

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

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

Commented [KS2]: UFM suggestion.

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

33 "Nursery stock tree" means a tree ~~which~~that meets the standards established by the American Standard
34 for Nursery Stock published by the American Association of Nurserymen (Publication No. ANSI Z60.1-
35 1996).

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

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

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

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

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

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

48 "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.

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

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

53 "Tree impact assessment" is a service provided by the City to assist property owners in preventing
54 unnecessary harm to trees, avoiding violations of this chapter, and quickly and efficiently navigating the

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55 ~~tree removal permit and tree protection plan permit processes when applicable. A tree impact~~
56 ~~assessment is a site visit by the Urban Forest Manager for the purpose of assessing the potential adverse~~
57 ~~impact of proposed activity in the vicinity of an urban forest tree, advising the property owner or the~~
58 ~~property owner's agent of the potential adverse impact of the project upon urban forest trees and how~~
59 ~~such impact may be mitigated or prevented and advising whether a tree removal permit or tree protection~~
60 ~~plan permit will be required for the proposed activity.~~

Commented [KS4]: Deleted because the definition is unnecessary, and Council did not like the definition proposed by the Tree Commission.

61 ~~"Tree Protection Plan~~protection plan~~" means a site plan that delineates tree save areas and details~~
62 ~~measures to be taken to ensure survivability of trees to be saved prior to and during construction.~~

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

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

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

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

68 **12.04.020 Interpretation.**

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

71 **12.04.030 Authority of City Manager to adopt regulations.**

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

74 **12.04.040 Interference prohibited.**

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

78 **12.04.050 Enforcement—Stop work orders.**

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

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

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83 C. In addition to all other means of enforcement provided for by law and in this chapter, the City
84 Manager, Code Enforcement officers, or police officers may issue a "stop work order" to any person who
85 violates any provision of this chapter. A stop work order also may be issued on the basis of information
86 received setting forth the facts of the alleged violation.

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

90 ~~2. A person who receives a stop work order may appeal the issuance of the stop work order to~~
91 ~~the Tree Commission pursuant to Section 12.12.110 within 15 days after the issuance of the stop~~
92 ~~work order, as if the issuance were a denial of a tree removal permit.~~

Commented [KSS]: Staff suggestions. This provision has never been used and the Commission is not well suited to decide this issue.

93 **12.04.060 Procedure to be followed in case of infractions.**

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

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

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

103 **12.04.070 Charges for City taking corrective action.**

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

109 B. The ~~City Treasurer~~ Finance Director shall send a bill for the costs of such corrective action to the
110 owner of the real property, as listed in the City property tax records. The ~~City Treasurer~~ Finance Director
111 also may send a copy of the bill for the costs of the corrective action to a lender under a mortgage or
112 deed of trust made by the owner and secured by the real property, as listed in the City property tax
113 records. The bill is sent by regular mail to the last-known address of the owner or lender or delivered by

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114 any other means reasonably calculated to bring the bill to such person's attention. If the bill is not paid
115 within one month after it is presented, then the cost becomes a lien against the real property ~~which~~that
116 may be collected and enforced in the same manner as are taxes, special assessments, and other liens
117 against real property or collected by a ~~law-suit~~lawsuit against the owner.

118 **12.04.080 City Manager to have decision-making authority for all trees on City property.**

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

Commented [KS6]: 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.

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

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

Commented [KS7]: Daryl suggested this change to to broaden scope to cover utilities other than sewers.

134 C. If the City removes a tree from City property, the City must replace the tree in accordance with
135 Section ~~12.12.100~~12.12.100.

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

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

142 **12.04.090 Inspection for insects and disease—Taking of specimens.**

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

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

153 **12.04.100 Permission required to prune, spray, plant or remove from City property.**

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

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

161 **12.04.110 Requirement for supervision by a tree expert.**

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

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

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

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

171 **12.04.120 Exemption from County ~~code~~Code.**

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

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

177 B. Section 19-71;

178 C. Section 49-35;

179 D. Section 49-36A;

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

181

182 **Chapter 12.08**
183 **PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION**

184 **12.08.010 Infected or infested woody vegetation on private property.**

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

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

191 **12.08.020 Fallen or dangerous trees on private property.**

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

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

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

197 **12.08.025 Vegetation not to obscure intersection.**

198 A. Vegetation taller than 3' above a street surface, except an urban forest tree, is not permitted within
199 20' of the corner of a property located at an intersection of 2 streets. If the vegetation is located on top of
200 a retaining wall, the retaining wall is considered part of the 3'

Commented [KS8]: 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.

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

202 **12.08.030 Vegetation not to obstruct sidewalks or traffic.**

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

206 **12.08.040 Noxious growths.**

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

213 B. All persons must control the growth of invasive species or other vines or vegetation that may damage
214 trees, native vegetation, or structures, including, but not limited to, bamboo, kudzu-vine (*Pueraria lobata*),
215 non-native honeysuckle, wisteria, and multi flora rose (*Rosa multiflora*) or other vines or vegetation that
216 may damage trees, native vegetation, or structures.); Allowing vines to reach the limbs of trees is a
217 violation of this subsection. Failure to make continued good faith efforts to control the growth of such
218 vegetation in accordance with Department regulations is a Class D municipal infraction.

