

CITY COUNCIL AND TREE COMMISSION JOINT MEETING

NOVEMBER 14, 2016

ATTACHMENTS TO THE AGENDA

- **Sections of the City Code that Refer to the Tree Commission**
 - **Chapter 2.16, Boards and Commissions, Article 2, Tree Commission (p. 1)**
 - **Chapter 12.04, Trees and Vegetation, General Provisions, 12.04.010 Definitions (p. 2)**
 - **Chapter 12.12, Urban Forest, 12.12.110, Appeals from Permit Decisions (p. 13)**
 - **Chapter 12.12, Urban Forest, Criteria for Tree Permit Decisions (p. 15)**

- **Tree Commission Bylaws**

Article 2. Tree Commission

2.16.020 Establishment.

A Tree Commission is established to preserve, protect and promote the urban forest of Takoma Park. (Ord. 2004-3 (part), 2004)

2.16.030 Composition.

The Tree Commission is composed of up to five City residents appointed by the Council. The terms begin on October 1st and end on September 30th. The members shall elect among themselves a Chair. (Ord. 2004-3 (part), 2004)

2.16.040 Function.

The Tree Commission, with the assistance of the Arborist, shall propose rules, regulations, procedures and actions to be taken by the City to preserve and protect the urban forest, subject to the approval of the Council, and perform any other related duties assigned by the Council by ordinance or resolution. (Ord. 2004-3 (part), 2004)

12.04.010 Definitions.

As used in this chapter:

**Ch. 12.04 Trees and Vegetation, General Provisions,
12.04.010 Definitions:**

“Basal area” means the area of a tree trunk’s cross section, measured outside the bark.

“Caliper” means the diameter measurement of the trunk of nursery stock trees, taken at caliper height.

“Caliper height” means 6" above the ground in the case of trees less than 4" in diameter at 6" above the ground and 12" above the ground in the case of all other trees.

“Canopy” means the combined crowns of all trees on a tract of land.

“City Manager” means the City Manager of the City of Takoma Park or his or her designee.

“City Property” means City rights-of-way, City parks, median strips, and other City-owned or controlled property.

“Critical root zone” means the protection zone for an individual tree or an area defined by a circle with a diameter 36 times the DBH of the tree (or 1.5' of radius for each inch of DBH) or such smaller area as determined by the City Manager in a tree impact assessment.

“Crown” means the volume defined by the spread of the branches and foliage of a tree.

“Department” means the Department of Public Works of the City of Takoma Park.

“Diameter at breast height” or “DBH” of a tree means the measurement of the average diameter of the tree taken at 4 1/2' above the ground.

“Hazardous,” in relation to a tree or tree part, means defective, diseased or dead, and posing an unreasonable risk of failure or fracture with the potential to cause injury to people or damage to property.

“Nursery stock tree” means a tree which meets the standards established by the American Standard for Nursery Stock published by the American Association of Nurserymen (Publication No. ANSI Z60.1-1996).

“Open space” means undeveloped City owned property that is not parkland or right-of-way.

“Owner” means any person who, alone or jointly or severally with others:

1. Has a legal or equitable ownership interest in a real property, including a contract purchaser of property;
2. Has a legal, equitable or beneficial interest in a corporation, limited liability company, partnership, limited partnership, limited liability partnership, trust or other entity that has a legal or equitable ownership interest in a rental facility; or
3. Has charge, care or control of real property as personal representative, executor, administrator, trustee, guardian, or conservator of the estate of the owner.

“Person” means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, trust, association, organization, or any other legal entity, but does not include the City.

“Tree Commission” means the citizen commission established by the Council to preserve, protect, and promote the urban forest of the City and to hear appeals from permit decisions.

“Tree cover” means area covered by canopy, expressed in square feet or as a percentage of the area of a tract of land.

“Tree Protection Plan” means a site plan that delineates tree save areas and details measures to be taken to ensure survivability of trees to be saved prior to and during construction.

“Urban forest tree” means a tree as defined in Section 12.12.020.

“Vermin” means small animals, including insects, that are prolific and destructive or injurious to health.

“Woody vegetation” means vegetation with stems of wood (other than vines) and includes trees and bushes. (Ord. 2003-40 (part), 2004)

Chapter 12.12 URBAN FOREST

Sections:

12.12.010 Legislative findings.

12.12.020 Urban forest trees.

- 12.12.030 Tree impact assessment.**
- 12.12.040 Tree removal permit required.**
- 12.12.050 Tree protection plan permit required.**
- 12.12.060 Permit waivers.**
- 12.12.070 Permit applications.**
- 12.12.080 Permit approval.**
- 12.12.090 Application and permit validity time period.**
- 12.12.100 Tree replacement required.**
- 12.12.105 Preplanting of replacement trees.**

12.12.110 Appeals from permit decisions.

12.12.120 Criteria for tree permit decisions.

- 12.12.125 Notification of tree protection laws required prior to sale of real property.**
- 12.12.130 Violations and penalties—Enforcement.**
- 12.12.140 Duties of City Arborist.**

