



Takoma Park City Council Meeting – July 1, 2020 Agenda Item 5

Work Session

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

Recommended Council Action

Discuss revised draft changes to the Tree Ordinance for possible adoption in July.

Context with Key Issues

The City Council has been reviewing the Tree Ordinance over the past two years, with leadership on the review effort being provided by an informal working group of Councilmembers Dyballa, Kostiuik and Kovar. The attached Draft Tree Ordinance text represents the consensus recommendation of the working group. The City Attorney has worked to clarify language and there has been consultation with City staff, the Tree Commission and others. However, there remain some items that the working group has identified that should be addressed at this Work Session and there may be some sections or text that staff or other Councilmembers will also want to discuss and revise. During this Work Session, Council will review the draft language, discuss changes, and ask for further information or revisions as needed.

Areas for focus for the July Work Session identified by the working group include:

- The tree replacement scheme in Section 12.12.100 and its implications for long-term tree canopy citywide, with reduced replanting requirements for lower rated trees, based on Council discussions at the last work session, and how to otherwise address tree replanting.
- Legislative findings section, Section 12.12.010.
- Reports to Council section, Section 12.12.140.
- Equity implications of proposed changes to the ordinance.

Council Priority

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

Environmental Considerations

The Tree Ordinance establishes the protection and preservation of trees as a fundamental goal of the City. As noted in the Takoma Park Tree Canopy Assessment, "Trees provide many benefits to communities, such as improving water quality, reducing stormwater runoff, lowering summer temperatures, reducing energy use in buildings, removing air pollution, enhancing property values, improving human health, providing wildlife habitat, and aesthetic benefits." Trees also offer climate mitigation and resilience benefits. The recent tree canopy assessment estimates about 60% tree canopy in the city on average, well above many neighboring communities.

In light of ongoing concerns about climate change -- which the Council recognized formally through its adoption of a resolution declaring a climate emergency and adoption of a climate emergency response framework in March 2020 -- taking thoughtful action to develop tree canopy goals and ensuring that the tree ordinance functions well take on added importance. Additionally, challenges such as the recent die-off affecting many oaks in the City -- which is having a negative effect on older trees that contribute significantly to carbon sequestration (among other benefits) -- underline the need to ensure that we have in place policies that can give our trees the necessary resilience to cope with changing weather patterns, harmful pests, and other threats.

Fiscal Considerations

The FY20 Budget for the Urban Forest Division is \$267,330, including staff, consultant services, tree purchases and services. Substantial changes to the ordinance administration or requirements may require a change in the funding level in order to be accomplished.

The costs of complying with the Tree Ordinance can be substantial when a construction project is proposed, when a property owner wishes to remove a tree that is not dead or imminently hazardous, or when trees suddenly decline. The City's tree emergency fund is available for residents with financial need who must remove hazardous trees. Increasing tree replanting requirements would require additional expenses for property owners. Reducing the tree replacement requirement for property owners would require additional City funding in order to maintain the City's tree canopy level.

The cost of tree maintenance for an individual property owner is ongoing and similar to other ongoing home maintenance expenses. Energy savings and increased property values may offset or exceed these costs. Removal costs for individual property owners can be expensive and in some cases, unexpected. Trees can sometimes damage pipes or building structures.

Racial Equity Considerations

Tree canopy is not spread equally throughout the City of Takoma Park and varies by location and type of property and land use. Heavier tree canopy coverage in residential areas has generally been found in areas with a higher percentage of single-family homes as opposed to multi-family residences. The 2018 analysis of tree canopy in Takoma Park showed less tree canopy in Wards 4 and 6 than in other wards, with Ward 6 having significantly less than all other wards. Wards 4 and 6 also have greater amounts of large multi-family and/or commercial properties and parking lots. Wards 4, 5, and 6 have the highest percentages of people of color in the City.

Research at the national level has found racial inequities in the distribution of tree canopy. Neighborhoods with lower incomes and high percentages of people of color have been found to have hotter temperatures and fewer trees. Racial inequities have been found in tree cover on public land. Extra heat can have dangerous and even deadly health consequences, and it costs more to cool a hotter home. Low-income neighborhoods and communities of color generally experience higher levels of air pollution. The presence of trees can provide economic boosts through raising property values and boosting retail sales. These and other benefits should be considered alongside some potential negative impacts of tree cover, such as allergies and asthma and the costs of maintenance, removal, and replanting requirements.

75% of the respondents to the Tree Ordinance Survey were residents of Wards 1, 2, and 3. These three wards are majority white and have fewer multifamily properties than do Wards 4, 5, and 6.

Attachments and Links

- Additional Information – Context with Key Issues
- Redlined Proposed Amendments to the Tree Ordinance

Additional Information – Context and Key Issues

The most significant changes since the June 7 version are found in the following sections: Whereas Clauses, Definitions, 12.12.010, 12.12.030 through 12.12.050, 12.12.080, and 12.12.140.

Whereas Clauses – Language was added to indicate the Tree Commission's efforts and to indicate the Council's oversight of this process.

- Section 12.04.020 – Definition was added for undesirable species.
- Section 12.12.010 – Language was added to capture the Council's findings.
- Section 12.12.030-050 – Language was added and adjusted to make the language consistent with respect to emergency actions.
- Section 12.12.080 – Language was added to reflect concerns, comments, and suggestions.
- Section 12.12.140 - This is essentially a rewrite of the Role of Urban Forest Manager.

The Feb. 12 draft language included a number of potential changes to the Tree Ordinance, such as:

- Reorganization of information, particularly relating to permits, for ease of understanding
- Formalized and bolstered requirements for removal and protection of trees on City property
- A new provision allowing the City Manager to make regulations requiring certification of proper disposal of infested trees to reduce the risk of infestation
- A more detailed explanation of what a tree impact assessment is (12.12.030(A))
- New requirements for protection of trees in emergency situations (12.12.030(B)(2)) and 12.12.040(B))
- Removing specific fee amounts and moving to administrative regulations
- Granting the authority to the City to require that a licensed professional prepare a Tree Protection Plan in complicated cases (12.12.040(C))
- Simplifying the process by removing the concept of waivers, independent of replacement requirements
- Eliminating the option to appeal the removal of trees that are in imminent decline due to significant defect or infestation, or when a part of a tree is damaging a permanent structure, and requiring posting of notice of the tree removal permit in those cases (12.12.080(A)(3))
- Changing the option to appeal a Tree Protection Plan from residents with shared property lines to residents who have a tree that may be substantially impacted by the proposed activity, with a 15-day notice requirement (12.12.085(E)(2))
- Adding a requirement that residents who replant themselves (rather than pay the fee in lieu) must provide certification of the planting and a photograph within 6 months (12.12.090(A)(1))
- Increasing the tree replanting "fee in lieu" to include two years of maintenance (to ensure that the fee covers the City's actual cost of tree planting and create a financial incentive for residents to replant rather than pay the fee) (12.12.100(E))
- A definition of what the tree fund can be used for to broaden its use and allow for more activities to support the tree canopy (12.12.100(G))
- Increasing the amount of a tree that can be pruned without requiring a Tree Impact Assessment from 5% to 10% (12.12.130(A)(1)(f))

