

1 **Sigman Draft Amendments (Clean Text)**

2 **January 31, 2020**

3 **Chapter 12.04**
4 **GENERAL PROVISIONS**

5 **12.04.010 Definitions.**

6 As used in this chapter:

7 "Basal area" means the area of a tree trunk's cross section, measured outside the bark.

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

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

11 "Canopy" means the combined crowns of all trees on a tract of land.

12 "City Manager" means the City Manager of the City of Takoma Park or their designee.

13 "City Property" means City rights-of-way, City parks, median strips, and other City-owned or controlled
14 property.

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

18 "Crown" means the volume defined by the spread of the branches and foliage of a tree.

19 "Department" means the Department of Public Works of the City of Takoma Park.

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

22 "Ecosystem services" means the material or energy outputs from ecosystems, including, but not limited
23 to, climate regulation, storm water runoff avoided, carbon sequestered, air pollution removed, water
24 purification, avoided energy use, wildlife habitat, and recreation benefits.

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

Commented [KS1]: The Tree Commission suggests removing this definition and removing reference to ecosystem services in the legislative purpose section. There is no legal significance to this issue.

27 An entire tree is not hazardous if the hazard can be addressed via pruning or other tree maintenance
28 measures.

Commented [KS2]: UFM suggestion.

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

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

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

34 "Owner" means any person who, alone or jointly or severally with others:

35 1. Has a legal or equitable ownership interest in a real property, including a contract purchaser of
36 property;

37 2. Has a legal, equitable or beneficial interest in a corporation, limited liability company,
38 partnership, limited partnership, limited liability partnership, trust or other entity that has a legal or
39 equitable ownership interest in a rental facility; or

40 3. Has charge, care or control of real property as personal representative, executor,
41 administrator, trustee, guardian, or conservator of the estate of the owner.

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

45 "Target" means people or property that may be subject to injury or damage as a result of a tree's failure.

Commented [KS3]: UFM/Tree Commission suggested that we define Target.

46 "Tree Commission" means the resident commission established by the Council to preserve, protect, and
47 promote the urban forest of the City and to hear appeals from preliminary permit decisions.

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

50 "Tree protection plan" means a site plan that delineates tree save areas and details measures to be taken
51 to ensure survivability of trees to be saved prior to and during construction.

52 "Urban Forest Manager" means the City of Takoma Park Urban Forest Manager or their designee.

53 "Urban forest tree" means a tree as defined in Section 12.12.020.

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

55 "Woody vegetation" means vegetation with stems of wood (other than vines) and includes trees and
56 bushes.

57 **12.04.020 Interpretation.**

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

60 **12.04.030 Authority of City Manager to adopt regulations.**

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

63 **12.04.040 Interference prohibited.**

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

67 **12.04.050 Enforcement—Stop work orders.**

68 A. The Department has primary responsibility for the administration and enforcement of this chapter.

69 B. Representatives of the Department, the Urban Forest Manager, and Code Enforcement Officers may
70 serve as the City Manager's designee, with full authority to enforce all municipal infraction provisions of
71 this chapter.

72 C. In addition to all other means of enforcement provided for by law and in this chapter, the City
73 Manager, Code Enforcement officers, or police officers may issue a "stop work order" to any person who
74 violates any provision of this chapter. A stop work order also may be issued on the basis of information
75 received setting forth the facts of the alleged violation. Any person who receives such a stop work order
76 shall immediately cease the activity that constitutes the violation. The person shall comply with all terms
77 and conditions imposed by the person issuing the order before the activity may resume.

78 **12.04.060 Procedure to be followed in case of infractions.**

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

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

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

88 **12.04.070 Charges for City taking corrective action.**

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

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

103 **12.04.080 City Manager to have decision-making authority for all trees on City property.**

104 A. The City Manager, as an agent of the sovereign City government, has authority over the disposition
105 of all trees located on City property and has the power to plant, maintain, or remove trees on City
106 property. The City Manager shall give due consideration to the urban forest preservation principles
107 embodied in this chapter, apply the criteria for tree removal permit decisions applicable to private
108 persons, and undertake all reasonable tree protection measures when making decisions regarding trees
109 on City property, as is required of private persons under this chapter. The City Manager shall apply for
110 tree impact assessments, tree protection plan permits, and tree removal permits when making decisions
111 regarding trees on City property, but such decisions are not subject to appeal to the Tree Commission.

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

113 1. Poses a threat to safety;

Commented [KS4]: The UFM and Tree Commission suggested requiring the City to go through the standard processes for tree decisions minus the possibility of appeal to ensure that the decisions regarding trees on City property receive thorough consideration.

- 114 2. May cause damage to utilities or other public improvements;
- 115 3. Is diseased or infested and poses a danger to other healthy trees, if removal is the only
116 practical solution;
- 117 4. Interferes with the exercise of any power conveyed by the Charter of the City of Takoma Park,
118 including the construction and alteration of buildings and public ways and sidewalks.
- 119 C. If the City removes a tree from City property, the City must replace the tree in accordance with
120 Section 12.12.100.
- 121 D. The City shall post written notice of the proposed removal of trees from City property adjacent to the
122 public right of way closest to the trees to be removed at least seven days prior to the removal unless the
123 City Manager determines that immediate removal of the tree is necessary, in which case such notice shall
124 be posted as soon as possible.
- 125 E. The City Manager shall manage forest located on open spaces to preserve the natural state except
126 where there is a threat to the public health, safety, or welfare.
- 127 **12.04.090 Inspection for insects and disease—Taking of specimens.**
- 128 A. The City Manager is authorized to inspect any woody vegetation that appears to be or is reported to
129 be infected with a fungus, virus, bacterium, or other pathogen or infested with insects or other parasites
130 which, due to such infection or infestation, may cause damage to other woody vegetation or other
131 property, and may take specimens from the woody vegetation if necessary to determine the existence of
132 such infection or infestation.
- 133 B. If the City Manager cannot determine with certainty the existence of infection or infestation in any
134 woody vegetation, the City Manager shall send any such specimens for examination, diagnosis and
135 report to the Cooperative Extension Service, Home and Garden Information Center, University of
136 Maryland or other laboratory, and shall base further action on such extension service or other laboratory
137 report.
- 138 **12.04.100 Permission required to prune, spray, plant or remove from City property.**
- 139 A. Except as provided in subsection (B) of this section, a person who sprays, prunes, cuts, removes, or
140 plants any vegetation on City property, without obtaining prior written permission from the Department,
141 commits a Class B municipal infraction.
- 142 B. Permission is not required to plant or maintain non-woody vegetation less than 24" in height on
143 planting strips or City rights-of-way located adjacent to the person's property (e.g., between the front yard

