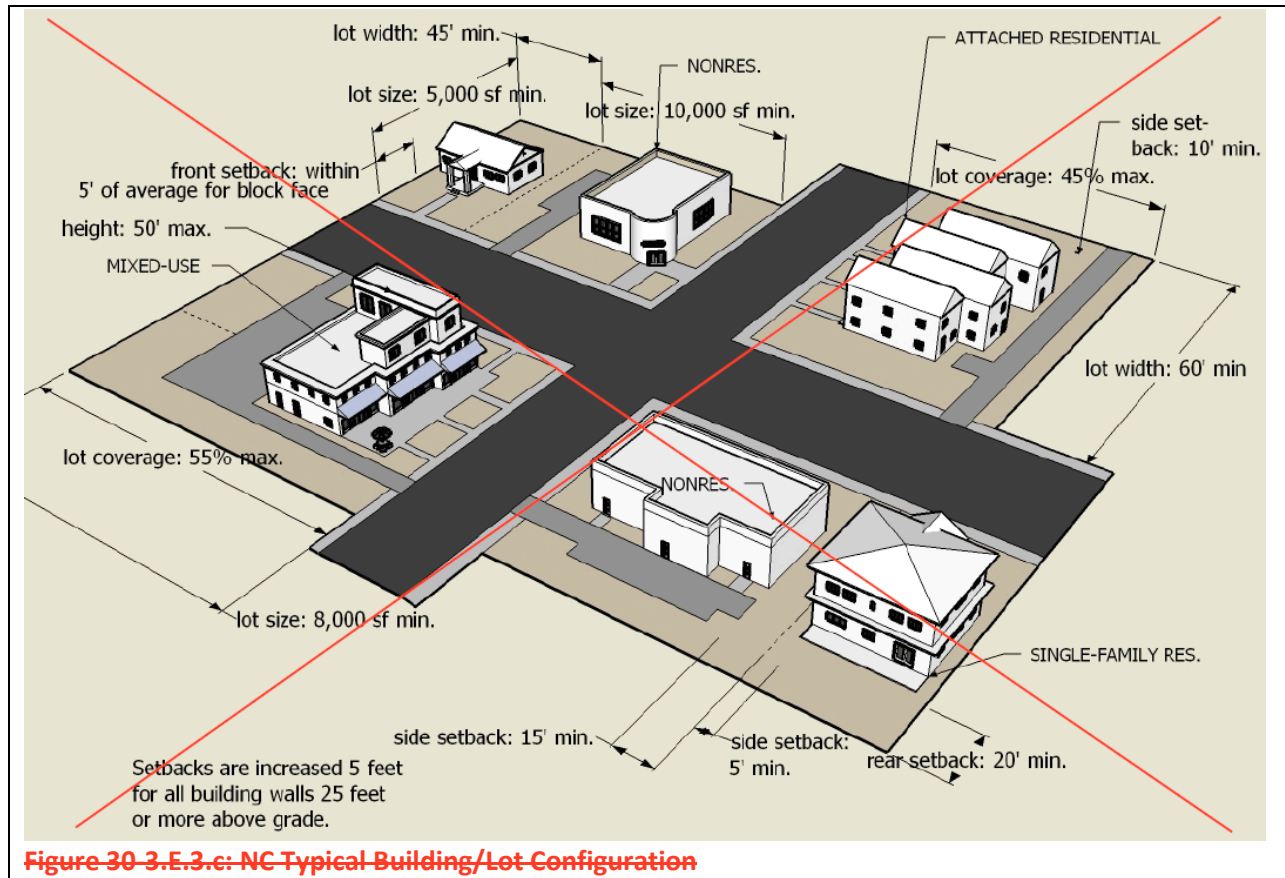
NOTES:

[1] New construction of individual retail space larger than 2,500 square feet in floor area shall first obtain a Special Use Permit (see Section 30-2.C.7). A single building may contain more than one such use, but a nonresidential or mixed-use building with a floor area larger than 7,500 square feet shall obtain a Special Use Permit and comply with the standards for a grocery store in an NC district (see Section 30-4.C.4.h).

[2] Accessory structures/use areas shall not exceed the lesser of: 1,200 square feet in size or 25 percent of the allowable lot coverage.

[3] ~~Minimum setbacks for nonresidential, multi-family, and mixed-uses shall be increased by five feet for all building walls 25 feet or more above grade.~~

[4] Zero lot line development on a tract or site of three acres in area or less shall require Special Use Permit approval (see Section 30-2.C.7, Special Use Permit).



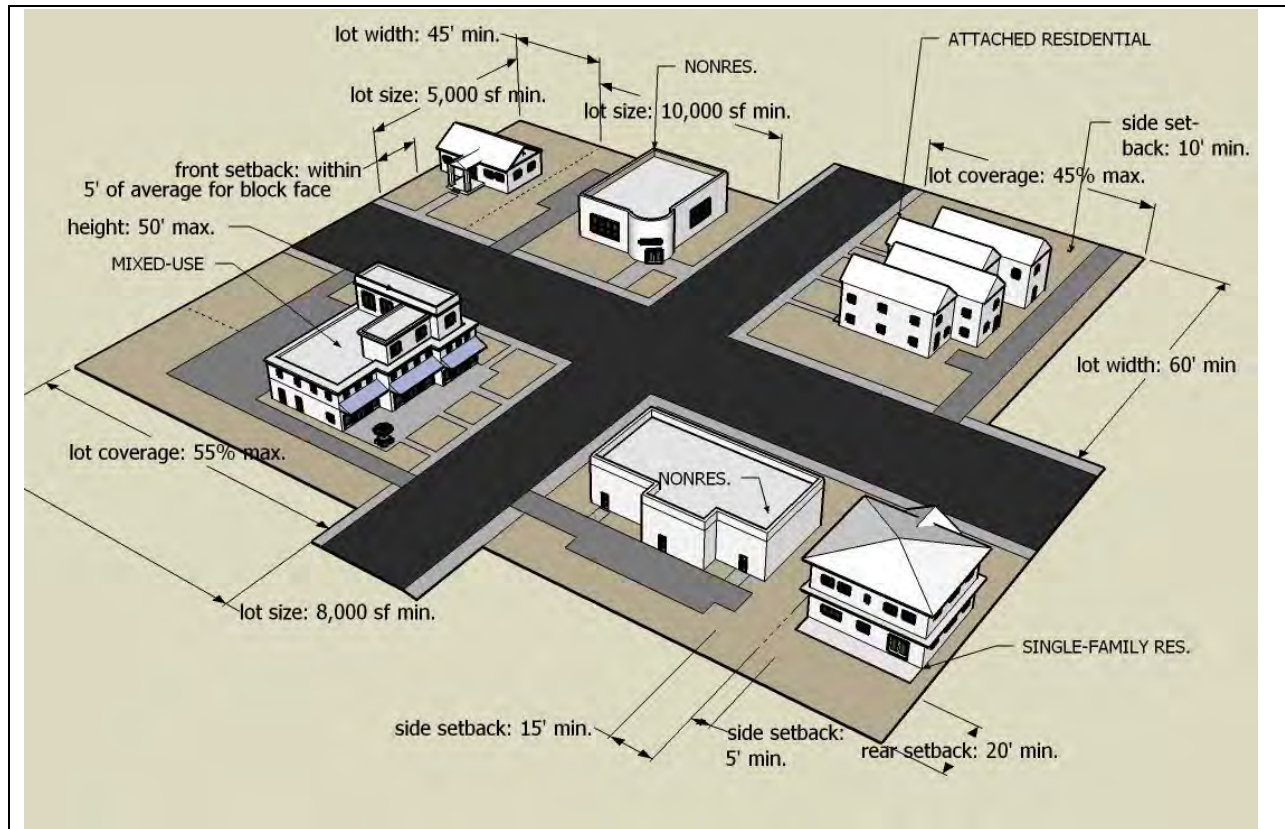


Figure 30-3.E.3.c: NC Typical Building/Lot Configuration

Section 2.3 Amend Subsection 4 LIMITED COMMERCIAL (LC) DISTRICT to modify text within the table, footnotes, and associated figures as follows:

<p style="text-align: center; font-size: 2em; margin: 0;">LC</p> <p style="text-align: center; margin: 0;">LIMITED COMMERCIAL DISTRICT</p>	PURPOSE			
		<p>The Limited Commercial (LC) District is established and intended to accommodate a wider range of moderate-intensity general retail, business, and service uses that serve groups of neighborhoods instead of just an individual neighborhood—e.g., grocery stores, drugstores, large restaurants, gas stations, and higher order retail uses like specialty stores. The district is not intended to accommodate intensive commercial or other business uses. Residential uses are encouraged on the upper floors of nonresidential establishments. The district is subject to standards intended to ensure development is compatible with surrounding residential neighborhoods.</p>		
DIMENSIONAL STANDARDS				
DIMENSIONAL STANDARD	NONRESIDENTIAL	MIXED-USE	ALL OTHER RESIDENTIAL	ACCESSORY STRUCTURES
Lot area, min. (sq ft)	20,000	15,000	8,000	n/a
Lot width, min. (ft)	45			n/a
Gross residential density, max. (dwelling units/acre)	12; 16 for mixed use			n/a
Lot coverage, max. (% of lot area)	55		45	[2]
Height, max. (ft)	The greater of 4 stories or 55 feet		lesser of 3 stories or 40 feet	25; 15 where abutting a single-family zoning district

			or use with setback less than 10 feet
Front setback, min. (ft) [3]	25; 50 ft from street centerline		Not allowed in front, corner side, or side yard areas
Side setback, min. (ft) [3]	3; 15 where abutting a single-family zoning district or use		
Corner side setback, min. (ft) [2]	15		
Rear setback, min. (ft) [3]	10; 20 where abutting an alley or single-family zoning district or use		5
Spacing between buildings, min. (ft)	20		5
Zero lot line development standards	Zero lot line development shall comply with the applicable maximum gross residential density standards. Setbacks and lot area for lots abutting the perimeter of the development shall meet the district minimums; otherwise no setbacks, lot area, lot coverage, or building spacing requirements shall apply. [4]		

NOTES:

[1] Reserved

[2] Accessory structures/use areas shall not exceed the lesser of: 1,300 square feet in size or 30 percent of the allowable lot coverage.

[3] Minimum front setbacks for nonresidential, multi-family, and mixed-uses may be reduced to 15 feet when off street parking is located to the side or rear of buildings and buildings are located proximate to the street (or corner) right-of-way(s) shall be increased by five feet for all building walls 25 feet or more above grade.

[4] Zero lot line development on a tract or site of three acres in area or less shall require Special Use Permit approval (see Section 30-2.C.7, Special Use Permit).

