

**Ordinance No. 2010-14A**

**AN ORDINANCE AMENDING CHAPTER 16 PLANNING AND DEVELOPMENT, LANDSCAPING**

**ARTICLE IV. LANDSCAPING**

**DIVISION 1. GENERALLY**

**Sec. 16-130. Definitions.**

The following are definitions of specialized terms and phrases used in this article

*Artificial lot:* An area within a platted lot, for the purpose of satisfying the requirements of the article, that is delineated on the building site plan and the landscape plan and approved by the building official.

The purpose of the artificial lot is to allow the partial development of property. If one owned a ten-acre tract on which one was planning to build a retail outlet, restaurant, and hotel in phases, one would need to declare artificial lots for each phase of the development. This would not be necessary if one were required to replat the acreage separately for each phase as these would define the "lots" for the landscape ordinance.

When one builds the retail center on three (3) acres of the property, one could draw an imaginary three-acre "artificial lot" for that phase of the development as it relates to the landscape ordinance only. In other words, the street yard, etc., would only be based on the three (3) acres used for the "artificial lot". The undeveloped area could remain untouched. As one proceeds with phase 2, the three (3) acres would be declared as a separate "artificial lot" for the restaurant and that lot would be landscaped in accordance with the Code. Then, when the hotel is built on the last four (4) acres, that acreage would become an "artificial lot" for which the street yard and other requirements of the Code would be figured.

*Building official:* The director of building inspections or his or her designated representative.

*Building site:* The lot or portion of a lot which is designated on the building permit application and any existing buildings and appurtenant parking on the lot; or if designated, an artificial lot contained therein and approved by the building official.

*Caliper:* Any of various measuring instruments having two (2) usually adjustable arms, legs, or jaws used especially to measure diameter or thickness.

*Controlled garden bed:* An area set aside for the cultivation of flowers, herbs, vegetables, shrubs, grasses, and trees. They may range in size from window boxes to large plots of land. They include raised beds where the soil is higher than the soil adjacent to the beds, or at grade beds that have a containment barrier such as wood boards or posts, bricks, rocks, plastic edging, small cut ditches, or other barriers that separate the beds from their surroundings.

*Ground cover:* Plant material of a species which normally attains a height of less than two (2) feet at maturity or can be maintained at that height, installed in such a manner to provide continuous cover over the ground.

*Intrusive species:* Weeds, undesirable natural and/or nuisance plants or species, such as Brazilian pepper trees.

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*Landscaping:* Any of the following combinations thereof; living material, such as, but not limited to, grass, ground covers, shrubs, vines, hedges, shade/canopy trees or palms. In addition, nonliving durable material, excluding paving and sand, may be used to compliment the landscaping for edging and decoration.

*Landscape area:* Area of property required to meet landscaping requirements as prescribed in section 16-143(a)(1).

*Mulch:* Non-living organic and inorganic materials customarily used in landscape design to retard erosion, retain moisture, maintain even soil temperature, control weeds, and enrich the soil.

*Native plant landscaping:* An area of native plant vegetation within a planned and managed landscape that allows the use of such plants in the creation, preservation, or restoration of natural plant communities.

*Permeable area:* An area having pores or openings that allow water to pass through that is sufficient to foster plant maturity, health and absorbability.

*Property owner:* The person, entity, corporation, or partnership in whose name the certificate of occupancy was issued; or, the current owner of the property if a certificate of occupancy is no longer valid or, if the property is undeveloped.

*Sod:* Permanently stabilizing areas of a continuous surface layer of ground containing a mat of grass and grass roots.

*Street yard:* The area of a lot which lies between the property line along a dedicated street and the actual wall line of the building; or, if no building exists, to the rear of the property line. Such building lines extend outward from the corners of the building as illustrated in section 16-151 of this article.

*Xeriscape:* The conservation of water and energy through creative landscaping. The word xeriscape comes from the Greek word "xeros", meaning "dry". This does not mean the landscape is brown or devoid of plants. However, it does mean that it is a well designed landscape providing the same lush appearance as other non-xeriscape landscapes, but requires significantly less water, energy and maintenance.

- Good design
- Soil improvements
- Use of mulch
- Use of drought-tolerant plants
- Efficient water use
- Good maintenance techniques

*Xeriscape planting:* A plant species that is drought tolerant, needing very little water once established. (Ord. No. 2003-13, § 1, 10-16-03)

## **Secs. 16-131 – 16-140. Reserved.**

### **DIVISION 2. ADMINISTRATION AND ENFORCEMENT**

## **Sec. 16-141. Landscaping permit required.**

A landscape permit is required where this article specifies below and shall apply to the street yard of all building sites within the city limits where any of the following conditions are present.