Commented [KS5]: Daryl suggested this change to to broaden scope to cover utilities other than sewers.

144 or the sidewalk and the Street), unless the City Manager informs the person of the City Manager's
145 objection to the planting or maintenance.

146 **12.04.110 Requirement for supervision by a tree expert.**

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

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

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

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

156 **12.04.120 Exemption from County Code.**

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

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

162 B. Section 19-71;

163 C. Section 49-35;

164 D. Section 49-36A;

165 E. Sections 55-1 through 55-11.

166

167 **Chapter 12.08**
168 **PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION**

169 **12.08.010 Infected or infested woody vegetation on private property.**

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

174 B. The City Manager may promulgate regulations requiring certification of proper disposal of infested
175 trees to prevent the spread of infestation.

176 **12.08.020 Fallen or dangerous trees on private property.**

177 A. No person shall permit a tree or tree part, dead or alive (including a stump displaced from the
178 ground), to stand on private property if it is hazardous.

179 B. No person shall maintain a fallen tree, brushwood, or part of a fallen tree on private property that
180 constitutes a harborage place for vermin or disease.

181 C. A violation of this section is a Class C municipal infraction.

182 **12.08.025 Vegetation not to obscure intersection.**

183 A. Vegetation taller than 3' above a street surface, except an urban forest tree, is not permitted within
184 20' of the corner of a property located at an intersection of 2 streets. If the vegetation is located on top of
185 a retaining wall, the retaining wall is considered part of the 3'.

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

187 **12.08.030 Vegetation not to obstruct sidewalks or traffic.**

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

191 **12.08.040 Noxious growths.**

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

198 B. All persons must control the growth of invasive species or other vines or vegetation that may damage
199 trees, native vegetation, or structures, including, but not limited to, bamboo, kudzu-vine (*Pueraria lobata*),

Commented [KS6]: Daryl suggests leaving this paragraph as is because it is necessary for public safety and does have a significant impact on the availability of space for trees.

200 non-native honeysuckle, wisteria, and multi flora rose (*Rosa multiflora*). Allowing vines to reach the limbs
201 of trees is a violation of this subsection. Failure to make continued good faith efforts to control the growth
202 of such vegetation in accordance with Department regulations is a Class D municipal infraction.

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

208 **12.08.050 Uncontrolled growth of vegetation on vacant lots.**

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

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

212 **12.08.060 Uncontrolled growth of lawns on private property.**

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

215 **12.08.070 Notice to correct prohibited conditions.**

216 A. Whenever any condition prohibited by Sections 12.08.010 through 12.08.060 is found within the City,
217 the City Manager shall give notice to the owner or occupant of the property or the person responsible for
218 such condition to correct such condition within such reasonable time as may be specified in such notice.

219 B. If any person fails or refuses to correct or abate any prohibited condition after receipt of notice
220 pursuant to subsection (A) of this section, such condition may be corrected by the City at the expense of
221 the person named in such notice. Correction or abatement by the City shall not prevent or excuse any
222 prosecution of the person responsible for the condition abated by the City.

Commented [KS7]: I see no conflict with Safe Grow.

223 **Chapter 12.12**
224 **URBAN FOREST**

225 **12.12.010 Legislative findings and purpose.**

226 The Council of the City of Takoma Park hereby finds (or states/declares/determines/affirms) that --

227 a) it is in the interest of the residents of the City to protect, preserve, promote, and to the extent
228 feasible expand Takoma Park's urban forest;

- 229 b) the purpose of this chapter is to promote a diverse, resilient, sustainable urban forest through
 230 community and individual stewardship of existing trees, and the planting of new trees with a focus
 231 on [...] that are adaptable to the impacts of climate change;
- 232 c) stewardship of the City’s urban forest is a community effort requiring the involvement of the entire
 233 community, and the regulation of actions affecting the urban forest provides benefits to residents,
 234 and property and business owners;
- 235 d) a health, biodiverse, and demographically balanced urban forest provides valuable ecosystem
 236 services, including preserving wildlife habitat; reducing air, noise, and visual pollution; improving
 237 water quality, reducing the City’s contribution to climate change; assisting in climate change
 238 mitigation, adaptation and resilience; lowering summer temperatures and moderating climatic
 239 extremes; and reducing energy use in buildings;
- 240 e) the urban forest is part of the watershed of Long Branch, Takoma Branch, and Sligo Creeks and
 241 as such plays an important role in controlling stormwater run-off, and supports the biologic and
 242 hydrologic integrity of downstream watersheds;
- 243 f) the urban forest contributes to the beauty of our neighborhoods, which enhances property values,
 244 and improves the quality of life in the community and the health of residents; and
- 245 g) the City’s forest policies and tree canopy goals should be pursued in a manner that addresses
 246 differences and inequities that may exist in tree canopy coverage across City neighborhoods and
 247 seeks to protect and replace trees with a focus on the health and sustainability of the urban forest
 248 as a whole.

Commented [KK8]: Council needs to discuss to determine the focus – native species, desirable species, etc?

