

**Town of Chevy Chase  
(Vegetation Encroaching into Rights-of-Way)**

Ordinance No.: 24-11  
Introduced: July 10, 2024  
Adopted: September 11, 2024  
Effective: October 11, 2024

AN ORDINANCE TO AMEND CHAPTER 4 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO REPLACE THE SPECIFIC STANDARD, RELATED TO VEGETATION, FOR RIGHT-OF-WAY INTERFERENCE AND CLEARANCE WITH A MORE GENERAL “PASSABLE” STANDARD, AND TO CLARIFY EXISTING PROVISIONS

WHEREAS, Maryland Code, Local Government Article, Section 5-202, 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;

WHEREAS, Maryland Code, Local Government Article, Section 5-211, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to make reasonable regulations concerning buildings to be erected within the limits of the municipality, including a building code and the requirement for building permits;

WHEREAS, the public rights-of-way located within the Town are held in trust for the benefit, use, and convenience of the public and the Town has the authority and duty to ensure that the public rights-of-way remain reasonably safe for pedestrian and vehicular travel and kept free from all nuisances, obstructions, and encroachments which may impair their use as public highways;

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 resident(s) of the Town; and for such other police and health matters as it may deem necessary;

WHEREAS, after proper notice to the public, the Town Council introduced the following Ordinance in an open meeting conducted on the 10<sup>th</sup> day of July 2024;

WHEREAS, after proper notice to the public, the Town Council considered the following Ordinance in public session assembled on the 11<sup>th</sup> day of September 2024;

WHEREAS, upon review and discussion of a report and recommendation by staff, the Town Council finds that sidewalk obstructions are caused by private plantings and trees that have grown over time and, under most circumstances, sidewalks should be maintained to meet a general “passable” standard, such as the ADA pathway requirements, rather than the more restrictive standard currently in the Town Code;

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;

THEREFORE, BE IT ORDAINED AND ORDERED, this 11<sup>th</sup> day of September 2024, by virtue of the authority given to it by the Maryland Code and the Town of Chevy Chase Charter, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance.

SECTION 1. BE IT ORDAINED AND ORDERED, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, that the Town Code is hereby amended to read as follows:

\* \* \*

## **Chapter 4 – BUILDINGS**

### **ARTICLE III. – FENCES, WALLS, TREES, HEDGES, ETC.**

#### **Sec. 4-46. - Purpose.**

It is the intent of the town council to promote the town's public health, safety and general welfare by providing regulatory requirements for the location, size and features of fences, guardrails, handrails, walls, berms, trees, hedges, shrubbery or other plant growth. Frequently, the location, height and design of fences, guardrails, handrails, walls, berms, trees, hedges, shrubbery or other plant growth in close proximity to the public right-of-way results in the obstruction of parked and moving vehicles and causes injury to pedestrians and vehicles. The purpose of this article is to regulate all fences, guardrails, handrails, walls, berms, trees, hedges, shrubbery or other plant growth so as to alleviate, to the extent possible, the aforementioned conditions and to preserve the value of property, to assure the continued attractiveness of the town and to protect the public health, safety and welfare.

**Sec. 4-47. - Removal of structures, fences, guardrails, handrails, walls, wires, cables, hoses, pipes, and similar facilities, trees, earth berms, hedges, shrubbery and other plant growth in violation.**

The town manager or designee shall may order the removal of any structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery and other plant growth erected or maintained in violation of this article. At least ~~ten~~ (10) days' notice in writing shall be given to the owner of such structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery, and other plant growth to remove the same or to bring it into compliance with this article. Upon failure to remove it or to comply with the notice, the town shall may remove the structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery, and other plant growth. ~~The town may remove the same immediately and without notice if it reasonably appears that the condition of the structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery, and other plant growth is such as to present an immediate threat to the safety of the public.~~ Any cost of removal or abatement incurred by the town shall may be assessed against the owner of the property on which such structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery, and other plant growth is located, or in the case of a public right-of-way against the owner of the property abutting the right-of-way, and may be collected in the manner of an ordinary debt or in the manner of taxes and such charge shall be a lien on the property. Nothing herein shall prevent the town from performing periodic maintenance, pruning, and clearing of vegetation located in or extending into the public rights-of-way, or from removing obstructions therein, with or without notice to abutting owners, where necessary to eliminate interference with pedestrian and vehicular traffic or to otherwise address an emergency or threat to public safety. The owner of the structure, fence, guardrail, handrail, wall, wire, cable, hose, pipe, and similar facility, berm, tree, hedge, shrubbery or other plant growth shall not have any claim against the town, its agents or contractors, for any damage or interference resulting from the removal or abatement by the town.