At the Feb. 12 work session, several additional changes to the Tree Ordinance were presented to the Council for consideration, based on the recommendations of the Tree Commission and/or City staff:

- Changes to the legislative findings section (12.12.010)
- Rewriting of the tree removal permit criteria (12.12.080)

- Removal of the exemption of replanting requirements for hazardous trees (12.12.100(B))
- Changes to the rating chart used for identifying replacement planting requirements, including clarification and conceptual changes to align with industry standards, and the removal of the “life expectancy” category (12.12.100(C))
- Changes to the replacement requirement amounts, at Tree Commission’s recommendation, including adding a replanting requirement of at least one tree for any tree removed (including declining or hazardous trees), increasing the replanting requirement percentages for trees that rate higher on the replacement planting requirements chart, and reducing the tree replacement requirements (in relation to the requirements for other trees) for trees that must be removed because they are damaging a structure (12.12.100(D))
- Changes to the definition of the Urban Forest Manager role (12.12.140)

Background Information:

The current draft language for proposed potential changes to the Tree Ordinance was based on the version of the ordinance provided by the prior City Attorney and Council’s discussion on February 12, and comments of City staff on a subsequent draft prepared for a work session planned but not held on March 18 due to the health emergency. Progress was delayed due to pandemic related issues. An informal working group of three councilmembers distributed questions, comments, and suggestions to staff and the current City Attorney. Additional revisions and discussions were had among the working group, staff and the City Attorney.

Ordinance language was adjusted by the City Attorney for clarity and in response to the working groups comments, questions, and suggestions, throughout and is highlighted in the text. Yellow highlights represent additions that were new on March 9th. Green represents additions that are new as of June 7th.

Areas for focus for the July work session will include:

- The tree replacement scheme in Section 12.12.100 and its implications for long-term tree canopy citywide, with reduced replanting requirements for lower rated trees, based on Council discussions at the last work session, and how to otherwise address tree replanting.
- Legislative findings section, Section 12.12.010.
- Reports to Council (formerly Role of the Urban Forest Manager) Section 12.12.140.
- Equity implications of proposed changes to the ordinance.

The Council identified goals of reviewing the Tree Ordinance and exploring ways to improve community outreach and education on tree matters in its FY19 and FY20 City Council Priorities. Concurrently with considering the Tree Ordinance changes, the Council has been working on a broader approach to tree canopy protection and maintenance and will continue to pursue development of a strategy to achieve these goals. A work session on October 24, 2018 established a strategy for moving the effort forward. In spring 2019, the City hosted a public workshop on results of a citywide tree canopy assessment by the University of Vermont, and the Council sought and received resident comments and suggestions on the Tree Ordinance through an online survey (with more than 500 responses). The Council has also received input from individuals and groups of residents, public and written comments at Council meetings, and neighborhood meetings.

Since that time, the Council has held several work sessions. At a June 19, 2019 work session, City’s Urban Forest Manager and Public Works Director provided an overview of the current Tree Ordinance process, presented the tree canopy assessment, and shared results of the online Tree Ordinance survey. The Council held a joint work session with the Committee on the Environment and the Tree Commission on July 22, 2019, to discuss their recommendations for changes to the Tree Ordinance and development of tree canopy goals and strategies. The Council’s work session September 11,

2019 reviewed a “starter list” of suggestions for action on the Tree Ordinance, and Council directed the City Attorney and City staff to begin drafting amended ordinance language. Three work sessions on October 16, 23, and 30, 2019 discussed elements on the “starter list” in depth, and Council provided some initial thoughts and direction to the City Attorney and City staff to work on drafting amended Tree Ordinance language for future review, working with the Tree Commission. A November 13, 2019 work session discussed initial draft language the City Attorney proposed to the Tree Ordinance. A Council work session on Feb. 12, 2020 reviewed revised draft language.

Yellow highlights are additions to March 9 version

Green highlights are additions in June 6, 19, and 24 Version

1 Introduced By: _____

First Reading: _____

2 Second Reading: _____

3 Effective Date: _____

4
5 **CITY OF TAKOMA PARK, MARYLAND**
6 **ORDINANCE 2020-__**

7
8 **AMENDING THE *TAKOMA PARK CODE*, TITLE 12, TREES AND**
9 **VEGETATION: CH. 12.04 GENERAL PROVISIONS, CH. 12.08**
10 **PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION,**
11 **AND CH. 12.12 URBAN FOREST**
12

13
14 **WHEREAS,** the Maryland Code, Local Government Article, section 5-202, as amended,
15 authorizes the legislative body of each municipal corporation in the State of
16 Maryland to pass ordinances that such legislative body deems necessary to assure
17 the good government of the municipality, to protect and preserve the
18 municipality’s rights, property and privileges, to preserve peace and good order,
19 to secure persons and property from danger and destruction, and to protect the
20 health, comfort and convenience of the citizens of the municipality; and
21

22 **WHEREAS,** Section 401 of the City Charter states that the Council has the power to pass all
23 such ordinances not contrary to the Constitution and laws of the State of Maryland
24 as it may deem necessary for the good government of the City, for the protection
25 and preservation of the City’s property, rights, and privileges, for the preservation
26 of peace and good order, for securing persons and property from violence, danger
27 or destruction, and for the protection and promotion of the health, safety, comfort,
28 convenience, welfare, and happiness of the residents of and visitors in the City;
29 and
30

31 **WHEREAS,** Section 2.16.030 of the City Code charges the Tree Commission with proposing
32 rules, regulations, procedures, and actions to be taken by the City to preserve and
33 protect the urban forest; and
34

35 **WHEREAS,** the Tree Commission has recommended adoption of certain amendments to
36 *Takoma Park Code*, Title 12, and development of Tree Canopy Goals; and
37

38 **WHEREAS,** the Tree Commission has recommended adoption of certain amendments to
39 *Takoma Park Code*, Title 12, and development of Tree Canopy Goals, and the
40 Council has sought and obtained input through a resident survey with more than
41 500 responses, public and written comments from individuals and non-
42 governmental groups with expertise in tree issues, advice from County and State
43 officials, discussions at neighborhood meetings, recommendations for the

1 Committee on the Environment, and input from the Department of Public Works
2 and the City Attorney; and

3
4 **WHEREAS,** the Council conducted a comprehensive review of the tree ordinance and
5 overarching forest canopy principles and goals and discussed the same during the
6 following work sessions: October 14, 2018, June 19, 2019, July 22, 2019,
7 September 11, 2019, October 16, 2019, October 23, 2019, October 30, 2019,
8 November 13, 2019, February 12, 2020, and June 17, 2020; and

9
10 **WHEREAS,** the Council, after having reviewed the proposed revisions and upon making
11 further modifications, desires to amend Title 12 of the *Takoma Park Code*.

