

#15(g) 2/16/17
#7(h) 3/2/17
#7(g) 3/16/17**ORDINANCE**
No. 2017-07

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE CITY OF FELLSMERE LAND DEVELOPMENT CODE BY AMENDING ARTICLE XI. LANDSCAPING, SECTION 11.1 APPLICABILITY, SECTION 11.2 GENERAL REQUIREMENTS, SECTION 11.3 LANDSCAPE MATERIALS REQUIREMENTS STANDARDS, TABLE 11A- REQUIRED TREES, DELETING TABLE 11B- PROHIBITED SPECIES, ADDING NEW TABLE 11B STREET TREE SPECIES, SECTION 11.4 PERIMETER BUFFER REQUIREMENTS, SECTION 11.5 OPEN SPACE, VEHICULAR USE AREA AND PARKING LANDSCAPE REQUIREMENTS, SECTION 11.6 OPEN SPACE AREA LANDSCAPING REQUIREMENTS, SECTION 11.7 SUPPLEMENTAL LANDSCAPE REQUIREMENTS, SECTION 11.9 LANDSCAPE INSTALLATION AND MAINTENANCE REQUIREMENTS, SECTION 11.10 LANDSCAPING REQUIREMENTS FOR RESIDENTIAL STRUCTURES OF THREE OR FEWER UNITS, SECTION 11.11 FERTILIZING REQUIREMENTS AND ADDING A NEW SECTION 11.12 SOIL AMENDMENT; PROVIDING FOR RATIFICATION; PROVIDING FOR CONSISTENCY WITH THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE; PROVIDING FOR AMENDMENT; PROVIDING FOR AUTHORIZATION TO INCLUDE IN THE CODE; FURTHER PROVIDING FOR SEVERABILITY, CONFLICT, AND AN EFFECTIVE DATE.

WHEREAS, the City of Fellsmere, Florida is a duly constituted municipality having such powers and authority conferred upon it by the Florida Constitution and Chapter 166 Florida Statutes; and

WHEREAS, the Planning and Zoning Commission/Local Planning Agency held a duly noticed public hearing on March 1, 2017, made a finding that the changes to the Land Development Code as set forth in Exhibit "A" attached hereto and by this reference made a part hereof, were consistent with the Comprehensive Plan and applicable provisions of the Land Development Code and recommended that the City Council approve the changes; and

WHEREAS, the City Council held duly advertised public hearings, made a finding that the changes to the Land Development Code as set forth in Exhibit "A" were consistent with the Comprehensive Plan and applicable provisions of the Land Development Code; and

WHEREAS, the City Council has determined that the changes made to the Land Development Code as set forth in Exhibit "A" are in the best interest of the public health, safety, environmental and general welfare of the residents of the City and that it is appropriate to adopt these amendments to the Land Development Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. RATIFICATION. The above recitals are hereby ratified, adopted and incorporated herein as legislation findings of the City Council.

SECTION 2. CONSISTENCY WITH THE COMPREHENSIVE PLAN AND LAND DEVELOPMENT CODE. The amendments to Article XI. Landscaping of the Land Development Code as set forth in Exhibit “A” are consistent with the Comprehensive Plan and applicable provisions of the Land Development Code of the City of Fellsmere. The following findings of facts are made:

1. The amendments are not in conflict with any applicable portions of the Land Development Code;
2. The amendments are consistent with all elements of the City of Fellsmere Comprehensive Plan;
3. The amendments are consistent with existing and proposed land uses within the City;
4. The changing conditions within the City will support the amendments;
5. The amendments will not result in excessive demands on public facilities, and the amendments will not exceed the capacity of such public facilities, including but not limited to transportation facilities, sewage facilities, water supply, parks, drainage, schools, solid waste, mass transit and emergency medical facilities;
6. The amendments will not result in significant adverse impacts on the natural environment;
7. The amendments will result in an orderly and logical development pattern for the City;
8. The amendments will not be in conflict with the public interest, and are in harmony with the purpose and interest of the Land Development Code.

SECTION 3. AMENDMENT. That Article XI. Landscaping of the City of Fellsmere Land Development Code is hereby amended to read as set forth in Exhibit “A” attached hereto and by this reference made a part hereof, and all of such revised, amended and new provisions are hereby adopted.

SECTION 4. AUTHORIZATION TO INCLUDE IN THE CODE. The revised, amended and new provisions of Article XI. Landscaping as set forth in Exhibit “A” shall be included and incorporated in the City of Fellsmere Land Development Code and to the extent necessary shall be numbered and titled in accordance with the numbering and titling system of the Land Development Code.

SECTION 5. SEVERABILITY. If any section, part of a sentence, phrase or word of this Ordinance is for any reason held to be unconstitutional, inoperative or void, such holdings shall not

affect the remaining portions hereof and it shall be construed to have been the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part.

SECTION 6. CONFLICT. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of conflict.

SECTION 7. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member _____ . The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Mayor, Joel Tyson	_____
Council Member Fernando Herrera	_____
Council Member Gerald J. Piper	_____
Council Member Sara J. Savage	_____
Council Member Jessica Salgado	_____

The Mayor thereupon declared this Ordinance fully passed and adopted this _____ day of _____, 2017.

CITY OF FELLSMERE, FLORIDA

ATTEST:

Joel Tyson, Mayor

Deborah C. Krages, CMC, City Clerk

I HEREBY CERTIFY that Notice of the public hearing on this Ordinance was published in the Press Journal, as required by State Statute, that the foregoing Ordinance was duly passed and adopted on the _____ day of _____, 2017, and the first reading was held on the 16th day of February, 2017, and the public hearing was held on the 2nd day of March, 2017, and the second and final reading and public hearing was held on the _____ day of _____, 2017.

Deborah C. Krages, CMC, City Clerk
0-2017-07_20170210(2)

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Section 11.1 Applicability.

The landscaping requirements of this Article shall apply to all non-residential uses, including all requested changes in use (except for those uses interior to a common shopping center or similar multi-user building or structure, provided that no additional parking is required), regardless of site plan status; mobile home parks and subdivisions; subdivisions approved through the site plan or planned development process; recreational vehicle parks; and multiple-family residential uses. Detached single-family (including individual mobile homes not located in a mobile home park), two-family, and three-family residences, not a part of a larger site planned community or development must only comply only with Sections 11.7, 11.8, 11.9, and 11.10, 11.11 and 11.12. Agricultural uses shall only be required to comply with Sections 11.2, 11.3, 11.4, 11.5, 11.7 and 11.9 unless such use is adjacent to a residential zoning district in which an agricultural use shall also provide a 25' wide Type "A" buffer.

Section 11.2 General Requirements.**A. Unlawful Activity.**

It shall be unlawful for any person to establish, remove or alter landscape, including irrigation and fertilization, contrary to the provisions of this Article. The lack of maintenance of landscape installed pursuant to an approved landscape plan shall also be a violation subject to penalties provide by law. The provisions of this article may be enforced through appropriate code enforcement action or by suit for prohibitory or mandatory injunctive relief, or by any other lawful remedy existing at law or in equity for the enforcement of municipal ordinances.

