

TOWN OF LEXINGTON

Landscaping and Tree Ordinance

April 5, 1999

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State of South Carolina)

Ordinance Number: 156

County of Lexington)

**AN ORDINANCE OF THE TOWN OF LEXINGTON
SOUTH CAROLINA REPEALING THE LANDSCAPING AND TREE
ORDINANCE OF THE TOWN OF LEXINGTON AND
REPLACING IT WITH A NEW LANDSCAPING AND TREE ORDINANCE**

BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LEXINGTON, SOUTH CAROLINA, IN COUNCIL ASSEMBLED AND BY THE AUTHORITY THEREOF that:

SECTION 1: Chapter 156 of the Code of Ordinances, The Landscaping and Tree Ordinance, first enacted on , April 1, 1996, shall be, and hereby is, repealed in its entirety.

SECTION 2: The repealed Chapter 156 of the Code of Ordinances, Landscaping and Tree Ordinance shall be, and hereby is, replaced with the new Chapter 156 of the Code of Ordinances, Landscaping and Tree Ordinance which shall read as follows:

ARTICLE 1

AUTHORITY

1-1.0 Authority

Pursuant to authority conferred by the 1994 "South Carolina Local Government Comprehensive Planning Enabling Act", S.C. Code Sections 6-29-310 through 6-29-1200, the Town of Lexington does ordain and enact into law the following articles and sections.

1-2.0 Inventory of Existing Conditions

The Town of Lexington has been and continues to experience a tremendous amount of residential and commercial development. From 1980 to 1990 the Town's population increased ninety (90) percent.

Since 1990, the Town has grown an additional thirty (30) percent. Currently, there are over seven hundred (700) single family and two hundred (200) multi-family housing units planned for the next three to five years. In place of open farmland and forest is now asphalt, concrete and steel. The 1995 Town Survey results overwhelmingly point to a desire among citizens to create

and enhance greenspaces, parks, and provide for effective landscaping and tree retention ordinances.

1-3.0 Intent

It is the intent of this ordinance to improve the appearance of the Community by encouraging attractive and creative design and good landscaping practice.

Since visitors' impressions of the Community are shaped primarily by the views from thoroughfares, retaining and improving streetscape, landscape resources and aesthetics contribute to the general welfare, prosperity, quality of life and Community pride.

The planting of trees and other landscape resources in new or expanding developments promotes air purification, oxygen regeneration, tourism, economic development, ground water recharge, and improves the quality of life and conserves energy.

It is the intent of this ordinance to protect lower intensity land uses from higher intensity uses.

This ordinance is designed to safeguard public health, safety and welfare; to reduce air and water pollution, erosion, sedimentation, noise, glare and excessive heat and to protect and enhance the value of investments, the visual beauty and the environment of the Town of Lexington.

1-4.0 Title

This ordinance shall be cited as the Landscaping and Tree Ordinance for the Town of Lexington, South Carolina.

1-5.0 Jurisdiction

The regulations set forth herein shall apply to all land within the Town limits.

1-6.0 Applicability

Except as otherwise stated, the provisions of this ordinance shall apply to all private and public land classified as commercial use within the IDD and RDD designations located within the corporate limits of the Town of Lexington with the following exemptions:

1-7.0 Exemptions

- (1) Any lot occupied by not more than two (2) residential structures containing (inaggregate) not more than two (2) dwelling units.
- (2) Any single-family residential building site shown on a site plan approved by the Town of Lexington.
- (3) Commercial Agriculture operations.

(4) Commercial Timber operations.

(5) For necessary service a utility company maintains, provides or constructs.

(6) Commercial and Industrial development containing a display/storage area greater than ten thousand (10,000) square feet shall be exempt of interior parking lot requirements within the display area only. However, additional trees, shrubbery and ground covers may be required elsewhere on the property (i.e. Automobile, Mobile Home, Boating Dealerships, truck terminals, etc).

(7) Residential subdivision – ***SPECIAL PROVISIONS APPLY AS SPECIFIED HEREIN – SEE***

ARTICLE 7, GENERAL; SUBDIVISION DEVELOPMENT.

(8) Industrial Districts shall be subject to the requirements of Section 2.10-Street Frontage and Perimeter – in so much that all areas viewed by the public right of way shall be in compliance with the Landscape and Tree Ordinance. Section 3 – Utilities and Service Areas, Section 4 – Tree Retention, Section 5 – Standards and Materials, Section 6 – Legal, Section 7, Section 8 and Section 9 shall remain in forcible sections. Intent of the exemption is so that service areas not viewed from public right of ways shall be exempt. Industrial Districts shall be defined by the Town of Lexington's Zoning Ordinance.

