

Edwards Aquifer Transition Zone shall comply with this section and the most current regulations in 31 TAC Chapter 334, Underground and Aboveground Storage Tanks, and 31 TAC 213, Edwards Aquifer, which is incorporated by reference in this chapter.

- (3) **Tertiary Containment.** Replacement underground storage tanks installed within the ERZD shall require tertiary containment. New and replacement underground storage tank systems installed within the Edwards Aquifer Transition Zone shall require tertiary protection. The tertiary barrier shall consist of an artificially constructed material that is sufficiently thick and impermeable (at least 10-6 cm/sec or allow permeation at a rate of no more than 0.25 ounces per square foot per twenty-four (24) hours for the regulated substance stored) and be able to direct a release to the monitoring substance stored so that a release from the underground storage tank system will not cause a deterioration of the barrier allowing a release to pass through undetected.
- (4) **Monitoring System.** Replacement underground storage tank systems shall include a monitoring and detection system able to detect a release between the underground storage tank and the tertiary barrier. The monitoring and release detection system must be capable of detecting a two-tenths (0.2) gallon per hour leak rate or a release of one hundred fifty (150) gallons within thirty (30) days such that the probability of detection shall be at least ninety-five (95) percent and the probability of false alarm shall be no greater than five (5) percent.
- (5) **Single Wall Underground Storage Tank Systems Within ERZD.** Single wall underground storage tank systems within the Edwards Recharge Zone district are prohibited. All existing single wall underground storage tank systems within the Edwards Transition Zone, installed prior July 2, 1986 and in conformance with all the USEPA December 22,

1998 update requirements shall be removed and upgraded to current Unified Development Code standards by the date of December 22, 2003.

- (6) **Fee.** A fee specified in Appendix "C" shall be required by the San Antonio Water System for Underground Storage Tanks (UST) located on the Edwards Recharge Zone district and the Edwards Transition Zone to ensure compliance with Ordinance No. 81147 and all requirements of Chapter 34 of the City Code regulating underground storage tanks over the Edwards Recharge Zone and Transition Zone. The fees include an initial permit fee (per site), an annual inspection fee (per site), and beginning in 1998, a renewal fee every three (3) years (per tank). (Ord. No. 96564 § 2) (Ord. No. 2006-11-30-1333, § 2, 11-30-06)

#### **Sec. 35-522. Floodplain Development Standards (Moved to Appendix F).**

#### **Sec. 35-523. Tree Preservation.**

##### *STATEMENT OF PURPOSE*

*While allowing the reasonable improvement of land within the city and city's ETJ, it is stated public policy of the city to maintain, to the greatest extent possible, existing trees within the city and the ETJ, and to add to the tree population within the city and the ETJ. The planting of additional trees and preservation of existing trees in the city and the ETJ is intended to accomplish, where possible, the following objectives:*

- *To preserve trees as an important public resource enhancing the quality of life and the general welfare of the city and enhancing its unique character and physical, historical and aesthetic environment.*
- *To encourage the preservation of trees for the enjoyment of future generations.*
- *To encourage the preservation of trees to provide health benefits by the cleansing and cooling of the air and contributing to psychological wellness.*

- *To encourage the preservation of trees to provide environmental elements by adding value to property, and reduction of energy costs through passive solar design utilizing trees.*
- *To encourage the preservation of trees to provide environmental elements necessary to reduce the amount of pollutants entering streams and to provide elements crucial to establishment of the local ecosystem.*
- *To provide tree preservation requirements and incentives to exceed those requirements that encourage the maximum preservation of trees.*
- *To promote and protect the health, safety and welfare of the public by creating an urban environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life.*

*This section implements the following provisions of the master plan:*

*Neighborhoods, Policy 3c: Continue to implement the tree preservation ordinance and strengthen as needed.*

**(a) Applicability.**

**(1) Generally.**

- A. The regulations contained in this division shall apply to any private property located within the city limits of the city and the ETJ of the city that is not the subject of a permit as of the effective date of this provision.
- B. The regulations contained in this division shall apply to all public property held by or for the benefit of the city or any agency, board or commission thereof in accordance with the provisions of subsection (o) of this division.
- C. The regulations contained in this division shall regulate all activities that result or may result in the removal of significant or heritage trees as defined herein. Said activities in-

clude any of the following conducted on property to which the division applies:

1. Industrial, commercial, office, multi-family, residential and institutional development, including all new construction and any additions that increase the total floor area of a structure by more than two thousand five hundred (2,500) square feet.
  2. Construction of a new parking lot larger than two thousand five hundred (2,500) square feet or expansion of an existing parking lot by more than two thousand five hundred (2,500) square feet.
  3. Any grading, filling or clearing of land.
  4. Any clear, selective or individual cutting or removal of any significant or heritage tree as defined.
  5. Chemical or biological treatment of trees that may result in the death or destruction of any significant or heritage tree as defined.
  6. Trenching or excavation that may damage or destroy any significant or heritage tree as defined.
- D. The regulations in this section shall apply to any projects receiving any federal, state, and/or local financial assistance.
- E. Tree Credit Certificate 001 issued February 10, 2000 and Tree Credit Certificate 002 issued March 26, 2002 are acknowledged and the express language of those certificates apply whenever and wherever until

fully redeemed with no limitations as to any time vesting projects as expressed in those contracts or certificates.

(2) **Activities Exempt.** The regulations in this division shall not apply to the clearing of understory necessary to perform boundary surveying of real property or to conduct tree surveys or inventories. Clearing for surveying may not exceed a width of two (2) feet for general survey (i.e. of easement boundary, etc.) and eight (8) feet for survey of property boundary lines. Except for surveys done in connection with residential development, no tree ten (10) inches or larger may be removed in any manner during such boundary or general surveying.

(3) **Categories of Development Exempt.** The provisions of this section shall not apply to any conservation subdivision.

(4) **Trees Exempt.** This division shall not apply to:

- A. Any significant or heritage tree determined to be diseased, dying or dead, by the city arborist.
- B. Any significant or heritage tree determined to be causing a danger or be in hazardous condition as a result of a natural event such as tornado, storm, flood or other act of God that endangers the public health, welfare or safety and requires immediate removal.
- C. Trees located on property on which construction of single-family, two-family or three-family residential dwelling units has been completed.
- D. Trees located in the clear vision area, as defined in the street improvement standards.

E. Trees preventing the opening of reasonable and necessary vehicular traffic lanes in a street or alley.

The provisions contained in this section shall control in the event and to the extent they may conflict with other provisions contained in this chapter that do not relate to health and safety.