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

224 **12.08.050 Uncontrolled growth of vegetation on vacant lots.**

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

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

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228 **12.08.060 Uncontrolled growth of lawns on private property.**
229 A person who allows 30% or more of a lawn to reach or exceed the height of 10 inches commits a Class
230 D municipal infraction.

231 **12.08.070 Notice to correct prohibited conditions.**

232 A. Whenever any condition prohibited by Sections 12.08.010 through ~~12.08.070~~12.08.060 is found
233 within the City, the City Manager shall give notice to the owner or occupant of the property or the person
234 responsible for such condition to correct such condition within such reasonable time as may be specified
235 in such notice.

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

Commented [KS9]: I see no conflict with Safe Grow.

240 **Chapter 12.12**
241 **URBAN FOREST**

242 **12.12.010 Legislative findings and purpose.**

243 ~~The Council of the City of Takoma Park hereby finds that it is in the interest of the residents of the City to
244 protect, preserve, and promote the City's urban forest. Stewardship of our urban forest is a community
245 effort. B. If any person fails or refuses to correct or abate any prohibited condition after receipt of notice
246 pursuant to subsection (A) of this section, such condition may be corrected by the City at the expense of
247 the person named in such notice. Correction or abatement by the City shall not prevent or excuse any
248 prosecution of the person responsible for the condition abated by the City.~~

249 **12.12.010 Legislative findings and purpose.**

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

- 251 a) it is in the interest of the residents of the City to protect, preserve, promote, and to the extent
252 feasible expand Takoma Park's urban forest;
253 b) the purpose of this chapter is to promote a diverse, resilient, sustainable urban forest through
254 community and individual stewardship of existing trees, and the planting of new trees with a focus
255 on [...] that are adaptable to the impacts of climate change;
256 c) stewardship of the City's urban forest is a community effort requiring the involvement of the entire
257 community, and the regulation of actions affecting the urban forest provides benefits to residents,
258 and property and business owners;

Commented [KK10]: Council needs to discuss to determine the focus – native species, desirable species, etc?

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- 259 d) a health, biodiverse, and demographically balanced urban forest provides valuable ecosystem
260 services, including preserving wildlife habitat; reducing air, noise, and visual pollution; improving
261 water quality, reducing the City's contribution to climate change; assisting in climate change
262 mitigation, adaptation and resilience; lowering summer temperatures and moderating climatic
263 extremes; and reducing energy use in buildings;
264 e) the urban forest is part of the watershed of Long Branch, Takoma Branch, and Sligo Creeks and
265 as such plays an important role in controlling stormwater run-off, and supports the biologic and
266 hydrologic integrity of downstream watersheds;
267 f) the urban forest contributes to the beauty of our neighborhoods, which enhances property values,
268 and improves the quality of life in the community and the health of residents; and
269 g) the City's forest policies and tree canopy goals should be pursued in a manner that addresses
270 differences and inequities that may exist in tree canopy coverage across City neighborhoods and
271 seeks to protect and replace trees with a focus on the health and sustainability of the urban forest
272 as a whole.

273
274 **Chapter 12.12**
275 **URBAN FOREST**

276 **12.12.010 Legislative findings and purpose.**

277 ~~The Council of the City of Takoma Park hereby finds that it is in the interest of the residents of the City to~~
278 ~~protect, preserve, and promote the City's urban forest. Stewardship of our urban forest is a community~~
279 ~~effort. The City's urban forest is part of a larger ecosystem that provides valuable ecosystem services,~~
280 ~~including supporting wildlife and significantly reducing air, noise, and visual pollution, and reduces the~~
281 ~~City's contribution to climate change. The existence of shade providing trees moderates climatic extremes~~
282 ~~and reduces energy consumption. The City's urban forest is part of the watershed of Long Branch,~~
283 ~~Takoma Branch, and Sligo Creeks and therefore plays an important role in controlling stormwater run-off~~
284 ~~and supports the biologic and hydrologic integrity of these watersheds. The urban forest has significant~~
285 ~~aesthetic value, which affects property values and the quality of life of the community. Regulation of~~
286 ~~actions affecting the urban forest provides mutual benefits to City residents and property owners. f~~
287 ~~including supporting wildlife and significantly reducing air, noise, and visual pollution, and reduces the~~
288 ~~City's contribution to climate change. The existence of shade providing trees moderates climatic extremes~~
289 ~~and reduces energy consumption. The City's urban forest is part of the watershed of Long Branch,~~
290 ~~Takoma Branch, and Sligo Creeks and therefore plays an important role in controlling stormwater run-off~~
291 ~~and supports the biologic and hydrologic integrity of these watersheds. The urban forest has significant~~
292 ~~aesthetic value, which affects property values and the quality of life of the community. Regulation of~~

Commented [KS11]: The Tree Commission suggests removing the term "ecosystem services" and just listing the benefits of trees.
The Commission will submit proposed language for this paragraph to Council.

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293 ~~actions affecting the urban forest provides mutual benefits to City residents and property owners.~~ The
294 purpose of this chapter is to promote a sustainable tree canopy through community stewardship of
295 ~~existing~~existing trees and the planting of new trees of diverse ~~native species~~ that are adaptable to the
296 impacts of climate change.