ARTICLE 2

Definitions

2-1.0 This ordinance shall be interpreted according to its literal terms. Words shall be construed as defined in a standard dictionary and syntax shall be understood according to conventional rules.

2-2.0 Unless the context requires otherwise:

- (1) the present tense of verbs shall include the future tense;
- (2) the masculine gender shall include the feminine;
- (3) the singular number shall include the plural shall include the singular
- (4) the word “shall” denotes a mandatory requirement; the word “may” denotes permission.

2-3.0 The following terms shall have the following definitions:

ACTIVITY – As defined in the Zoning Ordinance for the Town of Lexington.

ADMINISTRATOR – The Town Official assigned to administer, interpret and enforce the Landscape and tree Ordinance.

AGGREGATE EXPANSION – Any area expansions of a site, building or building group which occurs within a three (3) year period or less.

AUTHORITY HORTICULTURAL/LANDSCAPE – Any individual or source, licensed, registered, degreed or otherwise acknowledged as capable of providing expert information and reference in horticultural science and/or landscape design and maintenance.

BERM – Any hill or slope which represents a change of elevation of at least two (2) feet at a slope of between twenty-five (25) and fifty (50) percent and which is covered with an appropriate stabilizing vegetation.

BIODIVERSITY – Diverse use of living landscape material so that on parcels of zero to one acre there are no more than 40% of any one species of living landscape materials excluding turf grass and ground cover is used over the entire property. On parcels greater than one acre but less than five acres, no more than twenty-five percent (25%) of any one species of living landscape material excluding turf grass and ground cover is used over the entire property. On parcels greater than or equal to five acres, no more than ten percent (10%) of any one species of living landscape material excluding turf grass and ground cover is used over the entire property.

BUILDING AREA - That portion of the structure that is defined by the “footprint” and/or total square footage.

BUILDING SITE – That portion of a lot or site on which a principal building could be erected as permitted by the Zoning Ordinance. This will include an area not greater than twenty (20) feet outside of the exterior walls of the structure.

CALIPER – The diameter of nursery stock, taken at six (6) inches above ground for up to and including four (4) inch caliper size and twelve (12) inches above ground for larger size.

CALIPER INCHES – Quantity in inches of the diameter of supplemental and replacement trees measured at a height of four (4) inches above the root ball.

CIRCUMFERENCE – For existing trees, the trunk circumferences is measured at four and one half (4 ½) feet above grade in order to obtain D.B.H.

COMMERCIAL USE – Activities normally associated or located within and IDD zoning classification (refer to Town Zoning Ordinance).

COMMERCIAL ARBORICULTURAL OPERATION – The practice of planting, raising, harvesting and replanting of trees for profit.

CORNER LOT – Any lot which is bounded on two or more consecutive sides by road rights-of-way which intersect at an angle of 135 degrees or less.

DEVELOPED LOT – Any lot which had been developed with building or other improvements, or for which development approval, such as a final plat approval, a zoning permit, or a certificate of occupancy, had been issued before the effective date of this Ordinance.

DIAMETER AT BREAST HEIGHT – D.B.H. – The accepted measurements of established trees in the ground is their diameter at D.B.H., measured at 4.5 feet above grade. To obtain D.B.H., measure the circumference of the tree in inches and divide by 3.14 (pi).

DISPLAY AREA OR LOT – Any unenclosed area used for the display of merchandise.

DRIPLINE – A vertical line extending from the outermost portion of the tree canopy to the ground.

GROUND COVER - Any plant material which serves to prevent soil erosion by covering large areas of ground, and which does not grow beyond twelve (12) inches in height.

INDUSTRIAL DISTRICT – A remote area of Town which contains primarily businesses of a non-service nature and is not on a route which would normally serve pedestrian traffic. An industrial district is not a zoning district. An industrial district will be designated and identified by the Zoning Administrator.

LANDSCAPE ZONE – That area not covered by buildings or pavement and containing landscaping.

LANDSCAPING – Plant material including but not limited to grass, ground covers, shrubs, vines, trees and organic matter such as mulch. This may also include decorative stone; however, live materials must cover no less than two-thirds (2/3) of the materials in the landscape zone.

MULCH - A layer of organic material placed on the soil around plants or trees to retain moisture and prevent weeds.

PARKING LOT – Any area of land which is used for parking, loading, or access to parking or loading areas. The term should be construed broadly to include areas where expanses of impervious surfaces disrupt the natural environment, but does not include buildings or roads.

