



## Takoma Park City Council Meeting – November 13, 2019 Agenda Item 9

### **Work Session**

Initial Discussion of Draft Language on Potential Changes to the Tree Ordinance

### **Recommended Council Action**

Discuss initial draft language on proposed potential changes to the Tree Ordinance, based on Council discussions at work sessions Sept. 11 and Oct. 16, 23, and 30

### **Context with Key Issues**

The City Council has requested that the City Attorney and City staff create initial draft language on potential changes to the Tree Ordinance, based on Council discussions during work sessions on this topic Sept. 11 and Oct. 16, 23, and 30.

At this work session, Council will review draft language, discuss changes, clarify requests, and ask for further information as needed. Draft language will be posted with the agenda item when available prior to the meeting. The focus will be on items discussed during the October work sessions, including definitions, Tree Impact Assessment, Tree Protection Plan, hazardous trees, appeals, goals of the ordinance, tree rating chart, pre-planting program, and fees.

The draft language presented may be incomplete and is anticipated to change based on Council discussions.

The Council will consider the Tree Ordinance draft language within the context of its larger discussion about tree canopy goals and strategies. The Council has discussed moving from primarily a focus on regulating the removal of individual trees to a broader focus on urban forest protection, and establishing overarching strategic goals of no net loss, more attention to biodiversity and native species, and seeking to address inequities in the distribution of trees throughout the city. Changes to the Tree Ordinance will be discussed with this broader vision in mind. The Council will continue to work on moving forward with a plan for achieving the broader tree canopy goals while working on Tree Ordinance amendments.

The Council identified goals of reviewing the Tree Ordinance and exploring ways to improve community outreach and education on tree matters in its FY19 and FY20 City Council Priorities. A work session was held October 24, 2018, to establish a strategy for moving the effort forward. In spring 2019, the City hosted a public workshop on results of a citywide tree canopy assessment by the University of Vermont, and the Council sought and received resident comments and suggestions on the Tree Ordinance through an online survey (with more than 500 responses). The Council also received input from individuals and groups of residents, public and written comments at Council meetings, and neighborhood meetings.

A work session was held June 19, 2019, with the City's Urban Forest Manager and Public Works Director to provide an overview of the current Tree Ordinance process, present the tree canopy assessment, and share results of the online Tree Ordinance survey. The Council held a joint work session with the Committee on the Environment and the Tree Commission on July 22, 2019, to discuss their recommendations for changes to the Tree Ordinance and development of tree canopy

goals and strategies. The Tree Commission and Committee on the environment have provided several written recommendations to the Council.

The Council held a work session September 11, 2019, to review a "starter list" of suggestions for action on the Tree Ordinance. Council directed the City Attorney and City staff to begin drafting amended language for consideration based on a few items on the "starter list." Three work sessions were then held October 16, 23, and 30, 2019, to discuss elements on the "starter list" in depth. During these discussions, Council provided some initial thoughts and direction to the City Attorney and City staff to work on drafting amended Tree Ordinance language for future review, working with the Tree Commission.

Concurrently with considering the Tree Ordinance changes, the Council has been working on a broader approach to tree canopy protection and maintenance and will continue to pursue development of a strategy to achieve these goals.

### **Council Priority**

Environmentally Sustainable Community, Engaged, Responsive & Service-oriented Government

### **Environmental Considerations**

The Tree Ordinance establishes the protection and preservation of trees as a fundamental goal in the City. As noted in the Takoma Park Tree Canopy Assessment, "Trees provide many benefits to communities, such as improving water quality, reducing stormwater runoff, lowering summer temperatures, reducing energy use in buildings, removing air pollution, enhancing property values, improving human health, providing wildlife habitat, and aesthetic benefits."

In light of the ongoing concerns about climate change -- which the Council recognized formally through its adoption of a resolution declaring a climate emergency -- taking thoughtful action to develop tree canopy goals and ensuring that the tree ordinance functions well take on added importance. Additionally, challenges such as the current die-off affecting many oaks in the City -- which is having a negative effect on older trees that contribute significantly to carbon sequestration (among other benefits) -- underline the need to ensure that we have in place policies that can give our trees the necessary resilience to cope with changing weather patterns, harmful pests, and other threats.