Commented [KS12]: UFM suggests adding “desirable nonnative species”

Commented [KS13]: 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.

297 **12.12.020 Urban forest trees.**

298 An urban forest tree is a tree in the City ~~which~~that:

299 ~~A. Measures 24 inches or more in circumference at four and one-half feet above ground level or~~
300 ~~measures seven and five-eighths inches or more DBH; or~~

301 ~~B. A. Measures 24 inches or more in circumference at four and one-half feet above ground level or~~
302 ~~measures seven and five-eighths inches or more DBH; or~~

303 ~~B. Is required to be planted or maintained pursuant to governmental order, agreement, stipulation,~~
304 ~~covenant, easement, or a tree protection plan, or as a condition of issuance of a tree removal permit; or~~

305 ~~C. Is planted with government funding or under a government program.~~

306 **12.12.030 Tree impact assessment required.**

307 ~~A. , pursuant to governmental order, agreement, stipulation, covenant, easement, or a tree protection~~
308 ~~plan, or as a condition of issuance of a tree removal permit; or~~

309 ~~C. Is planted with government funding or under a government program.~~

310 **12.12.030 Tree impact assessment required.**

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

313 ~~A tree impact assessment is a process provided by the City to assist property owners in preventing~~
314 ~~unnecessary harm to trees, avoiding violations of this chapter, and quickly and efficiently navigating the~~
315 ~~tree removal permit and tree protection plan permit processes when applicable. A tree impact~~
316 ~~assessment is a site visit by the Urban Forest Manager for the purpose of assessing the potential adverse~~
317 ~~impact of proposed activity in the vicinity of an urban forest tree, advising the property owner or the~~
318 ~~property owner's agent of the potential adverse impact of the project upon urban forest trees and how~~
319 ~~such impact may be mitigated or prevented and advising whether a tree removal permit or tree protection~~
320 ~~plan permit will be required for the proposed activity. The Urban Forest Manager does not serve as the~~
321 ~~arborist for property owners and does not prepare tree protection plans on behalf of property owners.~~

Commented [KS14]: The Tree Commission suggested moving the definition of tree impact assessment to this section for ease of reference.

Commented [KS15]: UFM suggestion. The UFM reports that residents often identify him as their arborist on their tree protection plan applications.

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

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

327 2. ~~Activity~~Any activity within 50 feet of an urban forest tree that may destroy roots, compact the
328 ~~soil thereby destroying roots or reducing the air and impede water supply to the roots uptake,~~
329 including, but not limited to, the operation or parking of vehicles or heavy equipment, storage of
330 materials, and trenching;

Commented [KS16]: Council and UFM suggested these changes.

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

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

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

339 B. Exceptions to tree impact assessment requirements.

340 1. A tree impact assessment shall not be required for ~~action~~ the following:

341 a. actions required ~~on an emergency basis (with no time to obtain an~~
342 ~~assessment)~~ immediately to prevent harm to life or significant harm to property, ~~for;~~

343 b. actions performed at the written request of a utility company such as PEPCO,
344 Verizon, WSSC, or Washington Gas; ~~or for~~

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

347 2. When an emergency action is taken pursuant to paragraph (1)(a) of this subsection, the
348 person engaging in the activity must document the existence of an emergency, request a tree
349 impact assessment no later than the first business day following the commencement of the

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350 emergency action, and cease construction activity when the risk of harm to life or property is
351 eliminated until the City Manager determines that no tree protection plan permit is required in
352 connection with the work or the City Manager issues a tree protection plan permit.

Commented [KS17]: Council requested that we ensure that once an emergent situation is under control that the work stops and the tree impact assessment and permit process begins

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

Commented [KS18]: The UFM requested this to make it clear that a formal (albeit simple) application for a tree impact assessment is required.

359 D. The fee for a tree impact assessment is \$50.00 payable to the City with the applications shall be
360 established via regulation.

361 E. Failure to obtain a tree impact assessment or a tree protection plan permit before conducting any of
362 the activities described in this subsection shall constitute a Class AA municipal infraction.

363 **12.12.040 Tree protection plan permit required.**

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

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

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

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

381 C. If, at any time, the City Manager determines that the scope of the proposed activity presents
382 significant risk to one or more urban forest trees or If, at any time after receiving a tree protection plan
383 permit application that indicates a lack of understanding of the impact of construction activity on trees, the
384 City Manager determines that, because of the scope of the proposed activity, the proximity of the
385 proposed activity to or potential impact upon one or more urban forest trees, or the size or species of the
386 potentially impacted urban forest tree or trees, the activity presents a significant risk to the trees and that
387 the measures necessary to protect one or more urban forest trees that may be impacted by the activity
388 are complex, the City Manager may require that the tree protection plan be prepared by a certified
389 arborist or licensed landscape architect. licensed or certified professional who has demonstrable
390 expertise in the preparation of tree protection plans.

Commented [KS19]: UFM suggestion for clarification.

Commented [KS20]: 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 [KS21]: 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.