PERIMETER LANDSCAPE ZONE – Area of land, improved by landscaping or fences, or both, designed to mitigate the extent of high-intensity land uses on neighboring, lower-intensity uses. Measurements shall begin at the property line(s) and extend toward the interior of the parcel(s).

PROTECTIVE TREE BARRIERS – Barricades made of wood, wire, or chainlink fencing shall be constructed around trees to establish a Tree Protection Zone. Tree protection or keep out signs shall be attached to the barrier.

PROTECTED TREE – Any broad leaved tree located with the street frontage, perimeter or required landscape zones having a D.B.H. of four (4) inches or greater. Also includes the definition of specimen tree.

ROAD FRONTAGE – Any strip of land adjacent to a public road right-of-way.

SCREEN FENCE OR WALL – Any structure which stands at least six (6) feet high at its lowest point, is between sixty-seven and one hundred percent opaque, and is designed and constructed as a permanent improvement for the purpose of blocking view.

SEMI-COMMERCIAL – Activities normally associated or located within a RDD zoning classification (refer to Town Zoning Ordinance).

SHRUB – Any hard-wooded perennial plant of species which normally reaches a height between twelve (12) inches and eight (8) feet.

SINGLE FAMILY – Activities normally associated or located within a PRD zoning classification (refer to Town Zoning Ordinance).

SPECIMEN TREE – Any broad leaved large canopy tree with a D.B.H. of twelve (12) inches or greater or any understory tree with a D.B.H. of six (6) inches or greater.

THOROUGHFARE - Any major arterial road; one of the principal routes into and through the community.

TREE – Any hard-wooded perennial plant, whether evergreen or deciduous, or a species which normally reaches a height of eight (8) feet or more at maturity.

TREE FUND – A fund established by the Town to receive deposits made in situations where compliance with the Ordinance is not possible. The amount contributed is based on an equivalent value of what normal and customary landscaping costs would have been and is more clearly defined by an established formula described in 7.20(C).

TREE PROTECTION ZONE – The area around a tree to be protected from any activity.

TREE, CANOPY, LARGE – Any single-stem tree of a species which normally reaches a height of forty (40) feet or more and a crown spread of twenty (20) feet or more at maturity.

TREE, UNDERSTORY/NON-CANOPY, SMALL/MEDIUM – Any single or multi-stem tree of a species which normally reaches a height of less than thirty-nine (39) feet and a crown spread of less than twenty (20) feet at maturity.

USE – As defined in the Zoning Ordinance for the Town of Lexington.

VISIBILITY TRIANGLE – The triangle horizontal area formed by intersecting right-of-way lines of roadways, or the intersection of a right-of-way line of a roadway and the edge of a driveway, and a line connecting points located on those lines twenty (20) feet from the point of intersection. The vertical dimension of a visibility triangle is defined as the space above two and one-half (2 ½) feet from the surface of the pavement.

ARTICLE 3

LANDSCAPING REQUIREMENTS

3-1.0 STREET FRONTAGE AND PERIMETER

PURPOSE

The purpose of landscaping street frontages and perimeters is to soften the visual impact of development from public view and adjacent property and to enhance the appearance of the Town.

3-2.0 REQUIRED DESIGN ELEMENTS

- (A) Parcel(s) that adjoin or front all proposed, future, private and public streets shall have a minimum street frontage depth of ten (10) feet. Measurements shall begin at the property line and extend toward the interior of the parcel(s).
- (B) Large broad leaved canopy trees shall average at least one tree per thirty-five (35) feet or portion thereof. Placement shall be within twenty (20) feet of the street frontage property line.
- (C) Perimeter (sides and rear) landscape areas shall be a minimum of five (5) feet wide and are required when the surface parking lot can be viewed by adjoining property or street right of way.
- (D) The street frontage, perimeter and perimeter landscape zones shall be reserved for landscaping materials only and landscaping shall be planted over the entire landscape zone.
- (E) Biodiversity must be employed in the use of landscape design elements.

3-3.0 PARKING LOT PERIMETER

- (A) Street frontage and perimeter screening shall consist of evergreen plant material that is at least seventy-five (75) percent opaque. The mature height shall be not less than two (2) feet nor greater than five (5) feet.
- (B) Screening shall extend along the entire length of the surface parking lot street frontage and perimeter (sides and rear).
- (C) There shall be no horizontal gap in the street frontage or perimeter plane greater than six (6) feet wide.
- (D) Biodiversity must be employed in the use of landscape design elements.