12
13 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
14 **TAKOMA PARK, MARYLAND, THAT** Title 12, Trees and Vegetation, of the *Takoma Park*
15 *Code* is hereby amended as follows:

16 **Chapter 12.04**
17 **GENERAL PROVISIONS**

18
19 Sections:

- 20
21 12.04.010 Definitions.
22 12.04.020 Interpretation.
23 12.04.030 Authority of City Manager to adopt regulations.
24 12.04.040 Interference prohibited.
25 12.04.050 Enforcement—Stop work orders.
26 12.04.060 Procedure to be followed in case of infractions.
27 12.04.070 Charges for City taking corrective action.
28 12.04.080 City Manager to have decision-making authority for all trees on City property.
29 12.04.090 Inspection for insects and disease—Taking of specimens.
30 12.04.100 Permission required to prune, spray, plant or remove from City property.
31 12.04.110 Requirement for supervision by a tree expert.
32 12.04.120 Exemption from County eCode.

33
34 **12.04.010 Definitions.**

35
36 As used in this chapter:

37
38 “Basal area” means the area of a tree trunk’s cross section, measured outside the bark.

39
40 “Caliper” means the diameter measurement of the trunk of nursery stock trees, taken at caliper
41 height.

42
43 “Caliper height” means 6" above the ground in the case of trees less than 4" in diameter at 6" above
44 the ground and 12" above the ground in the case of all other trees.

1 “Canopy” means the total area of tree leaves on a tree or trees, the total area of branches and
2 stems of a tree or trees, or any combination of the same for ~~the combined crowns of all trees on a~~
3 tract of land.

4
5 “City Manager” means the City Manager of the City of Takoma Park or ~~his or her~~ their designee.

6
7 “City Property” means City rights-of-way, City parks, median strips, and other City-owned or
8 controlled property.

9
10 “Critical root zone” means the protection zone for an individual tree or an area defined by a circle
11 with a diameter 36 times the diameter at breast height (DBH) of the tree (or 1.5' of radius for each
12 inch of DBH) or such smaller area as determined by the City Manager in a tree impact assessment.

13
14 “Crown” means the volume defined by the spread of the branches and foliage of a tree.

15
16 “Department” means the Department of Public Works of the City of Takoma Park.

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

19
20 ~~“Ecosystem services” means the material or energy outputs from ecosystems, including, but not~~
21 ~~limited to, climate regulation, storm water runoff avoided, carbon sequestered, air pollution~~
22 ~~removed, water purification, avoided energy use, wildlife habitat, and recreation benefits.~~

23
24 “Emergency action” means actions that must be taken immediately with respect to the urban forest
25 in order to prevent harm to life or significant harm to property

26
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
29 property. An entire tree is not hazardous if the hazard can be addressed via pruning or other tree
30 maintenance measures.

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

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

38
39 “Open space” means undeveloped City owned property that is not parkland or right-of-way.

40
41 “Owner” means any person who, alone or jointly or severally with others:

42
43 A±. Has a legal or equitable ownership interest in ~~a~~ real property, including a contract
44 purchaser of property;

45

1 B2. Has a legal, equitable or beneficial interest in a corporation, limited liability
2 company, partnership, limited partnership, limited liability partnership, trust or other entity that
3 has a legal or equitable ownership interest in a rental facility; or
4

5 C3. Has charge, care or control of real property as personal representative, executor,
6 administrator, trustee, guardian, or conservator of the estate of the owner.
7

8 “Person” means an individual, corporation, limited liability company, partnership, limited
9 partnership, limited liability partnership, trust, association, organization, or any other legal entity,
10 but does not include the City.
11

12 “Target” means people or property that may be subject to injury or damage as a result of a tree’s
13 failure.
14

15 “Tree Commission” means the ~~citizen-resident~~ commission established by the Council to preserve,
16 protect, and promote the urban forest of the City and to hear appeals from preliminary permit
17 decisions.
18

19 “Tree cover” means area covered by canopy, expressed in square feet or as a percentage of the
20 area of a tract of land.
21

22 “Tree Protection Plan” means a site plan that delineates tree save areas and details measures to be
23 taken to ensure survivability of trees to be saved prior to and during construction.
24

25 “Undesirable Species” means plants that undermine the health of the urban forest and which are
26 identified from time to time by administrative regulation.
27

28 “Urban Forest Manager” means the City of Takoma Park Urban Forest Manager or their designee.
29

30 “Urban forest tree” means a tree as defined in Section 12.12.020.
31

32 “Utilities” mean includes any
33

34 “Vermin” means small animals, including insects, that are prolific and destructive or injurious to
35 health.
36

37 “Woody vegetation” means vegetation with stems of wood (other than vines) and includes trees
38 and bushes. (~~Ord. 2003-40 (part), 2004~~)
39

40 **12.04.020 Interpretation.**
41

42 This Chapter is intended to supplement and not to contradict or supersede any applicable
43 provisions of the law and regulations of the State of Maryland, and is to be interpreted as such.
44 (~~Ord. 2003-40 (part), 2004~~)
45

46 **12.04.030 Authority of City Manager to adopt regulations.**

1
2 The City Manager may adopt regulations to implement this chapter, in accordance with the
3 provisions of Chapter 2.12, Administrative Regulations. (~~Ord. 2003-40 (part), 2004~~)
4

5 **12.04.040 Interference prohibited.**
6

7 A person who prevents, delays, or interferes with the City Manager while ~~he or she is~~ they are
8 carrying out the provisions of this chapter in or upon any City property, public highway or public
9 space commits a Class C municipal infraction. (~~Ord. 2003-40 (part), 2004~~)
10

11 **12.04.050 Enforcement—Stop work orders.**
12

13 A. The Department has primary responsibility for the administration and enforcement
14 of this chapter.
15

16 B. Representatives of the Department, the ~~City Arborist~~ Urban Forest Manager, and Code
17 Enforcement Officers may serve as the City Manager’s designee, with full authority to enforce all
18 municipal infraction provisions of this chapter.
19

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

24 ~~D.~~ Any person who receives such a stop work order shall immediately cease the activity
25 that constitutes the violation. The person shall comply with all terms and conditions imposed by
26 the person issuing the order before the activity may resume.
27

28 ~~2.—A person who receives a stop work order may appeal the issuance of the stop work~~
29 ~~order to the Tree Commission pursuant to Section 12.12.110 within 15 days after the issuance of~~
30 ~~the stop work order, as if the issuance were a denial of a tree removal permit. (Ord. 2003-40 (part),~~
31 ~~2004)~~
32

