

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

Ordinance No.: 16-04
Introduced: February 10, 2016
Adopted: March 9, 2016
Effective Date: April 8, 2016

WHEREAS, Section 5-202 of the Local Government Article of the Maryland Code grants to the legislative body of every incorporated municipality in Maryland, including the Town of Chevy Chase, general power to pass such ordinances not contrary to the Constitution of Maryland or public general law as deemed necessary in order 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 certain trees in the Town constitute an important natural resource that must be protected, preserved and, replaced; and

WHEREAS, the Town Council asked the Climate and Environment Committee to review the Urban Forest Ordinance, Chapter 29 of the Town Code, and to make any recommendations for amendment thereto deemed appropriate; and

WHEREAS, the Climate and Environment Committee held several public meetings and submitted its findings and recommendations to the Town Council in an open meeting conducted on the 9th day of December 2015; and

WHEREAS, the Town Council discussed the findings and recommendations of the Climate and Environment Committee and proposed amendments to Chapter 29 in public meetings held on the 6th day of January 2016 and the 13th day of January 2016, and introduced the following Ordinance in an open meeting conducted on the 10th day of February 2016; 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 9th day of March, 2016; and

WHEREAS, upon consideration of the findings and recommendations of the Climate and Environment Committee, the Town Council's deliberations, 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 RESTRICT THE DEFINITION OF CANOPY TREE TO CERTAIN SPECIES; TO ALLOW CANOPY TREES TO BE REMOVED IF DEEMED HAZARDOUS BY THE TOWN MANAGER IN CONSULTATION WITH THE TOWN ARBORIST AND PROPERTY OWNER; TO IMPOSE CONDITIONS FOR REFORESTATION OR PAYMENT OF AN IMPACT FEE FOR REMOVAL OF CERTAIN CANOPY TREES; TO REQUIRE A TWO-YEAR WARRANTY PERIOD FOR REFORESTATION TREES; TO NO LONGER DECLARE A SECOND VIOLATION OF CHAPTER 29 TO BE A MISDEMEANOR; TO ALLOW THE TOWN MANAGER TO ORDER CERTAIN ABATEMENT FOR A VIOLATION; TO DESIGNATE THE TOWN COUNCIL AS THE REVIEWING BODY; AND TO REMOVE THE TREE ORDINANCE BOARD.

SECTION 1. BE IT ORDAINED AND ORDERED, this 9th day of March, 2016, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by the Maryland Code, and the Town Charter, that Chapter 29 of the Town Code is hereby amended to read as follows:

* * *

Sec. 29-1 - Findings and purpose.

The town council finds that it is in the interest of the residents of the Town of Chevy Chase to preserve, protect, and maintain the town's tree canopy. Because trees require the span of a human lifetime to mature and can be subject to disturbance at many points in their lives, the

town places a high value on the mature trees that have survived to form an intrinsic part of the fabric of our community and a defining feature of its character.

The town benefits from the mature tree canopy because it:

- Contributes significant aesthetic value
- Measurably increases property worth
- Fosters a cherished quality of life
- Recycles the air we breathe by absorbing carbon dioxide and producing oxygen
- Absorbs air pollutants
- Moderates climate extremes and reduces wind speed, thus conserving energy otherwise used for increased air conditioning and heating
- Provides food and shelter for innumerable plant and animal species
- Forms an interrelated part of the regional forest ecosystem, connecting with adjoining forest communities
- Muffles noise
- Stabilizes soils, reducing soil erosion and stormwater runoff

Each mature tree in the town's urban forest plays a critical role in controlling stormwater runoff and supporting the biological and hydrological integrity of the Lower Rockville and Little Falls Branch watersheds, part of the larger Chesapeake Bay watershed. Thus, the regulation of actions affecting the town's tree canopy provides benefits to all town residents and property owners and contributes to the greater good of the Suburban Maryland and Washington region.

Sec. 29-2. ~~Tree ordinance board.~~ Reserved.

~~The provisions of this chapter will be administered by a tree ordinance board made up of residents of the town appointed by the mayor. The board will consist of five (5) members. A quorum shall consist of a majority of the members of the board. A decision may be made by a majority of those present at the hearing as described in section 29-7. Members will be appointed to serve staggered terms of three (3) years.~~

Sec. 29-3. - Trees included.

(a) This chapter applies to all ~~canopy~~ **the following** trees on private and public property in the Town of Chevy Chase:

- (1) Canopy tree.** A canopy tree is defined as a tree with a trunk that measures at least twenty-four (24) inches in circumference at four and one-half (4½) feet above ground **and of one of the following species: Green Ash; White Ash; American Beech; English Elm; European Beech; Bald Cypress; American Elm; Franklinia; Ginkgo; Hackberry; Bitternut Hickory; Mockernut Hickory; Pignut Hickory; Shagbark Hickory; American Holly; Honeylocust; Katsura; American Linden; Southern Magnolia; Virginia Magnolia; Black Maple; Red Maple; Sugar Maple; London Planetree; Black Oak; Blackjack Oak; Chestnut Oak; Overcup Oak; Persimmon; Pin Oak; Post Oak; Northern Red Oak; Sawtooth Oak; Southern**

Red Oak; Scarlet Oak; Shingle Oak; White Oak; Swamp White Oak; Willow Oak; Tulip Poplar; American Sycamore; Sweetgum; Blackgum (Tupelo); Black Walnut; and Yellowwood.