3-4.0 SURFACE PARKING LOT INTERIOR

The interior of all surface parking lots shall be landscaped in accordance with the following required design elements:

- (A) Large broad leaved canopy trees shall be provided in each surface parking lot at a minimum average density of one tree for every eight (8) parking spaces or 1,440 square feet of impervious parking surface.
- (B) No off street parking space may be located more than fifty (50) feet from the trunk of a large canopy tree.
- (C) No tree may be planted closer than four (4) feet to the back of a curb, wheel stops or the paved portion of the parking lot.
- (D) Wheel stops, curbing or approved equal shall be provided for protection of all landscaped areas to prevent vehicular encroachment.
- (E) Large broad leaved canopy trees located in the interior (i.e. islands/medians) plantings shall have a minimum of three hundred twenty (320) square feet of pervious rooting area. The shape of the Island shall not allow the placement of the tree to violate (C) (i.e. Medians, Islands must be at least eight (8) feet wide).
- (F) Biodiversity must be employed in the use of landscape design elements.

3-5.0 PERIMETER LANDSCAPE ZONE

PURPOSE

The purpose of this ARTICLE is to protect lower intensity land uses from higher intensity uses. The applicant of new higher intensity use shall install a landscape zone adjacent to, but on their side of, common property lines to protect lower intensity uses.

3-6.0 LANDSCAPE ZONES

Side and rear perimeter landscape zones shall be at least the width as shown below when certain types of uses adjoin one another.

<u>Adjacent Use</u>	Commercial (IDD)	Semi- Commercial (RDD)	Single Family (PRD)
<u>Proposed Use</u>			
Commercial (IDD)	5*	10	20+S
Semi- Commercial (RDD)	5*	5*	20+S

S = Screening Structure required

* = Biodiversity screening materials shall be used and shall blend with existing screening materials on adjacent properties.

3-7.0 REQUIRED DESIGN ELEMENTS

- (A) Screening is a vegetative or man-made wall/fence. Screening may be required with or without a landscaped zone. Man made screening structures (i.e. wood, masonry) shall be eight (8) feet in height and at least ninety (90) percent opaque. Vegetative screening shall be equal to or greater than man-made structures.
- (B) A minimum of seventy-five (75) percent of all plant materials for the landscape zones shall be drought resistant evergreen varieties. In addition the following shall be included:
- (1) required landscape zones shall contain at least one of the following groups of plant material at a minimum average density of one group for every thirty-five (35) feet, or portion thereof, of landscape zone:
- Large broad leaved canopy tree and three understory trees; and/or
 - Large broad leaved canopy tree and three large evergreen shrubs; and /or
 - Two large cone bearing coniferous canopy trees and three understory trees; and/or
 - Equal combination as approved by the Administrator.
- (C) Landscaping shall be planted over the entire landscape zone.

ARTICLE 4

UTILITIES AND SERVICE AREAS

4-1.0 PURPOSE

All service areas shall be screened from public view. This ARTICLE shall apply to all utility lines, storm water management systems (i.e. detention ponds), garbage collection sites, exposed nonpower utility fixtures, power utility substations and exposed metal cabinets over five (5) feet in height or other related fixtures which serve the purpose of conducting communications (i.e. voice, data or visual images).

4-2.0 REQUIRED DESIGN ELEMENTS

- (A) All garbage collection sites and containers shall be shielded on all sides by screening that is ninety (90) percent opaque and at least one (1) foot higher than the item, but not less than six (6) feet.
- (B) Where to the extent practical, as determined by the Administrator, in consultation with the Utility Service Provider and applicant; all new construction or renovations of an existing building which involves expansion of building area of more than fifty (50) percent, utility service shall provide the underground utility infrastructure necessary to connect to utility service(s) at the property line. See ARTICLE four (4) regarding installation of utilities within or through a tree protection zone.
- (C) All other utility fixtures over five (5) feet in height and substations installed or constructed shall be screened from all proposed, future, private and public streets and adjoining PRD zoned property to the extent practicable after consideration of proper equipment operation, code compliance, access and maintenance.
- (D) All detention ponds or holding areas that are part of the site storm/surface water system shall be landscaped or screened from view from any proposed, future, private or public street and adjoining property. The quantity and type of landscaping and/or screen shall be at the discretion of the Administrator. This determination will be based on the following factors:
 - (1) Location and proximity to view from proposed, future, private and public streets.
 - (2) Proximity and use of adjoining property.
 - (3) Nature and use (i.e. detention vs. retention).
 - (4) Overall size and depth.
 - (5) Plant materials (i.e. ground cover, turf) shall be planted on all portions of exposed ground. Density shall be such as to provide 75% coverage within one (1) year from time of planting.