Commented [KK9R8]: Notes from Ken on previous iteration of this section:

The Tree Commission suggests removing the term “ecosystem services” and just listing the benefits of trees.

UFM suggests adding “desirable nonnative species”

The Tree Commission suggests removing mention of promoting trees that are adaptable to climate change because it is impossible to know what climate change will be like or what trees will be adaptable to it and because this concept has been used to promote the planting of understory trees instead of canopy trees.

249 **12.12.020 Urban forest trees.**

250 An urban forest tree is a tree in the City that:

- 251 A. Measures 24 inches or more in circumference at four and one-half feet above ground level or
 252 measures seven and five-eighths inches or more DBH; or
- 253 B. Is required to be planted or maintained pursuant to governmental order, agreement, stipulation,
 254 covenant, easement, or a tree protection plan, or as a condition of issuance of a tree removal permit; or
- 255 C. Is planted with government funding or under a government program.

256 **12.12.030 Tree impact assessment required.**

- 257 A. A tree impact assessment is a process provided by the City to assist property owners in preventing
 258 unnecessary harm to trees, avoiding violations of this chapter, and quickly and efficiently navigating the
 259 tree removal permit and tree protection plan permit processes when applicable. A tree impact
 260 assessment is a site visit by the Urban Forest Manager for the purpose of assessing the potential adverse

261 impact of proposed activity in the vicinity of an urban forest tree, advising the property owner or the
262 property owner's agent of the potential adverse impact of the project upon urban forest trees and how
263 such impact may be mitigated or prevented and advising whether a tree removal permit or tree protection
264 plan permit will be required for the proposed activity. The Urban Forest Manager does not serve as the

265 arborist for property owners and does not prepare tree protection plans on behalf of property owners.

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

268 1. Land disturbing activities, such as raising or lowering existing grade or excavating more than
269 three inches in depth over an area in excess of 25 square feet, within 50 feet of an urban forest
270 tree;

271 2. Any activity within 50 feet of an urban forest tree that may destroy roots, compact the soil or
272 impede water uptake, including, but not limited to, the operation or parking of vehicles or heavy
273 equipment, storage of materials, and trenching;

274 3. Construction or placement of a structure other than a fence within 50 feet of an urban forest
275 tree;

276 4. Paving in excess of 25 square feet with an impervious surface within 50 feet of an urban forest
277 tree; or

278 5. Removing, relocating, destroying, or topping an urban forest tree or pruning more than 10% of
279 the live canopy of an urban forest tree, or pruning live limbs with significant diameter in relation to
280 the size of the tree, or other action which would significantly and permanently detract from an urban
281 forest tree's health or growth.

282 B. Exceptions to tree impact assessment requirements.

283 1. A tree impact assessment shall not be required for the following:

284 a. actions required immediately to prevent harm to life or significant harm to property;

285 b. actions performed at the written request of a utility company such as PEPCO,
286 Verizon, WSSC, or Washington Gas; or

287 c. actions performed by a utility company in accordance with a memorandum of
288 understanding between the utility and the City.

Commented [KS10]: The Tree Commission suggested moving the definition of tree impact assessment to this section for ease of reference.

Commented [KS11]: UFM suggestion. The UFM reports that residents often identify him as their arborist on their tree protection plan applications.

289 2. When an emergency action is taken pursuant to paragraph (1)(a) of this subsection, the
290 person engaging in the activity must document the existence of an emergency, request a tree
291 impact assessment no later than the first business day following the commencement of the
292 emergency action, and cease construction activity when the risk of harm to life or property is
293 eliminated until the City Manager determines that no tree protection plan permit is required in
294 connection with the work or the City Manager issues a tree protection plan permit.

295 C. The Urban Forest Manager shall conduct a tree impact assessment upon submission of an
296 application by any person intending to conduct an activity described in subsection (A) of this section.
297 Following the tree impact assessment, the Urban Forest Manager will advise the person requesting the
298 assessment in writing of the permits required under this chapter to proceed with the proposed activity and
299 any suggestions to reduce the adverse impact of the proposed activity on the trees in the area.

300 D. The fee for a tree impact assessment shall be established via regulation.

301 E. Failure to obtain a tree impact assessment before conducting any of the activities described in this
302 subsection shall constitute a Class AA municipal infraction.

303 **12.12.040 Tree protection plan permit required.**

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

306 1. Land disturbing activities, such as raising or lowering existing grade, or excavating more than 3
307 inches in depth over an area in excess of 25 square feet within 50 feet of an urban forest tree;

308 2. Activity within 50 feet of an urban forest tree that may destroy the roots of a tree or endanger
309 the water supply to the roots;

310 3. Construction or placement of a structure other than a fence within 50 feet of an urban forest
311 tree; or

312 4. Paving in excess of 25 square feet with an impervious surface within 50 feet of an urban forest
313 tree.

314 B. No tree protection plan permit is required for actions required immediately to prevent harm to life or
315 significant harm to property. When an emergency action is taken pursuant to this paragraph, the person
316 engaging in the activity must notify the Department immediately, or, if the emergency occurs when City
317 offices are closed, no later than the first business day following the commencement of the emergency
318 action, and must cease construction activity when the risk of harm to life or property is eliminated until the

Commented [KS12]: The UFM requested this to make it clear that a formal (albeit simple) application for a tree impact assessment is required.

319 City Manager determines that no tree protection plan permit is required in connection with the work or the
320 City Manager issues a tree protection plan permit.

321 C. If, at any time after receiving a tree protection plan permit application that indicates a lack of
322 understanding of the impact of construction activity on trees, the City Manager determines that, because
323 of the scope of the proposed activity, the proximity of the proposed activity to or potential impact upon
324 one or more urban forest trees, or the size or species of the potentially impacted urban forest tree or
325 trees, the activity presents a significant risk to the trees and that the measures necessary to protect one
326 or more urban forest trees that may be impacted by the activity are complex, the City Manager may
327 require that the tree protection plan be prepared by a licensed or certified professional who has
328 demonstrable expertise in the preparation of tree protection plans.