B. Landscape Plan Required

A landscape plan showing proposed landscape design shall be submitted for review and approval by the City Manager, or designee, with all applications for a final development permit. Landscape plans shall include and indicate the following:

1. Location, type and size of all existing trees to be preserved or removed;
2. Location of all structures, including but not limited to, freestanding signs, parking areas, drives, vehicular use areas and other improvements to remain or proposed for installation on the property;
3. Location of utilities, easements and adjacent rights-of-way;
4. Location and description of existing native plant communities to remain undisturbed, as applicable;
5. Location, type, size, and quantity of all proposed landscape materials;
6. Plant list including botanical and common name and quantity of all proposed landscape materials;
7. General notes including mulching requirements, fertilization, and installation details, and such other information as needed;
8. All property lines and dimensions of the property; and
9. Tabulations which clearly show relevant statistical information necessary to evaluate compliance with provisions of this Article. This shall include, but not be limited to, required buffers, vehicular use landscaping/screening, non-vehicular landscaping, drought tolerance and such other information as needed.

The City Manager may waive plan requirements set forth in part B.1 through B.9 above for projects where such information is not applicable or pertinent for determination of compliance with the regulations contained herein.

All landscapes shall be designed to use water efficiently and follow Florida-friendly landscape principles. The most current versions of *Florida Yards & Neighborhoods Handbook*, the Water Management Districts' *Waterwise Florida Landscapes*, *Xeric*

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Landscaping with Florida Native Plants by the Association of Florida Native Nurseries, the *Florida Green Industries Best Management Practices for Protection of Water Resources in Florida*, and *Water Right: Conserving our Water, Preserving our Environment* published by the International Turf Producers Foundation shall guide landscape designs.

C. Irrigation Plan Required.

In conjunction with a landscape plan, an irrigation plan shall be required if irrigation is to be installed. Such plan shall indicate use of a low-volume irrigation system designed specifically for the proposed landscape installation, delineate planting zones if applicable, and clearly illustrate compliance with section 11.8 of this Article and Chapter 30, Article IV of the Code of Ordinances. In such cases an irrigation plan must be provided at time of building permit.

D. Certificate of Occupancy.

1. Certificate of Occupancy. No final certificate of occupancy shall be given or issued to the owner or his agent until all conditions of this Article have been met and the appropriate City official has given an approval. However, temporary power may be issued in those instances where all improvements on a site, except landscaping have been completed, where power is required for the irrigation system, and where the developer of the project certifies in writing that the required landscaping for the project will be installed as depicted on the plan and provides a timetable for installation of the landscaping. Failure to fulfill the proposed timetable shall be grounds for immediate and summary revocation of the temporary power allowance.
2. Landscape certification. The completed landscape installation shall be certified by the installer. The certification is required before issuance of the Certification of Occupancy or its equivalent. The certification shall indicate that plants were installed as specified in the landscape design documents, that an irrigation audit has been performed where irrigation has been provided, and that the audit confirmed that the system functions properly.

Section 11.3 Landscape Materials Requirements Standards.

A. Quality.

Plant materials used in conformance with the provisions of this Article shall conform at the time of delivery to the Standards for Florida No. 1 or better, as given in the most current edition of "Florida Grades and Standards for Nursery Plants" Part I and Part II, State of Florida, Department of Agriculture, Tallahassee, or equal thereto. Florida No. 2 may be substituted upon the approval of the Community Development Director. Grass sod shall be clean and free of weeds and noxious pests or diseases. Grass seeds shall be delivered to the job site in bags with Florida Department of Agriculture tags attached, indicating the seed grower's compliance with the department's quality control program. Plant materials which are known to be intolerant of paving environments, or whose physical characteristics may be injurious to the public, shall not be specified for use.

Plant selection for landscaped areas shall be based on the plant's adaptability to the existing conditions present at the site and shall consider the appropriate United States Department of Agriculture hardiness zone (Zone 9B for the City of Fellsmere), soil type and moisture conditions, exposure to sun, and mature plant size. Plants selected must be suited to withstand the soil and physical growing conditions found in the microclimate of each location. Plants prohibited by Florida Department of Agriculture and Consumer Services rule, Chapter 5B- 57 F.A.C., shall not be used for landscaping purposes. Controlled plants named in Chapter 5B-57, F.A.C., may ~~not only~~ be used ~~except~~ as allowed by following the procedures listed within Chapter 5B-57, F.A.C.

B. Drought Tolerance Requirements.

A minimum of fifty (50) percent of total cumulative landscape plant material used to meet the provisions of this Article shall be "moderately" or "very" drought tolerant as classified and listed in the most recent edition of the "South Florida Water Management Districts Xeriscape Plant Guide" or a comparable publication. Existing native plant species preserved on-site may be considered as credit toward the drought tolerance percentage requirement.

C. Trees.

1. Canopy trees.

Canopy trees shall be species having an average mature spread of crown of greater than fifteen (15) feet and ultimate maximum height in excess of thirty (30) feet (under local climatic conditions) and having a trunk(s) with over five (5) feet of clear wood. "Clear wood" refers to that portion of the trunk between the ground and the lowest lateral limbs.

~~Installed canopy trees shall be considered "mature" seven (7) years after installation.~~

2. Understory trees. Understory trees shall be a species having an average mature spread of crown ranging from eight (8) to fifteen (15) feet and ultimate maximum height in excess of fifteen (15) feet. Clusters of understory trees can be used as a canopy tree provided that a minimum of two (2) understory trees are clustered to equal one (1) canopy tree.

3. Palm trees. Palm trees shall have a minimum six (6) feet clear trunk. Clusters of palms can be used as a canopy tree provided that a minimum of three (3) palms are clustered to equal one (1) canopy tree. However, the three (3) to one (1) clustering requirement may be reduced or eliminated by the City Manager or his designee for palms with large canopies such as Canary Island date palms.

4. Trees having an average mature spread of crown less than fifteen (15) feet may be substituted by grouping the same so as to create the equivalent of a fifteen foot crown spread.

5. Palm clusters shall be considered trees. Palms, if used, shall consist of no more than fifty (50) percent of the total new tree requirement regardless of whether said palms are existing on the site or are relocated on the same site.

6. Tree sizes:

1. Required canopy trees shall be a minimum of ~~twelve~~fourteen (12~~4~~) feet in height and have a caliper of ~~three-two and one-half~~ (2.5~~3~~) inches at four and one-half (4 1/2) feet above the ground and a minimum six-foot spread when installed. Height shall be determined by the average end of all branches not the tallest branch or two.

2. Where a building over twenty-five (25) feet in height is proposed to be located within fifty (50) feet of a perimeter property line, all canopy trees within required buffers located between the building and a site perimeter shall be a minimum of ~~four~~sixteen (14~~6~~) feet in height and a three-inch diameter at four and one-half (4 1/2) feet above the ground and a minimum ~~seven~~eight-foot spread at planting. Where a building over twenty-five (25) feet in height is proposed more than fifty (50) feet from a perimeter, the canopy tree height requirements of 6.14.a. above, shall apply to canopy trees within the buffer.