### **(a) *New construction:***

- (1) Any new building construction for which a building permit is required.**
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- (1) Personally to the owner in writing; or
- (2) By letter addressed to the owner at the owner's post office address; or
- (3) If owner cannot be contacted by (1) or (2), then the city may attempt to contact the owner by one of the following methods:
  - a. By publication at least twice within ten (10) consecutive days; or
  - b. By posting the notice on or near the front door of each building on the property to which the violation relates; or
  - c. By posting the notice on a placard attached to the property to which the violation relates, if the property contains no buildings.

It shall be unlawful for any person to fail to comply with such notice. If the property has not been brought into compliance within ninety (90) days after notification, the city may cure the violation and charge the expenses incurred in said curative action to the owner of the property.

- (e) *Penalty.* A failure to comply with any provision of this article constitutes a violation punishable as such as provided by the general penalty provisions of section 1-15.
- (f) *Cumulative remedies.* The city may pursue any remedy or remedies available at law or in equity for a violation of this article, including, but not limited to injunctive relief. No election shall preclude the utilization of any other remedy. All remedies available to the city to enforce this article are cumulative.

(Ord. No. 2003-13, § 1, 10-16-03)

#### **Sec. 16-148. Recommended plant species list.**

~~Staff is proposing that instead of listing all allowable native plants it would be more manageable to list The following are to be added to the invasive and intrusive species list. To name a few:~~

1. Chinaberry, Texas Umbrella Tree
2. Castor Bean
3. Chinese Tallow
4. Brazilian Pepper
5. Salt Cedar
6. Guinea Grass
7. Johnson Grass
8. Grass Burr
9. King's Ranch Bluestem

~~Note: additional prohibited intrusive and invasive species may be determined by application reviewer(s).~~

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Shrub, Perennial or Tree < 3/4" caliper	3 – 5 gallon	5
Shrub, Perennial or Tree < 3/4" caliper	10 gallon	7
Shrub, Perennial or Tree < 3/4" caliper	15 gallon	10
Shrub, Perennial or Tree < 3/4" caliper	25 gallon/Burlap & Ball	15
Ground Cover or Vine	1 gallon	1
Ground Cover or Vine	5 gallon	2
Perennial or Ground Cover	1 flat	5
Grass	5 square feet	0.5
Mulch	5 square feet x 3" Depth	0.5

(Ord. No. 2003-13, § 1, 10-16-03)

**Sec. 16-146. Landscape area and plant maintenance.**

- (a) *Plant maintenance and replacement.* Required plants must be maintained in a healthy condition at all times. Any plant that dies must be replaced with another living plant that is equivalent in points at least to the initial plant selection within the approved landscape plan within ninety (90) days after notification by the city, if that plant(s) moves the plan below the required points.

Exception:

The building official may extend the time period for plant replacement by sixty (60) days to accommodate weather conditions and planting requirements.

- (b) *Easements/right-of-way.* Property owners may elect to plant within the easements and/or right-of-way within their properties. If easements and/or rights-of-way are not located within their properties, points will not be awarded. Damage to existing plantings in easements and rights-of-way due to required utility repairs or right-of-way work by utility companies or the city will be repaired by the property owner.

NOTICE: If easement/right-of-way becomes unusable, an alternate landscape plan shall be provided to the building inspector for approval.

(Ord. No. 2003-13, § 1, 10-16-03)

**Sec. 16-147. Noncompliance and enforcement.**

- (a) *Existing developments.* Where existing developments are limited in space, to accommodate the provisions of this article, an alternate landscape plan may be presented, and must demonstrate that all reasonable care has been taken to adhere to the provisions of this article.
- (b) *Appeals.* Applicants who disagree with decisions of the building official and code enforcement officer regarding required landscaping may apply to the board of adjustments and appeals for further consideration.
- (c) *Enforcement authority.* The building official and code enforcement officer shall enforce the provisions of this article. The city manager or his designee may assume some or all of the duties of the building official and/or code enforcement officer. The landscaping plan shall be re-examined at the time that any subsequent building department related permit is requested. If in the opinion of the building official the installed landscaping plan is no longer meeting the intention of the article, no permits will be issued until a supplementary plan is provided and approved by the building inspector, or the initial plan is met.
- (d) *Notification of violation.* The city may cure a violation on the subject property under the conditions hereinafter set forth. Whenever any landscaping plan is found to be in violation of this article, the owner may be notified by the city in writing to cure the violation within ninety (90) business days after such notice. The notice must be given:

owner will be in violation of this article and subject to enforcement penalties and procedures;  
and

- (3) Receipt of a performance bond or corporate surety bond for landscaping in the amount of ten thousand dollars (\$10,000.00).