ARTICLE 5

TREE RETENTION

5-1.0 PURPOSE

The purpose of this ARTICLE is to discourage the complete removal of existing trees from a site during the land development process. The practice of clear-cutting building sites: destroys the balance of nature, leads to sedimentation and erosion, contributes to air and water pollution and unnecessarily robs the community of valuable assets.

5-2.0 TREE APPROVAL APPLICATION

It is recommended that an applicant for development that will require existing tree cover to be removed schedule a preapplication conference with the Administrator. This meeting should be held prior to submitting an application for site development (i.e. building permit).

A tree survey is required for all parcels that will be modified that have existing trees (see ARTICLE Six (6) Plan Requirements).

- (A) Approval is required to remove any specimen tree anywhere on the property.
- (B) A minimum of thirty-five (35) percent of the trees four (4) inch to eight (8) inches D.B.H. within the required perimeter and perimeter landscape zones and twenty-five (25) percent of the trees over eight (8) inches D.B.H. within the required street frontage, perimeter and perimeter landscape zones shall be retained and planned for during the land development process. A minimum of twenty (20) trees per acre must be maintained.
- (C) It will be a violation to remove any trees with a D.B.H. of four (4) inches or greater within the street frontage, perimeter and perimeter landscape yards prior to development.
- (D) In an exceptional case where the Administrator determines that an individual tree or grouping of trees is of very high value and virtually irreplaceable, approval is required for removal (i.e. live oaks, exceptional Native species, or trees of historical importance to the Town).

5-3.0 JUSTIFICATION FOR REMOVAL OF SPECIMEN OR PROTECTED TREES

Criteria are listed below for determining whether removal of a protected tree should be approved. These criteria may be applied with varying degrees of stringency depending upon the value of the particular tree, but in no event shall retention of a tree or trees be required if reasonable use of the property will be significantly impaired. At its option, the Administrator may require replacement planting for trees which have been approved for removal. The replacement requirements will be based on a "inch for inch" basis or greater.

Criteria for removal:

- (1) Presentation of a safety hazard to pedestrian and vehicular traffic.
- (2) Presentation of a safety hazard to building, structures or utility infrastructures.
- (3) Removal being the only reasonable means by which to comply with certain governmental requirements.
- (4) Justification according to good Urban Forestry and Forestry practice (i.e. to reduce competition among trees or to remove invasive exotic species.
- (5) Any tree the Administrator certifies in writing as being structurally unsound, hazardous, diseased, dead or in a state of irreversible decline.
- (6) Consideration should also be given to the size and species of the tree and overall tree coverage (existing & proposed) on the site.
- (7) If tree retention and/or tree protection zone(s) prevents the minimum number of required parking spaces by the Town's Zoning Ordinance.
- (8) If the ingress/egress approved by the governing agency cannot reasonable be located to adequately accommodate the required root area of the protected tree(s).
- (9) Other required utility infrastructures cannot reasonable be located to accommodate the protected tree(s) (i.e. storm water systems, detention ponds, etc.).
- (10) The introduction of fill twelve (12) inches or greater to elevate the parcel above the required flood protection elevation.
- (11) A planned grade cut that would place the tree protection zone above four (4) feet above final grade.
- (12) Reasonable use of the property will be significantly impaired.
- (13) Specimen size pine and pecan trees located within the interior of the parcel are exempt from tree retention requirements.

TREE RETENTION AND THE LAND DEVELOPMENT PROCESS

5-4.0 PURPOSE

The purpose of this ARTICLE shall be to establish minimum standards for the retention of trees and protection of their root systems during the land development process.

5-5.0 REQUIRED DESIGN ELEMENTS

- (A) Tree Protection Zone Size – All tree protection zones shall be based on a combination of the trees dripline and D.B.H. One and one half (1½) feet per inch of D.B.H. or the trees dripline, whichever is greater shall be used. However, once a site inspection is completed, it shall be at the discretion of the Administrator to adjust the placement, type and size of the physical barriers. The tree protection zone is determined by the size of the canopy and other environmental factors not shown on the tree survey.
- (B) Tree Protection Zone Drainage – It shall be at the discretion of the Administrator to require proper drainage for protected trees where grade changes adjacent to the tree protection zone create poor drainage for the tree(s) (i.e. area adjacent is filled and tree protection zone is placed below grade, thereby, creating a well/pond).
- (C) See ARTICLE Six (6), Plan requirements.
- (D) Following the review of all required site plans, the Administrator shall either approve, approve with conditions or disapprove the landscaping and tree plans.
- (E) Landscaping and tree plan approval does not authorize any tree removal or site development activity of any kind until such time that the Zoning Administrator approves the issuance of a permit for such work.