### **Fiscal Considerations**

Fiscal considerations will be examined as the Tree Ordinance and the other tree-related matters being studied are discussed. The FY20 Budget for the Urban Forest Division is \$267,330, including staff, consultant services, tree purchases and services. Substantial changes to the ordinance administration or requirements may require a change in the funding level in order to be accomplished. The cost of tree maintenance for an individual property owner is ongoing and similar to any other ongoing home maintenance expense. Energy savings and increased property values may offset or exceed these costs. The costs of complying with the Tree Ordinance can be substantial when a construction project is proposed, when a property owner wishes to remove a tree that is not dead or imminently hazardous, or when trees suddenly decline. The City's tree emergency fund is available for residents with financial need who must remove hazardous trees.

### **Racial Equity Considerations**

Tree canopy is not spread equally across the City of Takoma Park and the costs and benefits of tree canopy vary by location and type of property, which can have a race equity component. In addition, heavier tree canopy coverage in residential areas has generally been found in areas with a higher

percentage of single family homes as opposed to multi-family residences. 75% of the respondents to the Tree Ordinance Survey were residents of Wards 1, 2, and 3. These three wards are majority white and have fewer multifamily properties than do Wards 4, 5, and 6.

### **Attachments and Links**

- [Tree Ordinance Review and Canopy Goal Project Page](#)
- [Tree Permit Page](#)
- [Agenda June 19, 2019, meeting agenda with links to various materials](#) (Agenda Item 7)
- [Agenda for the July 22, 2019, meeting agenda](#)
- [Agenda September 11, 2019, meeting agenda with links to various materials](#) (Agenda Item 4)
- [Agenda October 16, 2019, materials for Work Session #1](#) (Agenda Item 10)
- [Agenda October 23, 2019, materials for Work Session #2](#) (Agenda Item 5)
- [Agenda October 30, 2019, materials for Work Session #3](#) (Agenda Item 3)

**DRAFT TREE ORDINANCE AMENDMENTS FOR  
NOVEMBER 13, 2019, CITY COUNCIL WORKSESSION**

**Chapter 12.04  
GENERAL PROVISIONS**

**12.04.010 Definitions.**

As used in this chapter:

"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.

["Ecosystem services" means the important benefits for human beings that arise from healthily functioning ecosystems, notably production of oxygen, soil genesis, and water detoxification](#)

"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.

["Invasive species" means a species that is non-native to the City's ecosystem and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.](#)

"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 [citizenresident](#) 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 impact assessment" is a service provided by the City to assist property owners in preventing unnecessary harm to trees, avoiding violations of this chapter, and quickly and efficiently navigating the tree removal permit and tree protection plan permit processes when applicable. A tree impact assessment is a site visit by the Urban Forest Manager for the purpose of assessing the potential adverse impact of proposed activity in the vicinity of an urban forest tree, advising the property owner or the property owner's agent of the potential adverse impact of the project upon urban forest trees and how](#)

[such impact may be mitigated or prevented and advising whether a tree removal permit or tree protection plan permit will be required for the proposed activity.](#)

"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.

**12.04.020 Interpretation.**

This Chapter is intended to supplement and not to contradict or supersede any applicable provisions of the law and regulations of the State of Maryland, and is to be interpreted as such.

**12.04.030 Authority of City Manager to adopt regulations.**

The City Manager may adopt regulations to implement this chapter, in accordance with the provisions of Chapter 2.12, Administrative Regulations.

**12.04.040 Interference prohibited.**

A person who prevents, delays, or interferes with the City Manager while he or she is carrying out the provisions of this chapter in or upon any City property, public highway or public space commits a Class C municipal infraction.

**12.04.050 Enforcement—Stop work orders.**

- A. The Department has primary responsibility for the administration and enforcement of this chapter.
- B. Representatives of the Department, the ~~City Arborist~~[Urban Forest Manager](#), and Code Enforcement Officers may serve as the City Manager's designee, with full authority to enforce all municipal infraction provisions of this chapter.
- C. In addition to all other means of enforcement provided for by law and in this chapter, the City Manager, Code Enforcement officers, or police officers may issue a "stop work order" to any person who violates any provision of this chapter. A stop work order also may be issued on the basis of information received setting forth the facts of the alleged violation.

1. Any person who receives such a stop work order shall immediately cease the activity that constitutes the violation. The person shall comply with all terms and conditions imposed by the person issuing the order before the activity may resume.