(b) **Administration.** The provisions of this section shall be implemented by a city arborist under the direction of the director of development services. The city arborist shall oversee regulation of the maintenance and removal of significant or heritage trees and shall enforce and administer the provisions of this section.

The city arborist shall work closely with all city departments and governmental entities and licensees, and franchisees thereof in order to promote and ensure the maximum protection of trees by the implementation and administration of this section. City departments with which the city arborist is authorized to interact pursuant to subsection (o) of this section include, but are not limited to the following:

- A. Planning department. Coordination of tree preservation in the review of master development plans (for phase development) and any grading, fillings and spoil activities when applicable.
- B. Development services department. Coordinate and maximize the preservation of trees through the implementation of the city landscape and streetscape standards and through the building permit application and approval process contained in this chapter.
- C. Public works department. Maximize the preservation of trees during public works projects for

public improvements such as, but not limited to, utility installation, street construction and maintenance, drainage construction and maintenance, grading, filling, placement of soil, etc. and coordinate any projects that modify natural drainage areas in a way that negatively affects trees on private property or public property.

- D. San Antonio Water System. Maximize the preservation of trees during capital improvement projects. The arborist shall review any policies related to trees.
  - E. CPS Energy. Maximize the preservation of trees during capital improvement projects. The arborist shall review any policies related to trees.
  - F. Parks and Recreation. Maximize the preservation of trees during capital improvement projects.
  - G. Any other entities which may require easements or rights-of-way shall maximize the preservation of trees during the project. The arborist shall review any policies related to trees.
- (c) **Violation, Enforcement and Penalties.** The provisions of this section shall be enforced as provided in article IV, section 35-493 of this chapter.
- (d) **Protected Tree Designations.** The significant or heritage tree designations establish a threshold trunk size, measured in diameter at breast height (DBH), for various tree species for purposes of applying the requirements of this chapter. A significant or heritage tree is defined by DBH as set forth below. Significant trees of less than six (6) inches may be omitted from the tree survey and preserved or mitigated based on a numerical count.
- (1) **Significant Trees.** A significant tree means a tree of six (6) inches or

greater DBH for all tree species except the Ashe Juniper (*Juniperus ashei*), Huisache, and Mesquite are significant at ten (10) inches DBH and Arizona Ash and Hackberry are significant with at least one (1) trunk being ten (10) inches or greater DHB and the following species are significant with at least one (1) trunk being five (5) inches or greater DBH (the value of the five-inch or greater trunk is the value given to these small tree species):

- A. Texas Persimmon;
- B. Texas Redbud;
- C. Texas Mountain Laurel;
- D. Condalia;
- E. Possum Haw (in floodplain only);
- F. Crabapple (in floodplain only);
- G. Blue Wood Condalia;
- H. Brazil Tree;
- I. Downy Hawthorne.

- (2) **Heritage Trees.** A heritage tree means a tree of twenty-four (24) inches or greater DBH for all tree species except the following species are heritage with at least one (1) trunk being twelve (12) inches or greater DBH (the value of the twelve (12) inches or greater trunk is the value given to these small tree species):

- A. Persimmon;
- B. Redbud;
- C. Mountain Laurel;
- D. Condalia;
- E. Possum Haw (in floodplain only);
- F. Crabapple (in floodplain only).

- (3) **Non-native Trees.** Non-native invasive tree species are not protected and will be omitted from the

tree survey. Non-native invasive tree species means the following tree species:

- A. Chinese Pistache (*Pistacia chinensis*);
- B. Chinaberry (*Melia azedarach*);
- C. Chinese Tallow (*Sapium sebiferum*);
- D. Tree of Heaven (*Ailanthus altissima*);
- E. Salt Cedar (*Taxodium species*).

(e) **Minimum Tree Preservation Requirements.**

(1) **Generally.** Table 523-1 establishes the minimum percentage of all diameter inches or percent tree canopy of significant or heritage trees that must be preserved or mitigated. For single-family dwellings, developers and builders may elect to preserve trees at the platting or permitting stage; if a developer or builder elects to preserve at the platting stage, this method must be used throughout completion of the project.

**Table 523-1**

|                                | <i>Single-Family Dwellings</i>  | <i>Multi-family and Nonresidential Uses</i>   |
|--------------------------------|---|---|
| Significant Trees              | 35% within each platted lot, excluding street right-of-way and easements. Plus each builder on a single-family dwelling lot shall also be required to plant two (2), two-inch caliper new trees, which trees shall generally be native, large canopy trees. | 40% within the entire site excluding the street rights-of-way and easements.  |
| Significant Trees under 6" DBH | 35% within each planted lot, excluding the street right-of-way and easements or 35% of the number of total count of all such trees.   | 40% within the entire site, excluding street right-of-way and easements; or 40% of the number of total count of all such trees; or for athletic fields, 25% of the entire site to be developed as such. |
| Heritage Trees                 | 100% within each platted lot  | 100% within the entire site.  |
| 100-year floodplain(s)         | 80% of all the trees within the floodplain, which shall not apply toward preservation requirements on the remainder of the lot.   | 80% of the trees within the floodplain, which shall not apply toward preservation requirements on the remainder of the site.  |
| Mitigation Maximum             | Up to 90% of significant and heritage trees may be mitigated rather than preserved.   | Up to 90% of significant and heritage trees may be mitigated rather than preserved.   |

(2) **Calculation of Preservation Ratios.** All percentages relating to preservation stated within this section shall be based on the initial tree survey. Any subsequent redevelopment of property must minimally

preserve the applicable percentage of the total diameter inches of protected trees as indicated by the initial tree survey.

(3) **Tree Stand Delineation Alternative.**

A. **Standards.** As an alternative to a tree survey, a tree stand delineation (no heritage tree survey is required) may be used to meet the preservation requirements (see submittal requirements section 35-B125). In order to utilize this provision the site must have area(s) of tree canopy that meet the woodlands criteria as set forth in Appendix A and must contain existing native understory vegetation. The application of this provision will be based on the gross tree canopy of a site or project outside the 100-year floodplain, with no exclusions for rights-of-way or easements. A tree stand delineation shall meet the following standards:

- A tree preservation plan submitted at the master development plan stage must preserve a minimum of thirty (30) percent of contiguous tree canopy with the understory.
- If the tree preservation plan is delayed until subdivision review or any subsequent stages of development, the preservation requirement is thirty-five (35) percent of contiguous canopy with understory vegetation.
- Tree save areas will be a minimum of twenty thousand (20,000) square feet with any dimension being not less than thirty-five (35) feet.
- Tree save areas must be designated as such when the area is platted.
- Tree canopy area(s) to be preserved as tree save area(s) must include environmentally sensitive areas if such are present

on site; including steep slopes, drainage areas, aquifer recharge features, riparian buffers and corridors along arterial and collector streets.