5-6.0 SITE ACTIVITY BEFORE AND AFTER SITE DISTURBANCE

Prior to the commencement of any clearing, grading, tree removal or construction on a site, the following shall be completed:

- (A) Uniform colored ribbon system
 - (1) Blue ribbon for trees to be retained.
 - (2) Red ribbon for trees to be removed.

- (B) Passive forms

At the discretion of the Administrator, passive forms of ribbon marking and tree protection zones may be used (i.e. continuous rope or flagging for areas which are remote from human activity or heavily wooded).

(C) Tree Protection Zone

A tree protection zone for any trees within twenty-five (25) feet of any proposed grading, clearing, tree removal or construction shall be established by physical barriers and maintained until such work is completed. Placement and types of barriers shall be at the discretion of the Administrator. There shall be no activity of any type within the Tree Protection zone (i.e. grading, storing materials, trenching, digging, site office, parking equipment/vehicles, chemical, or cement rinsing, etc.)

(D) Signage

The placement of tree protection or keep out signage shall be attached to the physical barrier and maintained until all construction activities are completed. The placement and quantity of signage shall be on all sides and convey the intent of the tree protection zone and barriers.

(E) Utilities

Underground utilities shall be routed around tree protection zones. Necessary installation through protection zones shall be accomplished through tunneling rather than cutting open trenches. This applies to any irrigation systems, drainage, electric, gas, telephone, cable TV, etc.

(F) Entry

Entry into or through a tree protection zone shall be approved by the Administrator. Twenty-four (24) hour notice is required.

(G) Tree Damage

Any tree damaged before, during or after construction shall be treated according to accepted International Society of Arboriculture practices. Such treatment(s) shall occur prior to the issuance of a certificate of occupancy. Required treatments as well as the planting of additional trees that are damaged or destroyed shall be at the discretion of the Administrator.

(H) Pruning

All tree pruning required for construction or equipment operation or otherwise shall meet all National Arborist Association and International Society of Arboriculture Standards. All tree roots outside of the tree protection zone/barriers removed during construction shall be severed clean.

(I) Watering

During periods of dry weather or drought, supplemental watering of tree protection zones shall be required during the land development process. The quantity and frequency shall be at the discretion of the Administrator.

(J) Tree/Undergrowth removal

All approved underbrush and/or tree removals within all protected areas (street frontage, perimeter, perimeter landscape zones) shall be completed in a manner that will reduce injury to trees and undergrowth to be retained (i.e. canopy or root damage). Removal method shall be at the determination of the Administrator.

ARTICLE 6

STANDARDS AND MATERIALS

6-1.0 PURPOSE

The purpose of this ARTICLE is to provide the applicant with the minimum requirements to meet the terms and intent of this ordinance.

6-2.0 Plant Material

All required plant material shall meet the American Standard for Nursery Stock ANSI Z60.1-1990.

(A) Shrubs

All shrub material required shall be no less than #3 gallon container size and have a minimum vertical height of eight and one half (8 ½) inches.

(B) Trees

All broad leaf large canopy trees shall be no less than twelve (12) feet tall, with a minimum of two (2) caliper inches. All understory trees shall be no less one (1) caliper inches.

(C) All plant material installed to meet the requirements shall be recommended for local area use and approved by the Administrator.

(D) Plant material used for the purpose of screening shall be of a drought resistant evergreen variety.

(E) In the event overhead utilities preclude the planting of large canopy trees, three (3) understory trees shall be used in place of each large canopy tree.

6-3.0 Screening Instructions

All screen fences erected to meet the requirements of this ordinance maybe constructed of brick, stone, wood, or painted, stuccoed or decorative concrete block, shall be structurally sound and properly maintained.

ARTICLE 7

LEGAL

7-1.0 Administration

The Town of Lexington hereby designates the Parks, Streets and Sanitation Director as the Administrator responsible for administering and enforcing this ordinance.