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

393 **12.12.050 Tree removal permit required.**

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

396 B. No permit is required:

397 1. For ~~action~~actions required ~~on an emergency basis (with no time to apply for a tree removal~~
398 ~~permit)~~immediately to prevent harm to life or significant harm to property; or

399 2. Where the removal, destruction, cutting or trimming of an urban forest tree that has branches
400 or roots ~~which~~that obstruct or interfere with utility pipes, lines, and wires is performed by a utility
401 company such as PEPCO, Verizon, WSSC or Washington Gas in accordance with any applicable
402 memorandum of understanding between the City and the utility company, or at the written request
403 of a utility company.

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

407 **12.12.060 Reserved.**

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409 **12.12.070 Permit**~~Tree removal and tree protection plan permit~~ **applications.**
410 A. ~~A~~A property owner may apply for a tree removal permit or tree protection plan permit covering
411 action relating to an urban forest tree or trees on or near the owner's property. The application is made
412 under procedures specified in this Code and by the City Manager.

413 B. ~~In the case of an applicant who requests, A property owner may not reapply for a tree removal~~
414 ~~permit or tree protection plan permit for the purpose~~removal of constructing on the same tree or
415 ~~developing property, the City Manager may require the applicant to submit copies of all permits, licenses,~~
416 ~~and approvals which are required for the same construction or the development to take place before any~~
417 ~~action is taken on the activity within two years of the denial of a permit application. This may include, but is~~
418 ~~not limited to, county building permit, builders' license, grading permit, sediment control permit,~~
419 ~~stormwater management permit, zoning variance, special exception, and site plan review.~~

420 ~~1. If all necessary permits, licenses, and approvals have not been granted as without first demonstrating~~
421 ~~a substantial change in circumstances that warrants consideration of the date the new permit application~~
422 ~~is filed, then the City Manager, in his or her sole discretion, may accept other satisfactory evidence that all~~
423 ~~necessary permits and approvals for the construction or development will be granted and may begin~~
424 ~~acting on the application.]~~

425 2C. An applicant for a tree removal or tree protection plan permit shall pay processing fees established
426 by regulation with the application.

427 2D. The City Manager shall:

- 428 1. Make a copy of each application for a tree removal permit or tree protection plan permit
429 available for public inspection; and
430 2. Provide an at-cost copy of an application to any person requesting one.

431 **12.12.080 Permit approval**~~Tree removal permit standards and process.~~

432 A. Tree Removal Permits.

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

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

Commented [KS22]: Public Works requested this addition to discourage people from resubmitting applications without justification.

Commented [KS23]: The criteria for removal decisions was moved to the tree removal permit section to make the code more user friendly.

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- 438 b. The desirability of preserving the tree by reason of its age, size or other outstanding
- 439 quality.
- 440 c. The impact of the reduction in tree cover on the property where the tree is located,
- 441 adjacent properties and the surrounding neighborhood and the extent to which said areas
- 442 would be further subject to environmental degradation.
- 443 d. The location of the tree in relation to targets.
- 444 e. Any compelling reasons for the removal that the applicant has demonstrated and
- 445 whether a reasonable alternative to removal of the tree exists.
- 446 f. The extent to which tree clearing is necessary to achieve the proposed development or
- 447 land use.

Commented [KS24]: The Tree Commission, Staff, and the City Attorney developed the revised tree removal permit criteria.

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

- 449 a. Compliance with the tree replacement requirements of Section 12.12.100;
- 450 b. Approval of a tree protection plan and/or inspection of the property by the City to verify
- 451 that all required tree protection devices for trees other than the tree to be removed are in
- 452 place;
- 453 c. Submission to the City of all necessary County and other permits, licenses, and approvals
- 454 that are required for the construction or development of the property;
- 455 d. Submission of a Historic Area Work Permit Approval Subject to Appeal, if required for the
- 456 removal of the tree; and
- 457 4. Ife. Posting of a bond or other security for tree replacement.

Commented [KS25]: UFM/Tree Commission suggestion. Clarification only.

Commented [KS26]: Staff suggestion. Highlights potential HAWP requirement.

Commented [KS27]: Tree Commission suggestion. Tree replacement and removal requirements are not pertinent to tree removal permits.

459 3. Applicants receiving tree removal permits pursuant to paragraphs (a) through (d) of this

460 subsection shall post notice of the issuance of the tree removal permit on the property **beginning at**

461 **least seven days before the tree removal commences and continuing until seven days after the**

462 **completion of the removal.** The notice shall state that residents with comments or questions

463 regarding the activity may contact the City Manager and shall provide the City Manager's address,

464 email address, and telephone number, but there shall be no appeals from the City Manager's

465 decision.

Commented [KS28]: Kacy suggested removing the seven days' advance posting requirement because there is no appeal right and it would delay the removal of hazardous and infested trees and trees that are damaging a structure. The City Attorney suggested adding the seven day post removal posting requirement so neighbors and passers-by know that the removal was permitted.

