

**Town of Chevy Chase
Ordinance to Amend Urban Forest Ordinance**

Resolution No.: 11-02
Introduced: July 13, 2011
Adopted: September 14, 2011
Effective Date: October 15, 2011

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality, to protect and preserve the municipality's rights, property and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, the Natural Resources Article, Title 5, Subtitle 4, Part IV of the Maryland Code authorizes a municipal corporation to implement a local urban and community forestry program within its jurisdiction; and

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town; and for such other police and health matters as it may deem necessary; and

WHEREAS, trees benefit the Town by filtering the air, capturing carbon dioxide, providing shade, buffering noise, harboring wildlife, controlling storm water runoff, and stabilizing soils, and the Town Council has determined that the existing canopy trees in the Town constitute an important natural resource that must be protected, preserved and, replaced:

WHEREAS, the Environment Committee held several public meetings and submitted a report dated May 30, 2011 to the Council recommending several amendments to Chapter 29 of the Town Code; and

WHEREAS, the Town Council introduced the following Ordinance in an open meeting conducted on the 13th day of July, 2011; and

WHEREAS, after proper notice to the public, the Town Council conducted a public hearing at which it considered the following ordinance in public session assembled on the 14th day of September, 2011; and

WHEREAS, upon consideration of the report and recommendation of the Environment Committee and the record of the public hearing, the Town Council finds that portions of Chapter 29 should be clarified or amended; and

WHEREAS, the Town Council finds that the Ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town.

NOW THEREFORE, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 29 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO CLARIFY TERMINOLOGY, CLARIFY THE TOWN'S RIGHT TO REMOVE TREES FROM PUBLIC RIGHTS-OF-WAY, ADD NOTICE REQUIREMENTS, ADD A FACTOR TO BE CONSIDERED IN AN APPEAL, ADD A REQUIREMENT FOR A PRELIMINARY TREE PROTECTION PLAN, AND MODIFY PENALTY PROVISIONS.

SECTION 1. BE IT ORDAINED AND ORDERED, this 14th day of September, 2011, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Article 23A and the Natural Resources Article, Title 5, Subtitle 4, Part IV of the Maryland Code, and Section 301 of the Town Charter, that Chapter 29 of the Town Code is hereby amended to read as follows:

* * *

Sec. 29-4. Permit Required.

(a) No person shall remove or destroy, or cause the removal or destruction[,] of, a canopy tree, or undertake any action that will substantially impair the health or growth of a canopy tree without first obtaining a permit from the town. **Notwithstanding the foregoing, the town retains the right to remove a canopy tree from any public right-of-way, in accordance with the requirements of the Maryland Roadside Tree Law, as amended or replaced.**

(b) In the case of an emergency that threatens imminent harm to life or property as determined by the town manager, the provisions of this chapter are waived and the town manager may issue an immediate tree removal permit.

(Res. No. 06-01, 1-11-06; **Res. No. 11-02, 7-13-11, eff. 10-15-11**)

Sec. 29-5. Permit Procedure.

In order to remove or destroy or undertake any action that will substantially impair the health or growth of a canopy tree, a property owner shall first apply in writing for a tree removal permit from the town office using an official town application form that will include:

- (1) The street address of the property upon which the proposed action is to be taken;
- (2) The name, address and telephone numbers of the property owner;
- (3) The species and approximate circumference four and one-half (4 1/2) feet above the ground of [the] **all** tree(s) to be removed; **and**
- (4) A description and diagram of the proposed action including the location on the property of [the] **all** tree(s) to be removed.

Except in the case of an emergency permit issued pursuant to section 29-4(b), the town shall post a notice in a conspicuous manner on the subject property describing the tree removal permit application prior to evaluating the request.

(Res. No. 06-01, 1-11-06; **Res. No. 11-02, 7-13-11, eff. 10-15-11**)

Sec. 29-6. Permit Standards.

(a) The town manager is authorized to issue a tree removal permit if, in consultation with the town arborist, it is found that one of the following conditions applies:

- (1) The **canopy** tree is dying, dead, or in danger of falling;
- (2) The **canopy** tree constitutes a hazard to the safety of persons or property;
- (3) The **canopy** tree is a nuisance tree on the town's list of undesirable tree species as adopted by the town council.

(b) [Upon receiving an approved tree removal permit, the property owner will post a copy of the approved permit on the property at least seven (7) calendar days before removal may begin, in a conspicuous manner similar to the posting of County building permit notices.] **Except in the case of an emergency permit issued pursuant to section 29-4(b), the town shall post a notice of approval of a tree removal permit in a conspicuous manner on the subject property and on the canopy tree(s) to be removed. The canopy tree(s) shall not be removed until at least seven (7) calendar days after the posting of the notice(s).**

(c) **In the case of an emergency permit issued pursuant to section 29-4(b), the town shall post a notice of emergency approval as soon as practicable in a conspicuous manner on the subject property.**

(d) If the town manager determines that none of the above conditions apply, he/she shall issue a written denial of the application.

(Res. No. 06-01, 1-11-06; Res. No. 11-02, 7-13-11, eff. 10-15-11)

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Sec. 29-9. Factors to be considered in evaluating an appeal.

The tree ordinance board shall consider the following factors in deciding whether to approve or deny a request for a tree removal permit for a tree that does not qualify for removal under [Sec.] section 29-6.