7-2.0 Plan Requirements

All landscape plans shall include the following information:

- (1) The name of the proposed development, designers name, address and telephone number.
- (2) A location map showing the proposed project and its relationship to the roadway network.
- (3) The plans shall be drawn to scale appropriate to clearly convey all required information, but no smaller than one (1) inch equals twenty (20) feet (1:20) and shall show the true size, shape and location of all existing and proposed features and landscaping as follows:
 - (a) All existing lot lines, buildings, impervious surface, right-of-ways, utilities, water course, floodways, floodplains, current Town zoning and topography in two (2) foot contours;
 - (b) All proposed building, freestanding signage, utilities, and final grades in two (2) foot contours;
 - (c) All proposed landscaping and irrigation systems with all plant species labeled and scaled to show location and spread at time of installation.
 - (d) A table of planting materials stating species (common and botanical), quantity, height, and spread at installation.
 - (e) All required tree protection zone barriers.

- (4) A tree survey shall be in the form of a map or site plan prepared and sealed by a registered land surveyor within two (2) years of date of application. The survey shall be at the same scale as the site, utilities and grading plans, and shall include the following information:
 - (a) The location of all trees four (4) inches D.B.H. or greater within the required street frontage, perimeter and perimeter landscape yards to the property line(s);
 - (b) The species and D.B.H. of all tree(s) located;
 - (c) The location of all large canopy tree(s) with a D.B.H. of 12" or greater or any understory tree with a D.B.H. of 6" or greater;
 - (d) All required tree protection zones barriers;
 - (e) Show all final utility lines, irrigation systems, grading activities, impervious surfacing and building, and final topography in two (2) foot contours in relation to existing trees;
 - (f) Trees to be removed shall be denoted with an "X".
- (5) Following the review of all required site plans, the Administrator shall either approve, approve with conditions, or disapprove the Landscaping and Tree Plans.
- (6) The approved plans will expire one (1) year after the plan approval date if the required permits have not been obtained.

7-3.0 Plan Review Fees

- (1) A fee shall be collected by the Town in advance for each review of Landscape Plans by the Town in the amount of Fifty-five Dollars (\$55.00).
- (2) A fee shall be collected in advance for each subsequent review or re-inspection of Landscape Plans in the amount of Twenty-five Dollars (\$25.00).

7-4.0 Appeals Process

- (1) Any person who feels the Administrator has erred in the interpretation or enforcement of these regulations may appeal such decision to the Zoning Board of Appeals as provided in the "Zoning Ordinance of the Town of Lexington".
- (2) A variance may be granted from the provisions of these regulations by the Zoning Board of Appeals as provided in the "Zoning Ordinance of the Town of Lexington".

ARTICLE 8

GENERAL

8-1.0 No improvements, requirements or regulations of this ordinance shall;

- (1) encroach upon right-of-ways, nor block sight visibility triangles.
- (2) prevent ingress or egress to the parcel(s).
- (3) conflict with any other lawfully adopted regulations, if so, the stricter requirement or the higher standard shall prevail.

8-2.0 Nonconforming Property

(A) Existing developed properties which do not meet the landscaping and tree ordinance, herein, are declared to be nonconforming. The property owner shall comply with the requirements to the extent practical in the following cases:

- (1) Any change of use, activity, or parcel size;
- (2) Renovation (single/aggregate) costs that exceeds fifty (50) percent of the assessed value or fair market value;
- (3) Structure expansion (single/aggregate) of existing facilities increase building or parking lot area by more than thirty (30) percent;
- (4) The placement of impervious surfacing where none existed prior.

(B) The Administrator shall consider, among other things, the following factors during the plan review of properties that now must become conforming properties:

- (1) The design and layout of existing parking area(s), building area and redevelopment;
- (2) The amount of impervious and pervious surface remaining on the property
- (3) Tree retention requirements;
- (4) The feasibility to increase street frontage(s), perimeter(s) and perimeter landscape zone(s).

(C) The Administrator may recommend a contribution to the Town of Lexington's Tree Fund when it is found that strict compliance would impose excessive hardship and practical difficulty on the property owner. The applicant must request the contribution, in writing, to the Administrator prior to any site work being started. The contribution to the tree fund shall be based upon evidence that:

- (1) Granting of the Tree Fund contribution will not be detrimental to the public health, safety, or welfare;
- (2) The request for the Tree Fund contribution is based on particular conditions of size, shape, or topography of the property that are limiting as to the application of this ordinance;

- (3) Strict compliance would impose a particular hardship and not a mere inconvenience;
- (4) The granting of the Tree Fund contribution will not violate the provision of any other ordinance; and
- (5) The request is not solely to alleviate financial hardship.