(2) Regulated tree. A regulated tree is defined as a tree that measures at least twenty-four (24) inches in circumference at four and one-half (4½) feet above ground, regardless of species.

(b) If a tree divides into branches at less than four and one-half (4½) feet, the trunk shall be measured immediately beneath the dividing point.

Sec. 29-4. - Permit required.

(a) No person shall remove or destroy, or cause the removal or destruction of; a **regulated** canopy-tree, or undertake any action that will substantially impair the health or growth of a **regulated** 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.

Sec. 29-5. - Permit procedure.

(a) In order to remove or destroy or undertake any action that will substantially impair the health or growth of a **regulated** 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 (4½) feet above the ground of all tree(s) to be removed; and
- (4) A description and diagram of the proposed action including the location on the property of all tree(s) to be removed.

(b) Except in the case of an emergency permit issued pursuant to subsection 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.

Sec. 29-6. – Permit standards and requirements.

(a) The town manager is authorized to issue a tree removal permit if in consultation with the town arborist **and a property owner** the town manager finds that one (1) of the following conditions applies:

- (1) ~~The~~ A canopy tree is dying, dead, or in danger of falling;
- (2) ~~The~~ A canopy tree constitutes a hazard to the safety of persons or property; ~~or~~
- (3) ~~The canopy tree is a nuisance tree on the town's list of undesirable tree species as adopted by the town council!~~ **The tree to be removed is not a canopy tree.**

(b) Except in the case of an emergency permit issued pursuant to subsection 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 subsection 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 in section 29-6(a) apply, ~~he/she~~ **the town manager** shall issue a written denial of the application.

(e) If the town manager determines that a tree removal permit should be issued for a canopy tree that, in the opinion of the town arborist, does not meet the conditions in section 29-6(a), the town manager shall issue the permit with the condition that one (1) reforestation tree be installed on the subject property for each canopy tree removed or an impact fee be paid. The applicant shall, at applicant's sole cost and expense, be responsible for the maintenance and replacement of any reforestation tree required for a period of two (2) years from the time of planting. The town council may by resolution establish a list of acceptable reforestation trees and the impact fee.

Sec. 29-7. - Appeals.

An applicant who is denied a permit by the town manager may appeal the decision by filing a written appeal to the ~~tree ordinance board~~ **town council** within thirty (30) days of the town manager's denial of the application for a permit. The appeal must include the following information:

- (1) A copy of the denied tree **removal** permit application;
- (2) A brief statement explaining why the proposed action is reasonable and necessary and consistent with the purposes of this chapter; **and**
- (3) A statement whether the applicant intends to perform reforestation after tree removal is completed and if so, a diagram showing the number, size and species of the replacement tree or trees.

Sec. 29-8. - Appeals procedures.

(a) ~~Upon the filing of an appeal,~~ The town manager will transmit to the ~~tree ordinance board~~ **town council** the appeal record.

(b) Upon receipt of the appeal, the ~~tree ordinance board~~ **town manager** will schedule a public hearing.

(c) At least ~~seven (7)~~ **fifteen (15)** days prior to the public hearing the town manager shall:

- (1) Issue a notice of public hearing to the applicant and to owners of all adjacent and confronting properties or to those persons who are in residence, which shall include the nature of the ~~application~~ **appeal**, the date and time of the public hearing, and the location of the public hearing;
- (2) Post the notice of public hearing at the property in a conspicuous manner similar to the posting of a county building permit notice; and
- (3) Provide a copy of the appeal file to the owners of all adjacent and confronting properties or to those persons who are in residence.

(d) At the hearing, any party may appear in person or by agent or by attorney. The decision by the ~~tree ordinance board~~ **town council** shall be issued in writing as soon as practical following the hearing.

(e) In exercising its powers, the ~~tree ordinance board~~ **town council** may affirm the denial of a permit, may direct the town manager to issue a permit, or may direct the manager to issue a permit upon such conditions, terms or restrictions as the ~~board~~ **town council** may deem necessary to accomplish the intent and purposes of this chapter.

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

The ~~tree ordinance board~~ **town council** 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 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.

Sec. 29-10. - Judicial review of a decision of ~~tree ordinance board~~ the town council.

Within thirty (30) days of the date of the issuance of a decision of the ~~tree ordinance board~~ town council any aggrieved party may seek judicial review of the decision by filing a petition for judicial review in accordance with Title 7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure, as amended.