2. A person who receives a stop work order may appeal the issuance of the stop work order to the Tree Commission pursuant to Section 12.12.110 within 15 days after the issuance of the stop work order, as if the issuance were a denial of a tree [removal](#) permit.

**12.04.060 Procedure to be followed in case of infractions.**

A. In the case of violations of this chapter, the City may issue a warning notice, giving the person an appropriate period of time to correct the violation before a municipal infraction citation is issued. No additional warning notices are issued for continuing or subsequent violations for which a warning notice was issued.

B. Failure to abate a violation for which a municipal infraction citation has been issued by the due date of the fine, as set forth on the municipal infraction citation, causes continuing or subsequent violations to be treated as repeat offenses.

C. In addition to the fine for a municipal infraction, the City may obtain a court order for the owner to abate the violation or for the City to abate the violation at the expense of the owner.

**12.04.070 Charges for City taking corrective action.**

A. Where the City has taken corrective action to bring a property into compliance with this chapter, the City Manager shall send the owner a bill for the cost of the corrective action. The bill is sent by regular mail to the owner's last known address or delivered by any other means reasonably calculated to bring the bill to such person's attention. If the owner does not pay the bill within one month after it is presented, the City Manager may certify the cost of such corrective action to the City Treasurer.

B. The City Treasurer shall send a bill for the costs of such corrective action to the owner of the real property, as listed in the City property tax records. The City Treasurer also may send a copy of the bill for the costs of the corrective action to a lender under a mortgage or deed of trust made by the owner and secured by the real property, as listed in the City property tax records. The bill is sent by regular mail to the last-known address of the owner or lender or delivered by any other means reasonably calculated to bring the bill to such person's attention. If the bill is not paid within one month after it is presented, then the cost becomes a lien against the real property which may be collected and enforced in the same manner as are taxes, special assessments, and other liens against real property or collected by a [lawsuit](#) against the owner.

**12.04.080 City Manager to have decision-making authority for all trees on City property.**

A. The City Manager, as an agent of the sovereign City government, has authority over the disposition of all trees located on City property and has the power to plant, maintain, or remove trees on City property. The City Manager shall give due consideration to the urban forest preservation principles embodied in this chapter, apply the criteria for tree removal permit decisions applicable to private persons, and undertake all reasonable tree protection measures when making decisions regarding trees on City property, as is required of private persons under this chapter.

**Commented [KS1]:** These amendments make it more explicit that the City must adhere to the substantive requirements of the Urban Forest Chapter when engaging in construction activity or removing trees from City property

B. The City Manager may order the removal of any tree or part of a tree on City property that:

1. Poses a threat to safety;
2. May cause damage to sewers or other public improvements;
3. Is diseased or infested and poses a danger to other healthy trees, if removal is the only practical solution;
4. Seriously impairs the appearance of City property; or
5. ~~Interferes with the exercise of any power conveyed by the Charter of the City of Takoma Park, including the construction and alteration of buildings and public ways and sidewalks.~~

C. If the City Manager orders the removal of/removes a tree pursuant to subsection (B) of this section from City property, the City must replace the tree in accordance with Section 12.12.100.

**Commented [KS2]:** Clarification only.

D. The City shall post written notice of the proposed removal of trees from City property adjacent to the public right of way closest to the trees to be removed at least seven days prior to the removal unless the City Manager determines that immediate removal of the tree is necessary, in which case such notice shall be posted as soon as possible.

**Commented [KS3]:** New notice requirement for removal of City trees.

D. The City Manager shall manage forest located on open spaces to preserve the natural state except where there is a threat to the public health, safety, or welfare.

**12.04.090 Inspection for insects and disease—Taking of specimens.**

A. The City Manager is authorized to inspect any woody vegetation that appears to be or is reported to be infected with a fungus, virus, bacterium, or other pathogen or infested with insects or other parasites which, due to such infection or infestation, may cause damage to other woody vegetation or other property, and may take specimens from the woody vegetation if necessary to determine the existence of such infection or infestation.



B. If the City Manager cannot determine with certainty the existence of infection or infestation in any woody vegetation, the City Manager shall send any such specimens for examination, diagnosis and report to the Cooperative Extension Service, Home and Garden Information Center, University of Maryland or other laboratory, and shall base further action on such extension service or other laboratory report.