* * * * *

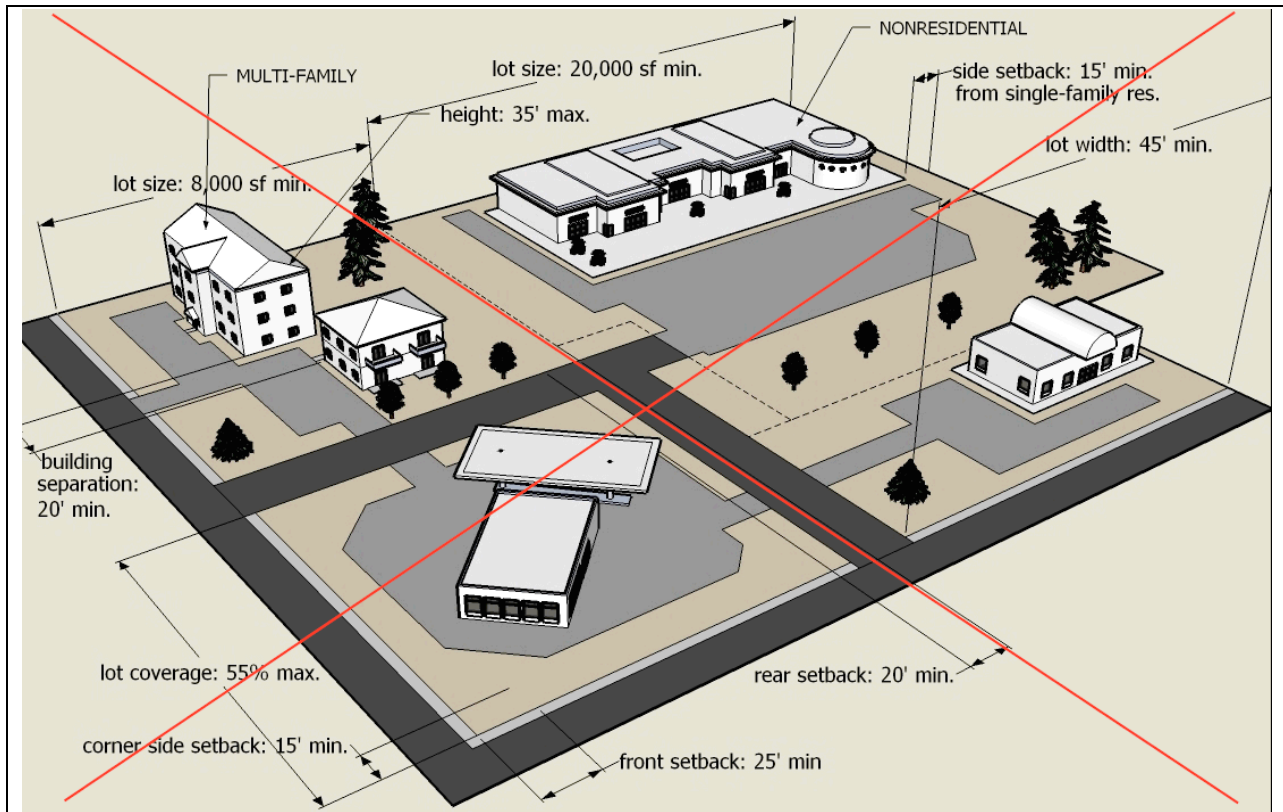


Figure 30-3.eE.4.c: LC Typical Building/Lot Configuration

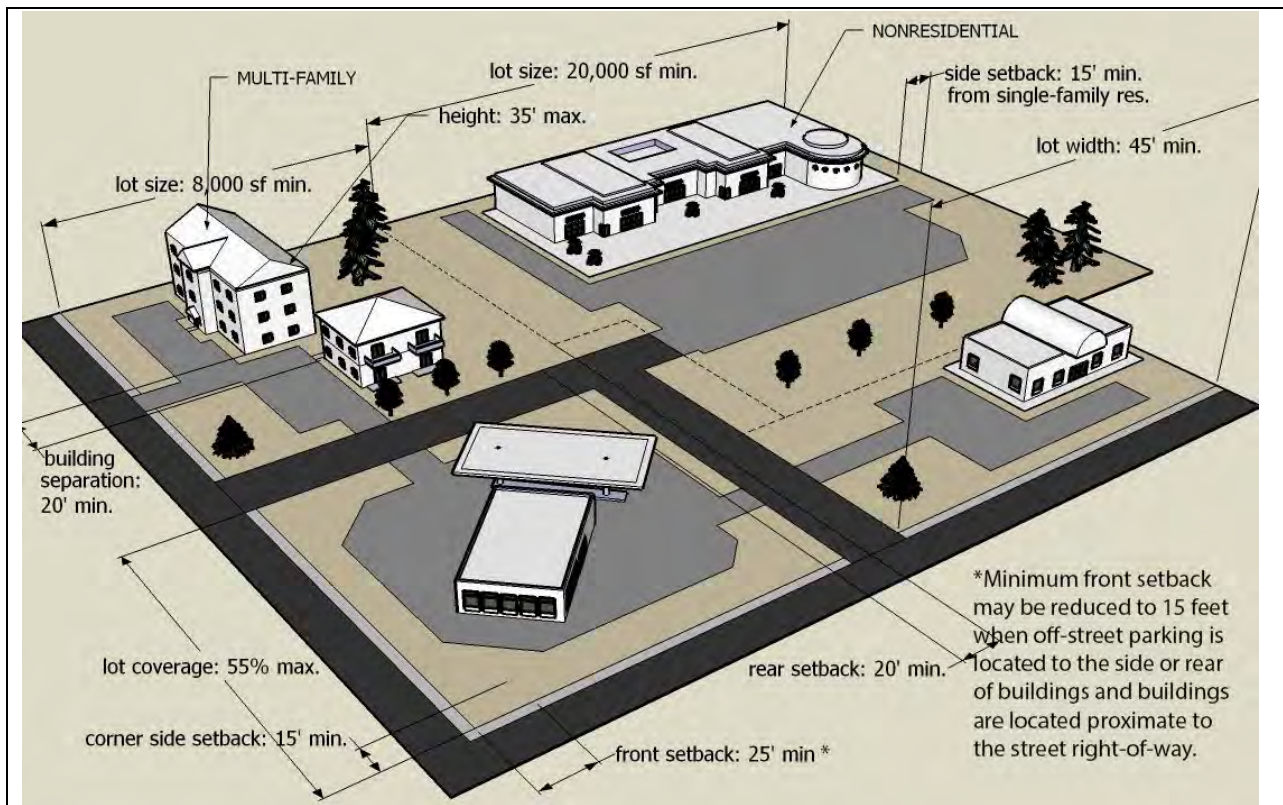


Figure 30-3.E.4.c: LC Typical Building/Lot Configuration

Section 2.4 Amend Subsection 5 COMMUNITY COMMERCIAL (CC) DISTRICT to modify text within the table, footnotes, and associated figures as follows:

<div style="background-color: #800000; color: white; padding: 10px; text-align: center;"> <h1 style="margin: 0;">CC</h1> <h2 style="margin: 0;">COMMUNITY COMMERCIAL DISTRICT</h2> </div>		PURPOSE		
		The Community Commercial (CC) District is established and intended to accommodate a diverse range of medium- to high-intensity retail, service, and office uses that provide goods and services serving the residents and businesses in the community at large—e.g., shopping centers, convenience stores, retail sales establishments, and heavier commercial uses (subject to approval of a Special Use Permit (see Section 30-2.C.7)). The district is typically located along major arterials, at the intersection of arterials, and along growth corridors identified in City plans. Higher-density residential uses are encouraged on the upper floors of nonresidential establishments, and may exist as stand-alone buildings as part of a larger horizontal mixed-use development. The district is subject to standards intended to ensure development is compatible with surrounding uses as well as the design standards in Article 30-5: Development Standards.		
DIMENSIONAL STANDARDS				
DIMENSIONAL STANDARD	NONRESIDENTIAL	MIXED-USE	ALL OTHER USES	ACCESSORY STRUCTURES
Lot area, min. (sq ft)	10,000	8,000	15,000	n/a
Lot width, min. (ft)	45			n/a
Gross residential density, max. (dwelling units/acre)	10	16	12	n/a
Lot coverage, max. (% of lot area)	65			[2]
Height, max. (ft)	The greater of 6 stories or up to 75 feet			25; 15 where abutting a single-family zoning district or use with setback less than 10 feet
Front and corner side setback, min. (ft) [3]	25; 60 ft from street centerline			Not allowed in front, corner side, or side yard areas
Side setback, min. (ft) [3]	3; 15 where abutting a single-family zoning district or use			
Rear setback, min. (ft) [3]	3; 20 where abutting an alley or single-family zoning district or use			5
Spacing between buildings, min. (ft)	20			5
Zero lot line development standards	Zero lot line development shall comply with the applicable maximum gross residential density standards. Setbacks and lot area for lots abutting the perimeter of the development shall meet the district minimums; otherwise no setbacks, lot area, lot coverage, or building spacing requirements shall apply. [4]			

NOTES:

[1] Reserved

[2] Accessory structures/use areas shall not exceed the lesser of: 1,500 square feet in size or 30 percent of the allowable lot coverage.

[3] Minimum front (and corner side) setbacks for nonresidential, multi-family, and mixed-uses may be reduced to 15 feet when off street parking is located to the side or rear of buildings and buildings are located proximate to the street (or corner) right-of-way(s) shall be increased by five feet for all building walls 25 feet or more above grade.

[4] Zero lot line development on a tract or site of three acres in area or less shall require Special Use Permit approval (see Section 30-2.C.7, Special Use Permit).