- The 100-year floodplain areas within the project are to be preserved at eighty (80) percent for significant trees and one hundred (100) percent for heritage trees. The trees or tree canopy in the floodplain may not be used to meet preservation requirements set forth above for the developable portion of the land.

- The minimum requirements must be met without mitigation to utilize this option.

B. **Subsequent Removal.**

- Removal of the tree save area or any portion thereof will require the applicant to reforest to the required preservation amount.

Mitigation trees will be as set forth in the standards of Table 523-2 using the shade value in Appendix E.

- (4) **Mitigation.** Protected trees that are required to be preserved are to be mitigated at the ratio described in Table 523-2.
- (5) **Diversity and Desirability.** As the particular site conditions warrant, the applicant shall make a reasonable effort to preserve a diversity of species of trees as determined by the city arborist.
- (6) **Site Design.** The location of all proposed buildings and improvements shall be oriented by the applicant, to the extent the applicant determines possible, in a manner which allows for preserving of the greatest number of trees and in doing so the applicant is encouraged to design by taking into consideration the site's limitations and assets. Trees located

within the existing right-of-way shall not be counted as it pertains to the minimum preservation percentage. Applicants are encouraged to preserve trees to meet the landscape and streetscape standards which could reduce or eliminate the irrigation requirements.

- (7) **Rights-of-Way.** Unless otherwise allowed by this division, trees of a protected size or larger located within existing rights-of-way or easements may be damaged, destroyed, or removed only if prior approval is granted by the city arborist.
- (8) **Trees on Public Property.** The city shall have the right to maintain trees, plants, and shrubs within the lines of all public property as may be necessary to ensure the safety, protect facilities and improvements, and maintain the health and aesthetics of such public grounds. In order to achieve the above, the city or its municipal utility entities may remove or cause or order to be removed any tree which is located on public property and determined to be in conflict with a public purpose or to be a public hazard through coordination with the city arborist.

Unless specifically authorized by the city, no person shall knowingly cut, carve, transplant, or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivances to any tree; or allow any substance, solid, liquid, gas, or fire to injure any tree or portion thereof on public property.

- (9) **Historic Trees.** In order to protect historic trees, as defined, the city

arborist shall defer the approval of tree preservation plans to review by the director of planning who shall seek the advice of the historic design and review commission in instances where a historic tree is proposed to be removed. The commission may recommend additional replacement standards, recommend a cash payment to be deposited to the tree replacement fund to offset the cost of future tree planting on public property, or recommend that the application for permit and tree preservation plan be denied. Provided, however that no later than thirty (30) days after the final application for removal of the historic tree was received, the director of development services shall advise the applicant by certified mail, return requested, or hand delivery of his decision. The final application will be deemed approved if not acted upon by the director of planning before the expiration of the thirty-day time period herein established. Such action may be appealed pursuant to section 35-489 of this chapter.

- (f) **Mitigation/Alternative Mitigation Methods.** Significant or heritage trees may be removed in excess of the minimum preservation requirement contained in subsection (e) provided the excess removal is properly mitigated. If mitigation is required to compensate for removing trees in excess of the number of diameter inches allowed to be removed within the surveyed area to be calculated for tree preservation under the minimum preservation requirements, the mitigation may be achieved in one of the ways prescribed in Table 523-2, below:

**Table 523-2 Mitigation**

| <i>(A)</i><br><i>Method</i>   | <i>(B)</i><br><i>Description</i>   | <i>(C)</i><br><i>Restrictions</i>   |
|---|--|---|
| 1. Establishment and maintenance of new trees at the required ratio on-site | Significant 1:1<br>Heritage 3:1<br>All tree species of Ash (all Fraxinus species) Hackberry (all Celtis species) Huisache, Ashe Juniper and Mesquite will be mitigated at 1:1. | No more than twenty-five (25) percent of the replacement trees shall be of the same species for the purposes of mitigation. Replacement trees must be at least three-inch diameter. |
| 2. Payment to the tree mitigation fund                                      | See subsection (n) of this section.  | See subsection (n) of this section.   |
| 3. Protection and maintenance of smaller trees within surveyed area         | Protection and maintenance of existing trees within the surveyed area that are smaller than the size requirements for a protected tree.  | Such trees must be at least two and one-half (2½) inches DBH. See column B ratios for diameter-inches required.   |
| 4. Protection and maintenance of natural areas within the surveyed area     | Protection and maintenance of existing natural areas, i.e., prairie, steep slope, etc.   | Area(s) must contain desirable plants as determined by the city arborist and/or by Texas Parks and Wildlife Dept.   |

In considering a mitigation method, the city arborist may weigh the value of smaller trees, clumps of trees, and natural vegetation that could be retained to meet the requirements of this section, such as mitigation method above, or the amount of vegetation to be retained on the site and/or added according to a landscape plan to determine the extent additional trees may not be required. For these reasons, indiscriminate clearing of smaller trees and shrubs or understory is discouraged. Small tree species shall be mitigated based on the one trunk that is five (5) inches or greater for significant status and the one trunk that is twelve (12) inches or greater for heritage status. Small tree species that achieve heritage status shall be mitigated on a 1:1 basis.

- (g) **100-Year Floodplain(s).** Significant trees shall be preserved at eighty (80) percent preservation within the 100-year floodplains. Heritage trees shall be preserved at one hundred (100) percent preservation within the 100-year floodplains.

The 100-year floodplain shall be determined by the floodplain administrator. Such trees shall be mitigated as defined in Table 523-2. If trees are required to be removed by a governmental entity due to existing off-site conditions, then mitigation shall not be required by the applicant. The city arborist, the director of public works, the director of development services, and one (1) representative from the Cibolo Creek Watershed, the Leon Creek Coalition, the Salado Creek Foundation, the San Antonio River Oversight Committee, and the Land Heritage Institute (for the Medina River) shall agree on a standard for treatment of drainageways, which standard shall be approved by the urban affairs committee of city council.