12.12.010 Legislative findings.

The Council of the City of Takoma Park hereby finds that it is in the interest of the citizens of the City to protect, preserve, and promote the City’s urban forest. The City’s urban forest is part of a larger ecosystem that supports wildlife and contributes significantly to air, noise, and visual pollution control. The existence of shade providing trees moderates climatic extremes and reduces energy consumption. The City’s urban forest is part of the watershed of Long Branch, Takoma Branch, and Sligo Creeks and therefore plays an important role in controlling water run-off and supports the biologic and hydrologic integrity of these watersheds. The urban forest has significant aesthetic value, which affects property values and the quality of life of the community. Regulation of actions affecting the urban forest provides mutual benefits to City residents and property owners. The purpose of this chapter is to protect healthy trees of desirable species and it shall be administered in a manner that seeks to protect such trees at every opportunity. (Ord. 2003-40 (part), 2004)

12.12.020 Urban forest trees.

An urban forest tree is a tree in the City which:

- A. Measures 24 inches or more in circumference at four and one-half feet above ground level or measures seven and five-eighths inches or more DBH; or
- B. Is required to be planted or maintained, pursuant to governmental order, agreement, stipulation, covenant, easement, or a tree protection plan, or as a condition of issuance of a tree

permit; or

C. Is planted with government funding or under a government program. (Ord. 2003-40 (part), 2004)

12.12.030 Tree impact assessment.

A. Except as provided in subsection (B) of this section, a tree impact assessment is required prior to conducting any of the following:

1. Land disturbing activities, such as raising or lowering existing grade, or excavating more than three inches in depth over an area in excess of 25 square feet within 50 feet of an urban forest tree;
2. Activity within the critical root zone of an urban forest tree that may destroy a significant portion of the roots of a tree or endanger the water supply to the roots;
3. Construction or placement of a structure other than a fence within 50 feet of an urban forest tree;
4. Paving in excess of 25 square feet with an impervious surface within 50 feet of an urban forest tree; or
5. Removing, relocating, destroying, or topping an urban forest tree or pruning more than 5% of the live canopy of an urban forest tree, or pruning live limbs with significant diameter in relation to the size of the tree, or other action which would significantly and permanently detract from an urban forest tree's health or growth.

B. A tree impact assessment shall not be required for action required on an emergency basis (with no time to obtain an assessment) to prevent harm to life or property, for actions performed at the written request of a utility company such as PEPCO, Verizon, WSSC, or Washington Gas, or for actions performed by a utility company in accordance with a memorandum of understanding between the utility and the City.

C. The City Arborist shall conduct a tree impact assessment at the request of any person intending to conduct an activity described in subsection (A) of this section. Following the tree impact assessment, the City Arborist will advise the person requesting the assessment of the permits required under this chapter to proceed with the proposed activity.

D. The fee for a tree impact assessment is \$50.00 payable to the City with the application.

E. Failure to obtain a tree impact assessment before conducting any of the activities described in this subsection shall constitute a Class AA municipal infraction. (Ord. 2010-27 § 1 (part), 2010/Ord. 2003-40 (part), 2004)

12.12.040 Tree removal permit required.

A. Except as provided in Subsection (B) of this section, a tree removal permit is required for the removal, relocation, or destruction of an urban forest tree.

B. No permit is required:

1. When the City Manager grants a tree permit waiver under Section 12.12.060; or
2. For action required on an emergency basis (with no time to apply for a tree permit or a tree permit waiver) to prevent harm to life or property; or
3. Where the removal, destruction, cutting or trimming of an urban forest tree that has branches or roots which obstruct or interfere with utility pipes, lines, and wires is performed by a utility company such as PEPCO, Verizon, WSSC or Washington Gas in accordance with any applicable memorandum of understanding between the City and the utility company, or at the written request of a utility company.

C. In addition to the permits required under this chapter, property owners in the Takoma Park Historic District may also have to obtain a Historic Area Work Permit from the Historic Preservation Commission before removing or destroying a tree. (Ord. 2010-27 § 1 (part), 2010/Ord. 2003-40 (part), 2004)

12.12.050 Tree protection plan permit required.*

A. Except as provided in subsection (B) of this section, a tree protection plan permit may be required for the following:

1. Land disturbing activities, such as raising or lowering existing grade, or excavating more than 3 inches in depth over an area in excess of 25 square feet within 50 feet of an urban forest tree;
2. Activity within the critical root zone of an urban forest tree that may destroy a significant portion of the roots of a tree or endanger the water supply to the roots;
3. Construction or placement of a structure other than a fence within 50 feet of an urban forest tree; or
4. Paving in excess of 25 square feet with an impervious surface within 50 feet of an urban forest tree.

B. No tree protection plan permit is required:

1. Where a tree permit waiver is obtained under Section 12.12.060; or
2. For action required on an emergency basis (with no time to apply for a tree protection plan permit or a waiver) to prevent harm to life or property. (Ord. 2010-27 § 1 (part), 2010/Ord. 2003-40 (part), 2004)

* Editorial note: This Section is based upon Prior Code Section 12-29 which became Section 12.12.040 during re-codification.

Editorial note: Sections 12.12.060, 12.12.070 and 12.12.080 were adopted, with substantive changes, from Prior Code Section 12-29, which became Section 12.12.040 during re-codification.