* * * * *

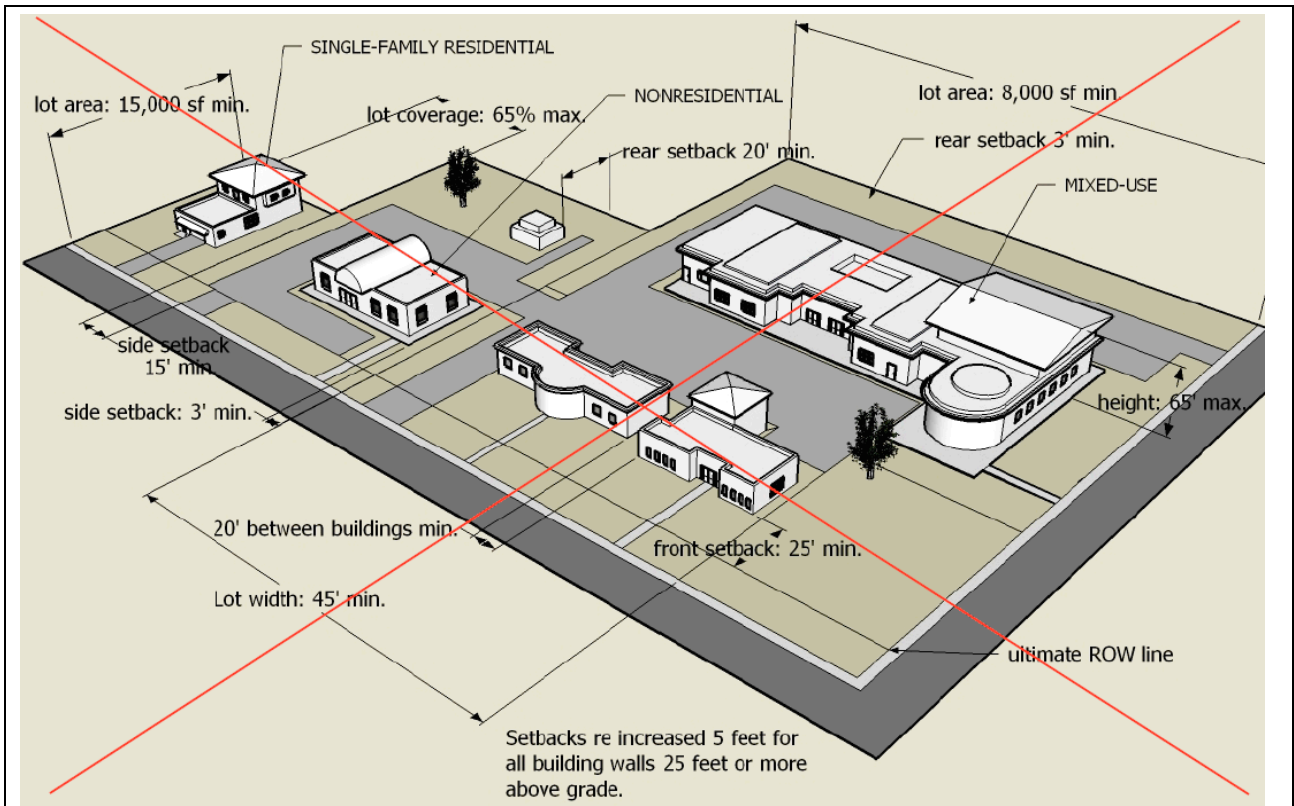


Figure 30-3.eE.5.c: CC Typical Building/Lot Configuration

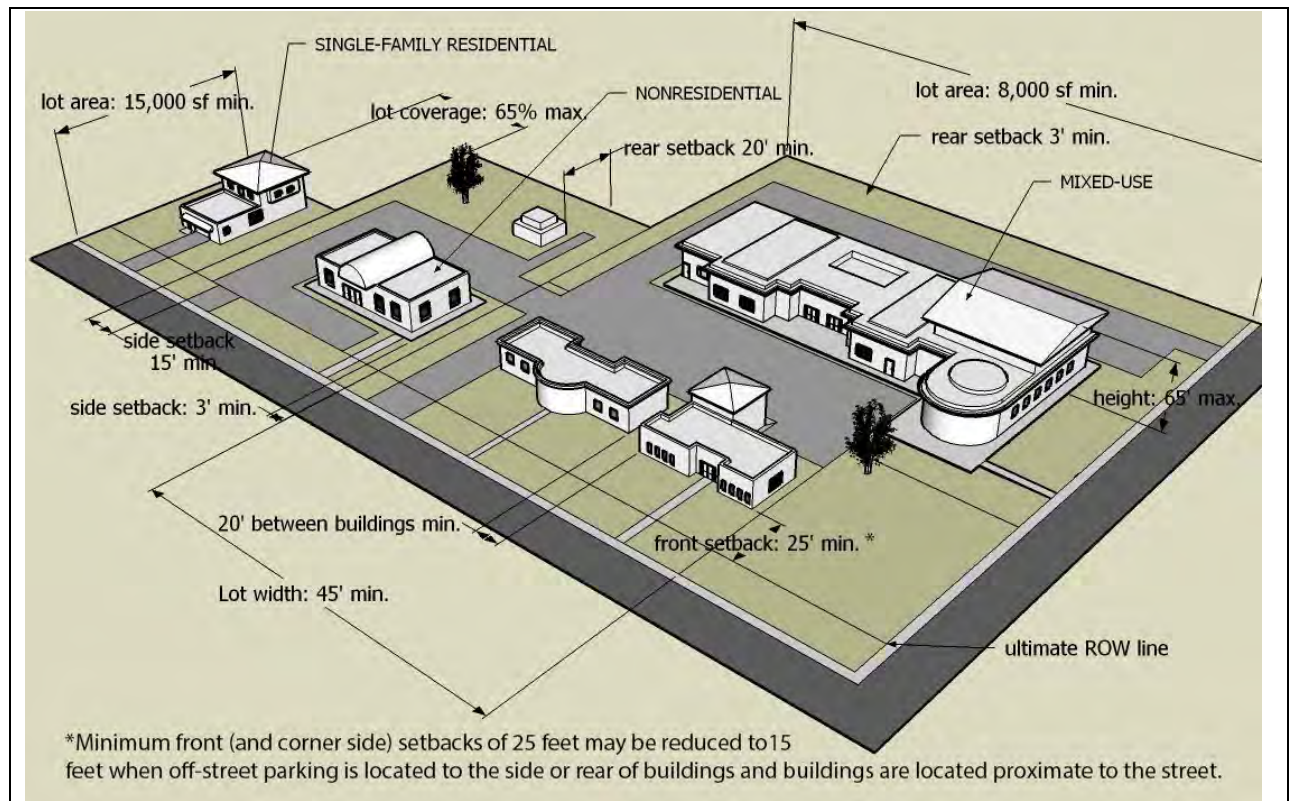


Figure 30-3.E.5.c: CC Typical Building/Lot Configuration

Section 2.5

Amend Subsection 6 MIXED-USE (MU) DISTRICT to modify text within the table, footnotes, and associated figures as follows:

<h1 style="font-size: 2em; margin: 0;">MU</h1> <p style="font-weight: bold; margin: 0;">MIXED-USE DISTRICT</p>	PURPOSE		
	<p>The Mixed-Use (MU) District is established and intended to accommodate and foster the coordinated development of a compatible and balanced mix of mutually supporting living, working, shopping, educating, entertainment, and recreating uses. By providing housing close to nonresidential uses and grouping multiple destinations, such mixed-used development reduces vehicle usage and creates a compact high-quality, pedestrian-oriented environment. The district is subject to flexible standards intended to encourage an appropriate scale and balance of uses and development to ensure district development is compatible with surrounding uses. Uses may be either vertically-integrated within a single building or horizontally-integrated within separate buildings on the same site. Developments proposed within the MU District that do not include a mix of uses require a Special Use Permit (See Section 30-2.C.7).</p>		
DIMENSIONAL STANDARDS			
DIMENSIONAL STANDARD	MIXED-USSES	ALL OTHER PRINCIPAL USES	ACCESSORY STRUCTURES
Lot area, min. (sq ft)	10,000	15,500	n/a
Lot width, min. (ft)	20	45	n/a
Gross residential density, max. (dwelling units/acre)	20	12	n/a
Lot coverage, max. (% of lot area)	65	55	[2]
Height, max. (ft)	60	35	25; 15 where abutting a single-family zoning district or use with setback less than 10 feet
Front and corner side setback, min. (ft) [3]	10; 20 from street centerline		Not allowed in front, side, or corner side areas
Side setback, min. (ft) [3]	5; 10 where abutting a single-family zoning district or use		
Rear setback, min. (ft) [3]			5
Spacing between buildings, min. (ft)	10		5
Floor area in district occupied by single-use development, max. (% of district)	n/a	25	n/a
Zero lot line development standards	Zero lot line shall comply with the applicable maximum gross residential density standards. Setbacks and lot area for lots abutting single-family detached development shall meet the district minimums; otherwise no setbacks, lot area, or building spacing requirements shall apply. [4][3]		
<p>NOTES:</p> <p>[1] Reserved</p> <p>[2] Accessory structures/use areas shall not exceed the lesser of: 1,500 square feet in size or 30 percent of the allowable lot coverage.</p> <p>[3] Minimum setbacks for nonresidential, multi-family, and mixed-uses shall be increased by five feet for all building walls 25 feet or more above grade.</p> <p>[4] Zero lot line development on a tract or site of three acres in area or less shall require Special Use Permit approval (see Section 30-2.C.7, Special Use Permit).</p>			