Sec. 29-11. - Protection of trees at risk.

(a) Before undertaking any activity that poses a potential risk to any ~~canopy~~ regulated tree on the property in question, or poses a potential risk to any ~~canopy~~ other tree, regardless of size or species, on an adjoining property or on the town right-of-way, a property owner shall submit a tree protection plan for review and approval by the town manager in consultation with the town arborist. It is the responsibility of the property owner to ascertain whether a construction-related activity places any ~~canopy~~ tree in jeopardy.

(b) Activities that pose a potential risk to ~~canopy~~ trees include but are not limited to (i) the demolition, in whole or in part, of an existing home or structure; (ii) the construction of a new home or structure; (iii) the expansion of the footprint of an existing home or structure; (iv) the construction of a driveway, patio or other impervious surface; (v) the construction of walls, (vi) installation of underground utility lines, and (vii) ~~regarding~~ regrading or excavating within the dripline of a ~~canopy~~ tree.

(c) In those instances in which a town building permit is required, compliance with the tree protection plan will become a condition of the building permit.

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~~ regulated trees on the subject property and all ~~canopy~~ trees at risk, regardless of size or species, 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) Prior to submission to the town manager, the applicant must provide a copy of the complete plan with any attachments 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.

(d) The town manager may require the applicant to amend or expand the tree protection plan as a condition of approval of the town building permit when ~~he/she~~ **the town manager deems** it necessary to protect any ~~canopy~~-tree.

(e) No construction or demolition shall begin until an approved tree protection plan has been implemented. The town manager will provide ongoing oversight of the plan to ensure compliance through completion of the project.

(f) In those instances in which a town building permit is required, the approved tree protection plan shall be incorporated by reference as a condition of the town building permit. Violation of the provisions of the tree protection plan shall be considered a violation of the conditions of the town building permit and subject to the same sanctions.

(g) The approved tree protection plan shall be posted at the property prior to the commencement of construction in a conspicuous manner similar to the posting of a county building permit notice and left in place until construction is finished.

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 four and one-half (4½) feet above the ground), species, state of health, estimated location of dripline, and accurate location of all trees on the project property, as well as ~~canopy~~-**all** trees on neighboring properties where their driplines lie over the proposed construction zone.
- (3) A delineation of the tree protection zones within which all construction activities, grading or drainage changes, trenching, heavy equipment, or storage of materials will be excluded. All tree protection zones must be surrounded by chain link fences six (6) feet in height with signage affixed warning workers to stay away in English and Spanish.
- (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.
- (6) The location of any proposed trenching for underground utility lines.
- (7) The location of any temporary gravel construction access drives and where construction materials and equipment will be stored.

- (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 **or reforestation** 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 **or reforestation** trees for two (2) years following construction.
- (13) Contact information for a designated individual who will ensure that all work adheres to the approved tree protection plan.
- (14) A copy of the approved tree protection plan posted on the property on a board covered with plastic prior to the commencement of construction and left in place until construction is finished.

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~~ **regulated** tree without obtaining a permit (section 29-4), removing a ~~canopy~~ **regulated** tree prior to the expiration of the seven-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 thousand dollars (\$1,000.00) or the maximum amount permitted by state law, whichever is greater.

(b) Whenever the town manager finds that a violation of this chapter may jeopardize the health or safety of a ~~canopy~~ tree, he/she may issue a stop work order to halt any activity that may damage the tree and may order remedial action as appropriate.

(c) A stop work order issued pursuant to this chapter, posted on the property in a conspicuous location, shall be sufficient service upon all persons physically on the property. A posted notice shall not be removed except under the authority of the town manager.

~~(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.~~ **In addition to any fine imposed, the town may require abatement of the violation. Such abatement may include the planting of a reforestation tree or payment of an impact fee, for each tree removed, destroyed, harmed, or subjected to potential risk in violation of this chapter.**

(e) Any person who violates any provision of this chapter, or directs or allows another to commit an act that would violate any provision of this chapter, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of any provision of this chapter on his or her property shall be guilty of a violation and shall be jointly and severally subject to the penalties provided in subsections (a) and (d) above. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation. Each violation of a provision of this chapter shall be a separate infraction. Each day that a violation exists shall constitute a separate violation.

(f) The town may institute injunctive or any other appropriate action or proceedings at law or equity for the enforcement of this chapter in any court of competent jurisdiction.

Sec. 29-15. Severability.

~~Should any part or provision of this chapter be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part held to be invalid.~~

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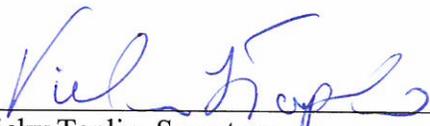
SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this 9th day of March, 2016, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Maryland law and the Town Charter, that:

(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 8th day of April, 2016.

ATTEST:

TOWN OF CHEVY CHASE



Vicky Taplin, Secretary



Albert Lang, Mayor
Town of Chevy Chase

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