33 **12.04.060 Procedure to be followed in case of infractions.**
34

35 A. In the case of violations of this chapter, the City may issue a warning notice, giving
36 the person an appropriate period of time to correct the violation before a municipal infraction
37 citation is issued. No additional warning notices are issued for continuing or subsequent violations
38 for which a warning notice was issued.
39

40 B. Failure to abate a violation for which a municipal infraction citation has been issued
41 by the due date of the fine, as set forth on the municipal infraction citation, causes continuing or
42 subsequent violations to be treated as repeat offenses.
43

1 C. In addition to the fine for a municipal infraction, the City may obtain a court order for
2 the owner to abate the violation or for the City to abate the violation at the expense of the owner.
3 (~~Ord. 2003-40 (part), 2004~~)
4

5 **12.04.070 Charges for City taking corrective action.**
6

7 A. Where the City has taken corrective action to bring a property into compliance with
8 this chapter, the City Manager shall send the owner a bill for the cost of the corrective action. The
9 bill is sent by regular mail to the owner's last known address or delivered by any other means
10 reasonably calculated to bring the bill to such person's attention. If the owner does not pay the bill
11 within one month after it is presented, the City Manager may certify the cost of such corrective
12 action to the ~~City Treasurer~~ Finance Director.
13

14 B. The ~~City Treasurer~~ Finance Director shall send a bill for the costs of such corrective
15 action to the owner of the real property, as listed in the City property tax records. The ~~City~~
16 ~~Treasurer~~ Finance Director also may send a copy of the bill for the costs of the corrective action
17 to a lender under a mortgage or deed of trust made by the owner and secured by the real property,
18 as listed in the City property tax records. The bill is sent by regular mail to the last-known address
19 of the owner or lender or delivered by any other means reasonably calculated to bring the bill to
20 such person's attention. If the bill is not paid within one month after it is presented, then the cost
21 becomes a lien against the real property ~~which~~ that may be collected and enforced in the same
22 manner as are taxes, special assessments, and other liens against real property or collected by a
23 ~~law suit~~ lawsuit against the owner. (~~Ord. 2003-40 (part), 2004~~)

24 **12.04.080 City Manager to have decision-making authority for all trees on City property.**
25

26 A. The City Manager has authority over the disposition of all trees located on City
27 property and has the power to plant, maintain, or remove trees on City property. The City Manager
28 shall give due consideration to the urban forest preservation principles embodied in this chapter,
29 apply the criteria in section 12.12.080.A.1 of this Chapter for tree removal permit decisions
30 applicable to private persons, and undertake all reasonable tree protection measures when making
31 decisions regarding trees on City property, as is required of private persons under this chapter.
32 The City Manager shall apply for tree impact assessments, tree protection plan permits, and tree
33 removal permits when making decisions regarding trees on City property, but such decisions are
34 not subject to appeal to the Tree Commission. The City Manager shall arrange for the posting of
35 notices of planned tree removals on City property in the same manner and with the same number
36 of days before removal as apply for tree removals on private property.
37

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

- 40 1. Poses a threat to safety;
- 41 2. May cause damage to sewers utilities or other public improvements;
- 42
- 43
- 44

1 3. Is diseased or infested and poses a danger to other healthy trees, if removal
2 is the only practical solution; or

3
4 4. ~~— Seriously impairs the appearance of City property; or~~

5
6 45. Interferes with the exercise of any power conveyed by the Charter of the
7 City of Takoma Park, including the construction and alteration of buildings and public ways and
8 sidewalks.

9
10 C. If the City ~~Manager orders the removal of a tree~~ removes a tree from City property
11 ~~pursuant to subsection (B) of this section~~, the City must replace the tree in accordance with
12 Section 12.12.100.

13
14 D. ~~The City Manager shall manage forest located on open spaces to preserve the natural~~
15 ~~state except where there is a threat to the public health, safety, or welfare. (Ord. 2003-40 (part),~~
16 ~~2004)~~ The City shall post written notice of the proposed removal of trees from City property
17 adjacent to the public right-of-way closest to the trees to be removed at least seven days prior to
18 the removal unless the City Manager determines that immediate removal of the tree is necessary,
19 in which case such notice shall be posted as soon as possible.

20
21 E. The City Manager shall manage forest located on open spaces to preserve the
22 natural state except where there is a threat to the public health, safety, or welfare.

23
24 **12.04.090 Inspection for insects and disease—Taking of specimens.**

25
26 A. The City Manager is authorized to inspect any woody vegetation that appears to be or
27 is reported to be infected with a fungus, virus, bacterium, or other pathogen or infested with insects
28 or other parasites which, due to such infection or infestation, may cause damage to other woody
29 vegetation or other property, and may take specimens from the woody vegetation if necessary to
30 determine the existence of such infection or infestation.

31
32 B. If the City Manager cannot determine with certainty the existence of infection or
33 infestation in any woody vegetation, the City Manager shall send any such specimens for
34 examination, diagnosis and report to the Cooperative Extension Service, Home and Garden
35 Information Center, University of Maryland or other laboratory, and shall base further action on
36 such extension service or other laboratory report. ~~(Ord. 2003-40 (part), 2004)~~

37
38 **12.04.100 Permission required to prune, spray, plant or remove from City property.**

39
40 A. Except as provided in subsection (B) of this section, a person who sprays, prunes,
41 cuts, removes, or plants any vegetation on City property; without obtaining prior written
42 permission from the Department; commits a Class B municipal infraction.

43
44 B. Permission is not required to plant or maintain non-woody vegetation less than 24" in
45 height on planting strips or City rights-of-way located adjacent to the person's property (e.g.,

1 between the front yard or the sidewalk and the ~~S~~street), unless the City Manager informs the person
2 of the City Manager’s objection to the planting or maintenance. (~~Ord. 2003-40 (part), 2004~~)

3
4 **12.04.110 Requirement for supervision by a tree expert.**

5
6 A. No person shall perform tree pruning, tree removal or other tree work for hire,
7 including consulting, insect and disease mitigation, abiotic mitigation, and tree preservation,
8 without supervision, involving a site visit, by a Licensed Tree Expert (LTE) in good standing with
9 the Maryland Department of Natural Resources.

10
11 B. No person shall perform tree care consulting for hire without being a Licensed Tree
12 Expert (LTE) in good standing with the Maryland Department of Natural Resources.

13
14 C. All tree work and consulting will be done according to arboriculture industry
15 guidelines: ANSI A300 (Parts 1 and 2) and ANSI Z133.1 (as amended).