Sec. 4-48. - Reserved.

Sec. 4-49. - Public property devoted to private use.

(a) The portion of the public right-of-way abutting private property, that is not improved with a sidewalk, paved roadway, or other public improvement, shall be under the immediate care and keeping of the abutting property owners. The town, by this article, grants to such abutting property owners, their successors, and assigns, a revocable license to continue to use such area, provided such usage does not violate the provisions of this chapter and provided that this license may be revoked at any time by the town in accordance with the provisions of this chapter.

(b) The town may revoke the license to use public property by any person violating the provisions of this chapter. Upon revocation of such license, the owner of the abutting property will, upon the demand of the town manager, remove all structures, walls, fences, guardrails, handrails, wires, cables, hoses, pipes, and similar facilities, berms, trees, hedges, shrubbery, and other plant growth on the public property so as to conform to this chapter. If such action is not taken within a period of ten (10) days after the town gives notice of revocation of a license, the

town manager or designee may enter such public property and take any steps that are necessary to bring it into compliance with this chapter. Any cost of any corrective action taken by the town manager or designee shall be borne by the owner of abutting property as provided for in section 4-47 of this chapter.

**(c) The town may revoke the license to use public property by any person if needed to accommodate maintenance of the public right-of-way; the installation, construction, repair, replacement, or expansion of a public improvement; or such other reason deemed necessary in the discretion of the town.**

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**Sec. 4-51. - Structures, walls, fences, guardrails, handrails, berms, and plants, on public property that are devoted to private use.**

(a) Excepted as provided below, no structure, wall, fence, guardrail, berm, or plant shall be placed on public property devoted to private use.

(b) Subject to the provisions of subsection (c) below and section 4-49, the following private improvements may be allowed:

(1) Low growing plants that are not hedges, which are maintained at a height not to exceed eighteen (18) inches, may be installed within six (6) feet of a curb at the edge of a street, within three (3) feet of a sidewalk on the street side, and within two (2) feet of a sidewalk on the main building side;

(2) Any shrubbery or plant growth, except trees, hedges, and bamboo, may be installed in areas not designated in (1) for low plantings;

(3) **Except as otherwise provided in subsection (c) below,** Structures, non-retaining walls, fences, berms, and plants located on public property devoted to private use on July 13, 2007, may be maintained, altered, and repaired, but not enlarged or replaced;

(4) A retaining wall or guardrail located on public property devoted to private use, as of April 8, 2016, may be maintained, altered, repaired, and replaced, but not enlarged or relocated; and

(5) A handrail on public property devoted to private use may be installed, maintained, altered, repaired, or replaced.

(c) No ~~private improvement~~ **structure, wall, fence, guardrail, handrail, berm, tree, hedge, shrubbery or other plant growth** in the public right-of-way may:

(1) ~~Extend over the vertical plane of a sidewalk for a height of eight (8) feet or extend over the vertical plane of a paved roadway for a height of fourteen (14) feet~~ **into a public street or sidewalk so as to interfere in any manner with pedestrian or vehicular traffic;**

(2) Interfere with street trees, public utilities, and other public improvements;

(3) Interfere with entry to and exit from vehicles at the curb;

(4) Obstruct pedestrian and vehicular **motorist** sight lines needed for safety; or

(5) Otherwise interfere with the public health, safety, and welfare.

(d) The town manager shall determine whether there is compliance with the provisions of this section.

**Sec. 4-52. - Structures, walls, fences, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth on private property.**

(a) Only low-growing plants, which are maintained at a height not to exceed eighteen (18) inches, may be installed within six (6) feet of a curb and within two (2) feet of the sidewalk on the main building side.

(b) The property owner and the property occupant shall maintain walls, fences, guardrails, handrails, berms, structures, trees, hedges, shrubbery, and other plant growth located on private property so that they:

(1) Do not, at any time, exceed the maximum height as specified in this chapter;

(2) Do not extend and are maintained so as not ~~to extend into the vertical plane of a sidewalk, for a height of eight (8) feet;~~

(3) ~~Do not project into any public right-of-way so as to interfere in any manner with pedestrian or vehicular traffic;~~

**(3) Do not interfere with street trees, public utilities, and other public improvements;**

(4) Do not obstruct the view of **pedestrian and motorist** sightlines ~~necessary~~ **needed** for safety;

(5) Do not ~~present a risk of harm to pedestrians and/or vehicles~~ **interfere with entry to and exit from vehicles at the curb;** and

(6) Do not otherwise present a risk of harm to pedestrians and/or vehicles or interfere with the public health, safety and welfare.