Commented [KS13]: UFM suggestion for clarification.

Commented [KS14]: Based on Council's request to prevent the requirement of hiring an expert to be the norm. Requires significant risk to a tree and complex tree protection requirements before the City may require the use of a certified arborist to prepare a tree protection plan.

Commented [KS15]: UFM suggestion. There are a variety of professionals who may be qualified to prepare tree protection plans, and many certified arborists and landscape architects who are not qualified to do so.

329 **12.12.050 Tree removal permit required.**

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

332 B. No permit is required:

- 333 1. For actions required immediately to prevent harm to life or significant harm to property; or
- 334 2. Where the removal, destruction, cutting or trimming of an urban forest tree that has branches
335 or roots that obstruct or interfere with utility pipes, lines, and wires is performed by a utility company
336 such as PEPCO, Verizon, WSSC or Washington Gas in accordance with any applicable
337 memorandum of understanding between the City and the utility company, or at the written request
338 of a utility company.

339 C. In addition to the permits required under this chapter, property owners in the Takoma Park Historic
340 District may also have to obtain a Historic Area Work Permit from the Historic Preservation Commission
341 before removing or destroying a tree.

342 **12.12.060 Reserved.**

343

344 **12.12.070 Tree removal and tree protection plan permit applications.**

345 A. A property owner may apply for a tree removal permit or tree protection plan permit covering action
346 relating to an urban forest tree or trees on or near the owner's property. The application is made under
347 procedures specified in this Code and by the City Manager.

348 B. A property owner may not reapply for a tree removal permit or tree protection plan permit for the
349 removal of the same tree or the same construction activity within two years of the denial of a permit
350 application without first demonstrating a substantial change in circumstances that warrants consideration
351 of the new permit application.

Commented [KS16]: Public Works requested this addition to discourage people from resubmitting applications without justification.

352 C. An applicant for a tree removal or tree protection plan permit shall pay processing fees established
353 by regulation with the application.

354 D. The City Manager shall:

355 1. Make a copy of each application for a tree removal permit or tree protection plan permit
356 available for public inspection; and

357 2. Provide an at-cost copy of an application to any person requesting one.

358 **12.12.080 Tree removal permit standards and process.**

359 A. Tree Removal Permits.

360 1. Criteria for tree removal permit decisions. The City Manager or, upon appeal, the Tree
361 Commission shall issue a tree removal permit if so indicated by the factors set forth in paragraphs
362 (a)-(f) of this subsection. The Tree Commission may approve the permit, disapprove the permit, or
363 approve the permit with modifications and/or conditions.

Commented [KS17]: The criteria for removal decisions was moved to the tree removal permit section to make the code more user friendly.

364 a. The general health and condition of the tree.

365 b. The desirability of preserving the tree by reason of its age, size or other outstanding
366 quality.

367 c. The impact of the reduction in tree cover on the property where the tree is located,
368 adjacent properties and the surrounding neighborhood and the extent to which said areas
369 would be further subject to environmental degradation.

370 d. The location of the tree in relation to targets.

371 e. Any compelling reasons for the removal that the applicant has demonstrated and
372 whether a reasonable alternative to removal of the tree exists.

373 f. The extent to which tree clearing is necessary to achieve the proposed development or
374 land use.

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

376 a. Compliance with the tree replacement requirements of Section 12.12.100;

377 b. Approval of a tree protection plan and/or inspection of the property by the City to verify
378 that all required tree protection devices for trees other than the tree to be removed are in
379 place;

Commented [KS18]: UFM/Tree Commission suggestion. Clarification only.

380 c. Submission to the City of all necessary County and other permits, licenses, and approvals
381 that are required for the construction or development of the property;

382 d. Submission of a Historic Area Work Permit if required for the removal of the tree; and

Commented [KS19]: Staff suggestion. Highlights potential HAWP requirement.

383 e. Posting of a bond or other security for tree replacement.

Commented [KS20]: Tree Commission suggestion. Tree replacement and removal requirements are not pertinent to tree removal permits.

384
385 3. Applicants receiving tree removal permits pursuant to paragraphs (a) through (d) of this
386 subsection shall post notice of the issuance of the tree removal permit on the property before the
387 tree removal commences and continuing until seven days after the completion of the removal. The
388 notice shall state that residents with comments or questions regarding the activity may contact the
389 City Manager and shall provide the City Manager's address, email address, and telephone number,
390 but there shall be no appeals from the City Manager's decision.

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

396 b. Where an owner proposes removing an urban forest tree that the City Manager has
397 determined to be dead or in imminent decline because of a significant defect or infestation
398 that cannot reasonably be ameliorated.

399 c. Where an owner proposes, or is required to remove a tree that is hazardous and the
400 hazard can only be eliminated by removing the tree.

Commented [KS21]: Prohibits appeals from what formerly were waiver trees.

Commented [KS22]: Staff suggests requiring one replacement tree for the removal of dead, almost dead, and hazardous trees.

401 d. Where an owner proposes removing a tree when a part of the tree is damaging a
402 permanent structure and further damage cannot be prevented via pruning or other
403 reasonable tree maintenance measures.

Commented [KS23]: Tree Commission recommendation. The earlier proposal required that a tree's trunk be impacting a structure, but the Tree Commission noted that there are situations where the roots are damaging the foundation of a building that should be treated the same way. The addition of the "cannot be prevented via pruning or other reasonable tree maintenance measures" serves to prevent situations such as branches hitting a roof and damaging shingles from resulting in removal without an appeal or with reduced replanting requirements.