- (1) The reasons cited by the applicant for wanting to remove the canopy tree.
- (2) The applicant's intention to plant replacement trees, with consideration of the number, size and desirability of species, and with a minimum goal of replacing the canopy tree to be removed.
- (3) The applicant's intention to retain and protect existing trees.
- (4) The facts in support or opposition presented by town residents.
- (5) Information provided by the town arborist.
- (6) The extent to which no alternative to canopy tree removal exists that would allow the proposed development, construction, or land use otherwise permitted under the town building code.
- (7) The desirability of preserving a canopy tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species.
- (8) The overall effect on the tree canopy of the adjacent properties, the neighborhood and the town.
- (9) The aggregate or cumulative effect of the proposed canopy tree removal(s), including any and all canopy tree removals from the property within the prior two-year period.**

(Res. No. 06-01, 1-11-06; Res. No. 11-02, 7-13-11, eff. 10-15-11)

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Sec. 29-12. Tree Protection Plans

(a) A tree protection plan is defined as a plan that delineates tree root protection areas and other measures to be taken to ensure the safety and survivability of all canopy trees on the

subject property and all **canopy** trees at risk on adjoining properties and on the town right-of-way.

(b) Tree protection plans shall comply with the standards set forth in section 29-13 of this chapter.

(c) [A tree protection plan shall include certification that, p] Prior to submission to the town manager, the applicant must provide a copy of the complete plan with any attachments [has been provided] to owners of all adjacent and confronting properties or to those persons who are in residence. An applicant shall submit with the tree protection plan an affidavit confirming compliance with this section. Before the tree protection plan is submitted to owners of adjacent and confronting properties, a preliminary tree protection plan shall be submitted to the town manager. The town manager may, in consultation with the town arborist, preliminarily review the accuracy of the plan. The town manager may require the applicant to amend or expand the plan before it is submitted to owners of adjacent and confronting properties.

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(Res. No. 06-01, 1-11-06; Res. No. 11-02, 7-13-11, eff. 10-15-11)

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Sec. 29-13. Requirements for tree protection plans.

(a) The objectives of a tree protection plan are to minimize the impacts of construction activities on **canopy** trees, including but not limited to: mechanical injury to roots, trunks and branches; compaction of soil which degrades functioning roots and inhibits the development of new ones; and changes in grade which can cut off or suffocate roots. A tree protection plan shall, where applicable, include the following:

(1) Existing and proposed property lines, structures, utility lines, driveways, sidewalks, and other paved surfaces.

(2) The size (circumference at 4 ½ feet above the ground), species, state of health, estimated location of drip line, and accurate location of all trees on the project property, as well as **canopy** trees on neighboring properties where their driplines lie over the proposed construction zone.

* * *

(4) Boundaries of Tree Protection Zones will be located to provide the maximum protection for tree roots.

(5) The delineation of areas to be excavated, regraded, and/or disturbed, as well as mitigation measures to be used to protect remaining trees if substantial grading changes are proposed.

* * *

(8) All trees proposed for removal.

(9) All trees to be protected in Tree Protection Zones, including all trees in the Town right-of-way.

(10) The location, species and diameter of each replacement tree proposed or required.

(11) The methods by which tree branches and roots are to be protected before construction. Branch and root pruning must adhere to International Society of Arboriculture standards.

(12) The maintenance program for trees to be protected during construction as well as for replacement trees for two years following construction.

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(Res. No. 06-01, 1-11-06; Res. No. 11-02, 7-13-11, eff. 10-15-11)

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Sec. 29-14. Penalties.

(a) Violation of any provision of this chapter, including but not limited to removing, destroying, or impairing the health of a canopy tree without obtaining a permit (section 29-4), removing a canopy tree prior to the expiration of the seven (7) day notification period (section 29-6), undertaking any activity that poses a potential risk to any canopy tree without filing a tree protection plan (section 29-11), failing to provide a copy of the complete tree protection plan to owners of all adjacent and confronting properties or to those persons who are in residence (section 29-12), or failing to comply with any part or provision of an approved tree protection plan, shall be a municipal infraction unless otherwise specifically provided. Any person or persons guilty of a municipal infraction shall be subject to a fine, per canopy tree, of one [hundred] thousand dollars (\$1,000.00) or the maximum amount permitted by State law, whichever is greater.

* * *

(d) A second violation of this chapter within a two-year period, or a violation of a stop work order, shall be a misdemeanor and upon conviction shall be punishable by a fine, per canopy tree, of one thousand dollars (\$1,000.00) or the maximum amount permitted by State law, whichever is greater, and imprisonment for six (6) months or the maximum duration permitted by State law, whichever is greater.

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(Res. No. 06-01, 1-11-06; Res. No. 09-02, 3-11-09, eff. 4-11-09; Res. No. 11-02, 7-13-11, eff. 10-15-11)

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SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this 14th day of September, 2011, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Maryland law and the Town Charter, that:

(1) If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This Ordinance shall take effect on the 15th day of October, 2011.

ATTEST:



Albert Lang, Secretary

TOWN OF CHEVY CHASE,



David Lublin, Mayor
Town of Chevy Chase

Bold and Underline indicates new material
[brackets] indicates material deleted
* * * indicates material unchanged