3. Required understory trees shall be a minimum of ~~six~~eight (6~~8~~) feet overall in height and one and one-half~~two~~ (1-1/2~~2~~) inch diameter at six (6) inches ~~0.5 feet~~ above grade, at the time of planting. Multi-trunk trees shall have a one-inch caliper for all trunks at six (6) inches above grade.

7. The number of different species of trees, other than palms, shall be as follows:

TABLE 11A - REQUIRED TREES

Required Number of Trees	Minimum Number of Species
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2--10	2
11--20	3
21--30	4
31--40	5
41—Over	6

8. At least fifty (50) percent of all new required trees shall be of a native species.
9. All trees shall be planted a minimum of five (5) feet from buildings, infrastructure, utilities and public works. Trees of a species whose roots are known to cause damage to public works or easements shall not be planted closer than twenty (20) feet to such public works, unless the tree root system is contained by use of an approved root barrier system.
10. The possession, planting or installation of any plants prohibited by the Florida Department of Agriculture and Consumer Services rule, Chapter 5B-57 F.A.C. the following plant species is prohibited in the City of Fellsmere. Controlled plants named in Chapter 5B-57 F.A.C. may not be possessed, planted, installed, or used except as allowed by Chapter 5B-57 F.A.C. Where such species already exist, their removal shall be a condition of any final development order.
 - Melaleuca leucadendra (Punk Tree)
 - a. Schinus terebinthefolius (Brazilian Pepper)
 - a. Casuarina spp. (Australian Pine)

~~Plants prohibited by Florida Department of Agriculture and Consumer Services rule, Chapter 5B-57 F.A.C., shall not be used not be used for landscaping purposes. Controlled plants named in Chapter 5B-57, F.A.C., may not be used except as allowed by Chapter 5B-57, F.A.C. The planting or installation of the following species, or any species designated as Category I on the Exotic Plant Pest Council's most recent list of "Florida's Most Invasive Species", shall not be used to meet the requirements of this Section. Where such species already exist, their removal shall be a condition of any final development order.~~

Table 11B—Prohibited Species

~~cupianopsis anacardiodes (Carrotwood)~~
~~dalbergia sissoo (Rosewood)~~
~~acacia auriculiformis (Earleaf Acacia)~~
~~albizzia lebbek (Woman's Tongue)~~
~~araucaria heterophylla (Norfolk Island Pine)~~
~~bishofia javanica (Bishofia)~~
~~brassaia actinophylla (Schefflera)~~
~~enterolobium cyclocarpum (Ear Tree)~~
~~eucalyptus spp. (Eucalyptus)~~
~~sapium sebifrum (Chinese Tallow Tree)~~
~~grevilla robusta (Silk Oak)~~
~~melia azedarach (Chinaberry)~~
~~syzygium cumini (Java Plum)~~
~~syaygium jambos (Rose Apple)~~
~~cinnamomum camphora (Champhor Tree)~~
~~Tree) eugenia uniflora (Surinam Cherry)~~
~~ligustrum sinense (Chinse Privet)~~
~~psidium sup. (Guava)~~
~~scaevola sericea, s. taccada, peltophorum pterocarpum (Yellow Poinciana)~~

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~~s. frutescens (Scaevola)~~
~~melaleuca leucadendra (Punk Tree)~~
~~schinus terebinthifolius (Brazilian Pepper)~~
~~casuarina spp. (Australian Pine)~~

11. Street trees shall be chosen from the species listed in Table 11.B below.

Table 11.B – Street Tree Species

<u>Trees</u>	<u>Palms</u>	<u>Understory</u>
<u>Slash pine</u>	<u>Cabbage palm</u>	<u>Dahoon holly</u>
<u>Live oak</u>	<u>Canary Island Date</u>	<u>East Palatka holly</u>
<u>Chapman oak</u>	<u>Medjool Date Palm</u>	<u>Wax myrtle, Bayberry</u>
<u>Laurel oak</u>	<u>Washington Palm</u>	<u>Scrub/Sand live oak</u>
<u>Red maple</u>	<u>Chinese Fan Palm</u>	<u>Sweet bay magnolia</u>
<u>Florida elm</u>		<u>Crape Myrtle</u>
<u>Sycamore</u>		<u>Ligustrum</u>

The spacing of street trees will be in accordance with the species size classes listed above, and no trees may be planted closer together than the following:

Palms: 15' if uniformly spaced or 7.5' if clustered.
Understory: 25' if uniformly spaced or 12.5' if clustered.
Canopy: 50' if uniformly spaced or 25' if clustered.

Alternate tree spacing may be approved for special plantings designed by a licensed landscape architect.

D. Shrubs and Hedges.

Shrubs shall be a minimum of ~~eighteen-twelve~~ (128) inches in height when measured immediately after planting. Hedges, where required, shall be planted and maintained so as to form a continuous, solid screen within a maximum of two (2) years after time of planting. ~~Low growing shrubs such as indian hawthorne and ilex vomitoria shillings that are not used as a hedge may be a minimum height of twelve (12) inches in height.~~

E. Vines.

Vines shall be a minimum of ~~eighteen-twelve~~ (128) inches in height directly after planting and may be used in conjunction with fences, screens or walls to meet physical barrier requirements as specified.

F. Ground Covers.

Ground covers (not including sod grass) shall be planted in such a manner as to present a finished appearance and 75% coverage within one year after planting.

G. Grass.

Grass areas may be sodded, plugged, sprigged or seeded, except that solid sod shall be used in swales or other areas subject to erosion. Seed, where used, shall be of a variety that will produce coverage within ninety (90) days from sowing; where other than solid sod, grass seed

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or grass sprigging is used, nurse grass seed shall be sown for immediate effect and protection until coverage is otherwise achieved. When necessary, a reseeding program shall be implemented to produce complete coverage within one year.

Section 11.4 Perimeter Buffer Requirements.

A. Screening and buffer yard requirements.

A perimeter buffer is a continuous landscaped strip of land located along the perimeter of a lot or parcel that serves as a buffer between incompatible uses and zoning districts, as an attractive boundary of the parcel or use, or as both a buffer and attractive boundary. Existing native vegetation and upland native plant communities as described in Article XIII, Environmental Standards-Upland Protection, may be utilized to meet buffer requirements.

B. Required screening of abutting residential and nonresidential uses.

In order to maintain stability of residential areas, nonresidential development within or abutting residential districts and multiple-family development abutting single-family residential districts shall provide a wall, fence, landscaped earth berm, planted vegetation, or utilize existing vegetation, or any combination thereof so as to comply with the requirements of this Article.

C. Applicability of buffers.

Any one of the following types of buffers may be required during the site plan review process for the purpose of minimizing the impact of potentially objectionable areas such as parking lots, major thoroughfares, unsightly rear entrances, utility or maintenance structures, solid waste disposal facilities, loading facilities, swimming pools and active recreational areas. Screening may also be required where land uses of different intensities are located in close proximity to each other.

D. Description of screening types.

Two (2) basic types of buffers are hereby established: Type "A", Opaque buffer and Type "B", Semi-Opaque Buffer. All plant materials utilized to meet the requirements of this section must comply with the Landscape Materials Requirements provided in Section 11.3.