404 4. *Preliminary decisions.* Except as provided in paragraph (3) of this subsection, if the City
405 Manager determines that the criteria set forth in section 12.12.080(A)(1) indicate that the applicant
406 is entitled to a tree removal permit, and that the conditions for issuance of a tree removal permit
407 have been met, then the City Manager shall notify the applicant that the City has granted
408 preliminary approval of the application. The preliminary approval of the application does not
409 authorize the applicant to take any action regarding an urban forest tree. If the City Manager
410 determines that the criteria set forth in paragraph (2) of this subsection indicate that the applicant is
411 not entitled to a tree removal permit, they shall notify the applicant that the City had preliminarily
412 denied the application.

413 5. Except as to tree removal permits issued pursuant to section 12.12.080(A)(3), within two
414 working days of this notification, the Department shall post notice of the preliminary approval of the
415 application on the property in question in plain view from the public right-of-way and on the City's
416 web site for a concurrent period. The notice must describe the procedure and time limit for filing an
417 appeal from the preliminary approval of the application. If no appeal is filed within 15 days after the
418 notice has been posted, the City Manager shall issue a tree removal permit upon satisfaction of any
419 conditions on the issuance of the permit. If an appeal from the preliminary approval of an
420 application is filed, then no permit is issued until the appeal has been decided and any conditions
421 satisfied. The applicant is responsible for maintaining the notice for the entire posting period. The
422 City Manager may extend the posting period up to an additional 15 days if they determine that the
423 applicant failed to maintain the notice for the entire posting period.

424 B. Appeals from preliminary tree removal permit decisions.

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

428 2. *Appeals from preliminary tree removal permit denials.* The permit applicant may appeal the
429 denial of a tree removal permit within 15 days after the date that the City Manager notifies the
430 applicant of the preliminary denial of an application for a tree removal permit.

Commented [KS24]: The Tree Commission suggested reordering these paragraphs to make the ordinance easier to follow.

431 3. *Appeals from preliminary tree removal permit approvals.* Any resident of the City or owner of
432 property in the City may appeal the preliminary approval of an application for a tree removal

Commented [KS25]: The UFM recommends limiting tree removal permit approval appeals to owners and residents of adjoining properties.

433 permit within the 15-day notice period. If a notice of appeal is filed during such 15-day notice
434 period, then no permit is issued until the Tree Commission has conducted a fact-finding hearing
435 and issued its final decision on the appeal and all conditions on the issuance of the permit have
436 been satisfied.

437 4. There is no appeal from the tree replacement requirement calculation of the City Manager.

438 5. For hearings on appeals from preliminary tree removal permit decisions, the Department
439 shall provide written notice of the time, date, and location of the hearing to the permit applicant
440 and all persons that timely file a written notice of appeal and shall post notice of the hearing on
441 the property in question in plain view from the public right-of-way and on the City's web site for at
442 least 15 consecutive days prior to the hearing date. The applicant is responsible for maintaining
443 the notice on their property for the entire posting period. The City Manager may continue the
444 hearing until a later date and immediately post notice of the continuation if they determine that the
445 applicant failed to make good faith efforts to maintain the notice for the entire posting period.

446 6. If the appealing party unreasonably fails to cooperate with the scheduling of a hearing within
447 45 days of the filing of the notice of appeal, the appeal will be dismissed.

Commented [KS26]: UFM request.

448 **12.12.085 Tree protection plan permit standards and process.**

Commented [KS27]: This section was reorganized to improve user friendliness.

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

- 451 1. Protection of roots from heavy equipment;
- 452 2. Prevention of soil compaction;
- 453 3. Prevention of silt runoff onto roots;
- 454 4. Prevention of grade changes;
- 455 5. Prevention of root damage by requiring proper root pruning or tunneling under roots;
- 456 6. Creation of a tree protection zone;
- 457 7. Fertilization, watering and treatment requirements; and
- 458 8. Protection of tree trunks.

459 B. The City Manager shall approve only such tree protection plans that prescribe all reasonable
460 measures to protect any trees required to be preserved under this chapter. If the City Manager rejects a
461 proposed tree protection plan, when reasonably feasible, the City Manager will advise the applicant in
462 writing of additional tree protection measures necessary for approval of the plan and explain why such
463 measures are necessary.

464 C. Conditions for issuance of a tree protection permit may include, but are not limited to:

465 1. Inspection of the property by the City to verify that all required tree protection devices are in
466 place;

467 2. Submission to the City of all necessary County and other permits, licenses, and approvals that
468 are required for the construction and development of the property; and

469 3. Posting of a bond or other security for tree removal, replacement and/or preservation.

470 4. Pneumatic excavation to determine the location of roots.

471 D. Preliminary tree protection plan permit decisions. When an applicant submits a tree protection plan
472 permit application as required by section 12.12.04, the City Manager shall issue a preliminary decision on
473 the application.

474 1. Preliminary tree protection plan permit approval.

475 a. If the City Manager determines that a tree protection plan permit application is
476 complete and that the applicant has agreed to abide by a tree protection plan approved
477 by the City Manager, then the City Manager shall notify the applicant that the City has
478 granted preliminary approval of the application. The preliminary approval of the
479 application does not authorize the applicant to take any action regarding an urban forest
480 tree.

481 b. Within two working days of this notification, the Department shall send notice of the
482 preliminary approval of the application to the address of the owner(s) of record of all
483 properties adjoining the applicant's property. If no appeal is filed within 15 days after the
484 notice has been mailed, the City Manager shall issue a tree protection plan permit. If an
485 appeal from the preliminary approval of an application is filed in accordance with
486 subsection (D) of this section, then no permit is issued until the appeal has been decided.

487 2. Preliminary tree protection plan permit denial.

Commented [KS28]: Tree Commission suggestion for user friendliness.

Commented [KS29]: This change reflects Staff's recommendation not to retain the authority to hold up consideration of an application pending the issuance of County permits.

