

**AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING SECTION 10.5 (SIDEWALKS) AND SECTION 10.13 (THOROUGHFARE SCREENING) OF THE SUBDIVISION ORDINANCE NO. 03-05; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

WHEREAS, the Town Council of the Town of Prosper, Texas ("Town Council") has investigated and determined that Section 10.5 (Sidewalks) and Section 10.13 (Thoroughfare Screening) of the Town of Prosper, Texas ("Prosper") Subdivision Ordinance No. 03-05 should be amended; and

WHEREAS, Prosper has complied with all notices and public hearings as required by law; and

WHEREAS, the Town Council finds that it will be advantageous, beneficial and in the best interest of the citizens of Prosper to amend Prosper's Subdivision Ordinance No. 03-05 as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment to Prosper's Subdivision Ordinance No. 03-05. Section 10.5 (Sidewalks) of Prosper's Subdivision Ordinance No. 03-05 is hereby amended to read as follows:

10.5 Sidewalks

Sidewalks shall be constructed having a minimum width of five feet (5') along all residential streets and six feet (6') along all thoroughfares and collector streets. Sidewalks located along thoroughfares and collector streets shall be constructed to meander with a radius between one hundred to two hundred feet (100'-200'), unless the Director of Development Services or his/her designee determines the required radius cannot be met due to existing physical conditions or site constraints. Sidewalks located in the required landscape buffer (see Section 10.13.5) shall be placed in a sidewalk easement to be dedicated at the time of final plat. Sidewalks shall be constructed of 3000 psi concrete and a minimum thickness of four inches (4"), with number 3 bars at 18 inch centers, both ways.

SECTION 3: Amendment to Prosper's Subdivision Ordinance No. 03-05. Section 10.13 (Thoroughfare Screening) of Prosper's Subdivision Ordinance No. 03-05 is hereby amended to read as follows:

10.13 Thoroughfare Screening

10.13.1 Screening Requirements - Screening is required for all Single-Family, Two-Family, and Townhome lots and subdivisions as follows:

10.13.1a The rear of all lots that back to a thoroughfare or collector with right-of-way of sixty feet (60') or greater;

- 10.13.1b The side of all lots that side to a thoroughfare or collector with right-of-way of sixty feet (60') or greater, unless a lot sides to a median divided entry street to a subdivision; and
- 10.13.1c Between any street and an adjoining parallel alley or street.
- 10.13.2 Lots are prohibited from backing to a street with a right-of-way of less than sixty feet (60'). All required screening shall be installed in accordance with this Ordinance, as it currently exists or may be amended.
- 10.13.3 Screening Plans - A conceptual screening detail shall be submitted for review and approval with the Preliminary Plat. A screening plan, including entry features, showing elevations and materials shall be submitted with the Final Plat and approved by the Director of Development Services or his/her designee prior to the filing of the Final Plat at the county. Screening walls and fences shall be designed in accordance with the Town's design standards. Structural elements shall be sealed by a licensed professional engineer and approved by the Town. Upon installation of the required screening, the developer shall contact the Development Services Department to request final inspection of screening elements. All required screening shall be installed prior to Town issuance of a final acceptance certificate. The Developer may delay the installation of screening by providing surety to guarantee the installation of the required screening. Surety shall be defined as a bond, letter of credit, or letter of financial guarantee from a financial institution and be in an amount and format that is approved by the Director of Development Services. Required screening shall be installed within three (3) months from the date of Town issuance of a final acceptance certificate or prior to Town issuance of a Certificate of Occupancy for a home in the subdivision, excluding model homes.
- 10.13.4 Landscape Plans - A landscape plan for landscaping required by this Ordinance, as it currently exists or may be amended, shall be submitted with the Final Plat and approved by the Director of Development Services or his/her designee prior to the filing of the Final Plat at the county. A landscape plan shall be approved by the Town for all proposed landscaping prior to planting. Landscape materials shall be in accordance with the planting list in Section 10.13.6 and installation shall be in accordance with the Zoning Ordinance, as it currently exists or may be amended, or other applicable ordinances. Other species may be utilized with approval from the Planning & Zoning Commission. Upon installation of the required landscaping, the developer shall contact the Development Services Department to request final inspection of landscaping elements. All required landscaping shall be installed prior to Town issuance of a final acceptance certificate. The Developer may delay the installation of landscaping by providing surety to guarantee the installation of the required landscaping. Surety shall be defined as a bond, letter of credit, or letter of financial guarantee from a financial institution and be in an amount and format that is approved by the Director of Development Services. Required landscaping shall be installed within six (6) months from the date of Town issuance of a final acceptance certificate or prior to Town issuance of a Certificate of Occupancy for a home in the subdivision, excluding model homes.
- 10.13.5 Required Screening and Landscaping - Screening required by Section 10.3.1 shall be installed by the Developer in accordance with the approved Screening and Landscape Plans. The design of such screening shall conform to the standards below and as generally shown in Exhibit 10.13.5-1:
- 10.13.5a Landscape Buffer Requirement. A minimum twenty five foot (25') landscape buffer shall be provided for required screening and shall be located within a private "non-buildable" lot that is dedicated to, owned by, and maintained by the subdivision's Homeowners' Association (HOA). Required landscape buffers shall be exclusive of all required streets and right-turn rights-of-way, drainage easements, and utility easements, unless otherwise approved by the Town