- (h) **Tree Preservation Incentives.** An individual may apply for, and subject to verification, shall receive incentives for tree preservation as follows:

- (1) **Parking Space Reduction.** Upon application and verification by the city arborist, an individual shall be

entitled to a reduction in the minimum parking requirements of section 35-526 of this chapter to help meet the minimum tree preservation requirements. For the purpose of providing an incentive, the said minimum parking requirements of section 35-526 of this chapter may be reduced by one (1) parking space for every four (4) diameter inches of trees that have been protected or mitigated on a site. The city arborist shall issue a certificate to the appropriate city department(s) confirming that a reduction has been earned under this section. Up to fifteen (15) percent of the required spaces may be waived, however, a waiver in excess of fifteen (15) percent of the required spaces must be approved by the director of development services or his designee, and no waiver may exceed thirty (30) percent of the required spaces. A waiver of up to fifty (50) percent of the minimum parking spaces required by Table 526-3 may be granted if the plan will result in the preservation of woodlands or significant stands of trees in a natural state as in section 35-526. If used, the incentive provided by this subsection shall control over any other conflicting provision of this chapter.

- (2) **Sidewalks.** Where the director of development services determines that preservation of trees warrants the elimination, reduction in width, or modification to the sidewalk and curb requirements in accordance with the tree preservation standards, a waiver may be granted.
- (3) **Tree Cluster(s).** In order to emphasize the importance of preserving trees in a cluster during development, additional tree preservation credit will be given as follows:
  - A. Cluster(s) of three (3) or more trees less than ten (10) feet

apart without existing understory will be calculated at one hundred five (105) percent for each tree within the cluster with a minimum size of two and one-half (2½) inch diameter.

- B. Cluster(s) of three (3) or more trees less than ten (10) feet apart with existing understory will be calculated at one hundred fifteen (115) percent for each tree within the cluster with a minimum size of two and one-half (2½) inch diameter.

- (4) **Landscape Credits.** Landscape credits may be awarded as provided in section 35-511, above.
- (5) **Understory.** The city arborist may determine that the preservation of native understory plants together with trees grouped in significant stands may result in a reduction of new plantings needed to meet the landscape requirements and/or an increase of credit given for elective points and/or the elimination of an irrigation system requirement of section 35-511. Emphasis is on the preservation of said significant stands and accompanying native understory plants and therefore, the smaller tree diameters may be counted one (1) for one (1) in terms of meeting the minimum tree preservation requirements. It is at the discretion of the city arborist as to the maximum number of trees, less than the significant tree size, that may be allowed to be used for obtaining additional landscape points under this incentive.
- (6) **Minimum Lot Size and Setbacks.** The board of adjustment may waive the minimum lot size and setback requirements of the applicable zon-

ing district for an individual lot or lots where the applicant demonstrates the following:

- A. Compliance with the minimum lot size or setback requirement is needed to preserve a significant tree or heritage tree; and
- B. If the tree permit application is pursuant to a proposed subdivision plat, the average lot size of the proposed subdivision will equal or exceed that of the applicable zoning district; and
- C. The public purpose involved in protecting the tree exceeds the public purpose of complying with minimum lot size or setback requirements; and
- D. The resulting lot sizes or setbacks do not violate the master plan or the applicable neighborhood plan.

(7) **State Certification in Lieu of Compliance.** The city arborist shall assist those who wish a site certified under the Texas Parks and Wildlife, Texas Wildscape Program in lieu of meeting city requirements in this division as long as twenty (20) percent of existing trees on-site are preserved.

(i) **Root Protection Zone.**

- (1) **Root Protection Zone.** A root protection zone must be established around the trunk of each tree preserved or mitigation tree. For multi-family and nonresidential construction the root protection zone shall be an area defined by an average radius extending outward from the trunk of the tree a distance of one (1) linear foot for each inch (DBH). The root protection zone area shall be preserved at natural grade, with natural groundcover. No cutting, filling, trenching, root disturbance, soil disturbance, or construction impacts shall occur closer to the trunk than

one-half ( $\frac{1}{2}$ ) the root protection zone radius except in parking areas where approved alternative materials and methods are used, construction may be as close as five (5) feet from the root flares on one side of the tree. Filling shall be allowed to accomplish water conservation goals established by the City of San Antonio or by a public utility. Native understory vegetation within the root protection zone shall be preserved, however this requirement does not apply to root protection zone areas that have been landscaped using native, drought tolerant plants. The root protection zone may be shifted and clustered as long as there is no construction closer to the trunk than one-half ( $\frac{1}{2}$ ) the root protection zone radius. The construction of sidewalks shall be allowed in the root protection zone, as long as excavation does not exceed three (3) inches.

The area contained within a root protection zone required under this subsection must be left in a pervious condition after construction and development are completed unless approved alternative construction methods are used. The arborist shall establish a written set of technical criteria on which such approval shall be based. These criteria will be updated at least every five (5) years with the assistance of a committee consisting of, at a minimum, the city arborist, the regional urban forester from the Texas Forest Service, a landscape architect and an engineer. During construction activity on the site, at least a six-inch layer of coarse mulch shall be placed and maintained over the root protection zone. The impervious cover may encroach within the root protection zone if said encroachment is approved by the city arborist.

(2) **Warranty.** In lieu of establishing root protection zone(s) as prescribed in subsection 35-523(i) or adhering to alternate construction methods as approved by the city arborist, a developer or property owner may choose to provide a tree preservation warranty for multi-family and nonresidential construction only. In the event a developer or property owner chooses to provide a tree preservation warranty as provided for herein the owner of the property must provide a tree preservation warranty to the city arborist, which shall obligate the then owner of the property to replace any tree (or trees) reflected on the tree survey and which are the subject of the warranty. The term of the warranty shall be five (5) years from the date that a building permit is filed for building construction projects or five (5) years from the date construction is commenced for infrastructure improvements related to development projects. Each tree that is covered by a tree preservation warranty must be identified on a tree survey prepared in accordance with subsection 35-B123(c)(1)A and submitted with the tree preservation warranty. If any tree required to be preserved and which is the subject of a tree preservation warranty shall die during the term of the tree preservation warranty, the tree shall be replaced in accordance with the mitigation provisions of subsection 35-523(f). All replacement trees shall be planted in accordance with the standards set forth in subsection 35-523(l). The city may require such owner to replace a tree (or trees) that has died at any time during the term of the tree preservation warranty, and, if such owner fails to replace the tree within ninety (90) days of the city's written request to replace same, the city at its sole option may refuse to issue any new building permits, ac-

cept any development application, or accept any infrastructure improvements from such owner. Nothing in this subsection shall exclude any and all remedies otherwise provided by law.

The tree preservation warranty shall be filed in the records of the development services department of the city.

The seller of property subject to a tree preservation warranty shall provide a copy of the warranty and attached tree survey to prospective buyers.