12.12.060 Permit waivers.

- A. Upon receipt of an application for a tree permit waiver, the City Manager may issue a written determination (referred to as a tree permit waiver), waiving the requirement to obtain a tree permit for the removal of a tree if the City Manager determines that the tree is dead or that the tree is hazardous.
- B. An applicant for a tree permit waiver shall pay a processing fee of \$25.00 to the City with the application.
- C. Upon issuance of a tree permit waiver, the City Manager shall inform the applicant that the City encourages the planting of replacement trees on a voluntary basis.
- D. The property owner shall post notice of the waiver on the property beginning upon receipt of the waiver and continuing until the completion of the tree removal or the expiration of 7 days, whichever shall first occur. The notice shall state that residents with comments or questions regarding the impact of the activity on the trees on or near the property may contact the City Manager and shall provide the City Manager's address and telephone number.
- E. The City Manager shall:
 - 1. Make a copy of each waiver application available for public inspection; and
 - 2. Provide an at-cost copy of a waiver application to any person requesting one. (Ord. 2010-27 § 1 (part), 2010/Ord. 2003-40 (part), 2004)

12.12.070 Permit applications.

- A. An owner may apply for a tree removal permit or tree protection plan permit covering action relating to an urban forest tree or trees on or near the owner's property. The application is made under procedures specified by the City Manager.
- B. In the case of an applicant who requests a tree removal permit or tree protection plan permit for the purpose of constructing on or developing property, the City Manager may require the applicant to submit copies of all permits, licenses, and approvals which are required for the construction or the development to take place before any action is taken on the application. This may include, but is not limited to, county building permit, builders' license, grading permit, sediment control permit, stormwater management permit, zoning variance, special exception, and site plan review.
 - 1. If all necessary permits, licenses, and approvals have not been granted as of the date the application is filed, then the City Manager, in his or her sole discretion, may accept other satisfactory evidence that all necessary permits and approvals for the construction or development will be granted and may begin acting on the application.
 - 2. An applicant for a tree removal permit shall pay a processing fee of \$50.00 to the City with the application. If the applicant had previously applied for a waiver for the same tree and it was denied, the fee for a permit will be \$25.00. An applicant for a tree protection plan permit shall pay a processing fee of \$100.00 to the City with the application. If there has

been a prior Tree Impact Assessment performed for the project, the tree protection plan permit fee shall be \$50.00.

C. The City Manager shall:

1. Make a copy of each application for a tree removal permit or tree protection plan permit available for public inspection; and
2. Provide an at-cost copy of an application to any person requesting one. (Ord. 2010-27 § 1 (part), 2010/Ord. 2003-40 (part), 2004)

12.12.080 Permit approval.

A. Tree Permit Approval Subject to Appeal.

1. If the City Manager determines that the tree permit application is complete, that the criteria set forth in Section 12.12.120(B) indicate that the applicant is entitled to a tree permit, and that the conditions for issuance of a tree permit have been met, then the City Manager shall notify the applicant that the City has granted preliminary approval of the application. The preliminary approval of the application does not authorize the applicant to take any action regarding an urban forest tree.

2. Except as provided in subsection (B) of this section, within two working days of this notification, the Department shall post notice of the preliminary approval of the application on the property in question in plain view from the public right-of-way. A copy of the notice is posted on a bulletin board at the Municipal Building and on the City's web site for a concurrent period. The notice must describe the procedure and time limit for filing an appeal from the preliminary approval of the application. If no appeal is filed within 15 days after the notice has been posted, the City Manager shall issue a tree permit. If an appeal from the preliminary approval of an application is filed in accordance with Section 12.12.120, then no permit is issued until the appeal has been decided. The applicant is responsible for maintaining the notice for the entire posting period. The City Manager may extend the posting period up to an additional 15 days if he or she determines that the applicant failed to maintain the notice for the entire posting period.

3. Conditions for the issuance of a tree permit may include, but are not limited to:

- a. Compliance with the tree replacement requirements of Section 12.12.100;
- b. Approval of a tree protection plan and/or inspection of the property by the City to verify that all required tree protection devices are in place;
- c. Submission to the City of all necessary County and other permits, licenses, and approvals which are required for the construction or development of the property; and
- d. Posting of a bond or other security for tree replacement.

B. Tree Permit Approval Not Subject to Appeal. Applicants receiving tree permits pursuant to paragraphs (1) and (2) of this section shall post notice of the issuance of the tree permit on the

property beginning at least seven days before the tree removal and continuing until the completion of the removal. The notice states that residents with comments or questions regarding the activity may contact the City Manager and provides the City Manager's address and telephone number.

1. Where an owner proposes removing one or more urban forest trees of a species identified as an undesirable species by City regulation, the owner agrees to replace the tree or trees in accordance with Section 12.12.100, and the City Manager determines that the tree or trees are undesirable because of their location, condition, or effect on other trees, the City Manager shall issue a tree permit.

2. Where an owner proposes removing one or more urban forest trees that the City Manager has determined to be diseased or infested beyond recovery, and the owner agrees to replace the tree or trees in accordance with Section 12.12.100, the City Manager shall issue a tree permit.

C. Tree Protection Plan Permit Approval.

1. If the City Manager determines that a tree protection plan permit application is complete, that the applicant has agreed to abide by a tree protection plan approved by the City Manager, and that all conditions for the issuance of a tree protection plan permit have been met, then the City Manager shall notify the applicant that the City has granted preliminary approval of the application. The preliminary approval of the application does not authorize the applicant to take any action regarding an urban forest tree.