Council.

10.13.5b Landscaping Requirements. All trees and other required landscape materials shall be from the approved Plant List in Section 10.13.6 of this ordinance. Landscaping shall be provided as follows:

(a) A living screen of evergreen shrubs shall be planted within the required landscape buffer as generally shown in Exhibit 10.13.5-1. The living screen shall alternate with shrubs that shall be a minimum of seven (7) gallons at time of planting and reach a minimum height of six feet (6') within two (2) growing seasons and shrubs that shall be a minimum of three (3) gallons at the time of planting and reach a minimum height of three feet (3') within two (2) growing seasons.

(b) A mix of large and ornamental trees shall be planted within the required landscape buffer, as generally shown in Exhibit 10.13.5-1. The total number of caliper inches of the trees shall equal or exceed two (2) caliper inches per ten (10) linear feet of landscape buffer frontage. Large trees shall consist of a minimum of thirty three percent (33%) of all tree plantings. Minimum large tree size shall be four (4) caliper inches at time of planting and minimum ornamental tree size shall be two (2) caliper inches at time of planting. A single species of tree shall not exceed forty-five percent (45%) of the plantings. Large trees shall be spaced a minimum of twenty five feet (25') from each other. Large trees shall be planted a minimum of fifteen feet (15') from right-of-way and a minimum of four feet (4') from easements as determined by the Town, curbs, utility lines, screening walls, fences, sidewalks, and alleys, unless the Director of Development Services or his/her designee determines the required distance cannot be met due to existing physical conditions or site constraints. Ornamental trees shall be spaced a minimum of twelve and a half feet (12.5') from each other.

(c) Berms shall be constructed within the landscape buffer as generally shown in Exhibit 10.13.5-1. The berms may encroach up to three feet (3') into the right-of-way and shall not exceed a 3:1 slope. Adequate information shall be provided on the landscape plan to indicate drainage patterns.

(d) Ground cover shall be planted throughout the landscape buffer. Ground cover includes, but is not limited to: grasses, shrubs, mulched planter beds, and hardscape.

10.13.5c Screening Wall and Fencing Requirements. Screening walls and fencing shall be provided as follows:

(i) A continuous ornamental metal fence with a minimum height of six feet (6') and a maximum height of eight feet (8'), with masonry columns spaced between seventy five feet (75') and one hundred feet (100'), shall be constructed along the shared property line between the landscape buffer and the abutting lots. The maximum height of the columns, including capstones, shall be nine feet (9'). The minimum height of required walls and fences shall be measured from the nearest alley edge, the property line (where no alley exists) or sidewalk grade, whichever is higher, and shall be constructed in accordance with Town design standards. The ornamental metal fence shall be constructed of solid-stock materials and tubular steel with a minimum of sixteen (16) gauge pickets and eleven (11) gauge posts.

(ii) The requirement to construct a continuous ornamental fence may be waived by the Director of Development Services or his/her designee where residential lots do not directly back or side to the required landscape buffer.

(iii) A minimum five-foot (5') wall maintenance easement, dedicated to the HOA, shall be provided on the plat on all lots abutting the screening wall or fence. The screening wall shall be owned and maintained by the HOA.