* * * * *

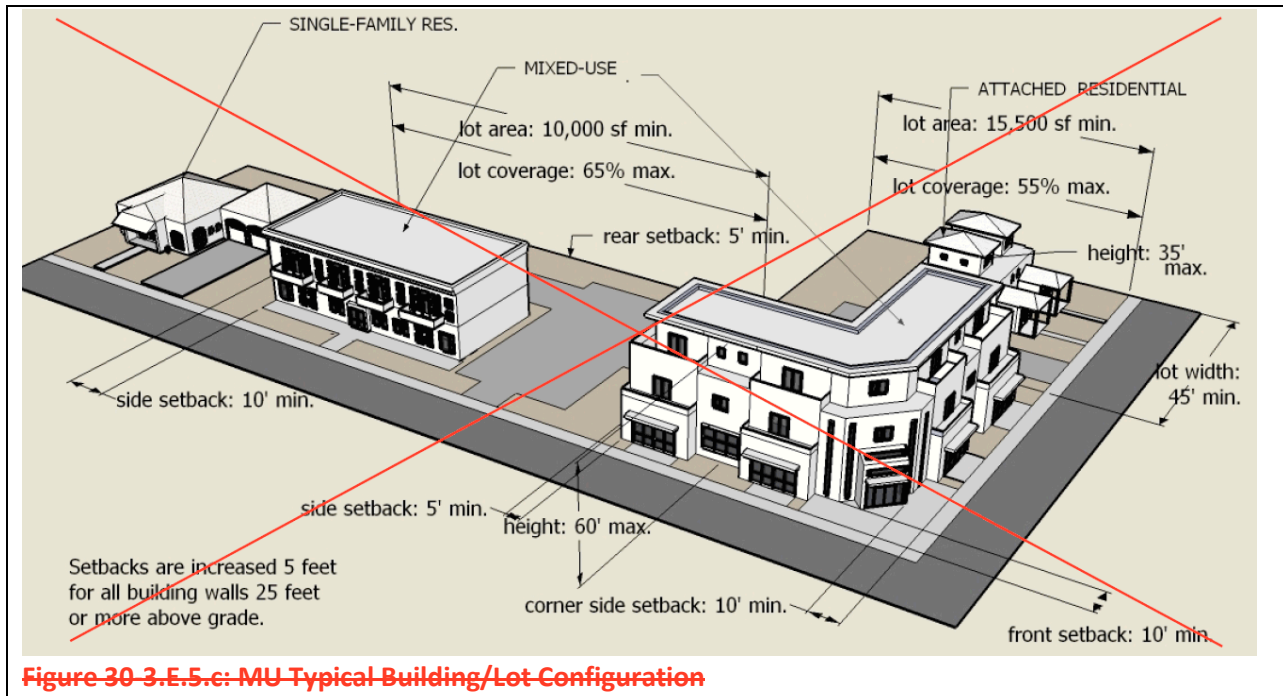


Figure 30-3.E.5.c: MU Typical Building/Lot Configuration

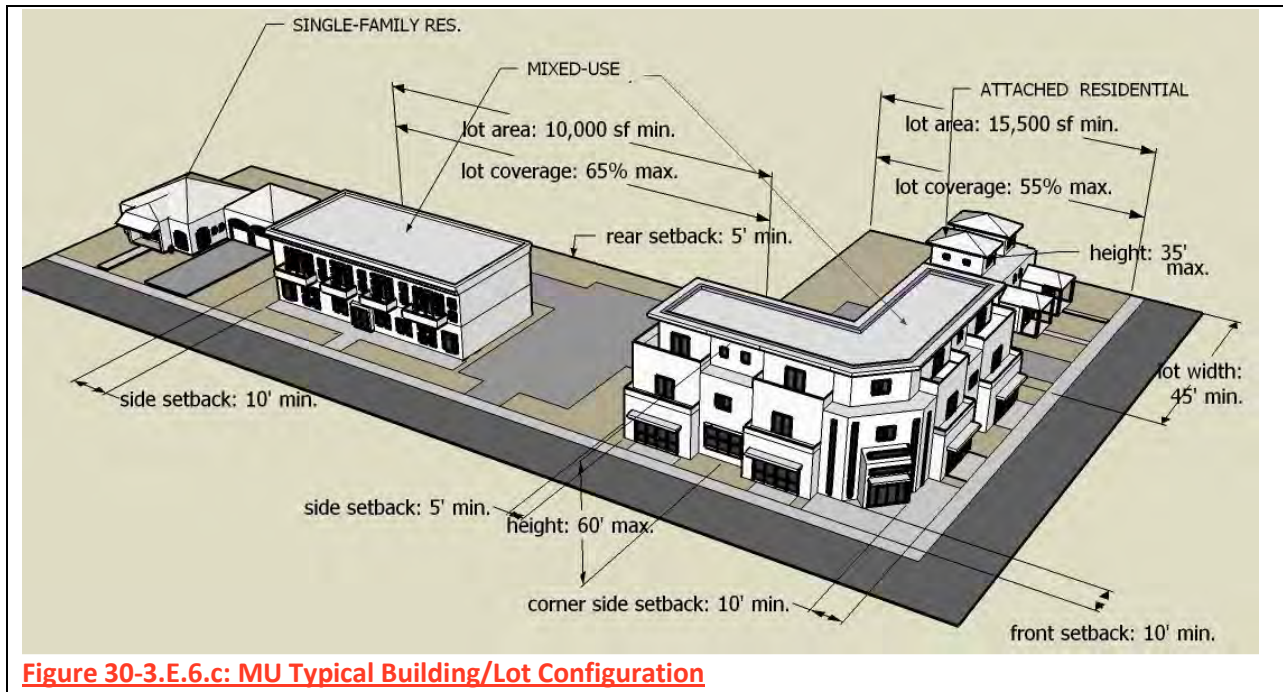


Figure 30-3.E.6.c: MU Typical Building/Lot Configuration

Section 3.0 Amend Article 30-4 USE STANDARDS, Section C USE SPECIFIC STANDARDS, as follows:

2. RESIDENTIAL USES

(a) Household Living

All household living uses shall comply with the single-family residential design standards or multi-family residential design standards (as appropriate) in Article 30-5: Development Standards.

(1) Dwellings, Live/Work

Live/work dwellings shall comply with the following standards:

* * * * *

~~f. Any nonresidential off-street parking shall be located as far as practicable from existing adjacent single-family dwellings.~~

Section 4.0 Amend Article 30-5 DEVELOPMENT STANDARDS, Section A OFF-STREET PARKING, LOADING AND CIRCULATION, as follows:

Section 4.1 Amend Subsection 3 GENERAL STANDARDS FOR OFF-STREET PARKING, STACKING AND LOADING AREAS, as follows:

(d) Arrangement

(1) Convenient Access

- a. All off-street parking, loading, and circulation areas shall be arranged for the access and safety of pedestrians and vehicles.
- b. Off-street parking areas with three or more spaces shall be arranged so that no parking or maneuvering incidental to parking shall occur on a public street or sidewalk, and so that an automobile may be parked and un-parked without moving another automobile (except as provided in Section 30-5.A.8.g, Valet and Tandem Parking).
- c. Large developments providing over 200 spaces are subject to one or both off-street circulation standards found in Section 30-5.A.11.e Primary Drive Aisles and 30-5.A.11.f Pedestrian Pathways.
- d. Large non-residential development with a single ground plate area of over 75,000 gross square feet for one tenant or 150,000 gross square feet for multiple tenants must meet the parking and circulation standards in Section 30-5.J.8 Parking and Circulation, associated with "large retail" development.

Section 4.2 Amend Subsection 11. OFF-STREET CIRCULATION, Table 30-5.A.11.B Stacking Lanes for Parking Lots, as follows:

TABLE 30-5.A.11.B STACKING LANES FOR PARKING LOTS	
NUMBER OF OFF-STREET PARKING SPACES [1]	MINIMUM STACKING LANE DISTANCE (FEET) [2]
1 – 49	25 35
50 – 249	50 45
250 – 499	100
500 or more	100 feet + 15 feet for every additional 50 spaces beyond 500

NOTES:

[1] Entrances into parking structures may be credited towards the stacking lane distance requirement provided the parking structure entrance is accessed from a development driveway and not a primary drive aisle.

[2] Stacking lane distance is measured from the edge of the driveway apron adjacent to the street right-of-way along the centerline of the stacking lane to its intersection with the centerline of the drive aisle through the parking area.