Commented [KS30]: City attorney suggestion. Changing "sharing a common property line" to "adjoining" to ensure we capture catty-corner properties that have trees that may be impacted by the construction activity.

488 a. If the City Manager determines that a tree protection plan permit application is
489 incomplete or that the applicant has not agreed to abide by a tree protection plan
490 approved by the City Manager, then the City Manager promptly shall notify the applicant
491 that the City has preliminarily denied the application.

Commented [KS31]: The deleted language was unnecessary because the conditions are imposed by the tree protection plan permit.

492 b. The notice must describe the procedure and time limit for filing an appeal from the
493 preliminary denial of the application. If no appeal is filed within 15 days after the notice
494 has been mailed, no tree protection plan permit shall issue.

495 E. Tree protection plan permit appeals.

496 1. A notice of appeal must be in writing, state the reasons for the appeal, the name, address,
497 and email address of the appellant, the nature of the interest of the appellant, and satisfy the
498 requirements of paragraph 2 of this subsection. Appeal notices shall be filed with the City
499 Manager, who shall forward the notice to the Department.

500 2. *Appeals from preliminary tree protection plan permit decisions.* The permit applicant or the
501 owner(s) of record of all properties on which an urban forest tree that is likely to be substantially
502 impacted by the applicant's proposed activity is located, as determined by the City Manager, may
503 appeal the preliminary decision on an application for a tree protection plan permit within the 15-
504 day notice period. Persons filing an appeal must authorize the City Manager to enter their
505 property for the purpose of determining their standing to appeal or their appeal will not be
506 accepted. A notice of appeal from the preliminary approval of an application for a tree protection
507 plan permit must allege with particularity facts upon which the Tree Commission could determine
508 that the tree protection plan is insufficient to protect the trees to be protected under the plan. If a
509 notice of appeal containing the requisite factual allegations is timely filed by a person who has
510 standing to appeal, then no permit is issued until the Tree Commission has conducted a fact-
511 finding hearing and has issued its final decision on the appeal.

Commented [KS32]: The reinstatement of the right of neighbors to appeal a tree protection plan permit is based on Daryl's comments at the 11/13 Worksession that such appeals are sometimes beneficial. The proposal to limit it to the owners of trees that are likely to be substantially impacted by the project is intended to narrow the scope of who may appeal and prevent frivolous appeals by neighbors.

512 3. *Hearing Notices.* For hearings on appeals from preliminary tree protection plan permit
513 decisions, the Department shall send written notice of the time, date, and location of the hearing
514 to the permit applicant and to the address of the owner(s) of record of all properties on which an
515 urban forest tree that is likely to be substantially impacted by the applicant's proposed activity is
516 located, as determined by the City Manager. Such notice shall be sent at least 15 days before the
517 scheduled hearing date.

518 **12.12.087 Tree removal and tree protection plan permit appeal hearings and decisions.**

519 A. There is a rebuttable presumption that the decision of the City Manager with respect to a tree
520 removal or tree protection plan permit application is correct. Any decision by the Tree Commission to
521 impose conditions upon an applicant or reverse or modify a decision of the City Manager with respect to a
522 permit application must be based upon substantial evidence in the record. Substantial evidence means
523 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

524 B. The Commission may dismiss an appeal if the person filing the notice of appeal, or their
525 representative, fails to appear at the hearing.

526 C. The Tree Commission shall conduct a fact-finding hearing on an appeal from a preliminary permit
527 decision. At the hearing, any interested party may present testimony and evidence to substantiate any
528 material point. All testimony shall be given under oath or by affirmation. The burden of proof shall be on
529 the party filing the appeal and shall be met by a preponderance of the evidence. The parties may also
530 cross-examine opposing witnesses presenting testimony at the hearing. A verbatim record of the hearing
531 shall be made. The record shall be open to inspection by any person. Upon request, the Department
532 shall furnish such person with an at-cost copy of the hearing record.

533 D. On appeal from the preliminary decision on a tree removal permit application, after due consideration
534 of the evidence and testimony and the criteria for tree removal permit decisions set forth in Section
535 12.12.080(A)(1), the Tree Commission shall issue its decision on the appeal and shall give notice to all
536 interested parties.

537 E. On appeal from a preliminary decision on a tree protection plan permit application, after due
538 consideration of the evidence and testimony and application of the standard for approval of tree
539 protection plans set forth in Section 12.12.085, the Tree Commission shall issue a decision on the appeal
540 affirming or modifying the decision and shall give notice to all interested parties.

541 F. Within 30 days of the date of the issuance of a decision of the Tree Commission, a person who was
542 a party to the proceedings before the Tree Commission and who is aggrieved by the decision may seek
543 judicial review of the decision by filing a petition for judicial review in accordance with Title 7, Chapter
544 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure, or any
545 subsequent amendments thereto.

546 **12.12.090 Application and permit validity time period.**

547 A. When tree replacement or the posting of security is required by the City Manager, permit applicants
548 must sign a tree replacement agreement or post security approved by the City Manager within 6 months
549 of submitting their application, or their application will be denied or their preliminary approval revoked.

Commented [KS33]: Clarification by City Attorney

550 1. Applicants that execute a tree replacement agreement must file a certification of compliance
551 with the tree replacement agreement on a form prepared by the City Manager and a photograph
552 of each tree planted pursuant to the agreement within six months of the issuance of the tree
553 removal permit.

554 2. Failure timely to submit the certification will result in the issuance of a municipal infraction
555 citation for failure to comply with the tree replacement requirements of this chapter.

Commented [KS34]: Requested by UFM.

556 B. Permits are valid for one year from the date of issuance unless extended by the City Manager for
557 good cause when an extension is consistent with the purposes of this chapter.