16
17 D. A violation of this section is a Class B municipal infraction. (~~Ord. 2003-40 (part),~~
18 ~~2004~~)

19
20 **12.04.120 Exemption from County eCode.**

21
22 Pursuant to the authority conferred by Section 4-111 of the ~~H~~Local ~~g~~Government ~~a~~Article of the
23 Annotated Code of Maryland and by Section 1-203 of the Montgomery County Code, the City of
24 Takoma Park specifically exempts itself from the following sections of the Montgomery County
25 Code relating to tree protection and tree canopy preservation:

- 26
27 A. Section 8-26(n) and (o);
28
29 B. Section 19-71;
30
31 C. Section 49-35;
32
33 D. Section 49-36A;
34
35 E. Sections 55-1 through 55-11. (~~Ord. 2014-4 § 1, 2014~~)

36
37 **Chapter 12.08**
PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION

38
39 Sections:

- 40
41 12.08.010 Infected or infested woody vegetation on private property.
42 12.08.020 Fallen or dangerous trees on private property.
43 12.08.025 Vegetation not to obscure intersection.
44 12.08.030 Vegetation not to obstruct sidewalks or traffic.
45 12.08.040 Noxious growths.

- 1 12.08.050 Uncontrolled growth of vegetation on vacant lots.
- 2 12.08.060 Uncontrolled growth of lawns on private property.
- 3 12.08.070 Notice to correct prohibited conditions.

4

5 **12.08.010 Infected or infested woody vegetation on private property.**

6

7 A. A person who maintains on private property woody vegetation found to be infected
8 with a fungus, virus, bacterium, or other pathogen or found to be infested with insects or other
9 parasites which, due to such infection or infestation, may cause damage to other woody vegetation
10 or may pose a threat to persons or the property of others commits a Class C municipal infraction.
11 (~~Ord. 2003-40 (part), 2004~~)

12

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

15

16 **12.08.020 Fallen or dangerous trees on private property.**

17

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

20

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

23

24 C. A violation of this section is a Class C municipal infraction. (~~Ord. 2003-40 (part),~~
25 ~~2004~~)

26 **12.08.025 Vegetation not to obscure intersection.**

27

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

31

32 B. A violation of this section is a Class D municipal infraction. (~~Ord. 2003-40 (part),~~
33 ~~2004~~)

34

35 **12.08.030 Vegetation not to obstruct sidewalks or traffic.**

36

37 A person who permits any vegetation on private property to encroach on, impede vehicular or
38 pedestrian passage upon, or to overhang within 8' above any street or sidewalk, or obstruct any
39 traffic control device commits a Class D municipal infraction. (~~Ord. 2003-40 (part), 2004~~)

40

41 **12.08.040 Noxious growths.**

42

43 A. No person shall maintain on private property poison ivy (*Rhus radicans* or
44 *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium*),
45 poison sumac (*Rhus vernix* or *Toxicodendron vernix*), ragweed (*Ambrosia artemisiifolia*) or

1 similar vegetation. Failure to make continued good faith efforts to eradicate such vegetation in
2 accordance with Department regulations is a Class D municipal infraction. The City shall not
3 maintain such vegetation in City parks but shall not be required to remove such vegetation from
4 any City property designated as an open space.

5
6 B. All persons must control the growth of invasive species or other vines or vegetation
7 that may damage trees, native vegetation, or structures, including, but not limited to, bamboo,
8 kudzu-vine (Pueraria lobata), non-native honeysuckle, wisteria, and multi flora rose (Rosa
9 multiflora) ~~or other vines or vegetation that may damage trees, native vegetation, or structures.~~
10 Allowing vines to reach the limbs of trees is a violation of this subsection. Failure to make
11 continued good faith efforts to control the growth of such vegetation in accordance with
12 Department regulations is a Class D municipal infraction.

13
14 C. No person shall allow any vine or vegetation ~~listed prohibited~~ in subsections (A) and
15 (B) of this section or any other vine or vegetation that may cause a threat to public safety or damage
16 to trees, structures, or native vegetation to spread to an adjoining property over the objection of
17 the adjoining property owner. Failure to make continued good faith efforts to control such growth
18 in accordance with Department regulations is a Class C municipal infraction. (~~Ord. 2003-40 (part),~~
19 ~~2004~~)

20
21 **12.08.050 Uncontrolled growth of vegetation on vacant lots.**

22
23 A. The owner of a vacant lot ~~that~~ who does not have at least 60% tree cover is required
24 to keep the natural non-woody vegetation on the lot to within 10 inches of the ground.

25 B. A violation of this section is a Class D municipal infraction. (~~Ord. 2003-40 (part),~~
26 ~~2004~~)

27
28 **12.08.060 Uncontrolled growth of lawns on private property.**

29
30 A person who allows 30% or more of a lawn to reach or exceed the height of 10 inches commits a
31 Class D municipal infraction. (~~Ord. 2003-40 (part), 2004~~)

32
33 **12.08.070 Notice to correct prohibited conditions.**

34
35 A. Whenever any condition prohibited by Sections 12.08.010 through 12.08.0760 is
36 found within the City, the City Manager shall give notice to the owner or occupant of the property
37 or the person responsible for such condition to correct such condition within such reasonable time
38 as may be specified in such notice.

39
40 B. If any person fails or refuses to correct or abate any prohibited condition after receipt
41 of notice pursuant to subsection (A) of this section, such condition may be corrected by the City
42 at the expense of the person named in such notice. Correction or abatement by the City shall not
43 prevent or excuse any prosecution of the person responsible for the condition abated by the City.
44 (~~Ord. 2003-40 (part), 2004~~)

1
2
3
4 **Chapter 12.12**
5 **URBAN FOREST**
6

7 Sections:

- 8
9 12.12.010 Legislative findings and purpose.
10 12.12.020 Urban forest trees.
11 12.12.030 Tree impact assessment required.
12 12.12.040 Tree ~~removal~~-protection plan permit required.
13 12.12.050 Tree ~~protection plan~~-removal permit required.
14 **12.12.060 Permit waivers Reserved.**
15 12.12.070 Tree removal and tree protection plan ~~p~~Permit applications.
16 12.12.080 Tree removal ~~p~~Permit standards and ~~process~~-approval.
17 12.12.085 Tree protection plan permit standards and process.
18 12.12.087 Tree removal and tree protection plan permit appeal hearings and decisions.
19 12.12.090 Application and permit validity time period.
20 12.12.100 Tree replacement required.
21 12.12.105 ~~Pre~~-planting of replacement trees.
22 ~~12.12.110 Appeals from permit decisions.~~
23 ~~12.12.120 Criteria for tree permit decisions.~~
24 12.12.125 Notification of tree protection laws required prior to sale of real property.
25 12.12.130 Violations and penalties—Enforcement.
26 12.12.140 Duties of ~~City Arborist~~-Urban Forest Manager.