2. Within two working days of this notification, the Department shall send to the address of the owner(s) of record of all properties sharing a common property line with the property notice of the preliminary approval of the application. The notice must describe the procedure and time limit for filing an appeal from the preliminary approval of the application. If no appeal is filed within 15 days after the notice has been mailed, the City Manager shall issue a tree protection plan permit. If an appeal from the preliminary approval of an application is filed in accordance with Section 12.12.110, then no permit is issued until the appeal has been decided.

3. Tree Protection Plans. The City Manager shall approve tree protection plans on a case by case basis. Tree protection plans may include, but shall not be limited to, the following elements:

- a. Protection of roots from heavy equipment;
- b. Prevention of soil compaction;
- c. Prevention of silt runoff onto roots;
- d. Prevention of grade changes;
- e. Prevention of root damage by requiring proper root pruning or tunneling under roots;

- f. Creation of a tree protection zone;
- g. Fertilization and watering requirements; and
- h. Protection of tree trunks.

The City Manager shall approve only such tree protection plans that prescribe all reasonable measures to protect any trees required to be preserved under this chapter.

- 4. Conditions for issuance of a tree protection permit may include, but are not limited to:
 - a. Inspection of the property by the City to verify that all required tree protection devices are in place;
 - b. Submission to the City of all necessary County and other permits, licenses, and approvals that are required for the construction and development of the property; and
 - c. Posting of a bond or other security for tree replacement. (Ord. 2003-40 (part), 2004)

12.12.090 Application and permit validity time period.

- A. When tree replacement or tree replacement security is required by the City Manager pursuant to Section 12.12.100, permit applicants must post security or sign a tree replacement agreement approved by the City Manager within 6 months of submitting their application, or their application will be denied.
- B. Permits are valid for one year from the date of issuance. (Ord. 2003-40 (part), 2004)

12.12.100 Tree replacement required.

- A. Tree replacement as specified in this section is required in the following cases:
 - 1. The applicant's agreement to replace removed urban forest trees shall be required as a condition of issuance of a permit to remove a tree under Section 12.12.040, and may be required as a condition of issuance of a permit for other actions under Section 12.12.050 that are likely to lead to destruction of a tree.
 - 2. Applicants are required to replace trees originally indicated and intended to be saved in a tree protection plan when such trees are excessively damaged or removed, including such trees that are on property adjacent to the applicant's property.
 - 3. Any person who removes or excessively damages a tree in violation of Section 12.12.040 is required to replace the tree within six months.
- B. Replacement trees are equal to or superior to the removed trees in terms of species quality, shade potential, and other characteristics. In the case of undesirable trees removed pursuant to Section 12.12.080(B)(1), the replacement tree is of superior species quality. Replacement trees are nursery stock trees with a size of one and one-half to three inches in caliper for deciduous trees, or six to 10 feet in height for evergreen trees and guaranteed for one year.

C. The basal area of the replacement trees, measured at caliper height, must be no less than a percentage of the total basal area of the tree to be removed, measured at four and one-half feet above the ground. The percentage is determined using the following health quality analysis rating scale.

CRITERION	VALUE		RATING	
	5 or 4	3 or 2	1	
Trunk	Sound and solid	Sections of bark missing	Extensive bark loss and hollow	
Growth/Rate per	More than 6 inch year twig elongation	2 to 6 inch twig elongation	Less than 2 inch twig elongation	
Structure	Sound	1 major or several minor limbs dead	2 or more major limbs dead	
Insects/Diseases	Normal pest presence	Moderate affliction or infestation	Severe affliction or infestation	
Crown/Development	Full and balanced	Full but unbalanced	Unbalanced and lacking a full crown	
Life Expectancy	Over 30 years	5 to 30 years	Less than 5 years	
			Total Rating	

D. Using the above scale, trees are to be replaced according to the following formula, with the actual number of replacement trees required rounded up to the next whole number:

Total Rating of Tree to Be Removed	Percentage of Basal Area to Be Replaced	
	Undesirable Species Removed per § 12.12.080(B)(1)	All Other Trees
6 to 15	.5%	1%
16 to 24	1%	2%
25 to 30	1.5%	3%

1. For trees removed or excessively damaged in violation of this chapter or an approved tree protection plan, the total basal area of the replacement tree at caliper height must be no less than 10% of the basal area at four and one-half feet above the ground of the tree removed or damaged.

2. In the case of an applicant's removing trees for the purpose of developing property, the replacement trees must be adequate to insure that the extent of tree cover at the time of development will be achieved by newly planted trees on or off site within 25 years.

E. Where it is not feasible or desirable to replace trees on site, the replacement requirement may be satisfied by planting trees at another location approved by the City Manager within the

City or by paying a fee in lieu of planting replacement trees equivalent to the installed market value of the required replacement trees to the City's tree planting fund.

F. As a condition precedent to the issuance of a tree permit or approval of a tree protection plan, the City may require the applicant to post a bond, letter of credit, or other security acceptable to the City or to deposit a sum of money with the City (hereafter referred to as "security"). The amount of the security required to be posted or deposited with the City is equal to the tree replacement costs of trees for which a tree removal permit has been issued and the cost of removing and replacing any tree or trees covered by a tree protection plan which die or become hazardous, including such trees that are on properties adjacent to the applicant's property.