(c) Front yard walls. No wall that is one (1) foot in height or higher may be constructed in a front yard, provided, however, a retaining wall that is less than thirty (30) inches in height may be constructed in a front yard provided that it is set back at least two (2) feet from the nearest public sidewalk the public right-of-way or, if there is no sidewalk, at least six (6) feet from the curb. In the event a wall is located within thirty (30) inches of another wall, as may be the case in terracing, the walls shall be considered one (1) wall and the height of the wall shall be measured cumulatively. Height is measured in accordance with subsection (h) below.

(d) Front yard fences and berms. No fence or berm may be constructed in a front yard.

(e) Front yard hedges.

~~(4) A hedge in a front yard must be maintained at a height not exceeding three (3) feet. Notwithstanding the foregoing, a hedge not exceeding six (6) feet in height may be maintained in a front yard adjoining Bradley Lane, East-West Highway, or Connecticut Avenue.~~

~~(2) The town may require removal of a front yard hedge if the town council, following a public hearing, determines that (i) any provision of this section or any condition of the permit issued for the hedge has been violated, or (ii) the hedge must be removed to accommodate a public improvement or other public use. At least fifteen (15) days prior to the public hearing, the town shall mail written notification to the owner of record and all adjoining and confronting property owners.~~

~~(3) After any such determination by the town council which requires removal of a front yard hedge, notice of the requirement to remove a hedge shall be in writing and mailed to the property owner of record. Within ten (10) days of the date of mailing of such written notice, the property owner shall remove the hedge. If removal of the hedge does not occur within the ten-day period, the town may remove the hedge and the cost of such corrective action shall be assessed to the property owner according to section 4-47.~~

(f) Guardrails. No guardrail may be constructed in a front yard.

(g) No person shall erect or maintain any wall, fence or berm measuring more than six (6) feet, six (6) inches in height in any side or rear yard. Notwithstanding the foregoing, a fence measuring eight (8) feet or less in height may be erected and maintained along a rear property line of a lot adjoining a rail line right-of-way. No wall or berm measuring more than one (1) foot in height may be erected within two (2) feet of any side or rear lot line. Notwithstanding the

foregoing, a retaining wall less than thirty (30) inches in height may be constructed along a driveway in a side or rear yard without the required two (2) foot setback. In the event such a wall is located within thirty (30) inches of another wall, as may be the case in terracing, the walls shall be considered one (1) wall and the height of the wall shall be measured cumulatively. Height is measured in accordance with subsection (h) below.

(h) The measurement of the height of walls, fences, berms, structures, hedges, shrubbery, or other plant growth shall be made from the surface of the adjoining ground. Where the yards on the two (2) sides differ, the measurement shall be made from the surface of the lower yard.

(i) The measurement of the height of guardrails and handrails shall be made from the surface of the adjoining ground or if mounted on a structure, from the surface of the structure. If a guardrail is attached to a retaining wall, the height of the wall will include the height of the guardrail for purposes of this chapter. If the guardrail is set back from the wall by two (2) inches or more, the height of the wall will not include that of the guardrail.

**Sec. 4-53. - Nonconforming fences, walls, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth on private property.**

(a) Except as otherwise provided in section 4-52(b)(2) through (6), Non-retaining walls, trees, berms, hedges, shrubbery, and other plant growth on private property existing as of November 8, 1986, and not conforming to this article shall be regarded as nonconforming and may be maintained and repaired, but not relocated, altered, or replaced.

(b) Nonconforming fences, walls other than retaining walls, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth on private property which are relocated, altered, or replaced shall comply with all provisions of this article.

(c) Notwithstanding subsection (b) above, nonconforming retaining walls, fences, and guardrails on private property may be altered or replaced, if the location is not changed and no dimension is enlarged, and in the case of fences, the fenestration is not decreased.

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SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, 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 day of 11<sup>th</sup> day of October 2024 (30 days after adoption).

ATTEST:

TOWN OF CHEVY CHASE

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Stephanie Martz, Secretary

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Irene Lane, Mayor  
Town of Chevy Chase

**Bold and Underline** indicates new material

~~Strike through~~ indicates material deleted

\* \* \* indicates material unchanged