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

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

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

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

479 4. Preliminary decisions. Except as provided in paragraph (3) of this subsection, if the City
480 Manager determines that the criteria set forth in Section 12.12.120(B) section 12.12.080(A)(1)
481 indicate that the applicant is entitled to a tree removal permit, and that the conditions for issuance
482 of a tree removal permit have been met, then the City Manager shall notify the applicant that the
483 City has granted preliminary approval of the application. The preliminary approval of the application
484 does not authorize the applicant to take any action regarding an urban forest tree. If the City
485 Manager determines that the criteria set forth in paragraph (2) of this subsection indicate that the
486 applicant is not entitled to a tree removal permit, they shall notify the applicant that the City had
487 preliminarily denied the application.

488 25. Except as provided in subsection (B) of this to tree removal permits issued pursuant to
489 section, 12.12.080(A)(3), within two working days of this notification, the Department shall post
490 notice of the preliminary approval of the application on the property in question in plain view from
491 the public right-of-way. A copy of the notice is posted on a bulletin board at the Municipal Building
492 and on the City's web site for a concurrent period. The notice must describe the procedure and time
493 limit for filing an appeal from the preliminary approval of the application. If no appeal is filed within
494 15 days after the notice has been posted, the City Manager shall issue a tree removal permit. upon
495 satisfaction of any conditions on the issuance of the permit. If an appeal from the preliminary
496 approval of an application is filed in accordance with Section 12.12.120, then no permit is issued
497 until the appeal has been decided and any conditions satisfied. The applicant is responsible for

Commented [KS29]: Staff and the Tree Commission recommend this language instead of "life expectancy of three years" to facilitate the removal of trees in very poor condition without an appeal.

Commented [KS30]: Prohibits appeals from what formerly were waiver trees and creates a new category of nonappealable tree removal permits.

Commented [KS31]: 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.

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498 maintaining the notice for the entire posting period. The City Manager may extend the posting
499 period up to an additional 15 days if they determine that the applicant failed to maintain the notice
500 for the entire posting period.

501 B. Appeals from preliminary tree removal permit decisions.

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

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

508 3. Appeals from preliminary tree removal permit approvals. Any resident of the City or owner of
509 property in the City may appeal the preliminary approval of an application for a tree removal
510 permit within the 15-day notice period. If a notice of appeal is filed during such 15-day notice
511 period, then no permit is issued until the Tree Commission has conducted a fact-finding hearing
512 and issued its final decision on the appeal and all conditions on the issuance of the permit have
513 been satisfied.

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

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

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

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

525 ~~b. Approval of a tree protection plan and/or inspection of the property by the City to verify~~
526 ~~that all required tree protection devices are in place;~~

Commented [KS32]: The Tree Commission suggested reordering these paragraphs to make the ordinance easier to follow.

Commented [KS33]: The UFM recommends limiting tree removal permit approval appeals to owners and residents of adjoining properties.

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527 e.—Submission to the City of all necessary County and other permits, licenses, and approvals
528 which are required for the construction or development of the property; and

529 d.—Posting of a bond or other security for tree replacement.

530 B.—Tree Removal Permit Approval Not Subject to Appeal. Applicants receiving tree removal permits
531 pursuant to paragraphs (1) through (3) of this section shall post notice of the issuance of the tree removal
532 permit on the property beginning at least seven days before the tree removal and continuing until the
533 completion of the removal. The notice states that residents with comments or questions regarding the
534 activity may contact the City Manager and provides the City Manager's address and telephone number.

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

540 2.—Where an owner proposes removing an urban forest tree that the City Manager has
541 determined to have a life expectancy of less than 3 years.

542 3.—Where an owner proposes or is required to remove a tree that is hazardous and that the
543 hazard can only be eliminated by removing the tree.

544 C.—b. If the appealing party unreasonably fails to cooperate with the scheduling of a hearing
545 within 45 days of the filing of the notice of appeal, the appeal will be dismissed.

Commented [KS34]: UFM request.

546 **12.12.085 Tree Protection Plan Permit Approval.**

547 1.—If the City Manager determines that a tree protection plan permit application is complete, that the
548 applicant has agreed to abide by a tree protection plan approved by the City Manager, **protection plan**
549 **permit standards** and that all conditions for the issuance of a tree protection plan permit have been met,
550 then the City Manager shall notify the applicant that the City has granted approval of the application.
551 **process.**

Commented [KS35]: This section was reorganized to improve user friendliness.

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

554 a1. Protection of roots from heavy equipment;

555 b2. Prevention of soil compaction;

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- 556 e3. Prevention of silt runoff onto roots;
- 557 d4. Prevention of grade changes;
- 558 e5. Prevention of root damage by requiring proper root pruning or tunneling under roots;
- 559 f6. Creation of a tree protection zone;
- 560 g7. Fertilization ~~and~~, watering and treatment requirements; and
- 561 h8. Protection of tree trunks.

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

567 4C. Conditions for issuance of a tree protection permit may include, but are not limited to:

- 568 a1. Inspection of the property by the City to verify that all required tree protection devices are in
 569 place;
- 570 b2. Submission to the City of all necessary County and other permits, licenses, and approvals that
 571 are required for the construction and development of the property; and
- 572 e3. Posting of a bond or other security for tree removal, replacement and/or preservation.

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

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

577 1. Preliminary tree protection plan permit approval.