1. The security may be retained by the City until the later of the date that the tree replacement requirements of this section are satisfied or, in the case of construction or development activities, until two years following the completion of the construction or development on the property as evidenced by final inspection approval by the County or other applicable governmental agency or entity.

2. The security may be forfeited to the City, in whole or in part, if the tree replacement requirements are not timely met or if any tree or trees on the property or adjacent properties die, become hazardous, are excessively damaged, or are removed in violation of the terms of a tree permit or an approved tree protection plan for the property.

3. There is a presumption that the death, hazardous condition, or significant decline in the health of any tree on the property which is covered by a tree protection plan, within two years following the completion of the construction or development, was caused by the construction or development activity. The burden of rebutting this presumption, by a preponderance of the evidence, is on the applicant.

4. The amount of the security which is forfeited to the City is equal to the tree replacement costs of the tree or trees on the property or adjacent properties which die, become hazardous, are excessively damaged, or are removed in violation of the terms of a tree permit or an approved tree protection plan for the property. In the case of construction or development activities on property, the amount of the security which is forfeited to the City also may include the cost of removing any tree or trees covered by a tree protection plan that die or become hazardous. The forfeited security is added to the City's tree planting fund or, with the agreement of the property owner and the City, maybe used to remove or replace the dead, damaged or hazardous tree or trees on the property. (Ord. 2011-28 § 1 (part), 2011/Ord. 2003-40 (part), 2004)

12.12.105 Preplanting of replacement trees.

A. Subject to the conditions of this section, property owners may obtain tree replacement credits to satisfy tree replacement conditions relating to future tree permits under Section 12.12.100(A)(1) by planting trees or contributing to the City's tree planting fund before filing a permit application.

B. Preplanted replacement trees must satisfy the size, species quality, shade potential, and other characteristic requirements of Section 12.12.100(A)(1) as determined by the Department.

C. Calculation of Preplanted Tree Replacement Credit.

1. At the time a property owner applies for a tree permit, the basal area of preplanted replacement trees shall be calculated by taking the caliper of the tree at the time of planting, as indicated in the sales receipt for the preplanted tree or other documented and verifiable evidence of the caliper of the tree, and imputing a 10% annual growth rate. The imputed growth rate of 10% per year shall be based upon the initial caliper and shall not be compounded. For example, for a one-and-one-half-inch caliper deciduous tree, the initial basal area will be 1.76 square inches, and 0.176 square inches of growth shall be imputed per year.

2. If the purchase of a preplanted tree was subsidized by the City, the credit will be calculated by reducing the initial caliper by a percentage equal to the percentage of the purchase price paid by the City.

3. If a property owner makes a contribution to the City's tree planting fund, the credit will be based upon an imputed one-and-one-half-inch caliper tree, with imputed annual growth calculated in accordance with subsection (C)(1) of this section, from the date of the contribution.

D. Registration of Preplanted Trees.

1. Owners may only register trees purchased from a nursery to receive preplanting credit.

2. Owners must register preplanted trees within 90 days of the date of purchase as documented on the receipt or other verified evidence, which must be submitted with the registration form.

3. The following documents and information must be included with the owner's preplanting registration.

a. A receipt or other verifiable evidence that includes the tree's date of purchase, species, size, and the address of the property where the tree is to be installed.

b. A site drawing of the property that identifies the replacement tree in relation to the street and the structures on the property.

c. A photograph of the installed tree that indicates the location of the tree in relation to nearby streets or structures.

d. Any other documents and information required by the Department.

E. Utilization of Preplanting Credit.

1. When a property owner wishes to utilize a preplanted tree to satisfy the tree replacement conditions of a tree permit, the property owner shall attach a copy of the previously filed tree registration form to the application.

2. If the applicant receives a tree permit that requires tree replacement, the Department shall inspect the preplanted tree to confirm that the tree is still alive, healthy, and structurally sound, and to determine whether the tree satisfies the species quality, shade potential, and other characteristics of the tree to be replaced. No credits shall be allowed for a preplanted tree that is dead, in significant decline, or structurally unsound.
3. When a property owner has made an advance contribution to the tree planting fund, the tree planted will be presumed to be alive, structurally sound, and healthy at the time the property owner seeks to utilize the credit and will be presumed to be of the highest species quality and shade potential and to possess all necessary characteristics to replace any tree that the property owner seeks to remove.
4. No single preplanted tree may be used to satisfy the replacement requirements for more than one urban forest tree removed by the property owner, regardless of whether the preplanted tree's imputed basal area exceeds the Department's calculation of the tree replacement requirements for the tree to be removed. However, the aggregate basal area of multiple preplanted trees can be used to satisfy the replacement requirement for a single tree to be removed.
5. Registered preplanting tree replacement credits convey with the property and may be used by subsequent owners of the property. However, preplanting credits may not be transferred to properties other than the property on which the preplanted tree is located.
6. Preplanting credits may not be used to satisfy a property owner's obligation to replace a tree that is required to be preserved under a tree protection plan permit. (Ord. 2011-28 § 1, 2011)