(iv) Masonry walls, wood fences, solid metal fences, or any other type of solid fencing shall not be constructed parallel to the required ornamental metal fence within the landscape buffer or on an adjacent lot, within a distance of twenty five feet (25') from the ornamental metal fence.

10.13.5d Irrigation Requirements. An automatic, underground irrigation system shall provide one hundred percent (100%) coverage for all living screens and plantings, and shall conform to the following:

(a) Irrigation lines shall be placed a minimum of two and one-half feet (2 ½') from the sidewalk. Reduction of this requirement is subject to review and approval by the Town Engineer. The main irrigation lines, section lines and zone valves for irrigation systems shall be placed outside of required right-of-way corner clips.

(b) Trees and shrubs shall be irrigated by bubbler irrigation lines only. Other landscaping may be irrigated by spray irrigation. Separate valves shall be provided to turn off the spray irrigation line during periods of drought or water conservation.

(c) The main irrigation line, section lines and water valve for irrigation shall be placed a minimum of thirteen feet (13') from the back of the curb at major intersections to accommodate right turn lanes.

(d) The Developer is responsible for installing the water meter and back flow equipment. The Town Engineer shall approve the water meter size and placement. The water meter shall be accessible from the street. Evapotranspiration (ET) controllers shall be required on all irrigation systems.

10.13.5e Maintenance Requirements. The Developer shall provide financial means to maintain required screening walls, fences, and landscaping. One of the following maintenance alternatives shall be selected and fulfilled by the Developer, but the selection is subject to staff approval:

(a) Establishment of a homeowners association to maintain required screening walls, fences, and landscaping. The Developer shall provide homeowners association documents to the Town to demonstrate financial responsibility for future maintenance, repairs, and replacement of the required improvements. Documents establishing the homeowners association or Property Owners association shall be submitted to the Town for review and may be reviewed by the Town Attorney for conformance with this and other applicable ordinances prior to final acceptance of the subdivision. The documents shall include, among other information required by the Town, descriptions of:

1. operating budgets based on operating assumptions;
2. reserve budget based on facilities to be maintained;
3. subsidies budget; and
4. liability insurance.

The homeowner association shall be responsible for maintaining, repairing, or replacing screening walls, fences, and landscaping required by this Ordinance, as it currently exists or may be amended. The Developer shall remain responsible for the maintenance requirements set forth herein, until the Developer ceases to control the homeowner's association.

(b) Subject to the discretion and approval of the Town Attorney and Town Council, a Public Improvement District (PID) may also be utilized to maintain landscaping improvements.

10.13.6 Plant List:

**Trees – Large (Canopy)**

Live Oak  
Shumard Red Oak  
Chinquapin Oak  
Texas Red Oak  
Shumard Oak  
Cedar Elm  
Lacebark Elm  
Chinese Pistache  
Texas Pistache  
Caddo Maple  
Trident Maple  
Drummond Maple  
Big Storm Maple  
Pecan  
River Birch  
Bald Cypress  
Corkscrew Willow  
Texas Ash  
Southern Magnolia

**Trees - Ornamental**

Desert Willow  
Eve's Necklace  
Yaupon Holly  
Texas Mountain Laurel  
Mexican Plum  
Eastern Redbud  
Texas Redbud  
Oklahoma Redbud  
Vitex  
Wax Myrtle  
Rose of Sharon  
Little Gem Magnolia  
Eastern Red Cedar  
Leyland Cypress  
Crape Myrtle  
Flowering Crab Apple  
Japanese Black Pine

**Shrubs - Ornamental**

Abelia Sp.  
Barberry Spp.  
Boxwood  
Dwarf Yaupon Holly  
Red Yucca  
Carissa Holly  
Gulf Stream Nandina  
San Gabriel Nandina

Moonbay Nandina  
Harbor Dwarf Nandina  
Indian Hawthorne  
'Rock' Rose  
'Knock Out' Rose  
Texas Sage  
Spirea Spp.