Section 5.0 Amend Article 30-5 DEVELOPMENT STANDARDS, Section H MULTI-FAMILY DESIGN STANDARDS, as follows:

4. MULTI-FAMILY DESIGN STANDARDS

All two- to four-family residential, attached residential, and multi-family development subject to this section shall comply with the following standards:

(a) Building Orientation/ Articulation

- (1) All residential buildings shall be oriented and constructed so that the façade(s) in view from a public/private right-of-way shall contain substantially the same building articulation, features and elements that are used on the façade which compromises the primary entrance to the building.
- (2) Residential buildings located within the interior of a multi-building development that are not primarily in view from a public/private right-of-way are exempted from these building orientation/Articulation standards.
- (3) It is desirable for buildings to be located proximate to the street right-of-way to frame the street edge, with off-street parking located to the side or rear. Therefore, when buildings are located proximate to the street (or corner), the front (and corner side) setback may be reduced as noted, within the MR-5 zoning district.

* * * * *

(c) Building Facades

- (1) FrontBuilding facades of two- to four-family residential, attached residential, or and multi-family development facing a public the street shall incorporate wall offsets, in the form of projections or recesses in the façade plane, a minimum of every 30 feet of the building wall fronting the street.
- (2) Wall offsets shall have a minimum depth of two feet.
- (3) Front facades fronting the street shall provide a minimum of four of the following design features for each residential unit fronting onto a street:

* * * * *

(d) Garage Standards

- (1) When visible from the public right-of-way, garages serving two- to four-family residential, and attached residential uses shall be located on the side or behind the rear facades of such buildings. As an alternative minimum, a Type B, C, or D Property Perimeter Landscape Buffer (in accordance with Section 30-5.B.4.d) may shall be provided and maintained to meet this requirement.

* * * * *

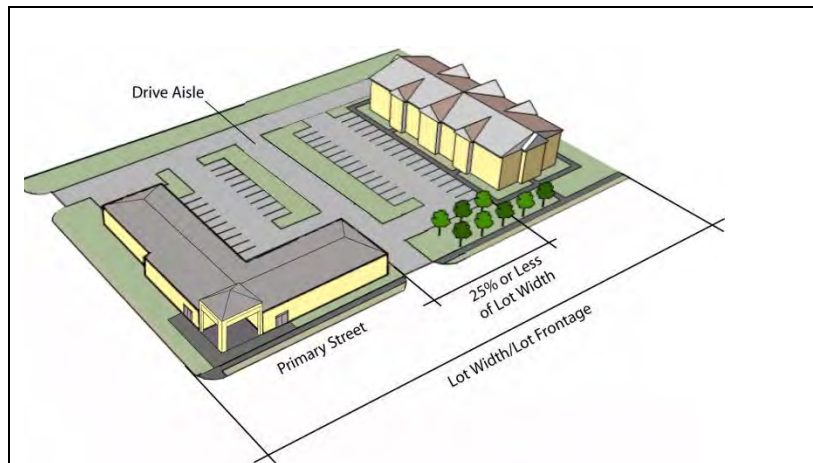


Figure 30-5.H.4.g, Multi-family Parking Location

Multi-family development should locate surface parking areaslots away from public street frontages.

Section 6.0 Amend Article 30-5 DEVELOPMENT STANDARDS, Section I COMMERCIAL, OFFICE, AND MIXED-USE DESIGN STANDARDS, as follows:

3. Design Standards

All commercial, office, and mixed-use development subject to this section shall comply with the following standards:

(a) Building Orientation

(1) Fronting Streets

- a. It is desirable for buildings to be located proximate to the street right-of-way to frame the street (or corner) edge, and it is desirable for off-street parking to be located to the side or rear of the buildings. To encourage and accommodate the location of buildings and parking in this manner, front (and corner side) setbacks may be reduced as noted, within the OI, LC, and CC zoning districts.
- b. In those cases where a vehicular use area is located between the structure and the street fronting the development, a vegetated buffer in accordance with Table 30-5.B.4.C.5: Street Yard Buffer Requirements, shall be provided as a screen to the vehicular use area.
- c. The façade of all buildings in view from a public right-of-waystreet, shall contain substantially the same building articulation, features and elements that are used on the façade which comprises the primary entrance to the building.
- d. In addition, service facilities and operations shall be oriented away from public view or screened to the extent practicable.

(2) Multi-Building Development

- a. Development comprised of multiple buildings totaling 75,000 square feet or more shall be configured with two or more of the following design elements:
 - i. Site configuration as a series of smaller “blocks” defined by buildings fronting on-site streets and internal vehicle access ways, utilizing pedestrian oriented design such as walkways, or other circulation routes and multi-modal transportation access/waiting areas when appropriate;
 - ii. Corner buildings designed to front both sides of an adjacent street intersection or entry point to the development in an “L” configuration;
 - iii. Buildings facing each other across a relatively narrow vehicular access area with pedestrian amenities in a "main street" character;
 - iv. Buildings framing and enclosing at least three sides of parking areas, public spaces, or other site amenities; or

- v. Buildings framing and enclosing outdoor dining or gathering spaces for pedestrians between buildings.
- b. The primary entrances of buildings shall be oriented towards a street along the perimeter of a development, towards streets interior to the development, or towards open space areas.

* * * * *

(e) Off-Street Parking Location in Certain Zoning Districts

(1) Downtown and PD-TN Zoning Districts

Commercial, office, and mixed-use development in the DT and PD-TN districts shall be configured to locate all required surface off-street parking to the side or rear of the building.

(2) Neighborhood Commercial District

Single-story commercial, office, and mixed-use development in the NC district shall be configured to locate all required surface off-street parking to the side or rear of the building. Buildings of two or more stories may locate up to two rows of off-street surface parking between the primary building entrance and the street it faces. ~~In no instance shall more than two rows of off-street parking be located between the building and the street it faces.~~ when a vegetated buffer in accordance with Table 30-5.B.4.C.5 is provided.

(3) All Other Zoning Districts

~~a.~~ A portion of off-street surface parking for commercial, office, and mixed-use development in all other zoning districts may be located between the building and the street it fronts in accordance with Table 30-5.1.3, Off-Street Parking Location:

TABLE 30-5.1.3: OFF-STREET PARKING LOCATION	
BUILDING FOOTPRINT SIZE (SQUARE FEET)	MAXIMUM NUMBER OF PARKING BAYS LOCATED BETWEEN BUILDING AND THE STREET [1]
30,000 or less	1
30,001 – 60,000	2
60,001 – 100,000	4
100,001 or more	6
NOTES:	
[1] The maximum number of allowable bays located between a building and the street may be doubled for buildings of two or more stories.	

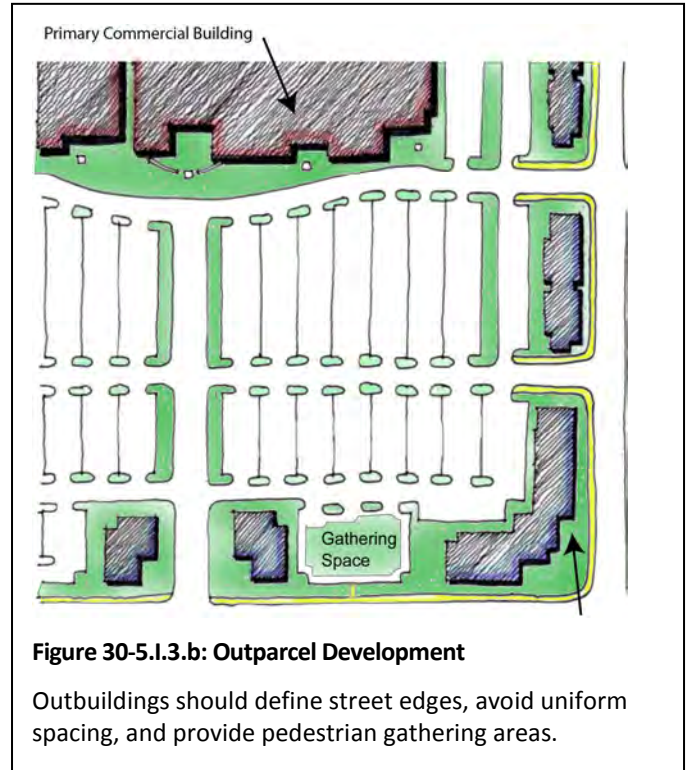


Figure 30-5.1.3.b: Outparcel Development

Outbuildings should define street edges, avoid uniform spacing, and provide pedestrian gathering areas.