Upon granting the contribution to the Town Tree Fund, the Town shall receive from the applicant a contribution to the Town Tree Fund to be used to plant trees on public lands. Contributions to the Tree Fund shall be calculated based on the following formula:

- 1) Measure the perimeter of the property and divide by 35 (thirty-five). That equals the number (rounded up) of trees that would be required for the street frontage and perimeter.
- 2) Take the number of parking spaces and divide by 8 (eight). That equals the number (rounded up) of trees that would be required for the parking lot interior.
- 3) Add subsections 1 and 2 to find the total number of trees required. Subtract any trees planted to meet the Ordinance.
- 4) Multiply the number of trees required times \$250.00 to determine the contribution to the Tree Fund.
- 5) The prices set in Item 4 are based on 1998 market prices. Each subsequent year thereafter the consumer price index adjustment shall be added to the amount per tree paid to the Town.

Once a property pays into the Tree Fund, it will be considered in compliance. If a change in use, activity, or parcel size occurs, the property shall be reevaluated by the Administrator for compliance.

(D) Emergency Situations

During an emergency, such as hurricane, tornado, flood or other act(s) of nature, the requirements of this ordinance maybe waived by the Town Council for a period of days determined by Town Council. This ordinance in no way prevents the reestablishment, repair or replacement of any primary utility service during or after such emergencies.

(E) Maintenance

The property owner shall be responsible for regular grounds maintenance (mowing, weeding, pruning, irrigating) and other maintenance of screening structures required to comply with this ordinance. Any required plant shown on the approved landscape or tree preservation plan that dies must be replaced with an approved living plant complying with this ordinance within forty-five (45) days after notification by the Administrator. This replanting deadline can be extended at the discretion of the Administrator due to environmental factors (i.e. extreme heat, drought or other weather conditions not conducive for planting). All proposed watering methods, irrigation or otherwise must be adequate to maintain plant material in a healthy growing conditions at all times.

The owner shall not take any measures which will prevent plant material from reaching minimum mature sizes required by this ordinance (i.e. improper pruning, growth regulators, etc.).

8-3.0 SUBDIVISION DEVELOPMENT

8-3.1 Intent

The intent of this ARTICLE is to provide for proper design and planting of landscape materials for residential subdivisions.

8-3.2 General

- (A) Residential (multi/single) subdivision entrance(s) shall be considered as part of a commercial venture until such time that the subdivision is completed and the developer has withdrawn from the project.
- (B) All entrances and entry drives shall comply with the requirements of this ordinance. Any modifications and/or additional landscaping shall be subject to approval and review of the Administrator.

8-3.3 Interior Subdivision Development

- (A) Residential subdivisions should be designed to minimize removal of any specimen trees and dense stands of hardwood trees. Streets and lots should be laid out, to the extent practical, so as not to site these trees and stands in the roads or in the center of lots.
- (B) Residential subdivisions shall set aside certain natural areas reserved as common land in the subdivision as per the following formula:

Average lot size 0 to ½ acre requires 5% of the subdivision's total land mass to be set aside for natural development and preservation.

Average lot size greater than ½ acre but less than 1 acre requires 3% of the subdivision's total land mass to be set aside for natural development and preservation.

Average lot size equal to or greater than 1 acre requires no such set aside.

Water surface acreage does not count towards this allotment. The typical set aside will consist of the native forest of that particular land and any wetlands. The set aside should be designed so as to include any hardwood tree stands and specimen trees. These percentages referred to in this Ordinance can be included in or in addition to the open space recreation requirements of Article 6-12 of the Land Development Regulations and Articles 41.34 and 42.35 of the Zoning Ordinance.

ARTICLE 9

Enforcement and Penalties

9-1.0 This ordinance is not intended and should not be interpreted, as a taking of property without due process or just compensation; nor is it intended to unnecessarily burden those who exercise due care in the installation and maintenance of landscaping.

9-2.0 Any person violating, by act or omission, any requirement of this ordinance shall, upon conviction, be deemed guilty of a misdemeanor punishable by a fine of not less than seventy-five (75) dollars or more than five hundred (500) dollars, or imprisonment of no more than thirty (30) days, or both, at the discretion of the court. Such person shall also be liable for any civil damages, injunctions, mandamus, court costs and/or the replacement of illegally removed trees.

9-3.0 Where violation of this ordinance continues after notice given by the Administrator, each day of continuation shall be deemed a separate offense.

9-4.0 Any person or organization who commits, assist in or maintains such violation(s) may be found jointly and severally liable for such violation(s).

9-5.0 In response to a violation(s) the Administrator and Building Official may take any appropriate additional actions including, but not limited to:

- (1) Requiring replacement of illegally removed trees or trees which are damaged;
- (2) Remedial action to repair or protect trees;
- (3) Revocation or denial of building permits, certificates of occupancy or business licenses;
- (4) Termination of water and sewer services.