12.12.110 Appeals from permit decisions.

- A. The permit applicant or any resident of the City or owner of property in the City may appeal the preliminary approval of an application for a tree permit within the 15-day notice period. The permit applicant or the owner of a property with a common property line may appeal the preliminary approval of an application for a tree protection plan permit within the 15-day notice period. If a notice of appeal is filed during such 15-day notice period, then no permit is issued until the Tree Commission has conducted a fact-finding hearing and has issued its final decision on the appeal.
- B. A notice of appeal from the preliminary approval of an application for a tree protection plan permit must allege with particularity facts upon which the Tree Commission could determine that the tree protection plan is insufficient to protect the trees to be protected under the plan.
- C. The permit applicant also may appeal the denial of a permit within 15 days after the date that the City Manager notifies the applicant of the denial of a permit for the removal or destruction of a tree covered by this chapter.
- D. There is a rebuttable presumption that the decision of the City Manager with respect to a permit application is correct. Any decision by the Tree Commission to impose conditions upon an applicant or reverse or modify a decision of the City Manager with respect to a permit application

must be based upon substantial evidence in the record. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

E. There is no appeal from the tree replacement requirement or from the granting or denial of a tree permit waiver by the City Manager.

F. Notices of Appeal and Hearing Notices.

1. A notice of appeal must be in writing, state the reasons for the appeal, the name, address, and email address of the appellant, and the nature of the interest of the appellant. Appeal notices shall be filed with the City Manager, who shall forward the notice to the Department and the Tree Commission.

2. Hearing Notices.

a. For hearings on appeals from preliminary tree protection plan permit decisions, the Department shall send written notice of the time, date, and location of the hearing to the permit applicant and to the address of the owner(s) of record of all properties sharing a common property line with the property. Such notice shall be sent at least 15 days before the scheduled hearing date.

b. For hearings on appeals from preliminary tree permit decisions, the Department shall provide written notice of the time, date, and location of the hearing to the permit applicant and all persons that timely file a written notice of appeal and shall post notice of the hearing on the property in question in plain view from the public right-of-way, on a bulletin board at the Municipal Building, and on the City's web site for at least 15 consecutive days prior to the hearing date. The applicant is responsible for maintaining the notice on his or her property for the entire posting period. The City Manager may continue the hearing until a later date and immediately post notice of the continuation if he or she determines that the applicant failed to make good faith efforts to maintain the notice for the entire posting period.

G. The Commission may dismiss an appeal if the person filing the notice of appeal, or his or her representative, fails to appear at the hearing.

H. The Tree Commission shall conduct a fact-finding hearing on an appeal from a permit decision or issuance of a stop work order after giving reasonable notice of the hearing to all interested parties in accordance with the Tree Commission's rules. At the hearing, any interested party may present testimony and evidence to substantiate any material point. All testimony shall be given under oath or by affirmation. The burden of proof shall be on the party filing the appeal and shall be met by a preponderance of the evidence. The parties may also cross-examine opposing witnesses presenting testimony at the hearing. A verbatim record of the hearing shall be made. The record shall be open to inspection by any person and, upon request, the Tree Commission shall furnish such person with an at-cost copy of the hearing record.

I. 1. The Tree Commission may view a property that is the subject of an appeal. All parties to the appeal have the right to be present during the viewing.

2. At the hearing, the Commission must notify the parties of the Commission's intent to view the property and the parties' right to be present at the viewing. Any party may waive their right to be present during the viewing. Parties that fail to appear at the hearing are deemed to have waived their right to be present at the viewing. The Commission and the parties that have not waived their right to be present shall schedule the viewing of the property to occur no later than ten days after the hearing.

3. All Tree Commissioners participating in the decision of the appeal must be present for the viewing.

4. The parties shall not communicate with the Commissioners regarding the subject matter of the appeal during the viewing.

5. The Tree Commission must file a written report in the record of the proceeding stating the facts observed during the viewing upon which its decision and order is based.

J. On appeal from the preliminary decision on a tree permit application, after due consideration of the evidence and testimony and the criteria for permit decisions set forth in Section 12.12.120, the Tree Commission shall issue its decision on the appeal and shall give notice to all interested parties.

K. On appeal from a preliminary decision on a tree protection plan permit application, after due consideration of the evidence and testimony and application of the standard for approval of tree protection plans set forth in Section 12.12.080(c)(3), the Tree Commission shall issue a decision on the appeal affirming or modifying the decision and shall give notice to all interested parties.

L. Within 30 days of the date of the issuance of a decision of the Tree Commission, a person who was a party to the proceedings before the Tree Commission and who is aggrieved by the decision 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, or any subsequent amendments thereto. (Ord. 2007-59 § 1, 2007/Ord. 2003-40 (part), 2004)

12.12.120 Criteria for tree permit decisions.

A. The City Manager or, upon appeal, the Tree Commission shall issue a tree permit pursuant to Section 12.12.080(A) if so indicated by the factors set forth in subsection (B) of this section. Upon appeal, the Tree Commission shall, taking into account the factors set forth in subsection (B) of this section, approve the permit, disapprove the permit, or approve the permit with modifications and/or conditions.

B. The following factors are into account:

1. The extent to which tree clearing is necessary to achieve proposed development or land use, and, when appropriate, the potential ameliorating effects of any tree protection plan that has been submitted or approved.