Section 7.0

The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future text amendments as long as doing so does not alter the material terms of the Unified Development Ordinance.

Section 8.0 **It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.**

ADOPTED this the 10th day of September, 2012.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Scott Shuford, Director, Development Services Dept.
DATE: September 10, 2012
RE: **Amendment to City Code 30-5 Development Standards to consider a permanent easement as access to certain land-locked parcels.**

THE QUESTION:

Are the proposed changes to development standards for alternative access to certain existing land-locked properties consistent with public health, safety and welfare? (Also see the attached Commission staff report with seven standards for considering amendments to Chapter 30)

RELATIONSHIP TO STRATEGIC PLAN:

More Attractive City - clean and beautiful
Growing City, Livable Neighborhoods - a great place to live

BACKGROUND:

Earlier this year the Planning Commission heard two waiver requests to allow owners of landlocked property to establish an easement to a street instead of requiring each lot to front on a street. The Commission asked staff to develop recommendations for changes in the access requirements to address the problem. In June and July the Planning Commission and City Council recommended approval of standards that allowed the creation of flag lots for certain residential properties and addressed commercial access issues while staff continued research on access options for landlocked residential properties.

The current language impacting the landlocked properties is in Article 30-6 Subdivisions A. 4. (c) Lots, "Insofar as practical, side lot lines shall be at right angles to straight street lines or radial to curbed street lines. Each lot shall front on a public or private street or highway. ..."

ISSUES:

Cumberland County now allows landlocked residential properties legally established before August 1984 to seek building permits if a permanent easement is provided. The City has always required frontage on a street. There is growing pressure to develop on these sites and to allow significant improvements to structures built on such lots before 1984. Considerations include long-term maintenance and access by all properties sharing the easement, and adequate emergency vehicle access.

The recommended changes, like the County's standards, only apply to properties legally established prior to August 1984 and require recordation of a permanent 20' wide easement and other standards including surface condition, cleared width, length and turn-around provisions, and maintenance agreements.

BUDGET IMPACT:

The amendment would enable development and renovations to certain residential properties otherwise unable to be improved. Public services being provided would be via private easements meeting certain minimum standards or specific administrative approvals.

OPTIONS:

1. Approval as presented
2. Approval with modifications
3. Deferral with direction for further research or modifications
4. Denial of the proposed amendment

RECOMMENDED ACTION:

The Planning Commission and staff recommend Option 1, that City Council move to: APPROVE the amendment to City Code 30-5 Development Standards to consider a permanent easement as access to certain land-locked parcels, as presented by staff.

ATTACHMENTS:

Excerpt - Evaluation - Access

Draft Ord - Access

EXCERPT – Planning Commission Staff Report 8/21/2012
Proposed Text Amendment
Access Standards

Proposed amendment: Amendment to City Code 30-5 Development Standards to consider a permanent easement as access to certain land-locked parcels.

The UDO provides seven standards of review for proposed text amendments. Each standard is listed in the following table, along with staff analysis of how each standard applies to the proposed changes in the access standards.

Standard	Analysis
1) Whether and the extent to which the proposed amendment is consistent with all City-adopted plans that are applicable;	<p>The City Strategic Plan speaks only tangentially to this amendment, where livable neighborhoods, economic development, and efficient and safe public services are the most relevant goals. Establishing reasonable access with clear limits responds to these goals. One primary consideration is to avoid encouraging or creating what amount to new ‘soil streets’ that eventually could become City responsibility to pave and maintain.</p> <p>The County currently allows unimproved easements as access to landlocked residential property established before August 1, 1984, with no limit on the number of lots</p>
2) Whether the proposed amendment is in conflict with any provision of this Ordinance, and related City regulations;	The proposed changes do not appear to conflict with other portions of the development code or with adopted plans governing new divisions of property.
3) Whether and the extent to which there are changed conditions that require an amendment;	None
4) Whether and the extent to which the proposed amendment addresses a demonstrated community need;	Many land-locked lots created in the County up to the mid 1980’s have houses now needing renovations to remain stable or have become attractive infill housing options.
5) Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and would ensure efficient development within the City;	Relying on easements as the sole access to residential lots is not a desirable practice or pattern of development. However, the proposed change meets a need for residential landlocked parcels by enabling renovation or development of certain legally existing properties under conditions intended to avoid creating long-term problems.
6) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern; and	The proposed change meets a need for residential landlocked parcels by enabling renovation or development of certain legally existing properties under conditions intended to avoid creating long-term problems.
7) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the	Impacts would be limited to minor clearing and grading and the surfacing required for provision of public services including police and fire.

natural environment	
--------------------------	--

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AMEND PORTIONS OF ARTICLE 6 SUBDIVISION OF CITY CODE CHAPTER 30, TO PROVIDE FOR ACCESS UNDER SPECIFIC CONDITIONS TO PARCELS THAT DO NOT ABUT A PUBLIC OR PRIVATE STREET.

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the Unified Development Ordinance adopted December 13, 2010 as Chapter 30 of the Code of Ordinances of the City of Fayetteville and last amended July 9, 2012, be amended as follows:

Section 1. Amend Section 30-6.A.4(c) as follows:

30-6.A.4. SUBDIVISION DESIGN STANDARDS

Subdivisions shall be developed in accordance with the City's *Standard Specification Manual* and the following standards

(c) Lots and Lot Frontage

(1) General

Insofar as practical, side lot lines shall be at right angles to straight street lines or radial to curved street lines. Each lot shall front on a public or private street or highway. Double frontage of lots from right-of-way to right-of-way shall be permitted only under unusual circumstances. Rear access on double frontage lots shall be for non-routine purposes only. In cases where the subdivision consists of parcels larger than ordinary building lots, such parcels shall be so arranged as to allow the opening of future streets and logical further subdivision.

(2) Access Requirements for Residential Streets and Lots

a. General

Except as set forth in subsections 30-6.A.4(c)(2)c and d below, all residential lots must abut a public street or a private street built to public street standards. Residential lots shall meet the minimum lot width requirements of the applicable zoning district where they abut a public or private street, except for lots on a cul-de-sac or flag lots or within and meeting all standards of a zero lot line development.

b. Lots on a cul-de-sac

.....

c. Flag lots

.....

d. Small residential subdivisions existing prior to August 1984

i. Applicability: Where there is an existing division of residential land not served by a public or private street, the following access process may be used to support development of the divided properties. This provision applies only to lawfully divided subdivisions existing before August 1984.

ii. Dedicated Right-of-way standards: Where alternative access is proposed, the following standards shall apply to said access:

- (a) A minimum, 20-foot wide easement or right-of-way shall be provided. Said easement or right-of-way must intersect at one of its ends with an existing public or private street built to public street standards.
- (b) The easement or right-of-way area must have a minimum 16-foot wide paved surface, with a six-inch CAEC stone base and one and one-half inch overlay of asphalt, or other durable surface acceptable to the city manager.
- (c) A road maintenance agreement acceptable to the City of Fayetteville which identifies the responsibilities for the maintenance of the access road and clearly states that the City of Fayetteville is not responsible for maintenance of the road shall be prepared and recorded in the Office of the Register of Deeds of Cumberland County. In addition, a notation must appear on the recording instrument stating that the easement or right-of-way is to provide permanent egress, ingress and utility access for all lots served by the right-of-way or easement.
- (d) If the road length exceeds 150 feet, a paved turnaround may be required meeting all engineering and fire department codes.
- (e) The curb cut for the access road shall meet all applicable City of Fayetteville driveway standards.