1. Type "A" Opaque Buffer.

An opaque buffer is intended to completely exclude all visual contact between uses. The type "A" Buffer shall be completely opaque from the ground up to a height of at least six feet with large trees utilized as intermittent visual obstructions from the opaque portion to a mature height of at least twenty (20) feet. The opaque buffer may be composed of a wall, fence, landscaped earth berm, planted vegetation, existing vegetation, or any combination thereof which maintains a completely opaque screen of at least six (6) feet in height at time of Certificate of Occupancy or its equivalent. Compliance of planted vegetation buffers or natural vegetation will be judged on the basis of the average height and density of foliage of the subject species at the time of planting or field observation of existing vegetation. The six-foot opaque portion of the Buffer must be opaque in all seasons of the year. In addition to the opaque portion of the buffer, a two tier landscape strip comprised of differing height ground cover (other than sod) and/or shrubs shall be installed along the outside of the buffer to create a visually appealing buffer.

2. Type "B" Semi-opaque Buffer.

The semi-opaque buffer is intended to partially block visual contact between uses. The type "B" buffer shall be completely opaque from the ground to a height of at least three feet with large trees utilized as intermittent visual obstructions from the opaque portion to a mature height of at least sixteen (16) feet. The semi-opaque buffer may be composed of a wall, fence, landscaped earth berm, planted vegetation, existing vegetation or any combination thereof which maintains a completely opaque buffer of at least three (3')

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feet at time of Certificate of Occupancy or its equivalent. Compliance of planted vegetative buffers or natural vegetation will be judged on the basis of average mature height and density of foliage of the subject species or field observation of existing vegetation. The visual screen may be waived for all or portions of the buffer length as part of the final site plan approval. In addition to the opaque portion of the buffer, a two tier landscape strip comprised of differing height ground cover (other than sod) and/or shrubs shall be installed along the outside of the buffer to create a visually appealing buffer.

E. General standards for screening and buffer yards.

In addition to the landscape requirements where the provisions of this article require screening or buffering, the following standards shall apply:

1. Minimum Landscaped buffer strip required. A minimum landscaped buffer strip not less than fifteen (15) feet in width for a type "A" buffer and ten (10) feet in width for a type "B" buffer shall be provided in conjunction with all screening required herein. The buffer strip may be contained within required setbacks. Each buffer strip shall be landscaped with ground cover (preferably native species) in addition to the required screening materials and trees. The landscape buffer strip shall contain no structures, parking or vehicular use areas or solid waste dumpsters. Stormwater management facilities shall be considered on a case by case basis as part of the final site plan approval. Above ground utilities and signs may be located within the buffer as long as the intent of the buffer is maintained and required spacing to such utilities is maintained.
2. Tree plantings required as visual intermittent obstructions. All screen types ("A" or "B") shall include one canopy tree for each ~~thirtytwo~~ thirtytwo ~~five~~ five (3025) lineal feet and one understory tree for each ~~twenty five~~ twenty five ~~thirty~~ thirty (2530) lineal feet or fraction thereof of screen length unless otherwise provided within. Such trees shall satisfy the requirements for intermittent visual obstructions for all types of screens. The above trees are in addition to the trees required for open space and vehicular use areas. All trees required by this provision shall be planted in the buffer strip and comply with the Landscape Materials requirements provided in Section 11.3. As part of the final site plan approval, the City may direct at its sole discretion placement of buffer trees within adjacent City-owned right-of-way to implement a street tree planting program. All such trees shall remain the maintenance responsibility of the development, and a maintenance agreement shall be executed with the City to allow for their perpetual maintenance. Trees shall be planted to maximize screening effect.
3. Grading of berms. Whenever berms are utilized, they shall be constructed with a grade not to exceed one foot vertical to three feet horizontal (1:3 slope) with a three-foot wide flat top for plantings. If berms are used in satisfying the screening and buffering requirements, they shall be landscaped with plant material, preferably native, to achieve the required heights.
4. Quality and maintenance of plant materials. All plant materials utilized to fulfill the requirements of this section shall be cold tolerant and shall meet criteria of this article. Synthetic or artificial material in the form of trees or shrubs shall not be used in lieu of plant requirements in this section. Artificial material in the form of vines, groundcover, or turf may only be used upon the approval of the City Council. If approved, artificial material shall maintain a lively appearance and if color fade or other deterioration of the material occurs over time, the property owner shall be obligated to replace said material.
5. Credit towards other required landscaping. Where the landscaping provided under this section meets the requirements of other provisions of this Article, such landscaping may be credited toward fulfilling those requirements, with the exception of any required recreational open space or as otherwise set forth herein.

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6. Front yards, visibility triangles. The above standards notwithstanding, no screening shall be required which conflicts with front yard fence or wall height limitations or required visibility triangles.
7. Required opaque features shall consist of a solid masonry wall, fence, earthen berm, vegetation or combination thereof ~~unless the City Council approves a substitute material (such as a completely opaque living landscape barrier) based upon the use and conditions of the project site and adjacent site.~~ Landscaping is required along both sides of a wall unless otherwise approved by the City Council. The City Council may allow a buffer width reduction when a solid masonry wall or fence is provided.
8. Required opaque features shall be measured from the finished floor elevation of the proposed structure(s) or elevation of the adjacent driveway, parking, or right of way, whichever is higher. This requirement can be modified by the City Council based upon grade differences and the relationship between the height and mass of the proposed building and its setback from the property line. The maximum required height of an opaque feature shall be eight (8) feet above the site grade where the feature is located except for screening required in conjunction with outdoor storage.
9. Hedge or shrub material within buffers may be reduced by the City Council when a six-foot wall or fence is provided within the buffer, if the remaining amount of required shrub material and at least fifty (50) percent of required understory tree material are planted between the project site perimeter and the wall or fence. Alternative planting locations may be approved by the City Council.

F. Sizes of Buffer Types.

1. The landscape buffer width and degree of vegetation required depends on the nature of the adjoining uses and right-of-way (thoroughfares). The following landscape buffer widths requirements shall apply:
 - a. Where a single family residential use abuts a multi-family residential use, a minimum ten (10) foot type B buffer shall be required;
 - b. Where a professional office abuts a residential use, a minimum ten (10) foot type B buffer shall be required;
 - c. Where a commercial use abuts a residential use, a minimum fifteen (15) foot type A buffer shall be required;
 - d. Where an industrial use abuts a commercial use, a minimum ten (10) foot type B buffer shall be required;
 - e. Where an industrial use abuts a residential use, minimum twenty-five (25) foot type A buffer with an opaque feature shall be required;
 - f. Where ~~the side or rear of~~ a residential use subdivision abuts an existing or proposed arterial or collector street, a minimum twenty-five (25) foot type A landscape buffer shall be required; and
 - g. Where the side or rear of a nonresidential or agricultural use abuts an existing or proposed arterial or collector street, a minimum ~~fifteen-ten~~ (105) foot type BA landscape buffer shall be required.
2. Nonresidential, agricultural, and multifamily development and residential subdivisions shall install street trees along all street frontages in accordance with the City's tree planting program. Credit toward tree planting requirements of this Article may be granted by City Council at their sole discretion.
3. The presence of a local road right-of-way between the uses set forth in part 1 above shall not be grounds for a reduction in the size and type of buffer as set forth herein.