2. The number and type of replacement trees and, if appropriate, any reforestation plan proposed as mitigation for the tree or trees to be removed.
3. Any hardship which the applicant will suffer from a modification or rejection of the permit application.
4. The desirability of preserving any tree by reason of its age, size, or outstanding quality.
5. The extent to which the area would be subject to environmental degradation due to removal of the tree or trees.
6. The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or trees are located.
7. The general health and condition of the tree or trees.
8. The desirability of the tree species as a permanent part of the City's urban forest.
9. The placement of the tree or trees in relation to utilities, structures and the use of the property. (Ord. 2003-40 (part), 2004)

12.12.125 Notification of tree protection laws required prior to sale of real property.

- A. On or before entering into a contract for the sale of real property in the City, the owner or agent of the property must provide the prospective buyer with a City of Takoma Park—Notice of Tree Preservation and Replacement Requirements (“notice”) in accordance with subsection (D) of this section.
- B. At the time the notice in subsection (A) of this section is delivered, each buyer must sign and date a written acknowledgment of receipt of the notice. The notice shall be included in or attached to the contract of sale for the property.
- C. The notice requirements established by this section do not apply to:
 1. A sheriff's sale, tax sale, deed in lieu of foreclosure, or sale by foreclosure, partition, or court-appointed trustee;
 2. A transfer of the property by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust;
 3. A transfer of the property or any interest therein, to a spouse, former spouse, domestic partner, former domestic partner, parent, sibling, child or grandchild; or
 4. A transfer of property solely to provide a security or leasehold interest in real property.
- D. Except as provided in subsection (C) of this section, the notice shall be included in or attached to all real property contracts of sale and shall be in substantially the form set forth below:

NOTICE OF TREE PRESERVATION AND REPLACEMENT REQUIREMENTS – CITY OF TAKOMA PARK:

1. The Buyer is notified that Chapter 12.12, Urban Forest, of the Takoma Park Code imposes restrictions and procedural requirements relating to activity on properties located in the City of Takoma Park (“City”) that may affect urban forest trees on the property or on neighboring properties. An “urban forest tree” is a tree which: a) measures 24 inches or more in circumference at 4-1/2 feet above ground level or measures 7-5/8 inches or more diameter at breast height (“DBH”) (note: additional requirements may apply if the property is located in the Takoma Park Historic District); b) is required to be planted or maintained pursuant to governmental order, agreement, covenant, easement or a tree protection plan, or as a condition of the issuance of a City tree permit; or c) is planted with government funding or under a government program. See Takoma Park Code §12.12.020.

2. The activities within 50 feet of an urban forest tree that may be regulated by Chapter 12.12, Urban Forest, of the Takoma Park Code include, but are not limited to, the construction or expansion of a structure, the operation of heavy equipment, land disturbing activities such as regrading or excavation, installation of paving or other hardscape, and the removal or pruning of roots or branches of trees.

3. A tree removal permit is required before a property owner may remove, relocate, or destroy an urban forest tree. The City may deny the tree removal permit and require that the tree remain in place, or may require the owner to plant multiple replacement trees or pay a tree replacement fee to the City as a condition of the issuance of a permit. Tree permit waivers may also be granted allowing the removal of dead or hazardous urban forest trees.

4. Before engaging in construction or other activities that may impact urban forest trees on or near the property, the property owner must contact the City Department of Public Works to request a tree impact assessment. Following a tree impact assessment, the Department will advise the property owner whether a tree protection plan permit is required before the activity may proceed. The owner and the owner’s contractors may be required to take measures to reduce the impact of the activity upon the trees on or near the property. Such measures may add to the cost of the activity, delay the completion of the activity, or require modifications to the planned activity, including, but not limited to, the use of alternative hardscape materials and construction methods, and reductions or modifications to the footprint of additions or new construction.

5. Violation of Chapter 12.12 of the Takoma Park Code may subject property owners and their agents to civil and criminal penalties, including fines and imprisonment.

6. Additional information is available from the City of Takoma Park Department of Public Works at (301) 891-7612 or at www.takomaparkmd.gov.

Buyer acknowledges receipt of this Notice of Tree Preservation and Replacement Requirements – City of Takoma Park.

_____ Buyer Date

_____ Buyer Date

E. A violation of this section is a Class B municipal infraction.

F. A buyer’s failure to receive the notice required by this section does not excuse or waive compliance with the requirements of this chapter. (Ord. 2011-28 § 1, 2011)

12.12.130 Violations and penalties—Enforcement.

A. Municipal Infractions.

1. Any of the following is a Class AA municipal infraction:

a. Doing any of the acts for which a permit is required under Section 12.12.040 or 12.12.050 or performing any such act in relation to a dead or hazardous urban forest

tree, without applying for a permit, after an application for a permit has been denied, or after applying for a permit but before a permit has been issued, unless a permit waiver covering the act has been issued or the act is described in Section 12.12.040(B) or 12.12.050(B).

b. Failure to fulfill the requirements of Section 12.12.100.

c. Any violation of a decision or order of the Tree Commission, including but not limited to the violation or nonperformance of conditions imposed in connection with the issuance of a permit.

d. Any violation of a requirement for a tree permit or tree protection plan.

e. Any violation of a condition imposed in connection with the issuance of a tree permit or tree protection plan permit.