(Ord. No. 2003-13, § 1, 10-16-03)

### **Sec. 16-143. Landscaping requirements.**

(a) *General requirements.*

- (1) Plant materials: No artificial plant materials or art objects, shade devices, or any other manmade item may be used to satisfy the requirements of this article. (Plant heights are measured from the top of the root ball or if the plant is in a container, from the soil level in the container and are awarded points at the time of planting.)
- (2) Permeable area: All planted areas and tree wells shall provide sufficient permeable area to foster plant maturity and health.
- (3) Water sources: If an irrigation system is not installed at the time of installation, a hose bib must be provided within eighty (80) feet of any planted area.

- (b) *Specific requirements.* Required landscape area: The required landscaped area of the site shall be equal to five (5) square feet per linear foot of street frontage, or fifteen (15) percent of the defined street yard, whichever is less; to be placed within the street yard area as defined by section 16-150 of this Code. A total of one-half (1/2) point per one (1) square foot of landscape area is required for all permitted landscaping plans, as described below.

(Ord. No. 2003-13, § 1, 10-16-03)

### **Sec. 16-144. Landscaping points.**

- (a) *Existing vegetation preservation.* Trees and shrubs: Points may be earned through existing vegetation preservation within the street yard. Points for existing healthy, vigorous, growing vegetation will be based on size and tabulated as if newly planted under the landscape plan. No plant considered intrusive shall receive points under this Code.

(b) *Newly planted vegetation.*

- (1) Street trees: Five (5) Bonus points per tree, installed within twelve (12) feet of the street right-of-way, will be awarded. Notice: consideration should be given to placement and growth potential in regards to utility high wires.
- (2) Landscape areas: The area required to be landscaped under this Code shall earn points with tree and shrub plantings as indicated in section 16-145, Point tabulation chart, of this article. No plant considered intrusive shall receive points under this Code.

(Ord. No. 2003-13, § 1, 10-16-03)

### **Sec. 16-145. Point tabulation chart.**

<i>Plant Classification</i>	<i>Size At Time of Planting</i>	<i>Points</i>
Tree (other than palm)	¾" or larger caliper	20
Palm Tree or Cycad - Small	Each 1" height of wood (trunk or bulb) (max. 20 points)	1
Palm Tree – Large	Each 1' height of trunk (max. 30 points)	3
Shrub, Perennial or Tree < ¾" caliper	1 gallon	2

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official for approval. The building department shall provide a form to assist in the application process. Preparation of the landscape plan must be completed by one of the following:

- (1) Landscape architect currently registered to practice in the state;
- (2) Certified nurseryman;
- (3) Master gardener;
- (4) Owner.

**Note:** When this article applies to a **new** building site, a landscape plan must be submitted with the building permit application and associated required drawings for the new development.

(b) *Contents:* The landscape plan shall be drawn to scale and shall contain and clearly index the following information:

- (1) Project name, street address, legal description, date, north arrow;
- (2) Location of lot lines, dimensions of the all building(s), fences site and streets, sidewalks, and driveways yard;
- (3) Location and size of the artificial lot(s), if required and where requested, for the purposes of satisfying the requirements of this article;
- (4) Description of the plant material shown on the plan, including names (common and botanical), quantities, sizes at installation (heights, spread, and spacing), location of all controlled garden beds and plant types within them;
- (5) Clearly referenced tabulation of landscaping points (See Section 16-144 and 145) earned by the plan, if required; and Landscaping Points (See Section 16-144 and 145) are not required for residential and commercial native landscaping applications, but the proposed native landscaping shall be equivalent to or greater than the landscaping that would be required under the points system as determined by the Building Official on a case by case basis;
- (6) Identification of existing vegetation (size, location, and species) to be preserved as part of the landscape plan and point tabulation, if required.
- (7) Location and width of any required buffer strips.

(c) *Plan review:* The building official, and/or the designated representative(s) that may consist of non-staff persons knowledgeable in the field of plants and landscaping, shall review the landscape plan to verify compliance with this article. Prior to issuance of any building permit the landscape plan shall be reviewed to verify compliance with this article. If an artificial lot is requested, it shall be clearly delineated and dimensioned on both the landscape and building site plans.

(d) *Temporary certificate of occupancy:* The building inspector may issue a temporary certificate of occupancy with a term up to six (6) months, prior to the installation of the requirements of this article under the following circumstances:

- (1) Weather consideration requirements for plant species installation; or
- (2) Receipt of a performance bond or corporate surety bond for landscaping in the amount of ten thousand dollars (\$10,000.00).