27 **12.12.010 Legislative findings and purpose.**
28

29 **The Council of the City of Takoma Park hereby finds that:**
30

31 **A. It is in the interest of the residents of the City to protect, preserve, promote, and to**
32 **the extent feasible expand Takoma Park’s urban forest;**
33

34 **B. The purpose of this chapter is to promote a diverse, resilient, sustainable urban**
35 **forest through community and individual stewardship of existing trees, and the planting of new**
36 **trees with a focus on native trees and desirable trees that are adaptable to the impacts of climate**
37 **change;**
38

39 **C. Stewardship of the City’s urban forest is a community effort requiring the**
40 **involvement of the entire community, and the regulation of actions affecting the urban forest**
41 **provides benefits to residents, and property and business owners;**
42

43 **D. A healthy, biodiverse, and demographically balanced urban forest provides**
44 **valuable services, including;**
45

- 1 1. Preserving wildlife habitat,
- 2
- 3 2. Reducing air, noise, and visual pollution,
- 4
- 5 3. Improving water quality,
- 6
- 7 4. Mitigating the City's contribution to climate change,
- 8
- 9 5. Assisting in climate change mitigation, adaptation and resilience,
- 10
- 11 6. Lowering summer temperatures and moderating climatic extremes, and
- 12
- 13 7. Reducing energy use in buildings;
- 14

15 E. The urban forest is part of the watershed of Long Branch, Takoma Branch, and
16 Sligo Creeks and, as such, plays an important role in controlling stormwater run-off and supports
17 the biologic and hydrologic integrity of downstream watersheds;

18

19 F. The urban forest contributes to the beauty of our neighborhoods, which enhances
20 property values, and improves the quality of life in the community and the health of residents; and

21

22 G. The City's urban forest policies and tree canopy goals shall be pursued in a manner
23 that takes into account and inequities that exist in tree canopy coverage across City neighborhoods
24 and that seeks to protect and plant trees with a focus on the health and sustainability of the urban
25 forest as a whole.

26

27 ~~The Council of the City of Takoma Park hereby finds that it is in the interest of the citizens~~
28 ~~residents of the City to protect, preserve, and promote the City's urban forest. Stewardship of our~~
29 ~~urban forest is a community effort. The City's urban forest is part of a larger ecosystem that~~
30 ~~supports wildlife and contributes significantly to provides valuable ecosystem services, including~~
31 ~~supporting wildlife and significantly reducing air, noise, and visual pollution control, and reduces~~
32 ~~the City's contribution to climate change. The existence of shade providing trees moderates~~
33 ~~climatic extremes and reduces energy consumption. The City's urban forest is part of the watershed~~
34 ~~of Long Branch, Takoma Branch, and Sligo Creeks and therefore plays an important role in~~
35 ~~controlling stormwater run off and supports the biologic and hydrologic integrity of these~~
36 ~~watersheds. The urban forest has significant aesthetic value, which affects property values and the~~
37 ~~quality of life of the community. Regulation of actions affecting the urban forest provides mutual~~
38 ~~benefits to City residents and property owners. The purpose of this chapter is to protect healthy~~
39 ~~trees of desirable species promote a sustainable tree canopy through community stewardship of~~
40 ~~existing trees and it shall be administered in a manner that seeks to protect such trees at every~~
41 ~~opportunity the planting of new trees of diverse native species that are adaptable to the impacts of~~
42 ~~climate change.~~ (Ord. 2003-40 (part), 2004)

43

44 **12.12.020 Urban forest trees.**

45

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

1
2 A. Measures 24 inches or more in circumference at four and one-half feet above ground
3 level or measures seven and five-eighths inches or more DBH; or
4

5 B. Is required to be planted or maintained, pursuant to governmental order, agreement,
6 stipulation, covenant, easement, or a tree protection plan, or as a condition of issuance of a tree
7 removal permit; or
8

9 C. Is planted with government funding or under a government program. (~~Ord. 2003-40~~
10 ~~(part), 2004~~)
11

12 **12.12.030 Tree impact assessment required.**
13

14 ~~A. Except as provided in subsection (B) of this section, a tree impact assessment is~~
15 ~~required prior to conducting any of the following:~~
16

17 A. A tree impact assessment is conducted by the Urban Forest Manager for the purpose
18 of assessing the potential adverse impact of proposed activity in the vicinity of an urban forest tree
19 on said urban forest tree and determining whether a tree removal permit or tree protection plan
20 permit will be required for the proposed activity. Except as provided in subsection (B) of this
21 section, a tree impact assessment is **shall be** required prior to conducting any of the following:
22

23 1. Land disturbing activities, such as raising or lowering existing grade, or
24 excavating more than three inches in depth over an area in excess of 25 square feet, within 50 feet
25 of an urban forest tree;
26

27 2. Any **A**activity within the critical root zone 50 feet of an urban forest tree that
28 may destroy **a significant portion of the** roots of a tree or endanger the water supply to the roots,
29 compact the soil or impede water uptake, including, but not limited to, the operation or parking of
30 vehicles or heavy equipment, storage of materials, and trenching;
31

32 3. Construction or placement of a structure other than a fence within 50 feet of an
33 urban forest tree;
34

35 4. Paving in excess of 25 square feet with an impervious surface within 50 feet of
36 an urban forest tree; or
37

38 5. Removing, relocating, destroying, or topping an urban forest tree or pruning
39 more than 510% of the live canopy of an urban forest tree, or pruning live limbs with significant
40 diameter in relation to the size of the tree, or other action which would significantly and
41 permanently detract from an urban forest tree's health or growth.
42

43 ~~B. A tree impact assessment shall not be required for action required on an emergency~~
44 ~~basis (with no time to obtain an assessment) to prevent harm to life or property, for actions~~
45 ~~performed at the written request of a utility company such as PEPCO, Verizon, WSSC, or~~

1 Washington Gas, or for actions performed by a utility company in accordance with a memorandum
2 of understanding between the utility and the City.

3
4 **B. The requirements set forth in subsection 12.12.030.A, shall be modified as**
5 **follows:**

6
7 **1. When an emergency action, as defined under this Title, is taken pursuant to**
8 **paragraph 1 of this subsection, the person engaging in the activity shall:**

9
10 **a. Document the existence of an emergency.**

11
12 **b. Cease ~~construction~~ activity when the risk of harm to life or**
13 **significant harm to property is eliminated.**

14
15 **c. Notify the Department, provide documentation of the emergency,**
16 **and request a tree impact assessment immediately or no later than the first**
17 **business day following the commencement of the emergency action, and**

18
19 **d. Resume activity only after the determination is made that a tree**
20 **protection plan permit is not required in connection with the activity or a**
21 **tree protection plan permit is issued.**

22
23 **2. A tree impact assessment shall not be required for the following:**

24
25 **a. Actions performed at the written request of a utility company such**
26 **as PEPCO, Verizon, WSSC, or Washington Gas; or**

27
28 **b. Actions performed by a utility company in accordance with a**
29 **memorandum of understanding between the utility company and the**
30 **City.¹**

31

¹ For ease of reference, the reader will find below the language that was new and/or modified for this section in the March 9th version that has been replaced for consistency in Sections 12.12.030 through 12.12.050. The change is not intended to be substantive.