558 **12.12.100 Tree replacement required.**

559 A. Tree replacement as specified in this section is required in the following cases:

560 1. The applicant's agreement to replace removed urban forest trees shall be required as a
561 condition of issuance of tree removal permit and may be required as a condition of issuance of a
562 tree protection plan permit for activity that is likely to lead to destruction of a tree.

563 2. Applicants are required to replace trees originally indicated and intended to be saved in a tree
564 protection plan when such trees are excessively damaged or removed, including such trees that
565 are on property adjacent to the applicant's property.

566 3. Any person who removes or excessively damages a tree in violation of this chapter is required
567 to replace the tree within six months.

568 B. Replacement trees must be equal to or superior to the removed trees in terms of species quality,
569 shade potential, and other characteristics, unless the City Manager authorizes deviation from this
570 requirement to facilitate planting replacement trees on site. In the case of undesirable trees removed
571 pursuant to Section 12.12.080(A)(3)(a), the replacement tree is of superior species quality. Replacement
572 trees are nursery stock trees with a size of one and one-half to three inches in caliper for deciduous trees,
573 or six to 10 feet in height for evergreen trees and guaranteed for one year.

574 C. The basal area of the replacement trees, measured at caliper height, must be no less than a
575 percentage of the total basal area of the tree to be removed, measured at four and one-half feet above
576 the ground. The percentage is determined using the following health quality analysis rating scale, which
577 shall be applied in accordance with International Society of Arboriculture standards.

Commented [KS35]: UFM request.

CRITERION	VALUE	RATING
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	5 or 4	3 or 2	1
Roots and Root Collar	Roots are healthy. Root collar clearly visible and healthy.	Some root damage/decay. Root collar is somewhat buried and/or some root collar damage/decay.	Significant root damage/decay. Root collar is buried and/or significant root collar damage/decay.
Trunk	Sound and solid.	Sections of bark missing. Some trunk/codominant stem damage/decay.	Extensive bark loss. Significant trunk/codominant stem damage/decay.
Crown/Branches	Healthy, full and balanced crown.	Crown has some health issues, is not entirely full, and/or is somewhat unbalanced. One major/structural limb is dead/dying and/or several smaller limbs are dead/dying.	Crown has significant health issues, is very sparse and/or is very unbalanced. Two or more major/structural limbs are dead/dying and/or many smaller limbs are dead/dying.
Tree Health and Species Profile	Tree vigor is high. Foliage is healthy.	Tree vigor is normal. Foliage shows some signs of biotic/abiotic damage. Species is somewhat prone to failure.	Tree vigor is low. Foliage shows significant signs of biotic/abiotic damage. Species is very prone to failure.
			Total Rating

578

579 D. Replacement calculation.

580 1. For trees rated 4-9 using the above scale, one replacement tree is required for each tree
581 permitted for removal.

582 2. For trees rated 10-20 using the above scale, trees are to be replaced according to the
583 following formula, with the actual number of replacement trees required rounded up to the next
584 whole number:

Total	Percentage of Basal Area to Be Replaced	
Rating of Tree to Be Removed		
	Trees permitted for removal under §§ 12.12.080 (A)(3)(a) (undesirable species) and (d) (damaging structure)	All Other Trees
10 to 16	1.5%	3%
17 to 20	2.5%	5%

Commented [KS36]: The Tree Commission recommends the 3%, and 5% replacement requirements. Staff and the City Attorney believe these replacement requirements will be too expensive for residents. Staff recommends 1% for trees rated 10-16 and 3% for trees rated 17-20.

585

586

587 1. For trees removed or excessively damaged in violation of this chapter or an approved tree
 588 protection plan, the total basal area of the replacement tree at caliper height must be no less than
 589 10% of the basal area at four and one-half feet above the ground of the tree removed or damaged.

590 E. Where it is not feasible or desirable to replace trees on site, the replacement requirement may be
 591 satisfied by planting trees at another location approved by the City Manager within the City or by paying a
 592 fee in lieu of planting replacement trees, to be established by regulation, which shall be equivalent to the
 593 installed market value of the required replacement trees plus two years of maintenance to the City's tree
 594 canopy fund. The City Manager shall establish the fee amount via regulation. Maintenance expenses
 595 shall include, but not be limited to, watering, protection from infestation, and protection from deer.

Commented [KS37]: Tree Commission and UFM request. 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. The UFM recommends a fee of \$500 per tree.

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

In addition to Code amendments, Staff would like to encourage tree planting rather than payment of the fee-in-lieu and reduce costs to residents by facilitating use of the City's bulk buy program to satisfy tree replacement obligations and by creating a program that connects property owners who want trees planted on their property and persons with tree replacement obligations that are unable or unwilling to plant trees on their own property.

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

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

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

617 4. The amount of the security that is forfeited to the City is equal to the tree replacement costs of
618 the tree or trees on the property or adjacent properties that die, become hazardous, are excessively
619 damaged, or are removed in violation of the terms of a tree removal permit or an approved tree
620 protection plan for the property. In the case of construction or development activities on property,
621 the amount of the security that is forfeited to the City also may include the cost of removing any tree
622 or trees covered by a tree protection plan that die or become hazardous. The forfeited security is
623 added to the City's tree canopy fund or, with the agreement of the property owner and the City,
624 maybe used to remove or replace the dead, damaged or hazardous tree or trees on the property.

625 G. Permissible uses of tree canopy fund. The tree canopy fund may be used to plant trees on public
626 and private property, maintain trees planted with the tree canopy fund, or other purposes that promote the
627 urban forest.

628 **12.12.125 Notification of tree protection laws required prior to sale of real property.**

629 A. On or before entering into a contract for the sale of real property in the City, the owner or agent of the
630 property must provide the prospective buyer with a City of Takoma Park—Notice of Tree Preservation
631 and Replacement Requirements ("notice") in accordance with subsection (D) of this section.