Failure to comply within the temporary term of six (6) months shall constitute violation of this article and subject the owner to enforcement penalties and procedures.

(e) *Permanent certificate of occupancy:* The building inspector may issue a permanent certificate of occupancy prior to the installation of the requirements where a lending institution will not accept a temporary certificate of occupancy for permanent financing and:

- (1) The applicant presents a signed affidavit by an official of the lending institution citing this requirement; and
  - (2) The applicant presents a signed affidavit acknowledging that if the requirements of this article are not met within six (6) months from the date on the permanent certificate of occupancy, the
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(2) Any construction of a new parking lot for which a building permit is required.

(b) *Additions/renovations:*

- (1) Any building addition or renovation exceeding fifty (50) percent of the existing building area as defined by the footprint of the existing building for which the building permit is required.
- (2) Any parking lot addition within the street yard by more than two thousand (2,000) square feet or ten (10) percent in area of the existing parking lot whichever is greater for which a building permit is required.

(c) *Residential or commercial uses requesting native plant landscaping:*

- (1) Native plant landscaping is permitted without a landscaping permit when the native plant landscaping is within a controlled garden bed(s), and when combined, the square footage area of the native plants does not exceed twenty-five (25) percent of the properties open space.
- (2) Native landscapes may be required to maintain a regularly mowed strip of grass or maintain an open strip of property as a buffer to adjoining properties. The width of the strip, if required, shall be determined on a case by case basis through the permitting process.
- (3) Native landscapes shall maintain a mowed or clear buffer strip within ten (10) feet of any public right-of-way boundary, and within five (5) feet of a public sidewalk.
- (4) Nothing contained herein shall be construed to supersede any lawful provisions of covenants and restrictions on private property. Landscaping permits for native landscaping will not supersede property deed restrictions.
- (5) Critical dune vegetation located on dune(s) landward of the thousand (1,000) foot Dune Protection Line, as established in the City of Port Aransas Coastal Management Plan (CMP), shall not require a landscape permit. The presence of dune(s) shall be established as defined in the CMP.

(d) *Residential or commercial uses requesting landscaping/decorative item(s) in a city right-of-way.*

- (1) In general, landscaping and decorative items within the city right-of-way shall be permitted on properties whose street front section has a raised curb, as on-street parking takes place on the street. In general landscaping and decorative items that prohibits on-street parking shall not be permitted within the city right-of-way whose street front section is curb-less, as on-street parking takes place in this area. In both cases, a landscape permit shall be required and approval shall be determined on a case by case basis.

(e) *Exceptions:*

- (1) Residential uses with less than four (4) dwelling units, except for native landscaping requests.
- (2) Exterior or interior finishing and remodeling that does not increase the existing building area or parking area of the existing development.
- (3) Reconstruction of an existing building which was destroyed or ruined by flood, fire, windstorm, or act of God as long as the reconstruction of the existing building does not alter the footprint or area of the existing building and/or parking lot.

(Ord. No. 2003-13, § 1, 10-16-03)

**Sec. 16-142. Application for permit.**

- (a) *General:* Two (2) sets of the landscape plan shall be submitted with the landscape application. must accompany the building permit application. The landscape plan shall include drawing (overlays), consistent in scale with the building site plan drawings, of proposed landscaped areas with dimensions, and a plant list specifying plant size and associated points. If changes are made during the installation process, amendments to the landscape plan shall be provided to the building

owner may be notified by the city in writing to cure the violation within ninety (90) business days after such notice. The notice must be given:

- (1) Personally to the owner in writing; or
- (2) By letter addressed to the owner at the owner's post office address; or
- (3) If owner cannot be contacted by (1) or (2), then the city may attempt to contact the owner by one of the following methods:
  - a. By publication at least twice within ten (10) consecutive days; or
  - b. By posting the notice on or near the front door of each building on the property to which the violation relates; or
  - c. By posting the notice on a placard attached to the property to which the violation relates, if the property contains no buildings.

It shall be unlawful for any person to fail to comply with such notice. If the property has not been brought into compliance within ninety (90) days after notification, the city may cure the violation and charge the expenses incurred in said curative action to the owner of the property.

- (e) *Penalty.* A failure to comply with any provision of this article constitutes a violation punishable as such as provided by the general penalty provisions of section 1-15.
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~~Note: additional prohibited intrusive and invasive species may be determined by application reviewer(s).~~

PASSED AND APPROVED THIS 16<sup>TH</sup> DAY OF DECEMBER



Keith McMullin, Mayor

ATTEST:



Esther Arzola, City Secretary