G. Timing of Buffer Installation.

The timing of the installation of required buffers shall be as set forth below.

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1. When a proposed project is required to provide a buffer pursuant to Section 11.4.F.1.a through e, and the adjacent property is developed, the proposed use shall install 100% of the required buffer prior to the release of the initial certificate of occupancy. However, if an existing buffer meeting at least 50% of the width and planting requirements of the required buffer has been previously provided in conjunction with the adjacent development, then the proposed use is required to install 50% of the required buffer in terms of width and planting requirements. The landscape materials shall be placed to maximize buffer screening taking into consideration the location of the existing buffer material on the adjacent property.
2. When a proposed project is required to provide a buffer pursuant to Section 11.4.F.1.a through e, and the adjacent property lies within the Town of Fellsmere according to the plat thereof recorded in Plat Book 2, Pages 2 and 3, Public Records of St. Lucie County, now lying in Indian River County, the proposed use shall install 100% of the required buffer in terms of width and planting material prior to the release of the initial certificate of occupancy. However, if an existing buffer meeting at least 50% of the width and planting requirements of the required buffer has been previously provided in conjunction with the adjacent development, then the proposed use is required to install 50% of the required buffer in terms of width and planting requirements. The landscape materials shall be placed to maximize buffer screening taking into consideration the location of the existing buffer material on the adjacent property.
3. When a proposed project is required to provide a buffer pursuant to Section 11.4.F.1.a through e, and the adjacent property is vacant not otherwise meeting the requirements of subsection 2. above, the proposed use shall install 50% of the required buffer in terms of width and planting material prior to the release of the initial certificate of occupancy. The landscape materials shall be placed to maximize buffer screening taking into consideration the location of the proposed uses. The balance of the buffer will be provided in conjunction with the development of the adjacent vacant land.
- ~~Where the side or rear of a proposed residential use abuts an existing or proposed arterial or collector street, a minimum twenty five (25) foot type A landscape buffer shall be required prior to release of the first certificate of occupancy.~~
- ~~4. Where the side or rear of a proposed nonresidential use abuts an existing or proposed arterial or collector street, a minimum fifteen (15) foot type A landscape buffer shall be required prior to release of the first certificate of occupancy.~~

H. Perimeter landscaping relating to abutting properties.

1. On the site of a building or structure or open lot use providing an off-street parking or vehicular use area; where such areas will not be entirely screened visually by any intervening building or structure from abutting property, that portion of such area not so screened shall be provided with a two-tier hedge or hedge and ground cover combination or other durable landscape barrier maintained with one tier not less than twothree (23) feet in height to form a continuous screen between the off-street parking or vehicular use area and such abutting property within one year of installation. Nonliving barriers shall not exceed four (46) feet in height unless otherwise approved by the City Council.
2. Such landscaped barrier shall be located between the common lot line and the off-street parking or vehicular use area and shall be planted in a planting strip no less than ten (10) feet in width.
3. In addition, one canopy tree shall be provided for each thirty (30) lineal feet of such landscape barrier or fractional part thereof.
4. Such trees shall be located between the common lot line and the off-street parking or vehicular use area.

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5. Each such tree shall be planted in at least one-hundred (100) square feet of planting area with a minimum dimension of at least ten (10) feet.
6. Each such planting area shall be landscaped with grass, ground cover or other landscape material, excluding paving, in addition to the required tree and the landscape requirements of Section H.1 above.
7. The provisions of this subsection shall not be applicable in the following situations:
 - a. ~~When a property line abuts a dedicated alley, or Along~~ those portions of the property that are opposite the service area of a building or other structure located on the abutting property.
 - b. Where the subject property and abutting property are zoned or used for nonresidential uses, the two-tier hedge provision with this planting area as prescribed in this subsection may be waived by the Approval Authority City Council.
 - c. When a nonresidential property is adjacent to vacant land within a non-residential zoning district, the parking buffer width and required trees may be reduced up to 50% at the sole discretion of the City.
 - d. When an agricultural property is adjacent to vacant land within an agricultural zoning district, the parking buffer width and required trees may be reduced up to 50% at the sole discretion of the City.

Section 11.5 Open Space, Vehicular Use Area and Parking Landscape Requirements.**A. Interior Landscaping for Off-Street Parking**

For off-street parking or vehicular use (driving aisles, driveways, parking spaces, loading areas), areas equal to at least ten (10) percent of the total paved area (driving aisles, driveways, parking spaces, loading areas) shall be provided with interior landscaping. Please see graphic at end of this Article illustrating how this requirement is calculated.

B. Separate Landscape Area

Each separate, required landscaped area shall contain a minimum of two hundred (200) square feet with minimum dimensions of at least ten (10) feet in areas where a tree is planted, and shall include at least one tree having a clear trunk of at least five (5) feet, with the remaining area adequately landscaped with shrubs, ground cover or other authorized landscaping material not to exceed three (3) feet in height.

1. To preserve adequate sight distance, end islands at intersection of internal driveways shall be designed and maintained to preserve a visual "clear window" for the area between three (3) feet and seven (7) feet above the adjacent parking lot grade.
2. The total number of trees shall not be less than one for each ~~sixthree~~ hundred (~~6300~~) square feet of fraction thereof of required interior landscaped area. Such landscaped areas shall be located in such a manner as to divide and break up the expanse of paving.
3. When, upon the request of the developer and in the opinion of the City Manager or designee, the size of interior landscape areas and placing of all required interior trees would create an impractical landscape effect, a portion of the required interior trees may be placed along the perimeter of the parking or vehicular use area to satisfy this requirement and/or the size of interior landscape areas may be reduced by up to 50%.
4. The area to be counted for interior landscaping requirements shall be graphically depicted on landscape plans by cross-hatching or other graphic means.

Section 11.6 Open Space Area Landscaping Requirements.**A. General Landscaping Treatment.**

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All non-vehicular open spaces including common green space required by Article XV on any site proposed for development in all zoning districts, ~~except for individual single family dwellings,~~ shall conform to the minimum landscaping requirements herein provided. Perimeter buffers shall be excluded from this requirement.

1. Grass, ground cover, shrubs, native plant areas and other landscaping materials shall be used to treat all ground not covered by building, paving or other structures.