**12.04.100 Permission required to prune, spray, plant or remove from City property.**

A. Except as provided in subsection (B) of this section, a person who sprays, prunes, cuts, removes, or plants any vegetation on City property, without obtaining prior written permission from the Department, commits a Class B municipal infraction.

B. Permission is not required to plant or maintain non-woody vegetation less than 24" in height on planting strips or City rights-of-way located adjacent to the person's property (e.g., between the front yard or the sidewalk and the Street), unless the City Manager informs the person of the City Manager's objection to the planting or maintenance.

**12.04.110 Requirement for supervision by a tree expert.**

A. No person shall perform tree pruning, tree removal or other tree work for hire, including consulting, insect and disease mitigation, abiotic mitigation, and tree preservation, without supervision, involving a site visit, by a Licensed Tree Expert (LTE) in good standing with the Maryland Department of Natural Resources.

B. No person shall perform tree care consulting for hire without being a Licensed Tree Expert (LTE) in good standing with the Maryland Department of Natural Resources.

C. All tree work and consulting will be done according to arboriculture industry guidelines: ANSI A300 (Parts 1 and 2) and ANSI Z133.1 (as amended).

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

**12.04.120 Exemption from County code.**

Pursuant to the authority conferred by Section 4-111 of the local government article of the Annotated Code of Maryland and by Section 1-203 of the Montgomery County Code, the City of Takoma Park specifically exempts itself from the following sections of the Montgomery County Code relating to tree protection and tree canopy preservation:

A. Section 8-26(n) and (o);

B. Section 19-71;

- C. Section 49-35;
- D. Section 49-36A;
- E. Sections 55-1 through 55-11.

**Chapter 12.08  
PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION**

**12.08.010 Infected or infested woody vegetation on private property.**

A. A person who maintains on private property woody vegetation found to be infected with a fungus, virus, bacterium, or other pathogen or found to be infested with insects or other parasites which, due to such infection or infestation, may cause damage to other woody vegetation or may pose a threat to persons or the property of others commits a Class C municipal infraction.

B. [The City Manager may promulgate regulations requiring certification of proper disposal of infested trees to prevent the spread of infestation.](#)

**Commented [KS4]:** According to staff, this is a complex issue without clear guidelines at this point that also presents difficult enforcement issues.

**12.08.020 Fallen or dangerous trees on private property.**

- A. No person shall permit a tree or tree part, dead or alive (including a stump displaced from the ground), to stand on private property if it is hazardous.
- B. No person shall maintain a fallen tree, brushwood, or part of a fallen tree on private property that constitutes a harborage place for vermin or disease.
- C. A violation of this section is a Class C municipal infraction.

**12.08.025 Vegetation not to obscure intersection.**

- A. Vegetation taller than 3' above a street surface, except an urban forest tree, is not permitted within 20' of the corner of a property located at an intersection of 2 streets. If the vegetation is located on top of a retaining wall, the retaining wall is considered part of the 3'.
- B. A violation of this section is a Class D municipal infraction.

**12.08.030 Vegetation not to obstruct sidewalks or traffic.**

A person who permits any vegetation on private property to encroach on, impede vehicular or pedestrian passage upon, or to overhang within 8' above any street or sidewalk, or obstruct any traffic control device commits a Class D municipal infraction.

**12.08.040 Noxious growths.**

A. No person shall maintain on private property poison ivy (*Rhus radicans* or *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium*), poison sumac (*Rhus vernix* or *Toxicodendron vernix*), ragweed (*Ambrosia artemisiifolia*) or similar vegetation. Failure to make continued good faith efforts to eradicate such vegetation in accordance with Department regulations is a Class D municipal infraction. The City shall not maintain such vegetation in City parks but shall not be required to remove such vegetation from any City property designated as an open space.

B. All persons must control the growth of bamboo, kudzu-vine (*Pueraria lobata*), non-native honeysuckle, wisteria, multi flora rose (*Rosa multiflora*) or other vines or vegetation that may damage trees, native vegetation, or structures. Allowing vines to reach the limbs of trees is a violation of this subsection. Failure to make continued good faith efforts to control the growth of such vegetation in accordance with Department regulations is a Class D municipal infraction.

C. No person shall allow any vine or vegetation listed in subsections (A) and (B) of this section or any other vine or vegetation that may cause a threat to public safety or damage to trees, structures, or native vegetation to spread to an adjoining property over the objection of the adjoining property owner. Failure to make continued good faith efforts to control such growth in accordance with Department regulations is a Class C municipal infraction.