Section 2. The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future text amendments as long as doing so does not alter the material terms of the Unified Development Ordinance.

Section 3. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the 24th day of September, 2012.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Scott Shuford, Director, Development Services Dept.
DATE: September 10, 2012
RE: **Amendments to City Code 30-4 and 30-9 to modify use or category definitions, descriptions, and use listings, including Personal Services in the OI district.**

THE QUESTION:

Are the proposed changes to the use list, category description, and use-specific standards for certain Personal Services consistent with public health, safety and welfare? (Also see the attached Commission staff report with seven standards for considering amendments to Chapter 30)

RELATIONSHIP TO STRATEGIC PLAN:

More Attractive City - clean and beautiful
Growing City, Livable Neighborhoods - a great place to live

BACKGROUND:

During a recent request that involved establishing a specific use, a martial arts studio, in the property, staff more carefully examined the listings for uses considered Personal Services, which included martial arts and dance studios. Table 30-4.A Use Table allows Personal Service Establishments as a special use in MR-5 and as permitted uses in the NC and OI districts and includes a reference to use-specific standards. There are three inter-related issues to consider:

1. In the use-specific standards, 30-4.C(4)(h), MR-5 is not mentioned, one of the specific standards is a size limitation, and retail activity is not clearly limited.
2. There is some confusion in the examples of uses in the definition of "personal services" and the examples in the description of the Use Type: Some of these ('financial services' and 'tanning and body-piercing establishments') are listed as separate uses in the Use Table as well as an example in the 'personal services' Use Type.
3. The MR-5 and OI Office and Institutional districts are intentionally limited relative to the retail or commercial uses allowed, but this isn't reflected in the use-specific standards.

ISSUES:

The specific changes proposed would:

1. Remove the size limitation for martial arts and dance studios in the OI district.
2. Add MR-5 to the district list in the use-specific standards for personal service uses.
3. Emphasize that retail activity is intended to be very limited in OI and MR-5.
4. Synchronize the examples for Personal Services and the separate listings in the Use Table by deleting financial services and tattoo parlor/body-piercing establishments as examples of Personal Services uses.

BUDGET IMPACT:

No impact.

OPTIONS:

1. Approval as presented
2. Approval with modifications
3. Deferral with direction for further research or modifications
4. Denial of the proposed amendment

RECOMMENDED ACTION:

The Planning Commission and staff recommend Option 1, that the City Council move to:

APPROVE the amendments to City Code 30-4 to modify use or category definitions, descriptions and use listings, including Personal Services in the OI districts, presented by staff.

ATTACHMENTS:

Excerpt - Evaluation - OI uses

Draft Ord - personal svcs OI

EXCERPT – Planning Commission Staff Report 8/21/2012
Proposed Text Amendment
OI Office and Institutional Uses

Proposed amendment: Amendments to City Code 30-4 and 30-9 to modify use or category definitions, descriptions, and use listings, including Personal Services in the OI district.

The UDO provides seven standards of review for proposed text amendments. Each standard is listed in the following table, along with staff analysis of how each standard applies to the proposed changes in the use listings, definitions and description of the use categories.

Standard	Analysis
1) Whether and the extent to which the proposed amendment is consistent with all City-adopted plans that are applicable;	The changes create a better fit between the size or scale and certain use types in the different zoning districts. In that manner, the changes would be consistent with the City’s Strategic Vision and Goals (Livable Neighborhoods), goals of the 2030 Vision Plan, and the basic purpose of the development code.
2) Whether the proposed amendment is in conflict with any provision of this Ordinance, and related City regulations;	The proposed changes remove existing conflicts in how certain uses are classified.
3) Whether and the extent to which there are changed conditions that require an amendment;	The proposed changes remove existing conflicts in how certain uses are classified.
4) Whether and the extent to which the proposed amendment addresses a demonstrated community need;	The proposed changes add protection relative to certain uses listed in the MR-5 district and add appropriate flexibility in the OI district for certain uses considered “personal services establishments”.
5) Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and would ensure efficient development within the City;	The proposed changes remove existing conflicts in how certain uses are classified. The proposed changes add protection relative to certain uses listed in the MR-5 district and add appropriate flexibility in the OI district for certain uses considered “personal services establishments”.
6) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern; and	The changes create a better fit between the size or scale and certain use types in the zoning districts, supporting a logical and orderly development pattern.
7) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment	N/A

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AMEND PORTIONS OF ARTICLE 30-4 AND 30-9 TO MODIFY USE OR CATEGORY DEFINITIONS, DESCRIPTIONS, AND USE LISTINGS, INCLUDING PERSONAL SERVICES IN THE OI OFFICE AND INSTITUTIONAL DISTRICT.

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the Unified Development Ordinance adopted December 13, 2010 as Chapter 30 of the Code of Ordinances of the City of Fayetteville and last amended July 9, 2012, be amended as follows:

Section 1. Amend Section 30-4.b.5(i) Retail Sales and Services to delete financial institutions and tattoo parlors and body piercing establishments as examples of Personal Services Establishments:

30-4.B.5. (i) Retail Sales and Services

(1) Characteristics

(2) Examples

Use Types include uses from the following groups:

d. Personal Services Establishments

Establishments meeting frequent or recurrent service needs of a personal nature, including, laundromats, laundry and dry-cleaning drop-off establishments, photographic studios, mailing or packaging services, photocopy and blueprint services, hair salons and barber/beauty shops, tanning and nail salons, massage therapy and day spas, dance or music instruction, martial arts classes, and psychics or mediums.

Explanation: Financial Services, Financial Institutions with and without drive-through, and Tattoo Parlors are listed separately in the use table and to include them in the Personal Services use type, which is also a listing in the use table, creates confusion. Some of these uses also are associated with separate use-specific standards.

Section 2. Amend Section 30-4.C.4(h) to include the MR-5 district, to exempt martial arts and music studios from the maximum size standard and to clarify that retail sales are ancillary to the service or teaching:

30-4.C.4. (h) (8) Personal Services Establishments

Personal service establishments in the MR-5, OI and NC zoning districts shall comply with the following standards and in the MR-5 district may be further limited as a condition of approval of a special use permit:

- a.** An individual establishment shall have no more than 2,500 square feet of gross floor area except that in the OI district martial arts and dance studios may exceed this size limitation.
- b.** The business activities of the establishment shall be conducted within an enclosed building, with no more than 20 percent of the gross floor area devoted to storage.

- c. The establishment shall only sell products at retail and retail sales shall be ancillary to the service or teaching activity.

Explanation: Martial arts and dance studios are often associated with neighborhood services and thus appropriate listings within Personal Services. While they tend to require significant space, the size limitation of 2500 sf is consistent with the scale and standards for Mixed Residential and Neighborhood Commercial uses. However, the OI district does not have size limitations broadly associated with it. Given that martial arts and dance studios typically have minimal impact on nearby uses, the size limitation in the OI district appears unnecessary even when OI is a transition between commercial and residential uses.

Section 3. The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future text amendments as long as doing so does not alter the material terms of the Unified Development Ordinance.

Section 4. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the 24th day of September, 2012.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

City Clerk