B. Trees required.

1. Trees shall be planted in the non-vehicular open space (excluding required buffers and perimeter strips) to meet the following requirements:
 - a. Residential zoning districts and mobile home residential zoning districts requiring site plan approval: a minimum of one tree per each ~~threetwo~~ thousand (~~32,000~~) square feet of non-vehicular open space or fraction thereof;
 4. Commercial zoning districts: A minimum of one tree per each ~~fourthree~~ thousand (~~43,000~~) square feet of non-vehicular open space or fraction thereof;
 5. Industrial zoning districts: ~~Open space trees shall be provided as set forth below.~~

Square Feet of Non-Vehicular Open Space	Required Open Space Trees
<u>Up to five (5) acres</u>	<u>one tree per each four thousand (4,000) square feet of non-vehicular open space or fraction thereof</u>
<u>Greater than five (5) acres up to twenty (20) acres</u>	<u>one tree per each six thousand (6,000) square feet of non-vehicular open space or fraction thereof</u>
<u>Greater than twenty (20) acres up to fifty (50) acres</u>	<u>one tree per each eight thousand (8,000) square feet of non-vehicular open space or fraction thereof</u>
<u>More than fifty (50) acres</u>	<u>one tree per each ten thousand (10,000) square feet of non-vehicular open space or fraction thereof</u>

~~A minimum of one tree per each four thousand (4,000) square feet of non-vehicular open space or fraction thereof.~~

Section 11.7 Supplemental Landscape Requirements.

- A. All trees planted adjacent to or within a right-of-way shall be planted within the following minimum planting areas and maximum spacing:~~in a planting area of at least one hundred (100) square feet, with minimum dimensions being at least ten (10) feet in any direction.~~
 1. Canopy species shall be planted with a minimum width of 10 feet in the planting strip and one hundred (100) square feet of planting area and spaced no farther than fifty feet on center.
 2. Midstory trees shall be planted with a minimum width of six feet in the planting strip and thirty-six (36) square feet of planting area and spaced no farther than twenty-five feet on center.
 3. Understory trees and palms shall be planted with a minimum width of three feet in the planting strip and nine (9) square feet of planting area and spaced no farther than five feet on center.
 4. Tree spacing may be clustered as part of a specific landscape design when design by a licensed landscape architect and approved by the City.
- B. ~~If such~~ Durable barriers ~~is~~ is of nonliving material, such as walls and fences, ~~not otherwise provided as an opaque buffer screen,~~ shall be landscaped with one shrub or vine ~~shall be~~

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- ~~planted~~ at each ten (10) feet thereof abutting such barrier, but need not be spaced ten (10) feet apart.
- C. Shrubs or vines shall be planted along the street side of a barrier unless they are of sufficient height at the time of planting to be readily visible over the top of such barrier.
 - D. Necessary access ways from the public right-of-way through all such landscaping areas shall be permitted to service the parking, and such access ways may be subtracted from the lineal dimension used to determine the number of trees required.
 - E. ~~Site distance for landscaping adjacent to roadways and points of access.~~ All landscape plans submitted hereunder shall conform to the minimum sight distance standards established within the FDOT index 546. The requirement may be modified by the City Engineer for roadways and points of access internal to a project
 - F. ~~Landscaping Near Overhead Electrical Transmission Or Distribution Lines.~~ Landscaping adjacent to Electrical Transmission Or Distribution Lines shall conform to Florida Power & Light's (FPL) "Right Tree Right Place Guidelines". The TRC may require cross section diagrams depicting how the proposed landscaping complies with this requirement.-See Figure (1) below. Required canopy trees within buffers impacted by overhead utility lines may be converted to understory or palm trees.
 - G. Tree Preservation and Removal:
 - 1. Governmental and agricultural projects shall be exempt from the tree preservation requirements of this section.
 - ~~1.2.~~ All proposed development, including work within public or private rights-of-way, shall be required to submit a tree survey as part of any development application. The survey shall be by a licensed surveyor unless otherwise approved by the Community Development Director. For single family homes on a lot of record, the survey may be in the form of a sketch plan showing all hardwood trees 6" or greater in diameter at breast height (DBH) on their building permit application and may be prepared by the home owner or home owner's representative. For multifamily or nonresidential development, the tree survey or inventory shall depict all hardwood trees that have achieved a trunk diameter of 6" at 4-1/2 feet above grade and softwood trees having achieved a trunk diameter of 12", excluding those provided in Table 11B, all palm trees, softwood trees, and dead or diseased trees, and trees that pose a threat to utilities and structures.
 - ~~2.3.~~ Hardwood trees less than 6", softwood trees, and palms and dead or diseased trees may be removed with no required mitigation at no cost.
 - 4. Hardwood trees 6" or greater and softwood trees 12" or greater shall be preserved to extent feasible, and if unable to be retained, the owner shall replace hardwood trees, based upon total DBH removed, with an equivalent amount of trees, based upon total DBH provided, of similar species.
 - a. Before making a final decision on the feasibility of retention, the owner shall consider the feasibility of relocating proposed buildings and other improvements within the development site boundaries to accommodate desirable trees.
 - b. Each tree designated for retention shall have a Critical Protection Zone (CPZ) established around its perimeter which shall be protected by fencing erected before the onset of site development and left in place until project completion. The CPZ shall include an area around the tree equal to at least 60% of the tree's Critical Root Zone (CRZ). The CRZ is a circular area with a radius of one foot for every one inch of tree DBH. The final CPZ shall have a radius of at least 40% of the CRZ on all sides.
 - c. Where trees to be retained are located in groups or clumps, the CPZ shall be determined based on the CPZ's of the trees on the perimeter of the group.

4.5. Trees provided as mitigation shall be in addition to all trees required by other parts of this Article but may be installed at 12' in overall height with a minimum 2.5" caliper.

5.6. In lieu of providing mitigation trees, the applicant may elect to pay for each tree removed by the inch of each tree's DBH removed. This fee shall be set by resolution of the City Council. The applicant may also elect to provide a combination of on site mitigation and payment. An individual single family lot created prior to December 17, 1956 may elect to pay a reduced fee per inch of DBH for each tree removed if they desire not to replace with an equivalent amount of DBH. This reduced fee shall be set by resolution of the City Council.

6.7. Prior to removal of any ~~protected~~ tree, a tree permit shall be obtained from the Community Development Department. Applications for tree removal permits shall contain a survey or sketch as set forth in part 1 above; the site plan or sketch required for development approval if the tree is being removed as part of a development proposal; a proposed mitigation plan, which may include a mitigation payment as set forth above; and an application fee as set by resolution of the City Council. The permit application shall be reviewed to determine whether the proposal requires mitigation as set forth herein or is otherwise exempt from mitigation and to determine whether the proposal will maintain compliance with the landscape requirements of the Code. The review of the permit application shall be completed within 10 days of receipt of a permit application and any applicable fees, not counting the day of receipt and not counting any Saturday, Sunday, or legal holiday which falls between the first or the 10th day after the date of receipt.

H. Unless other regulations require a larger separation, no street tree shall be planted closer than three feet to a curb or sidewalk.

I. A minimum nine (9) feet overhead clearance shall be maintained from the grade of all pedestrian ways to the lowest overhead branch of any tree.

Figure 1

Section 11.9 Landscape Installation and Maintenance Requirements.