B. Exceptions to tree impact assessment requirements.

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

a. Emergency action as defined in this Title;

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

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

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

1 C. ~~The City Arborist-Urban Forest Manager shall conduct a tree impact assessment at the~~
2 ~~request of~~ upon submission of an application by any person intending to conduct an activity
3 described in subsection (A) of this section. Following the tree impact assessment, **which requires**
4 **a site visit**, ~~the City Arborist-Urban Forest Manager will advise the person requesting the~~
5 ~~assessment in writing of the permits required under this chapter to proceed with the proposed~~
6 ~~activity and any suggestions to reduce the adverse impact of the proposed activity on the trees in~~
7 ~~the area. The Urban Forest Manager does not serve as the arborist for property owners and does~~
8 ~~not prepare tree protection plans on behalf of property owners.~~
9

10 D. The fee for a tree impact assessment is ~~\$50.00 payable to the City with the application~~
11 ~~shall be established via regulation.~~
12

13 E. Failure to obtain a tree impact assessment before conducting any of the activities
14 described in this subsection shall constitute a Class AA municipal infraction. (~~Ord. 2010-27 § 1~~
15 ~~(part), 2010/Ord. 2003-40 (part), 2004~~)
16

17 **12.12.040 Tree removal protection plan permit required.**

18
19 A. Except as provided in subsection (B) of this section **or unless the City determines**
20 **pursuant to section 12.12.030 of this Chapter that a tree protection plan permit is not required**, a
21 ~~tree removal protection plan permit is required for the removal, relocation, or destruction of an~~
22 ~~urban forest tree may~~ **shall** be required for the following:
23

24 1. Land disturbing activities, such as raising or lowering existing grade, or
25 excavating more than 3 inches in depth over an area in excess of 25 square feet within 50 feet of
26 an urban forest tree;
27

28 2. Activity within 50 feet of an urban forest tree that may destroy a significant
29 portion of the roots of a tree or endanger the water supply to the roots, compact the soil, or impede
30 water uptake, including, but not limited to, the operation or parking of vehicles or heavy
31 equipment, storage of materials, and trenching;
32

33 3. Construction or placement of a structure other than a fence within 50 feet of an
34 urban forest tree; or
35

36 4. Paving in excess of 25 square feet with an impervious surface within 50 feet of
37 an urban forest tree.
38

39 B. ~~No permit is required:~~

40
41 1. ~~When the City Manager grants a tree permit waiver under Section~~
42 ~~12.12.060; or~~
43

44 2. ~~For action required on an emergency basis (with no time to apply for a tree~~
45 ~~permit or a tree permit waiver) to prevent harm to life or property; or~~

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

6
7 B. The requirements set forth in subsection 12.12.040.A, shall be modified as
8 follows:

9
10 1. When an emergency action, as defined under this Title, is taken pursuant to
11 paragraph 1 of this subsection, the person engaging in the activity shall:

12 a. Document the existence of an emergency.

13 b. Cease activity when the risk of harm to life or significant harm to
14 property is eliminated.

15 c. Notify the Department, provide documentation of the emergency,
16 and request a tree impact assessment immediately or no later than the first
17 business day following the commencement of the emergency action, and

18 d. Resume activity only after the determination is made that a tree
19 protection plan permit is not required in connection with the activity or a
20 tree protection plan permit is issued.

21
22 2. A tree protection plan permit shall not be required for the following:

23 a. Actions performed at the written request of a utility company such
24 as PEPCO, Verizon, WSSC, or Washington Gas; or

25 b. Actions performed by a utility company in accordance with a
26 memorandum of understanding between the utility company and the
27 City.²

² For ease of reference, the reader will find below the language that was new to the March 9th version that has been replaced for consistency in Sections 12.12.030 through 12.12.050. The change is not intended to be substantive.

B. No tree protection plan permit is required for emergency actions provided that:

1. The need for the emergency action is documented;

2. The emergency action shall cease when the risk of harm to life or significant harm to property is eliminated; and

3. The person engaging in the emergency action notifies the Department and provides documentation of the need for the emergency immediately, or, if the emergency occurs when City offices are closed, no later than the first business day following the commencement of the emergency action.

1 C. Upon notification of emergency action described in section 12.12.040.B.1, the City
2 Manager shall determine whether a tree protection plan permit is required for future activity related
3 to the emergency action undertaken and direct the person accordingly.
4

5 ~~C. In addition to the permits required under this chapter, property owners in the~~
6 ~~Takoma Park Historic District may also have to obtain a Historic Area Work Permit from the~~
7 ~~Historic Preservation Commission before removing or destroying a tree. (Ord. 2010 27 § 1 (part),~~
8 ~~2010/Ord. 2003 40 (part), 2004)~~
9

10 D. If, at any time after receiving a tree protection plan permit application, the City
11 Manager determines it is substantively inadequate, the City Manager may require that the tree
12 protection plan be prepared by a licensed or certified professional who has demonstrable expertise
13 in the preparation of tree protection plans. Factors the City Manager may consider in making this
14 determination, include:
15

16 1. The scope of the proposed activity;
17

18 2. The proximity of the proposed activity to or potential impact upon one or
19 more urban forest trees;
20

21 3. The size or species of the potentially impacted urban forest tree or trees;
22

23 4. Whether the activity presents a significant risk to the tree or trees and that
24 the measures necessary to protect one or more urban forest trees that may be impacted by
25 the activity are complex; or
26

27 5. Other reasonable factors that may be unique to the circumstances.
28

29 **12.12.050 ~~Tree protection plan~~ removal permit required.**
30

31 A. Except as provided in subsection (B) of this section, a tree ~~protection plan~~ removal
32 permit ~~may be~~ **shall be** required for the ~~following~~: removal, relocation, or destruction of an urban
33 forest tree.
34

35 ~~1. Land disturbing activities, such as raising or lowering existing grade, or~~
36 ~~excavating more than 3 inches in depth over an area in excess of 25 square feet within 50 feet of~~
37 ~~an urban forest tree;~~
38

39 ~~2. Activity within the critical root zone of an urban forest tree that may destroy~~
40 ~~a significant portion of the roots of a tree or endanger the water supply to the roots;~~
41

42 ~~3. Construction or placement of a structure other than a fence within 50 feet~~
43 ~~of an urban forest tree; or~~
44

44 ~~4. Paving in excess of 25 square feet with an impervious surface within 50 feet~~
45 ~~of an urban forest tree.~~

1
2 B. The requirements set forth in subsection 12.12.050.A, shall be modified as
3 follows:

4
5 1. When an emergency action, as defined under this Title, is taken pursuant to
6 paragraph 1 of this subsection, the person engaging in the activity shall:

7
8 a. Document the existence of an emergency.