632 B. At the time the notice in subsection (A) of this section is delivered, each buyer must sign and date a
633 written acknowledgment of receipt of the notice. The notice shall be included in or attached to the contract
634 of sale for the property.

- 635 C. The notice requirements established by this section do not apply to:
- 636 1. A sheriff's sale, tax sale, deed in lieu of foreclosure, or sale by foreclosure, partition, or court-
- 637 appointed trustee;
- 638 2. A transfer of the property by a fiduciary in the course of the administration of a decedent's
- 639 estate, guardianship, conservatorship or trust;
- 640 3. A transfer of the property or any interest therein, to a spouse, former spouse, domestic partner,
- 641 former domestic partner, parent, sibling, child or grandchild; or
- 642 4. A transfer of property solely to provide a security or leasehold interest in real property.
- 643 D. Except as provided in subsection (C) of this section, the notice shall be included in or attached to all
- 644 real property contracts of sale and shall be in substantially the form set forth below:

645 NOTICE OF TREE PRESERVATION AND REPLACEMENT REQUIREMENTS – CITY OF TAKOMA

646 PARK:

- 647 1. The Buyer is notified that Chapter 12.12, Urban Forest, of the Takoma Park Code imposes
- 648 restrictions and procedural requirements relating to activity on properties located in the City of Takoma
- 649 Park ("City") that may affect urban forest trees on the property or on neighboring properties. An "urban
- 650 forest tree" is a tree which: a) measures 24 inches or more in circumference at 4-1/2 feet above ground
- 651 level or measures 7-5/8 inches or more diameter at breast height ("DBH") (note: additional
- 652 requirements may apply if the property is located in the Takoma Park Historic District); b) is required to
- 653 be planted or maintained pursuant to governmental order, agreement, covenant, easement or a tree
- 654 protection plan, or as a condition of the issuance of a City tree removal permit; or c) is planted with
- 655 government funding or under a government program. See Takoma Park Code §12.12.020.
- 656 2. The activities within 50 feet of an urban forest tree that may be regulated by Chapter 12.12, Urban
- 657 Forest, of the Takoma Park Code include, but are not limited to, the construction or expansion of a
- 658 structure, the operation of heavy equipment, land disturbing activities such as regrading or excavation,
- 659 installation of paving or other hardscape, and the removal or pruning of roots or branches of trees.
- 660 3. A tree removal permit is required before a property owner may remove, relocate, or destroy an urban
- 661 forest tree. The City may deny the tree removal permit and require that the tree remain in place, or may
- 662 require the owner to plant multiple replacement trees or pay a tree replacement fee to the City as a
- 663 condition of the issuance of a permit.

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

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

675 6. Additional information is available from the City of Takoma Park Department of Public Works at (301)
676 891-7612 or at www.takomaparkmd.gov.

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

679 _____ Buyer Date

680 _____ Buyer Date

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

682 F. A buyer's failure to receive the notice required by this section does not excuse or waive compliance
683 with the requirements of this chapter.

684 **12.12.130 Violations and penalties—Enforcement.**

685 A. Municipal Infractions.

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

687 a. Doing any of the acts for which a permit is required under
688 Sections 12.12.040 or 12.12.050 or performing any such act in relation to a dead or
689 hazardous urban forest tree, without applying for a permit, after an application for a permit has
690 been denied, or after applying for a permit but before a permit has been issued.

691 b. Failure to fulfill the tree replacement requirements of this chapter.

- 692 c. Any violation of a decision or order of the Tree Commission, including but not limited to
693 the violation or nonperformance of conditions imposed in connection with the issuance of a
694 permit.
- 695 d. Any violation of a requirement of a tree removal permit or tree protection plan.
- 696 e. Any violation of a condition imposed in connection with the issuance of a tree removal
697 permit or tree protection plan permit.
- 698 f. Pruning more than 10% of the live canopy of an urban forest tree, or pruning live limbs
699 with significant diameter in relation to the size of the tree, or other action that would
700 significantly and permanently detract from an urban forest tree's health or growth, unless such
701 activity is authorized under a tree protection plan or tree removal permit.

Commented [KS38]: UFM request.

702 B. Misdemeanors.

- 703 1. It is a Class A misdemeanor to do any of the following:
- 704 a. To do any of the acts specified in subsection (A) of this section in relation to three or more
705 urban forest trees, whether or not such urban forest trees are located on the same property,
706 within a three-month period.
- 707 b. To do any of the acts specified in subsection (A) of this section in relation to any urban
708 forest tree that has been designated by the Tree Commission or the City as having special
709 botanical, ecological or historical significance or as a landmark.
- 710 c. To do any of the acts specified in subsection (A) of this section in relation to any tree that
711 is more than 33 inches in circumference at four and one-half feet above ground level.
- 712 d. To willfully or repeatedly violate this chapter or an order of the Tree Commission.
- 713 e. To violate a stop work order issued pursuant to this chapter.

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

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

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

722 F. Fines collected for violations of this chapter are deposited by the City's tree canopy fund.

723 **12.12.140 Duties of Urban Forest Manager.**

724 The Urban Forest Manager shall prepare an annual report to the Council that includes a description of the
725 condition of the urban forest, the number of applications received and tree removal permits and tree
726 protection plan permits issued by the City Manager, and a summary of each decision of the Tree
727 Commission; prepare and, every five years, update a master tree plan consisting of an inventory of trees
728 on public space, a multi-year planting schedule, revised canopy goals, and an education and outreach
729 strategy; notify the Council of significant events related to the urban forest; recommend, as needed,
730 changes in law or other action the Council may wish to take to protect and promote the urban forest in
731 Takoma Park; prepare a quarterly report to the Council listing the number of applications received and the
732 number of tree removal permits and tree protection plan permits issued by the City Manager; and perform
733 any other related duties assigned by the City Manager or by ordinance or resolution.

Commented [KK39]: Council needs to consider direction for this section