**12.08.050 Uncontrolled growth of vegetation on vacant lots.**

A. The owner of a vacant lot that does not have at least 60% tree cover is required to keep the natural non-woody vegetation on the lot to within 10 inches of the ground.

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

**12.08.060 Uncontrolled growth of lawns on private property.**

A person who allows 30% or more of a lawn to reach or exceed the height of 10 inches commits a Class D municipal infraction.

**12.08.070 Notice to correct prohibited conditions.**

A. Whenever any condition prohibited by Sections 12.08.010 through 12.08.070 is found within the City, the City Manager shall give notice to the owner or occupant of the property or the person responsible for such condition to correct such condition within such reasonable time as may be specified in such notice.

B. If any person fails or refuses to correct or abate any prohibited condition after receipt of notice pursuant to subsection (A) of this section, such condition may be corrected by the City at the expense of

the person named in such notice. Correction or abatement by the City shall not prevent or excuse any prosecution of the person responsible for the condition abated by the City.

## Chapter 12.12 URBAN FOREST

### 12.12.010 Legislative findings and purpose.

The Council of the City of Takoma Park hereby finds that it is in the interest of the ~~citizens~~residents of the City to protect, preserve, and promote the City's urban forest. Stewardship of our urban forest is a community effort. The City's urban forest is part of a larger ecosystem that ~~supports~~provides valuable ecosystem services, including supporting wildlife and ~~contributes~~significantly ~~to~~reducing air, noise, and visual pollution~~control, and reduces the City's contribution to climate change~~. 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 waterstormwater 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~~promote a sustainable tree canopy through community stewardship of existing trees ~~of desirable~~and the planting of new trees of diverse native species ~~and it shall be administered in a manner that seeks~~are adaptable to protect such trees at every opportunitythe impacts of climate change.

### 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 removal permit; or
- C. Is planted with government funding or under a government program.

### 12.12.030 Tree impact assessment required.

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~~50 feet of an urban forest tree that may ~~destroy a significant portion of compact~~ the soil thereby destroying roots ~~of a tree~~ or ~~endanger~~reducing the air and water supply to the roots, including, but not limited to, the operation or parking of vehicles or heavy equipment, storage of materials, and trenching;
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~~10% 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.

**Commented [KS5]:** Because residents and contractors must be able to understand when a tree impact assessment is required, using a 50-foot radius rather than “within the critical root zone” is necessary.

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~~Urban Forest Manager 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~~Urban Forest Manager will advise the person requesting the assessment in writing of the permits required under this chapter to proceed with the proposed activity and any suggestions to reduce the adverse impact of the proposed activity on the trees in the area.

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 or a tree protection plan permit before conducting any of the activities described in this subsection shall constitute a Class AA municipal infraction.

**Commented [KS6]:** The Council discussed allowing people to skip the Tree Impact Assessment if they apply for a tree protection plan permit. Staff, the City Attorney, and the Tree Commission strongly oppose this approach, as the TIA, which enables the Urban Forest Manager to educate property owners about the ways that design and construction activity impact trees and how to mitigate adverse impacts both protects trees and reduces expense and delays for property owners. Notably, the developer that made this request has started complying with the TIA requirement and his projects are now moving through the process more quickly and efficiently. Should the Council wish to allow people to forego the TIA, the following provision could be added:

When an applicant has applied for a Tree Protection Plan Permit for the proposed activity and submits a proposed tree protection plan prepared by a certified arborist.

**12.12.040 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:

**Commented [KS7]:** This section has been moved ahead of the tree removal permit section so that it immediately follows the tree impact assessment provision and makes the ordinance easier to follow.

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 50 feet 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. If, at any time, the City Manager determines that the scope of the proposed activity presents significant risk to one or more urban forest trees or that the measures necessary to protect one or more urban forest trees that may be impacted by the activity are complex, the City Manager may require that the tree protection plan be prepared by a certified arborist or licensed landscape architect.

C. No tree protection plan permit is required for action required on an emergency basis (with no time to apply for a tree protection plan permit) to prevent harm to life or property.

**Commented [KS8]:** The Urban Forest Manager wants the authority to require the applicant to hire an arborist to work on the tree protection plan because, in his experience, he often spends excessive time trying to work with property owners, architects, and contractors who do not understand trees or tree protection principles, which also delays approval of the tree protection plan.