B. Misdemeanors.

1. It is a Class A misdemeanor to do any of the following:

a. To do any of the acts specified in subsection (A) of this section in relation to three or more urban forest trees, whether or not such urban forest trees are located on the same property, within a three-month period.

b. To do any of the acts specified in subsection (A) of this section in relation to any urban forest tree which has been designated by the Tree Commission or the City as having special botanical, ecological or historical significance or as a landmark.

c. To do any of the acts specified in subsection (A) of this section in relation to any tree, which is more than 33 inches in circumference at four and one-half feet above ground level.

d. To willfully or repeatedly violate this chapter or an order of the Tree Commission.

e. To violate a stop work order issued pursuant to Section 12.04.050(C).

C. Each urban forest tree that is damaged or destroyed as a result of act(s) taken in violation of any provision of this chapter is considered a separate violation of the appropriate section(s).

D. In cases where a person has hired an individual or organization to perform tree work that is in violation of any provision of this chapter, both the hired and the hirer maybe subject to the penalties set forth in this chapter.

E. Any person or organization that performs tree trimming or tree removal for hire within the City of Takoma Park and who violates any provision of this chapter may be barred from contracting with or performing work for the City of Takoma Park.

F. Fines collected for violations of this chapter are deposited by the City's tree planting fund. (Ord. 2004-6 (part), 2004/Ord. 2003-40 (part), 2004)

12.12.140 Duties of City Arborist.

The City Arborist shall prepare an annual report to the Council that includes a description of the condition of the urban forest, the number of applications received and tree permits, tree protection plan permits, and waivers issued by the City Manager, and a summary of each decision of the Tree Commission; prepare and update, at least biennially, a master tree plan consisting of an inventory of trees on public space and a multi-year planting schedule; notify the Council of significant events related to the urban forest; recommend, as needed, changes in law or other action the Council may wish to take to protect and promote the urban forest in Takoma Park; prepare a quarterly report to the Council listing the number of applications received and the number of tree permits, tree protection plan permits, and waivers issued by the City Manager; and perform any other related duties assigned by the City Manager or by ordinance or resolution. (Ord. 2003-40 (part), 2004)

TAKOMA PARK TREE COMMISSION BYLAWS
October 13, 2015

- 1) Officers consist of Chair, Vice-Chair and Secretary.
 - a) Officers will serve concurrently for a term of one year, beginning October 1 and ending September 30 of the following year.
 - b) The Chair and Vice Chair positions will rotate among Commissioners on the basis of seniority, unless a commissioner next in the rotation elects to pass, in which case the next in line will serve. For example, the longest serving member will serve as Chair for a year; the next most senior will be assigned Vice Chair. After a year, the Chair steps down, the Vice Chair becomes Chair, and the third most senior person becomes Vice Chair, and so on. After all Commissioners have served as Chair and Vice Chair, the rotation begins anew. A Commissioner is required to attend a minimum of six meetings before assuming position of Chair.
 - c) Role of the Secretary will rotate on a yearly basis among the remaining three commissioners, with terms ending on September 30. If the Secretary is absent from a meeting, one of the Commissioners in attendance will act as a temporary Secretary.
 - d) Duties of Officers:
 - i) Chair will preside over Tree Commission hearings, and in consultation with other members of the Tree Commission, will communicate with the City staff liaison on Tree Commission matters. The Chair will compile and forward the agenda to other commissioners.
 - ii) Vice Chair will carry out duties of Chair if the latter is unable to do so.
 - iii) Secretary will take notes of meetings and distribute them to the other Commissioners within seven days of the meeting. Minutes of previous meeting will be approved at the following meeting and placed into the record by the City Clerk or designee, who will make them publicly available.
- 2) Meetings will take place on the second Tuesday of every month, at a set time, except in the event of a holiday or other special circumstance, in which case an alternate date may be set, or the meeting may be cancelled. Meetings may also be cancelled at the discretion of the officers in the event that no agenda items have been identified or in the event that there will not be a quorum. Decisions will normally be by consensus, but any Commissioner may request a vote by majority.
- 3) Attendance requirements: Each Commissioner will be allowed three absences from meetings a year without prior notice, not including canceled meetings. Procedures for

removal of a Commissioner due to excessive absences from meetings are set out in Section 2.16.010(C)(5) of the City Municipal Code.

- 4) Agendas will be set with input from Commissioners prior to upcoming meetings. Items for inclusion will be forwarded to the Chair no less than three days prior to the meeting, and the Chair will compile and forward the agenda to the Commission no less than one day prior to the meeting.
- 5) The entire Commission will discuss any proposed changes to the bylaws. Changes will be approved by consensus if possible, or if necessary, by majority vote.
- 6) The Commission will provide electronic copies of orientation packet materials to the City Clerk, who will make them available electronically, or by request, hard-copy to new Commissioners, including a summary of the Open Meetings statute, a copy of the Tree Ordinance, the Takoma Park Public Ethics Ordinance, the Commission's bylaws and a current roster of the Commissioners with contact information for each member.

Approved by members of the City of Takoma Park Tree Commission on 13 October, 2015:

Colleen Cordes, Chair
Gresham Lowe, Secretary
Carol Hotton
Denny May