(j) **Tree Protection During Construction.**

(1) **Generally.** It is the applicant's responsibility to insure that all parts of the tree preservation plan are transferred to each appropriate person concerned with the development project.

(2) **Protection Barrier.** Except for single-family residential construction, a protection barrier shall be erected at the edge of the root protection zone for all trees, understory and/or natural areas to be preserved to meet the requirements of the tree preservation, landscape and/or streetscape standards. The barrier shall be in place before any site work is initiated and maintained throughout the construction process. However, on one (1) side of the tree the protective barrier can be erected a minimum distance of sixty (60) inches from the trunk(s) of individual significant, heritage or mitigation trees or islands of such trees and understory and maintained until construction is completed. This protective barrier may be comprised of snow fencing, vinyl construction fencing, chain link, geotextile material or other similar sturdy material. During construction, no excess soil, additional fill,

equipment, liquids or construction debris shall be placed inside the protective barrier nor shall any soil be removed within the barrier.

- (3) **Grading.** The proposed finished grade within the root protection zone of any tree to be preserved shall not be raised or lowered more than three (3) inches. Approved welling methods for tree preservation may be used within the root protection zone. Other welling and/or retaining methods may be used to protect and/or provide lateral support to the area outside the root protection zone.
- (4) **Branch/Root Pruning and Wounded Trees.** All broken branches and exposed roots two (2) inches in diameter or greater of significant, heritage or mitigation trees shall be cut cleanly. In the case of oak species, in order to prevent infection by oak wilt spores, wounds must be painted with an acceptable wound dressing within thirty (30) minutes.
- (5) **Equipment/Vehicle Storage and Parking Areas.** Prior to construction or land development, the developer or builder shall establish designated parking areas for the parking and maintenance of all vehicles, trailers, construction equipment, and related items, as well as stockpile areas for the storage of construction supplies and materials. The location and dimensions of said designated areas shall be clearly identified on construction and site plans and at the construction site.
- (6) **Boring of Utilities.**
  - A. For purposes of this subsection, "boring" means the practice of tunneling below the effective root system of a tree for the purpose of running underground utilities.
  - B. Boring is permitted, but not required, under protected trees

where needed to provide underground utility access. The minimum length of the bore shall be the width of the tree's canopy. The minimum depth is twenty-four (24) inches.

- (7) **Tree Protection Details.** Tree protection notes and details shall be included on subdivision plans, tree preservation plans and/or landscape plans. The applicant shall also include tree protection notes and details with the bid documents given to the contractor.

- (k) **General Maintenance.** Significant, heritage, or mitigation trees must be maintained in a healthy condition at all times. The property owner is responsible for irrigating, fertilizing, pruning and other maintenance of all trees as needed. Except for residential development, mitigation trees that are planted on the property and that die within twelve (12) months of final inspection are subject to the mitigation requirements set forth in subsection (e) at a ratio of one-inch mitigation for every one (1) inch of a significant, heritage, or mitigation trees that dies. However, a significant or heritage or mitigation tree that dies from other than natural causes shall be mitigated at a ratio as defined in Table 523-2. Any tree that dies must be replaced with another living tree of the same category type or better within ninety (90) days after notification by the city. The director of development services may extend this time period up to an additional ninety (90) days due to weather considerations. If the plants have not been replaced after appropriate notification and/or extension, the property owner shall be in violation of this section. If a public utility disturbs trees, it shall make every reasonable effort to preserve the trees and return them to their prior location and condition after the utility work is completed. If nonetheless, trees die, replacement is not the responsibility of the

property owner if the death or destruction of the trees is due to the action of a public utility.

(l) **General Planting Standards.**

- (1) Mitigation or replacement trees required by this section must have a minimum caliper of two and one-half (2½) inches measured six (6) inches above grade at the time of installation and, shall be planted in a pervious area of at least one hundred and sixty-two (162) square feet per tree.
- (2) No artificial plant materials may be used to satisfy the requirements of this section.
- (3) For single-family residential construction, the two (2) trees required to be planted per residential lot shall be class I trees, of two-inch caliper, and shall be a species that matures to a minimum height of thirty (30) feet (Appendix "E") unless there is a conflict with overhead utilities where the trunk would be within twelve (12) feet of overhead utilities. In such incidences the tree will be from the small tree species as listed in Appendix "E".
- (4) Plant materials required by this section must comply with the following minimum size requirements at the time of installation:
  - A. In satisfying the requirements of this section, the use of mulch material shall be provided at the time of planting.
  - B. Each replacement tree must be planted at least thirty (30) inches away from any impervious surface.
  - C. Plant areas must be protected from vehicular traffic through the use of concrete curbs, wheel stops or other permanent barriers.

(5) Transplanting existing trees shall be considered an acceptable method for preserving a tree if:

- A. The tree is a significant or heritage tree; and
- B. The tree is transplanted on the same lot, parcel, or development site; and
- C. The applicant provides a feasibility report prepared by a certified arborist or landscape architect which describes the following:
  - 1. Digging method;
  - 2. Relocation sites;
  - 3. Method of transport;
  - 4. Time of year transplanting will take place;
  - 5. Storage methods (if any); and,
  - 6. Maintenance programs before, during, and after transplanting.
- D. The applicant shall comply with the requirements of the feasibility report, which shall be considered a condition of the tree permit.

(m) **Variance Procedure.**

- (1) **Variations.** Variations to the terms and requirements of this division may be granted by the city arborist where a literal enforcement of the provisions of this division will result in an unnecessary hardship. No variance may be granted unless:
  - A. Such variance will not be contrary to public interest;
  - B. Such variance will be in harmony with the spirit and purpose of this division;
  - C. The variance will not substantially weaken the general purposes of this division or the regulations herein established for the protection of trees; and

- D. The variance granted is limited in scope of relief to only that which is necessary to relieve the hardship condition.
- (2) **Request for Variance.** A person who feels they qualify for a variance, under the conditions outlined in subsection (a) above, from the literal application of this division to their property may request a variance from such application of one (1) or more of the provisions of this division. All requests for variances shall be made in writing to the city arborist, and shall include:
- A. The subject of the requested variance; and
- B. The justification for granting a variance.
- (3) **Burden.**
- A. The party requesting a variance has the burden of demonstrating that sufficient evidence exists for the granting of a variance to application of this division. The city arborist shall consider and provide a written response to all such requests for variances as quickly as possible but not more than thirty (30) days from the date a valid request for variance is received. The response shall be served by certified mail, return receipt requested, or by hand delivery.
- B. If granted. If a variance is granted as requested, or with modification, the recipient of the variance may develop their property according to all applicable provisions of this division, to the extent such provisions have not been waived or modified by the variance.
- (4) **Appeal.** Any person who properly requests a variance pursuant to this section and objects to the decision of the city arborist which denies all or

part of the relief requested may appeal such denial to the director of development services or his designee by filing a request for appeal within ten (10) working days from the date notice of denial is received by the requesting party. All such appeals shall be made in writing to the office of the director of development services and shall include all pertinent information which the person requesting the appeal wishes to be considered. The director of development services may require additional information from or request a meeting with the person making the appeal. The written decision of the director of development services, or authorized designee, on the appeal shall be rendered within fifteen (15) working days and shall be delivered to the appealing party by certified mail, return requested, or by hand delivery. If the director of development services or authorized designee fails to render an opinion on the appeal within the fifteen-day period, the relief requested in the appeal shall be granted.