578 a. If the City Manager determines that a tree protection plan permit application is
 579 complete and that the applicant has agreed to abide by a tree protection plan approved
 580 by the City Manager, then the City Manager shall notify the applicant that the City has
 581 granted preliminary approval of the application. The preliminary approval of the

Commented [KS36]: Tree Commission suggestion for user friendliness.

Commented [KS37]: This change reflects Staff's recommendation not to retain the authority to hold up consideration of an application pending the issuance of County permits.

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582 application does not authorize the applicant to take any action regarding an urban forest
583 tree.

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

Commented [KS38]: 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.

590 2. Preliminary tree protection plan permit denial.

591 a. If the City Manager determines that a tree protection plan permit application is
592 incomplete or that the applicant has not agreed to abide by a tree protection plan
593 approved by the City Manager, then the City Manager promptly shall notify the applicant
594 that the City has preliminarily denied the application.

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

598 E. Tree protection plan permit appeals.

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

603 2. Appeals from preliminary tree protection plan permit decisions. The permit applicant or the
604 owner(s) of record of all properties on which an urban forest tree that is likely to be substantially
605 impacted by the applicant's proposed activity is located, as determined by the City Manager, may
606 appeal the preliminary decision on an application for a tree protection plan permit within the 15-
607 day notice period. Persons filing an appeal must authorize the City Manager to enter their
608 property for the purpose of determining their standing to appeal or their appeal will not be
609 accepted. A notice of appeal from the preliminary approval of an application for a tree protection
610 plan permit must allege with particularity facts upon which the Tree Commission could determine
611 that the tree protection plan is insufficient to protect the trees to be protected under the plan. If a
612 notice of appeal containing the requisite factual allegations is timely filed by a person who has

Commented [KS39]: 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.

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613 standing to appeal, then no permit is issued until the Tree Commission has conducted a fact-
614 finding hearing and has issued its final decision on the appeal.

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

621 **12.12.087 Tree removal and tree protection plan permit appeal hearings and decisions.**

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

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

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

636 D. On appeal from the preliminary decision on a tree removal permit application, after due consideration
637 of the evidence and testimony and the criteria for tree removal permit decisions set forth in Section
638 12.12.080(A)(1), the Tree Commission shall issue its decision on the appeal and shall give notice to all
639 interested parties.

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

Commented [KS40]: Statement of existing policy.

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644 F. Within 30 days of the date of the issuance of a decision of the Tree Commission, a person who was
645 a party to the proceedings before the Tree Commission and who is aggrieved by the decision may seek
646 judicial review of the decision by filing a petition for judicial review in accordance with Title 7, Chapter
647 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure, or any
648 subsequent amendments thereto.

649 **12.12.090 Application and permit validity time period.**

650 A. When tree replacement or ~~tree replacement~~the posting of security is required by the City Manager
651 ~~pursuant to Section 12.12.100,~~ permit applicants must ~~post security or~~ sign a tree replacement
652 agreement or post security approved by the City Manager within 6 months of submitting their application,
653 or their application will be denied: or their preliminary approval revoked.

Commented [KS41]: Clarification by City Attorney

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

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

Commented [KS42]: Requested by UFM to facilitate enforcement of planting requirements.

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

662 **12.12.100 Tree replacement required.**

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

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

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

670 3. Any person who removes or excessively damages a tree in violation of ~~Section 12.12.050~~this
671 chapter is required to replace the tree within six months.

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

Commented [KS43]: Staff, the Tree Commission, and the City Attorney recommend requiring at least one replacement tree for each tree that is removed, regardless of condition.

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674 ~~C.~~ Replacement trees ~~are~~must be equal to or superior to the removed trees in terms of species quality,
 675 shade potential, and other characteristics, unless the City Manager authorizes ~~the planting of a lesser~~
 676 ~~species~~deviation from this requirement to facilitate planting replacement trees on site. In the case of
 677 ~~invasive~~undesirable trees removed pursuant to Section ~~12.12.080(B)(1)~~12.12.080(A)(3)(a), the
 678 replacement tree is of superior species quality. Replacement trees are nursery stock trees with a size of
 679 one and one-half to three inches in caliper for deciduous trees, or six to 10 feet in height for evergreen
 680 trees and guaranteed for one year.

681 ~~C. D.~~ Except as provided in paragraph H of this section, theThe basal area of the replacement trees,
 682 measured at caliper height, must be no less than a percentage of the total basal area of the tree to be
 683 removed, measured at four and one-half feet above the ground. The percentage is determined using the
 684 following health quality analysis rating scale., which shall be applied in accordance with International
 685 Society of Arboriculture standards.

Commented [KS44]: UFM request.

Commented [KS45]: The UFM and Tree Commission agree on the proposed changes to the rating chart.