**Screening Shrubs (6' minimum in height)**

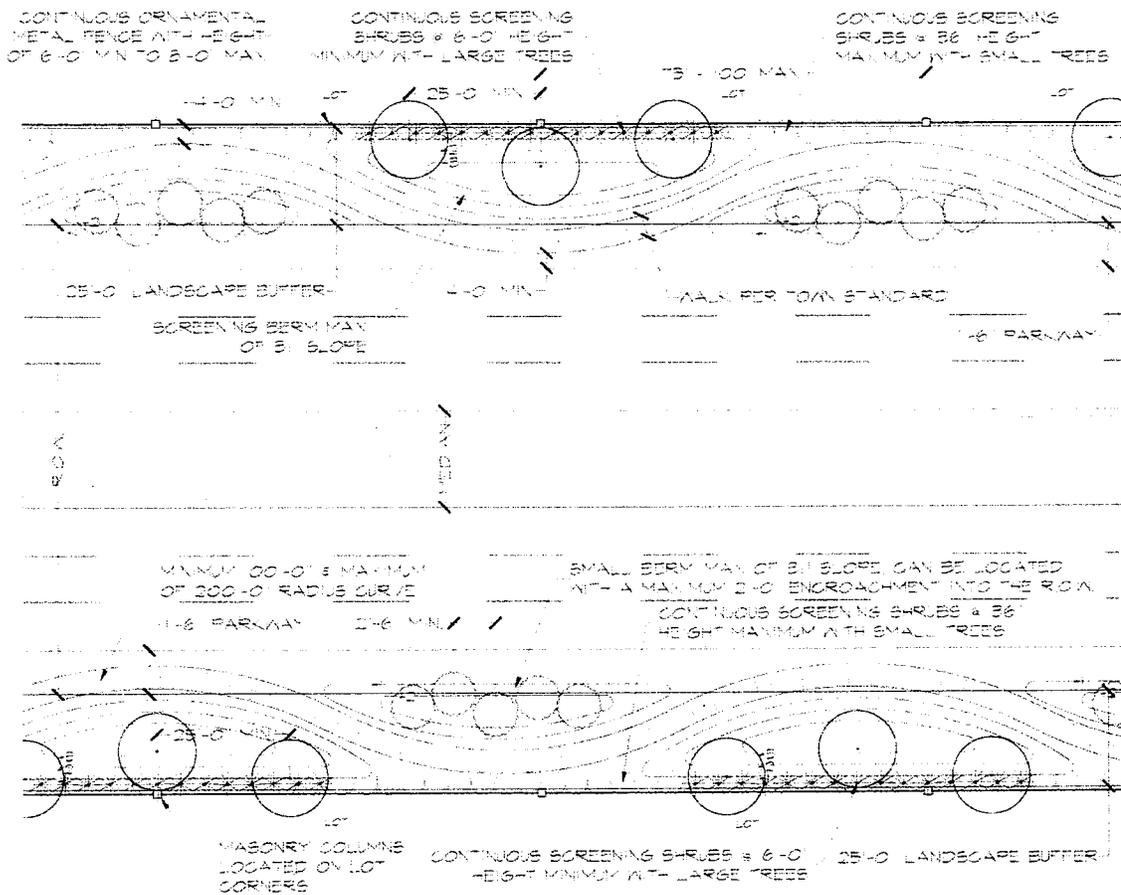
Cleyera  
Foster Holly  
Nellie R. Stevens Holly  
Savanna Holly  
Burford Holly  
Mary Nell Holly  
Viburnum  
Spiraea Spp.  
Skyrocket Juniper  
Blue Point Juniper

**Screening Shrubs (36" maximum)**

Spiraea Spp.  
Indian Hawthorne  
Dwarf Burford Holly  
Needle Point Holly  
Nandina Compacta  
Texas Sage  
Tams Juniper



Exhibit 10.13.5-1



**SECTION 4: Savings/Repealing Clause:** Prosper’s Subdivision Ordinance No. 03-05 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect.

**SECTION 5: Severability:** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

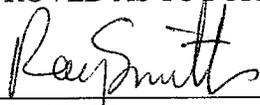
**SECTION 6: Penalty Provision.** Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper’s Subdivision Ordinance No. 03-05, or as amended, shall be deemed

guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

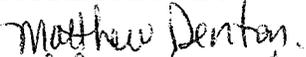
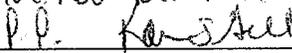
SECTION 7: Effective Date: This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS on this 25<sup>th</sup> day of January, 2011.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ray Smith, Mayor

ATTESTED TO AND  
CORRECTLY RECORDED BY:

  
  
\_\_\_\_\_  
Matthew D. Denton, TRMC  
Town Secretary

DATE OF PUBLICATION: 02/05/2011, *Dallas Morning News*