(5) **Planning Commission.**

- A. If the director of development services denies all or part of the relief requested in an appeal, the aggrieved party may appeal to planning commission by filing a notice of appeal with the office of the city clerk no later than the tenth working day following the party's receipt of the written decision of the director of development services. A true and correct copy of the notice of final appeal must also be filed with the office of the director of development services who, upon receipt of such notice, shall immediately transfer copies of all documents and information relevant to the ap-

peal to the executive secretary to the planning commission. The executive secretary of the planning commission shall schedule the hearing of the appeal at the earliest available regularly scheduled meeting of the planning commission which will allow compliance with the requirements of the Texas Open Meetings Act.

- B. A decision of the planning commission that is adverse to the applicant shall be appealable by the applicant to the city council for final action by filing a notice of final appeal with the office of the city clerk no later than the tenth working day following the party's receipt of the written decision of the planning commission. The city clerk shall schedule the hearing of final appeal at the next available regularly scheduled meeting of the city council which will allow compliance with the requirements of the Texas Open Meetings Act.
- C. Where this division requires either the city or applicant to respond, or take other action, within a specific number of days, such calculation shall begin on the first working day after the date of receipt of the information that necessitated response or action.

(n) **Tree Mitigation Fund.**

- (1) **Fund Established.** The director of finance is hereby directed to establish a dedicated account to be entitled tree mitigation fund (hereinafter the "fund").
- (2) **Penalties.** Section 35-493 of this chapter provides for sections imposing civil penalties in addition to criminal penalties. Civil penalties col-

lected pursuant to such section shall be recorded in the fund created pursuant to this section, unless expressly prohibited by law. Likewise, all funds received from the payment of mitigation fees pursuant to subsection (f) shall be recorded in the fund.

- (3) **Use of Funds.** The funds collected from civil penalties and mitigation fees in the fund shall be utilized to pay for the planting and maintenance of trees, the funding of tree preservation and planting programs to be administered by the development services department. The development services director shall seek the advice of the open space advisory board in regard to the selection of projects to be funded. A portion of the fund may be used, on an annual basis, to fund activities directed towards educating the public on the importance of trees in the environment, ecological issues and pollution prevention.
- (4) **Funds to be Kept Separate.** The balance within the fund shall be recorded and accounted for in a manner that distinguishes them from other general funds of the city and shall be disbursed in a manner consistent with the purposes for which this fund has been established. The balance of this fund shall not be transferred to the general fund at the end of each budget year, but rather, the balance remaining in the fund at the close of the city's fiscal year shall roll over and become the beginning balance for the next fiscal year.
- (o) **Public Projects.** Municipal and utility entities shall obtain a tree permit before any vegetation is removed or new construction activity takes place. Special attention will be given to the preservation of trees in public rights-of-way that are to help satisfy the objectives of the streetscape

planting standards of this article (section 35-512). The city arborist shall approve an application for the reasonable removal of a protected tree in connection with construction, maintenance or repair of public facilities in or above a public street, alley, rights-of-way, easement or other public land.

- (1) **Generally.** A minimum of twenty-five (25) percent of all diameter inches of protected trees within the project boundary/limits must be preserved.
  - (2) **Calculations of Preservation Ratios.** All percentages relating to preservation stated within this section shall be based the initial tree survey. Any subsequent redevelopment of public property must minimally preserve the applicable percentage of the total diameter inches of protected trees as indicated in the initial tree survey.
  - (3) **Tree Retention Ratio.** A minimum of ten (10) percent of the total diameter inches within the surveyed area must be retained in their original location when possible. Removal of additional trees, up to the percentage prescribed in this section, requires mitigation (see subsection (f) above).
  - (4) **Design, Diversity and Desirability.** The location of all improvements shall be orientated by the applicant, to the extent the applicant determines possible, in a manner which allows for the preserving of the greatest number of trees and in doing so is encouraged to acquire rights-of-way in such a manner. Applicants are also encouraged to preserve trees to meet the landscape and streetscape standards. Also as the particular site conditions warrant, the applicant shall preserve a diversity of species.
- (p) **Tree Canopy Investment Fund.**
- (1) **Fund Established.** The director of finance is hereby directed to establish a dedicated account to be entitled Tree Canopy Investment Fund.

(2) **Tree Canopy Investment Fund Fees.**

- (i) A fee of fifteen dollars (\$15.00) per lot shall be assessed for each residentially platted lot or for each residential building permit issued.
  - (ii) A fee of twenty-five dollars (\$25.00) per acre or portion thereof shall be assessed for each commercially platted lot or a fee of twenty-five dollars (\$25.00) per acre for each lot for which a commercial building permit is issued by the development services department.
  - (iii) Fees collected pursuant to the Tree Canopy Investment Fund shall be assessed at the time a tree permit is issued and recorded in the fund created pursuant to this section, unless expressly prohibited by law.
- (3) **Use of Funds.** The funds collected shall be utilized to pay for the planting and maintenance of trees to proactively enhance the city's tree canopy area. The program is to be administered by the development services department. The development services director shall seek the advice of the city forester in regard to the selection of projects to be funded.
- (4) **Funds to Be Kept Separate.** The balance within the fund shall be recorded and accounted for in a manner that distinguishes them from other general funds of the city and shall be disbursed in a manner consistent with the purposes for which this fund has been established. The balance of this fund shall not be transferred to the general fund at the end of each budget year, but rather, the balance remaining in the

fund at the close of the city's fiscal year shall roll over into the balance for the next fiscal year.