A. Installation.

1. All landscaping shall be installed in a sound workmanlike manner and according to accepted good planting procedures with the quality of plant materials as herein described. Prior to or at the time a certificate of occupancy inspection is requested, the project landscape architect or landscape contractor shall certify in writing the date he or she last inspected the landscape installation and that all installed landscape material meets the quality requirements of this Code. All elements of landscaping, exclusive of plant material, shall be installed so as to meet all other applicable ordinances and code requirements. No final certificates of occupancy or similar authorization will be issued unless the landscaping meets the requirements provided in this Code.
2. Security to Guarantee Installation. Required landscape materials can be guaranteed for future installation ~~in the event of at the sole discretion of the~~ City Council ~~recognized disaster (e.g. freeze or hurricane) that adversely affects availability of landscape materials. When required landscape materials are guaranteed for future installation At the time that it recognizes such a disaster,~~ the City Council shall set a time frame by which required landscaping must be installed. ~~In addition to providing security after such disasters, the City Council is authorized to approve the use of security to guarantee the installation of required landscape materials where such installation needs to be delayed~~

~~in coordination with adjacent road construction that would disrupt adjacent landscape areas or for other reasons approved by the City Council.~~ The security for future (post C.O.); ~~installation shall be by cash bond which~~ must be posted with the City in the amount of one hundred fifteen (115) percent of the contract installation price. Alternatively, in lieu of a security, the City Council may approve landscape for future installation as part of temporary CO conditions or as conditions of approval subject to code enforcement actions for failure to comply.

3. Mulches with a minimum depth of two inches shall be used in all planting beds

B. Maintenance.

1. The owner or his agent shall maintain all landscaping depicted on the approved plan in good condition, so as to present a healthy, neat and orderly appearance, free from weeds, refuse and debris, and with the quantity and variety required by this article for the duration of use of the site. Completed project sites shall be reviewed periodically by the City staff for compliance with these provisions, and any violations shall be presented to the code enforcement special master.
2. Native plant areas used for landscaping purposes may be left in their natural condition, providing they are maintained so as not to create a health or safety hazard. These areas may also be excluded from the water supply requirements, providing they are in a healthy condition upon issuance of a final certificate of occupancy. All approved "native plant areas" shall be required to maintain the site free of any nuisance exotic plant species.
3. Mature trees shall not be "hat raked" or otherwise pruned to reduce the canopy to less than the minimum fifteen-foot spread, except for the removal of dead or diseased wood. Trees severely damaged by storms or other natural causes, or trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this requirement at the determination of the City Tree Board. When mature trees are "hat raked" without an exemption granted from the City Tree Board, such violations shall be presented to the code enforcement special master as a noncorrectable violation and the violator shall be required to mitigate for the loss of the tree pursuant to Section 11.7.G.
- 3.4. Landscape maintenance shall be performed in accordance with the *Florida Green Industries Best Management Practices for Protection of Water Resources in Florida*, the University of Florida Cooperative Extension Service and with the *Florida Yards & Neighborhoods Handbook*.
5. Every property owner of any tree overhanging any street or sidewalk within the City shall prune the branches so that branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of nine (9) feet above the surface of the street or sidewalk. The City shall have the right to prune any tree or shrub overhanging public property when it interferes with the proper spread of light from a street light or interferes with visibility of any traffic control device or sign or reduces the overhead separation from a street or sidewalk to less than nine (9) feet.
6. Every property owner within the City shall remove any dead or diseased trees on private property when such tree constitutes a hazard to life and property or harbors insects or disease which constitutes a threat to other trees within the City or which constitute a menace to the safety of the public. Failure to remove such trees upon written notification from the City granting at least twenty (20) days to remove such tree may be enforced through code enforcement.
7. All stumps of any trees on public or private property shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the

ground. Stumps at least three (3) feet in height and used as public art may remain so long as their location does constitute a threat or hazard to the public.

8. The City shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.
9. The owner of any parcel, lot or tract of land that has been previously cleared, whether developed or not, shall be responsible for mowing the grass within any adjoining right-of-way to the edge of the developed roadway, alleyways excepted, and maintain such grass at a height of less than twelve (12) inches.
10. Parking perimeter hedges shall be maintained at a height between four and six feet.

C. Replacement of Required Landscaping.

1. Required landscaping that has died or has been removed shall be replaced by material which is equivalent to the size that the material should have attained from the time of project C.O. (certificate of occupancy), as follows:
 - a. From zero (0) to eighteen (18) months after project C.O., landscape materials may be replaced at the sizes indicated on the approved site plan.
 - b. More than eighteen (18) months after project C.O., replacement shrubs shall be a minimum of ~~twenty four~~ thirty (2430) inches in height, replacement canopy trees shall be a minimum of ~~six~~ eighteen (1816) feet in height and ~~four~~ five (45) inches in diameter at 4 ½ feet above grade, and replacement understory trees shall be a minimum of eight (8) feet tall with a two (2) inch diameter at 0.5 feet above grade.

Section 11.10 Landscaping Requirements For Residential Structures of Three or Fewer Units.

- A. Any new residential structure containing one (1), two (2), or three (3) units must either retain and protect ~~preserve~~ or plant one (1) tree for every 2,500 square feet of the subject lot or parcel of land, up to a maximum planting of 17 trees per lot or parcel. Existing trees preserved on site may be credited toward this requirement at the rate of four inches of trunk diameter at 4 ½ feet above grade equalling one required tree.
- B. Planted canopy trees shall be of a size, quality and type as specified in Section 11.3 of this Article. The owner of the lot shall be required to maintain the canopy trees in viable condition.
- C. The following trees are approved for use to meet the residential lot canopy tree requirement of this section. Other canopy tree species may be used subject to City staff approval.
 - Live oak (*Quercus virginiana*)
 - Laurel oak (*Quercus hemisphaerica*)
 - Diamond-leaf oak (*Quercus laurifolia*)
 - Red maple (*Acer rubrum*)
 - American holly (*Ilex opaca*)
 - Southern magnolia (*Magnolia grandiflora*)
 - Sweet gum (*Liquidambar styraciflua*)
 - Sycamore (*Platanus occidentalis*)
 - Seagrape (*Coccoloba uvifera*)
 - Red mulberry (*Morus rubra*)
 - Slash pine (*Pinus elliottii*)

Section 11.11 Fertilizing Requirements.

A. TIMING OF FERTILIZER APPLICATION

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period or to soils with standing water or soils in which water is released upon walking upon the surface of the soil. Prohibited Application Period means the time period between June 1 and September 30 or the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of the City of Fellsmere issued by the National Weather Service, or if heavy rain is likely.

B. FERTILIZER FREE ZONES

Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall, ~~unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of 3 feet shall be maintained.~~ If more stringent regulations from permitting agencies or private restrictions apply, this provision does not relieve the requirement to adhere to the more stringent regulations. Newly planted turf and/or landscape plants may be fertilized in this Zone only for a sixty (60) day period beginning 30 days after planting if need to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

C. LOW MAINTENANCE ZONES

A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent regulations from permitting agencies or private restrictions apply, this provision does not relieve the requirement to adhere to the more stringent regulations. Notwithstanding the voluntary nature of the above sentences, ~~n~~No mowed or cut vegetative material may be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone.