**12.12.050 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: For action required on an emergency basis (with no time to apply for a tree removal permit) to prevent harm to life or property; 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.

**12.12.060 Reserved.**

~~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.~~

~~\* 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.~~

**Commented [KS9]:** The waiver application process has been eliminated. Persons wishing to remove a tree for any purpose must file a tree removal permit application and, if the tree is dead or hazardous, a tree removal permit will issue with no right for others to appeal the granting of the permit and with no replacement requirement.

**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. An~~



[applicant for a tree removal or tree protection plan permit shall pay processing fees established by regulation with the application.](#)

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.

**12.12.080 Permit approval.**

A. Tree [Removal](#) Permit Approval Subject to Appeal.

1. If the City Manager determines that the tree [removal](#) permit application is complete, that the criteria set forth in Section 12.12.120(B) indicate that the applicant is entitled to a tree [removal](#) permit, and that the conditions for issuance of a tree [removal](#) 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 [removal](#) 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~~ [determinesthey determine](#) that the applicant failed to maintain the notice for the entire posting period.

3. Conditions for the issuance of a tree [removal](#) 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 Removal Permit Approval Not Subject to Appeal. Applicants receiving tree removal permits pursuant to paragraphs (1) ~~and (2) through (4)~~ of this section shall post notice of the issuance of the tree removal 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/invasive species by City regulation, the owner agrees to replace the tree or trees in accordance with Section 12.12.100, the City Manager shall issue a tree removal permit.

2. Where an owner proposes removing ~~one or more~~ urban forest ~~tree/tree~~ that the City Manager has determined to ~~be diseased or infested beyond recovery, and the~~ have a life expectancy of less than three years.

~~3. Where an owner agrees/proposes or is required to replace/remove a tree that is dead or that is has hazardous and that the hazard can only be eliminated by removing the tree or trees in accordance with Section 12.12.100, the City Manager shall issue a tree permit.~~

4. Where an owner proposes removing a tree because the tree's trunk or root flare is impacting a building other than an outbuilding.

**Commented [KS10]:** Since we eliminated the tree permit waiver for dead or hazardous trees, this section exempts tree removal permits for removal of such trees from the appeal process.

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.

**Commented [KS11]:** These amendments eliminate the right of neighbors to appeal the granting of tree protection plan permits.

Alternatively, we can retain the right to appeal and shorten the appeal period to 10 days (the Commission and staff believe that 7 days is too short because a neighbor who is on vacation for a week may miss the opportunity to appeal) or allow the property owner to obtain written consent for the plan from all adjoining neighbors (staff advises strongly against the neighbors' consent approach, as it is administratively burdensome). I recommend eliminating the right to appeal approval of a TPP because neighbors tend to use it to delay development activity they are opposed to rather than because of substantive tree protection issues, and the appeal process can delay a project for one to two months (and up to six months if a court appeal is filed challenging the Tree Commission's decision).

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, giving due consideration to factors including, but not limited to, the risk posed to a tree, the value of the tree to the urban forest, the cost of tree protection measures, and the impact of the tree protection measures on the applicant's intended use of their property. If the City Manager rejects a proposed tree protection plan, when reasonably feasible, the City Manager will advise the applicant in writing of additional tree protection measures necessary for approval of the plan and explain why such measures are necessary.

**Commented [KS12]:** This additional language is intended to show the factors to be considered when determining whether a tree protection plan is sufficient.

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.

**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—unless extended by the City Manager for good cause when an extension is consistent with the purposes of this Chapter.

**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 tree removal permit ~~to remove a tree under Section 12.12.040~~, and may be required as a condition of issuance of a tree protection plan permit for ~~other actions under Section 12.12.050 activity~~ 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~~050 is required to replace the tree within six months.

~~B-B.~~ Tree replacement is not required for the removal of a tree that the City Manager has deemed to be hazardous or to have a life expectancy of less than three years.

C. 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, unless the City Manager authorizes the planting of a lesser species to facilitate planting replacement trees on site. In the case of invasive~~ 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 D. Except as provided in paragraph H of this section, 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.

**Commented [KS13]:** We need the Urban Forest Manager's input and assistance in revising the tree replacement provisions to meet the Council's goals, so we do not yet have a comprehensive proposal for amendments to this section.