CRITERION	VALUE		RATING
	5 or 4	3 or 2	1
Trunk Roots and Root Collar	Sound and solid. Roots are healthy. Root collar clearly visible and healthy.	Sections of bark missing. Some root damage/decay. Root collar is somewhat buried and/or some root collar damage/decay.	Extensive bark loss and hollow. Significant root damage/decay. Root collar is buried and/or significant root collar damage/decay.
Growth/Rate per	More than 6 inch year twig elongation	2 to 6 inch twig elongation	Less than 2 inch twig elongation
Trunk Structure	Sound and solid.	1 major or several minor limbs dead. Sections of bark missing. Some	2 or more major limbs dead. Extensive bark loss. Significant trunk/codominant

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		<u>trunk/codominant stem damage/decay.</u>	<u>stem damage/decay.</u>
<u>Insects/DiseasesCrown/Branches</u>	<u>Normal pest presenceHealthy, full and balanced crown.</u>	<u>Moderate affliction or infestationCrown 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.</u>	<u>Severe affliction or infestationCrown 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.</u>
<u>Crown/DevelopmentTree Health and Species Profile</u>	<u>Full and balancedTree vigor is high. Foliage is healthy.</u>	<u>Full but unbalancedTree vigor is normal. Foliage shows some signs of biotic/abiotic damage. Species is somewhat prone to failure.</u>	<u>Unbalanced and lacking a full crownTree vigor is low. Foliage shows significant signs of biotic/abiotic damage. Species is very prone to failure.</u>
<u>Life Expectancy</u>	<u>Over 30 years</u>	<u>5 to 30 years</u>	<u>Less than 5 years</u>
			Total Rating

686 E. Using

687

688 D. Replacement calculation.

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

Commented [KS46]: Staff suggestion.

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

Total Rating of Tree to Be Removed	Percentage of Basal Area to Be Replaced	
	Invasive Species Removed per § 12.12.080(B)(1) Trees permitted for removal under §§ 12.12.080 (A)(3)(a) (undesirable species) and (d) (damaging structure)	All Other Trees
6 10 to 15 16	1.5%	1 3%
16 to 24	1%	2 %
25 17 to 30 20	1 2.5%	3 5%

Commented [KS47]: 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.

694
 695
 696 1. For trees removed or excessively damaged in violation of this chapter or an approved tree
 697 protection plan, the total basal area of the replacement tree at caliper height must be no less than
 698 10% of the basal area at four and one-half feet above the ground of the tree removed or damaged.

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

Commented [KS48]: Deleted because the chart establishes the replacement requirement calculation.

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

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

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

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

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

730 4. The amount of the security which that is forfeited to the City is equal to the tree replacement
731 costs of the tree or trees on the property or adjacent properties which that die, become hazardous,
732 are excessively damaged, or are removed in violation of the terms of a tree removal permit or an
733 approved tree protection plan for the property. In the case of construction or development activities

Commented [KS49]: 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.

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.

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734 on property, the amount of the security ~~which that~~ is forfeited to the City also may include the cost of
735 removing any tree or trees covered by a tree protection plan that die or become hazardous. The
736 forfeited security is added to the City's ~~tree-planting fund~~ tree canopy fund or, with the agreement of
737 the property owner and the City, maybe used to remove or replace the dead, damaged or
738 hazardous tree or trees on the property.

739 ~~H. Reduced tree replacement requirements.~~

740 ~~1. Trees that must be removed because off the proximity of the trunk to a structure.~~

741 ~~C2. When an applicant plants replacement trees on site.~~

742 ~~3. Other ideas?~~

743 i. Permissible uses of ~~tree replacement fund~~ tree canopy fund. The ~~tree replacement fund~~ tree canopy
744 fund may be used to plant trees on public and private property, ~~and to~~ maintain trees planted with the
745 ~~tree replacement fund~~ tree canopy fund, or other purposes that promote the urban forest.

746 **12.12.110 Appeals from permit decisions.**

747 A. ~~The permit applicant or any resident of the City or owner of property in the City may appeal the~~
748 ~~preliminary approval of an application for a tree removal permit within the 15-day notice period. The~~
749 ~~permit applicant or the owner of a property with a common property line may appeal the preliminary~~
750 ~~approval of an application for a tree protection plan permit within the 15-day notice period. If a notice of~~
751 ~~appeal is filed during such 15-day notice period, then no permit is issued until the Tree Commission has~~
752 ~~conducted a fact-finding hearing and has issued its final decision on the appeal.~~

753 B. ~~A notice of appeal from the preliminary approval of an application for a tree protection plan permit~~
754 ~~must allege with particularity facts upon which the Tree Commission could determine that the tree~~
755 ~~protection plan is insufficient to protect the trees to be protected under the plan.~~

756 C. ~~The permit applicant also may appeal the denial of a permit within 15 days after the date that the City~~
757 ~~Manager notifies the applicant of the denial of a permit for the removal or destruction of a tree covered by~~
758 ~~this chapter.~~

759 D. ~~There is a rebuttable presumption that the decision of the City Manager with respect to a permit~~
760 ~~application is correct. Any decision by the Tree Commission to impose conditions upon an applicant or~~
761 ~~reverse or modify a decision of the City Manager with respect to a permit application must be based upon~~
762 ~~substantial evidence in the record. Substantial evidence means such relevant evidence as a reasonable~~
763 ~~mind might accept as adequate to support a conclusion.~~

Commented [KS50]: These reduced replanting requirements are baked into the tree replacement chart.

Commented [KS51]: Kacy and Peter requested that we expand the permissible uses of the tree fund beyond planting and maintaining trees.