(Ord. No. 97332 § 2) (Ord. No. 97602 § 2) (Ord. No. 98697 § 1, 4, and 6) (Ord. No. 100126 § 4) (Ord. No. 101816, § 2, 12-15-05) (Ord. No. 2006-11-02-1258, § 2, 11-2-06)

**Sec. 35-524. Reserved.**

**Editor's note**—Ord. No. 2006-11-02-1258, § 2, adopted Nov. 2, 2006, deleted § 35-524, which pertained to woodlands preservation standards and derived from Ordinance No. 100126, § 4.

**DIVISION 6. PARKING AND STORAGE STANDARDS**

**Sec. 35-525. Outdoor Storage Standards.**

(a) **Applicability.** The provisions of this section apply to the keeping, in an unroofed area, any goods, junk, material, or merchandise in the same place for more than twenty-four (24) hours. For purposes of this section, outdoor storage is divided into the following categories:

(1) **Class 1 Storage.**

- The storage of passenger vehicles incidental to a residential use.
- The incidental storage of materials on construction sites.

(2) **Class 2 Storage.** Class 2 storage includes the following:

- The storage of live plants on lots or parcels of not less than one (1) acre.
- The storage of goods incidental to the on-site sale of feed, grain, fertilizers, pesticides and similar goods, or the provision of agricultural services.
- The display, except along a property line of a lot zoned for a residential use, of the following merchandise outdoors: artwork or pottery; flowers or plants; food products; handcrafted goods; and recreational equipment, including roller skates, bicycles, windsurf boards, and watercraft.

(3) **Class 3 Storage.** Class 3 storage includes the following:

A. Storage of automobiles, noncommercial trucks, motorcycles, motor-homes, recreational vehicles, or boats for sale incidental to the use of a lot or parcel as a car dealer, a bus, truck, mobile homes, or large vehicle dealer, or a mini-warehouse.

i. The area used for outside vehicle storage for display of auto, RV, boat, or trailer inventory shall be limited to twenty (20) percent of the total site area for "incidental" auto, RV, boat, or trailer sales. "Incidental" being defined as sales totaling for all such products to be less than fifty (50) percent of the total income or gross revenues generated on the site.

ii. The area used for outside vehicle storage for display of auto, RV, boat, or trailer inventory for auto lots or dealerships which is the primary source of gross income or revenue shall not be limited in site area except for required buildings, setbacks, landscaping and buffering provisions of this chapter.

B. Storage incidental to monument retail sales, including the retail sale of monuments for placement on graves, and the sale, storage, and delivery of headstones, footstones, markers, statues, obelisks, cornerstones, and ledgers.

(4) **Class 4 Storage.** Class 4 storage involves the display of merchandise other than that described in subsection (2) outdoors during business hours where screened from view off-premises.

(5) **Class 5 Storage.** Class 5 storage includes any of the following:

A. The storage of sports equipment, watercraft, watercraft motors, trailers, motorcycles, or motorhomes.

planting standards of this article (section 35-512). The city arborist shall approve an application for the reasonable removal of a protected tree in connection with construction, maintenance or repair of public facilities in or above a public street, alley, rights-of-way, easement or other public land.

- (1) **Generally.** A minimum of twenty-five (25) percent of all diameter inches of protected trees within the project boundary/limits must be preserved.
  - (2) **Calculations of Preservation Ratios.** All percentages relating to preservation stated within this section shall be based the initial tree survey. Any subsequent redevelopment of public property must minimally preserve the applicable percentage of the total diameter inches of protected trees as indicated in the initial tree survey.
  - (3) **Tree Retention Ratio.** A minimum of ten (10) percent of the total diameter inches within the surveyed area must be retained in their original location when possible. Removal of additional trees, up to the percentage prescribed in this section, requires mitigation (see subsection (f) above).
  - (4) **Design, Diversity and Desirability.** The location of all improvements shall be orientated by the applicant, to the extent the applicant determines possible, in a manner which allows for the preserving of the greatest number of trees and in doing so is encouraged to acquire rights-of-way in such a manner. Applicants are also encouraged to preserve trees to meet the landscape and streetscape standards. Also as the particular site conditions warrant, the applicant shall preserve a diversity of species.
- (p) **Tree Canopy Investment Fund.**
- (1) **Fund Established.** The director of finance is hereby directed to establish a dedicated account to be entitled Tree Canopy Investment Fund.

(2) **Tree Canopy Investment Fund Fees.**

- (i) A fee of fifteen dollars (\$15.00) per lot shall be assessed for each residentially platted lot or for each residential building permit issued.
  - (ii) A fee of twenty-five dollars (\$25.00) per acre or portion thereof shall be assessed for each commercially platted lot or a fee of twenty-five dollars (\$25.00) per acre for each lot for which a commercial building permit is issued by the development services department.
  - (iii) Fees collected pursuant to the Tree Canopy Investment Fund shall be assessed at the time a tree permit is issued and recorded in the fund created pursuant to this section, unless expressly prohibited by law.
- (3) **Use of Funds.** The funds collected shall be utilized to pay for the planting and maintenance of trees to proactively enhance the city's tree canopy area. The program is to be administered by the development services department. The development services director shall seek the advice of the city forester in regard to the selection of projects to be funded.
- (4) **Funds to Be Kept Separate.** The balance within the fund shall be recorded and accounted for in a manner that distinguishes them from other general funds of the city and shall be disbursed in a manner consistent with the purposes for which this fund has been established. The balance of this fund shall not be transferred to the general fund at the end of each budget year, but rather, the balance remaining in the

fund at the close of the city's fiscal year shall roll over into the balance for the next fiscal year.

(Ord. No. 97332 § 2) (Ord. No. 97602 § 2) (Ord. No. 98697 § 1, 4, and 6) (Ord. No. 100126 § 4) (Ord. No. 101816, § 2, 12-15-05) (Ord. No. 2006-11-02-1258, § 2, 11-2-06)

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A. Storage of automobiles, noncommercial trucks, motorcycles, motor-homes, recreational vehicles, or boats for sale incidental to the use of a lot or parcel as a car dealer, a bus, truck, mobile homes, or large vehicle dealer, or a mini-warehouse.

i. The area used for outside vehicle storage for display of auto, RV, boat, or trailer inventory shall be limited to twenty (20) percent of the total site area for "incidental" auto, RV, boat, or trailer sales. "Incidental" being defined as sales totaling for all such products to be less than fifty (50) percent of the total income or gross revenues generated on the site.

ii. The area used for outside vehicle storage for display of auto, RV, boat, or trailer inventory for auto lots or dealerships which is the primary source of gross income or revenue shall not be limited in site area except for required buildings, setbacks, landscaping and buffering provisions of this chapter.