**Commented [KS14]:** The Tree Commission is concerned that it is not realistic to estimate life expectancy with this level of precision.

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	
			<b>Total Rating</b>	

DE. 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/Invasive 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%

**Commented [KS15]:** We might use this chart to impose reduced replanting requirements for specified circumstances, such as when a trunk is impacting a house, when a tree has a life expectancy of three years, or when someone replants on site (or at least replants X% of replacement trees on site or at least X number of trees on site)

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.

EF. 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, to be established by regulation, which shall be equivalent to the installed market value of the required replacement trees plus two years of maintenance to the City's tree planting fund. The City Manager shall establish the fee amount via regulation. Maintenance expenses shall include, but not be limited to, watering, protection from infestation, and protection from deer.

FG. As a condition precedent to the issuance of a tree removal 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 removal 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 or near the property which that is covered by a tree protection plan, within two years following the completion of the construction or development, was caused by the construction or

**Commented [KS16]:** The purpose of this amendment is to ensure that the fee in lieu reflects the actual cost to the City of planting and maintaining replacement trees and preventing a financial incentive to pay the fee in lieu instead of replanting on or near the applicant's property.

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 [removal](#) 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.

[H. Reduced tree replacement requirements.](#)

[1. Trees that must be removed because off the proximity of the trunk to a structure.](#)

[2. When an applicant plants replacement trees on site.](#)

[3. Other ideas?](#)

[I. Permissible uses of tree replacement fund. The tree replacement fund may be used to plant trees on public and private property and to maintain trees planted with the tree replacement fund.](#)

**Commented [KS17]:** If we do not incorporate these factors into the tree rating chart in a manner that effectively reduces replacement requirements in certain circumstances as desired by the Council, we can specify the reduced requirements here. This is not proposed language—it is a placeholder.

**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~~

**Commented [KS18]:** This is intended to clarify that the tree fund can be used to plant on private property and to maintain trees once they are planted.

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 replanted 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 replanted 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 replanted 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 replanted 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 replanted trees can be used to satisfy the replacement requirement for a single tree to be removed.

5.—Registered replanting tree replacement credits convey with the property and may be used by subsequent owners of the property. However, replanting credits may not be transferred to properties other than the property on which the replanted tree is located.

6.—Replanting 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.

#### **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 [removal](#) 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 calculation of 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 denials~~, 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 removal 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 they determine~~ that the applicant failed to make good faith efforts to maintain the notice for the entire posting period.

**Commented [KS19]:** The City Attorney and Tree Commission strongly recommend not allowing appeals of tree replacement calculations, as we believe that it would result in a significant increase in appeal hearings, which are burdensome on the Urban Forest Manager and the Tree Commission and would increase the City's legal expenses. In addition, the Tree Commission feels that the Urban Forest Manager has the expertise to rate the condition of the tree and does not think it would be beneficial for the Commission to review such determinations.

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. ~~Reserved.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 removal 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.

**12.12.120 Criteria for tree removal permit decisions.**

A. The City Manager or, upon appeal, the Tree Commission shall issue a tree removal 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~~ health, condition, and life expectancy of the tree or trees.
8. The desirability of the tree species as a permanent part of the City's urban forest.

**Commented [KS20]:** We need the input of the Urban Forest Manager before we propose comprehensive revisions to this section. The revisions to this section are intended to highlight issues and are not recommendations at this point.

**Commented [KS21]:** The Commission would like to specify categories of hardship pertinent to tree removal permit decisions.

9. The placement of the tree or trees in relation to utilities, structures and the use of the property.

[10. The risk that a tree poses to life or property.](#)

**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 [removal](#) 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](http://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.

**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 removal permit or tree protection plan.
  - e. Any violation of a condition imposed in connection with the issuance of a tree removal 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 12.04.959040(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 may be 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.

**12.12.140 Duties of ~~City Arborist~~Urban Forest Manager.**

The ~~City Arborist~~Urban Forest Manager 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 removal permits, and tree protection plan permits, ~~and waivers~~ issued by the City Manager, and a summary of each decision of the Tree Commission; prepare and every five years, update, ~~at least biennially~~, a master tree plan consisting of an inventory of trees on public space and, a multi-year planting schedule, revised canopy goals, and an education and outreach strategy; 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 removal permits, and 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.