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764 E. There is no appeal from the tree replacement requirement calculation of the City Manager.

765 F. Notices of Appeal and ~~Hearing Notices.~~

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

769 2. ~~Hearing Notices.~~

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

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

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

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

793 I. Reserved.

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

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

801 ~~L. Within 30 days of the date of the issuance of a decision of the Tree Commission, a person who was a
802 party to the proceedings before the Tree Commission and who is aggrieved by the decision may seek
803 judicial review of the decision by filing a petition for judicial review in accordance with Title 7, Chapter
804 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure, or any
805 subsequent amendments thereto.~~

806 **12.12.120 Criteria for tree removal permit decisions.**

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

812 B. The following factors are into account:

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

816 2. The number and type of replacement trees and, if appropriate, any reforestation plan proposed
817 as mitigation for the tree or trees to be removed.

818 3. Any hardship which the applicant will suffer from a modification or rejection of the permit
819 application.

820 4. The desirability of preserving any tree by reason of its age, size, or outstanding quality.

821 5. The extent to which the area would be subject to environmental degradation due to removal of
822 the tree or trees.

823 ~~6. The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood~~
824 ~~and the property on which the tree or trees are located.~~

825 ~~7. The general health, condition, and life expectancy of the tree or trees.~~

826 ~~8. The desirability of the tree species as a permanent part of the City's urban forest.~~

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

828 ~~10. The risk that a tree poses to life or property.~~

Commented [KS52]: These provisions were relocated.

829 **12.12.125 Notification of tree protection laws required prior to sale of real property.**

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

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

836 C. The notice requirements established by this section do not apply to:

837 1. A sheriff's sale, tax sale, deed in lieu of foreclosure, or sale by foreclosure, partition, or court-
838 appointed trustee;

839 2. A transfer of the property by a fiduciary in the course of the administration of a decedent's
840 estate, guardianship, conservatorship or trust;

841 3. A transfer of the property or any interest therein, to a spouse, former spouse, domestic partner,
842 former domestic partner, parent, sibling, child or grandchild; or

843 4. A transfer of property solely to provide a security or leasehold interest in real property.

844 D. Except as provided in subsection (C) of this section, the notice shall be included in or attached to all
845 real property contracts of sale and shall be in substantially the form set forth below:

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

847 PARK:

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

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

861 3. A tree removal permit is required before a property owner may remove, relocate, or destroy an urban
862 forest tree. The City may deny the tree removal permit and require that the tree remain in place, or may
863 require the owner to plant multiple replacement trees or pay a tree replacement fee to the City as a
864 condition of the issuance of a permit.

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

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

876 6. Additional information is available from the City of Takoma Park Department of Public Works at (301)
877 891-7612 or at www.takomaparkmd.gov.

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

880 _____ Buyer Date

881 _____ Buyer Date

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

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

885 **12.12.130 Violations and penalties—Enforcement.**

886 A. Municipal Infractions.

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

888 a. Doing any of the acts for which a permit is required under
889 ~~Section 12.12.040~~Sections 12.12.040 or 12.12.05012.12.050 or performing any such act in
890 relation to a dead or hazardous urban forest tree, without applying for a permit, after an
891 application for a permit has been denied, or after applying for a permit but before a permit has
892 been issued,~~unless the act is described in Section 12.12.040(B) or 12.12.050(B).~~

893 b. Failure to fulfill the tree replacement requirements of ~~Section 12.12.100~~this chapter.

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

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

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

900 f. Pruning more than 10% of the live canopy of an urban forest tree, or pruning live limbs
901 with significant diameter in relation to the size of the tree, or other action that would
902 significantly and permanently detract from an urban forest tree's health or growth, unless such
903 activity is authorized under a tree protection plan or tree removal permit.

Commented [KS53]: UFM request.

904 B. Misdemeanors.

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

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

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

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

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

916 e. To violate a stop work order issued pursuant to ~~Section 12.04.040(C)~~this chapter.

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

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

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

925 F. Fines collected for violations of this chapter are deposited by the City's ~~tree planting fund~~tree canopy
926 fund.

927 **12.12.140 Duties of Urban Forest Manager.**

928 The Urban Forest Manager shall prepare an annual report to the Council that includes a description of the
929 condition of the urban forest, the number of applications received and tree removal permits and tree
930 protection plan permits issued by the City Manager, and a summary of each decision of the Tree
931 Commission; prepare and, every five years, update a master tree plan consisting of an inventory of trees
932 on public space, a multi-year planting schedule, revised canopy goals, and an education and outreach
933 strategy; notify the Council of significant events related to the urban forest; recommend, as needed,
934 changes in law or other action the Council may wish to take to protect and promote the urban forest in
935 Takoma Park; prepare a quarterly report to the Council listing the number of applications received and the

936 number of tree removal permits and tree protection plan permits issued by the City Manager; and perform
937 any other related duties assigned by the City Manager or by ordinance or resolution.

Commented [KS54]: The Tree Commission recommends that this section set strategic goals for the Tree Ordinance instead of listing duties of the UFM. They will draft a proposal.

Commented [KK55R54]: Council needs to discuss what to include in this section, with Tree Commission feedback

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