D. FERTILIZER CONTENT AND APPLICATION RATES

1. No fertilizer containing phosphorous shall be applied to turf or landscape plants in the City unless a soil or plant tissue deficiency is verified by a University of Florida, Institute of Food and Agriculture Sciences, approved testing methodology. In the case that a deficiency has been verified, the application of a fertilizer containing phosphorous shall be in accordance with the rates and directions for the Central Region of Florida as provided by Rule 5E-1.003(2), Florida Administrative Code. Deficiency verification shall be no more than two (2) years old. However, recent application of compost, manure, or top soil shall warrant more recent testing to verify current deficiencies.
2. The nitrogen content of fertilizer applied to turf or landscape plants within the City shall contain at least fifty (50) percent slow release nitrogen per guaranteed analysis label.
~~Appropriate Best Management Practices listed below must be followed on sites for golf courses, parks and athletic fields for nutrient management activities. Fertilizers labeled for sports turf at golf courses, parks and athletic fields shall~~
 - ~~have directions for use not to exceed rates recommended in the document titled SL191 "Recommendations for N, P, K and Mg for Golf Course and Athletic Field Fertilization Based on Mehlich I Extractant", dated March 2007, which is hereby~~

~~adopted and incorporated by reference into this rule. Copies may be obtained from the Soil and Water Science Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL 32611 or the following website: <http://edis.ifas.ufl.edu/SS404>.~~

~~have directions for use in accordance with the recommendations in "BMP's for the Enhancement of Environmental Quality on Florida Golf Courses", published by the Florida Department of Environmental Protection, dated January 2007. Copies may be downloaded from <http://www.dep.state.fl.us/water/nonpoint/pubs.htm>.~~

~~Note that this does not exempt applicators at these sites from the required basic Green Industry BMP training. Information on this is located at http://fyn.ifas.ufl.edu/professionals/BMP_overview.htm.~~

2.3. Fertilizer content and application rates shall be governed for all other uses as set forth below.

- a. Fertilizers applied to turf and/or landscape plants within the City of ~~Fellsmere~~ shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.
- b. Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first 30 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.
- ~~b. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in (a) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test.~~

E. APPLICATION PRACTICES

1. Spreader deflector shields are required when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.
2. Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.
3. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.
4. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.
5. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

F. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

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G. EXEMPTIONS

The provisions set forth above in this Ordinance shall not apply to:

1. bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14 Florida Statutes;
2. other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;
3. any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture;
4. Golf courses when landscaping is performed within the provisions of the Florida Department of Environmental Protection document, "Best Management Practices for the Enhancement of Environmental Quality on Florida Golf Courses," these provisions shall be followed when applying fertilizer to golf course practice and play areas;
5. Athletic fields at public parks and school facilities that apply the concepts and principles embodied in the Florida Green BMPs, while maintaining the health and function of their specialized turf areas;
6. Vegetable gardens owned by individual property owners or a community, and trees grown for their edible fruit.

H. TRAINING

1. All commercial and institutional applicators of fertilizer within the City of Fellsmere shall abide by and successfully complete the six-hour training program in the "*Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries*" offered by the Florida Department of Environmental Protection through the University of Florida Extension "Florida-Friendly Landscapes" program, or an approved equivalent.
2. Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizers.
3. Persons with statewide FDACS commercial fertilizer certification cannot be required to submit to additional local testing after obtaining the FDACS certificate.

I. LICENSING OF COMMERCIAL APPLICATORS

1. Prior to January 2014, all commercial applicators of fertilizer within the City of Fellsmere shall abide by and successfully complete training and continuing education requirements in the "*Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries*", offered by the Florida Department of Environmental Protection through the University of Florida IFAS "Florida Friendly Landscapes" program, or an approved equivalent program, prior to obtaining a City of Fellsmere Local Business Tax Certificate for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial Fertilizer Applicators shall provide proof of completion of the program to the Community Development Department within 180 days of the effective date of this ordinance.
2. After December 2013, all commercial applicators of fertilizer within the City of Fellsmere shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per 5E-14.117(18) F.A.C.
3. All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a "Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries"

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training certificate prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the Community Development Department.

Section 11.12 Soil Amendment.

A. PURPOSE. The provisions of this Section are intended to enhance soil water storage capacity, improve conditions for plant growth and reduce water runoff.

B. DEFINITIONS. The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this Section:

Soil amendments shall mean compost material regulated by the Florida Department of Environmental Protection (FDEP) for distribution to the general public.

Top soil shall mean a friable mixture of sand, silt and clay particles, each within the following limits:

<u>Sand (0.05- 2.00 mm)</u>	<u>Maximum 75%</u>	<u>Minimum 20%</u>
<u>Silt (0.002–0.05 mm)</u>	<u>Maximum 60%</u>	<u>Minimum 5%</u>
<u>Clay (less than 0.002 mm)</u>	<u>Maximum 30%</u>	<u>Minimum 5%</u>

Top soil shall have an organic matter content of greater than five (5) percent and a pH between 6.0 and 8.0, and shall be free from noxious weeds and roots, salts, clay lumps, any nonsoil materials such as rock, concrete, brick chips, or building materials, foreign matter, and any chemical, biological or radiological contaminants.

C. REGULATIONS.

(a) Except as otherwise provided below, the holder of any building or development permit shall, as a condition of the issuance of a certificate of occupancy or final inspection, prepare any area in which any plant materials, including but not limited to grass, seed, flowers, shrubs or trees, are expected or intended to be installed, prior to installation of any plant materials in that area, as follows:

(1) The soil in such areas shall be thoroughly loosened to a depth of not less than six (6) inches; and

(2) Soil amendments shall be thoroughly incorporated into the soil of such areas to a depth of at least six (6) inches by tilling, discing or other suitable method, at a rate of at least four (4) cubic yards of soil amendment per one thousand (1,000) square feet of area to be planted. Alternatively, at least four (4) inches of loose top soil may be placed on the area after completion of construction activity on top of not less than four (4) inches of loosened subgrade soils or documentation of the content and quality of the existing soil may be provided that demonstrates that the existing soil meets the definition of Top Soil in Section B.

(3) Documentation of the content and quantity of the soil amendments and top soil placed in an area, prepared by the commercial source of the material or a qualified soils testing laboratory, shall be submitted in connection with the certification required in Subsection (b) below.

(b) Prior to the issuance of any certificate of occupancy, the prospective recipient of such certificate of occupancy or final inspection shall submit written certification to the Community Development Director that all planted areas, or areas to be planted, have been thoroughly loosened and the soil amended, consistent with the requirements set forth in this Section.

(c) In the event that the Community Development Director determines that compliance with this Section is rendered unreasonably difficult by weather or seasonal conditions, the Community Development Director may temporarily suspend the application of this requirement, contingent upon the provision by the prospective recipient of such arrangements, guaranties or assurances as the Community Development Director determines to be adequate to ensure compliance.

(d) The Community Development Director or City Manager may inspect any property in order to determine compliance with the requirements of this Section as a condition of issuance of any certificate of occupancy or final inspection.

(e) Payment of any administrative fee established by resolution of the City Council for the purpose of recovering the costs of administering and enforcing the requirements of this Section shall be required as a condition of issuance of any building permit or development order, excluding any building permit or development order where it can be shown that no areas within the project limits will be disturbed by construction activities and planted with vegetation.