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(4) **Class 4 Storage.** Class 4 storage involves the display of merchandise other than that described in subsection (2) outdoors during business hours where screened from view off-premises.

(5) **Class 5 Storage.** Class 5 storage includes any of the following:

A. The storage of sports equipment, watercraft, watercraft motors, trailers, motorcycles, or motorhomes.

- (3) **City Council Hearing.** In addition to the other remedies provided for the enforcement of this chapter, the city council is authorized and empowered to hear and determine the facts in cases of alleged nuisances and where it finds that facts exist which constitute a nuisance as specified in subsection (2) above, the city council may order the cessation and abatement of such nuisance.

(Ord. No. 95352 § 5) (Ord. No. 98697 § 6)

### Sec. 35-492. Violation of Conditions.

(a) **Penalty.** The violation of any condition imposed pursuant to a development order or a permit pursuant to this chapter including, but not limited to, a specific use authorization, conditional zoning district or special exception, shall constitute a violation of this chapter and may be prosecuted in municipal court regardless of whether civil or administrative action is taken against the permit holder. Upon conviction, the permit holder shall be subject to the penalties prescribed in subsection 35-491(c)(2) of this chapter.

(b) **Revocation of Permit.** The director of development services is authorized to issue any administrative order necessary to terminate or suspend a use found, as a result of the administrative process noted in section 35-406, to be in violation of a condition.

(c) **Civil Action.** The director of development services may request the city attorney to institute a civil action as prescribed in subsection 35-491(a) of this chapter regardless of whether a criminal or administrative action is taken against the permit holder.

(Ord No. 98697 § 4 and 6)

### Sec. 35-493. Violations of Tree Preservation Standards.

#### (a) Inside City Limits.

- (1) **Violation Defined.** It shall be a violation of this division for any person to intentionally or knowingly remove or destroy, or allow the removal or destruction of a significant or heritage tree located on any property to which this chapter applies, or for any person to knowingly or intention-

ally perform any regulated activity in a manner that does not conform to the requirements of this chapter. Any act or omission contrary to the requirements or directives of this chapter, or any breach of any duty imposed by this chapter shall constitute a violation hereof. In addition to enforcement by the city arborist, this section shall be enforceable by and pursuant to the authority provided in section 35-491 of this chapter.

- (2) **Penalty.** Any person who commits a violation of this chapter shall be subject to a civil penalty of up to one thousand dollars (\$1,000.00) per violation or a criminal penalty of up to two hundred dollars (\$200.00) per violation per day and may be required to attend one or more training seminars. For the purpose of calculating penalties, each day on which a violation is found to exist shall constitute a separate and sanctionable offense.

(b) **Outside City Limits.** Whenever a violation of this chapter is believed to have occurred or to be occurring outside the corporate limits of the city but within the city's ETJ, criminal penalties shall not be sought, however, enforcement against such violations is hereby authorized pursuant to and under the authority granted by V.T.C.A. Local Government Code § 212.001 et seq.

(c) **Work Commencing Before Issuance of a Tree Permit.** Any person who commences any work requiring a tree permit before obtaining such permit shall be subject to a fine of two thousand dollars (\$2,000.00) or an additional fee equal to the fee established in Appendix "C" for commencing development without a tree permit. (Ord. No. 97332 § 6) (Ord. No. 2006-11-02-1258, § 2, 11-2-06) (Ord. No. 2006-11-30-1333, § 2, 11-30-06)

### Sec. 35-494. Enforcement of Subdivision Regulations.

(a) **Permits.** Building permits shall not be issued by the city for any structure on a tract of land [or] lot within the corporate limits of the city which has not been platted and the plat duly recorded in the office of the county clerk.

(b) **Utility Service to Land First Served Prior to September 1, 1987.** No public utility such as water, sewer, electricity, or gas which is owned, controlled or distributed by the city, will be provided to a lot in a subdivision within the corporate limits of the city or its extraterritorial jurisdiction that has not been platted and the plat duly recorded in the office of the county clerk. In addition, all relevant impact fees required to provide utility service to the land must be paid prior to the provision of service.

(c) **Utility Service to Land First Served on or After September 1, 1987.** No public utility or city-owned or city-operated utility that provides water, sewer, electricity, gas, or other utility service shall serve or connect any land within the corporate limits of San Antonio or its extraterritorial jurisdiction unless the utility has been presented with or otherwise holds a certificate applicable to the land and issued by the planning commission under subsection 35-432(d)(4). In addition, all relevant impact fees required to provide utility service to the land must be paid prior to the provision of service.

(d) **Completion of Improvements.**

- (1) **Liability.** A subdivider shall be held liable to the city for the completion of all site improvements required by these regulations until such time as the improvements shall have been actually completed and accepted by the city.
- (2) **Remedy.** If the construction of site improvements has been guaranteed by a form of security described in section 35-438 and such improvements have not been completed and accepted by the city within the time period prescribed by these regulations, the director of development services, after written notification has been given to the subdivider, shall take such action as may be required to cause payment to be made to the city of the amounts of money secured by a guarantee of performance. Such amounts of money shall be used by the director of development services to finance the completion of the required improvements. In the event that the amounts of money referred to above

are insufficient to finance the completion of the required improvements, the director of development services shall so notify the subdivider in writing and shall require the subdivider either to complete the improvements without delay or to make available to the city the amount of money required to finance their completion. Should the subdivider fail to do either of the above and such failure is not due to strikes, riots, acts of God, acts of the public enemy, injunction or other court action, or any other cause similar to those enumerated beyond the subdivider's control, the director of development services shall refer the matter to the city attorney for such action as the city attorney may deem appropriate to compel the subdivider to comply with the provisions of the performance agreement entered into by the subdivider as a condition precedent to the approval of the plat by the planning commission, or to pursue any other remedy which may be available to the city. Further, until such time as the required site improvements have been completed and accepted by the city, the director of development services shall refuse to accept from such subdivider a performance guarantee under any form which is related to the plat of a subdivision, subsequently filed with the planning commission, in which such subdivider has a principal or subsidiary interest. Such a plat, once it has been approved by the planning commission, may be recorded only in the manner prescribed in subsection 35-432(i)(1).

- (3) **Exemptions.** The provisions of this section shall not apply if a subdivider is prevented from completing and having accepted such required site improvements within the prescribed time by reason of strikes, riots, acts of God, acts of the public enemy, injunction or other cause similar to those enumerated beyond the subdivider's reasonable control. The subdivider shall be entitled to an extension of time equal to the time of such delay that shall be fixed by written certificate made