9
10 b. Cease activity when the risk of harm to life or significant harm to
11 property is eliminated.

12
13 c. Notify the Department, provide documentation of the emergency,
14 and request a tree impact assessment immediately or no later than the first
15 business day following the commencement of the emergency action, and

16
17 d. Resume activity only after the determination is made that a tree
18 protection plan permit is not required in connection with the activity, a tree
19 protection plan permit is issued, or a tree removal permit is issued.

20
21 2. A tree removal permit shall not be required for the following:

22
23 a. Actions performed at the written request of a utility company such
24 as PEPCO, Verizon, WSSC, or Washington Gas; or

25
26 b. Actions performed by a utility company in accordance with a
27 memorandum of understanding between the utility company and the
28 City.³

29
30 C. In addition to the permits required under this chapter, property owners in the
31 Takoma Park Historic District may also have to obtain a Historic Area Work Permit from the
32 Historic Preservation Commission before removing or destroying a tree. In such cases, the City
33 shall not issue a tree removal permit until a copy of the Historic Area Work Permit is provided to
34 the City.

³ For ease of reference, the reader will find below the language that was new to the March 9th version that has been replaced for consistency in Sections 12.12.030 through 12.12.050. The change is not intended to be substantive.

B. No tree protection plan permit is required:

1. ~~Where a tree permit is obtained under Section 12.12.060; or~~

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

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

1
2 **12.12.060 Permit Waivers Reserved.**
3

4 A. ~~Upon receipt of an application for a tree permit waiver, the City Manager may issue~~
5 ~~a written determination (referred to as a tree permit waiver), waiving the requirement to obtain a~~
6 ~~tree permit for the removal of a tree if the City Manager determines that the tree is dead or that the~~
7 ~~tree is hazardous.~~

8
9 B. ~~An applicant for a tree permit waiver shall pay a processing fee of \$25.00 to the~~
10 ~~City with the application.~~

11
12 C. ~~Upon issuance of a tree permit waiver, the City Manager shall inform the applicant~~
13 ~~that the City encourages the planting of replacement trees on a voluntary basis.~~

14
15 D. ~~The property owner shall post notice of the waiver on the property beginning upon~~
16 ~~receipt of the waiver and continuing until the completion of the tree removal or the expiration of~~
17 ~~7 days, whichever shall first occur. The notice shall state that residents with comments or questions~~
18 ~~regarding the impact of the activity on the trees on or near the property may contact the City~~
19 ~~Manager and shall provide the City Manager's address and telephone number.~~

20
21 E. ~~The City Manager shall:~~
22 ~~1. Make a copy of each waiver application available for public inspection; and~~
23 ~~2. Provide an at cost copy of a waiver application to any person requesting~~
24 ~~one. (Ord. 2010 27 § 1 (part), 2010/Ord. 2003 40 (part), 2004)~~

25
26 **12.12.070 Tree removal and tree protection plan pPermit applications.**
27

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

31
32 B. ~~In the case of an applicant who requests A property owner may not reapply for a tree~~
33 ~~removal permit or tree protection plan permit for the purpose removal of constructing on the same~~
34 ~~tree or developing property, the City Manager may require the applicant to submit copies of all~~
35 ~~permits, licenses, and approvals which are required for the same construction or the development~~
36 ~~to take place before any action is taken on the activity within two years of the denial of a permit~~
37 ~~application. This may include, but is not limited to, county building permit, builders' license,~~
38 ~~grading permit, sediment control, permit, stormwater management permit, zoning variance, special~~
39 ~~exception, and site plan review. without first demonstrating a substantial change in circumstances~~
40 ~~that warrants consideration of the new permit application.~~

41
42 ~~1. If all necessary permits, licenses, and approvals have not been granted as of~~
43 ~~the date the application is filed, then the City Manager, in his or her sole discretion, may accept~~
44 ~~other satisfactory evidence that all necessary permits and approvals for the construction or~~
45 ~~development will be granted and may begin acting on the application.~~

1 C2. An applicant for a tree removal or tree protection plan permit shall pay a processing
2 fees of \$50.00 to the City with the application. If the applicant had previously applied for a waiver
3 for the same tree and it was denied, the fee for a permit will be \$25.00. An applicant for a tree
4 protection plan permit shall pay a processing fee of \$100.00 to the City with the application. If
5 there has been a prior Tree Impact Assessment performed for the project, the tree protection plan
6 permit fee shall be \$50.00 established by regulation with the application.

7
8 DC. The City Manager shall:

9
10 1. Make a copy of each application for a tree removal permit or tree protection
11 plan permit available for public inspection; and

12
13 2. Provide an at-cost copy of an application to any person requesting one. (~~Ord.~~
14 ~~2010-27 § 1 (part), 2010/Ord. 2003-40 (part), 2004)~~)

15
16 **12.12.080 Tree removal pPermit standards and process approval.**

17
18 A. Tree Removal Permits Approval Subject to Appeal. Except as otherwise provided
19 in this section, if the City Manager determines that the criteria set forth in section 12.12.080.A.1.,
20 have been met and that the conditions for issuance of a tree removal permit set forth in
21 12.12.080.A.2., have been met, then the City Manager shall notify the applicant that the City has
22 granted preliminary approval of the application. The preliminary approval of the application does
23 not authorize the applicant to take any action regarding an urban forest tree unless and until a tree
24 removal permit is issued.

25
26 1. ~~—— If the City Manager determines that the tree permit application is complete,~~
27 ~~that the criteria set forth in Section 12.12.120(B) indicate that the applicant is entitled to a tree~~
28 ~~permit, and that the conditions for issuance of a tree permit have been met, then the City Manager~~
29 ~~shall notify the applicant that the City has granted preliminary approval of the application. The~~
30 ~~preliminary approval of the application does not authorize the applicant to take any action~~
31 ~~regarding an urban forest tree.~~

32
33 1. The City Manager or, upon appeal, the Tree Commission shall issue a tree
34 removal permit if so indicated only after taking into consideration the tree removal permit factors
35 set forth in paragraphs (a)-(f) of this subsection. The tree removal permit factors are as follows:

36
37 a. The general health and condition of the tree;

38
39 b. The desirability of preserving the tree by reason of its age, size,
40 species, or other outstanding quality;

41
42 c. The impact of the reduction in tree cover on the property where the
43 tree is located, adjacent properties and the surrounding neighborhood and the extent
44 to which said areas would be subject to environmental degradation;

1 d. The location of the tree in relation to targets (people or property that
2 may be subject to injury or damage due to a tree's failure) or utilities above ground
3 or below ground upon which the tree may have an adverse impact at present or in
4 the future;

5
6 e. Any compelling reasons for the removal that the applicant has
7 demonstrated, including hardship, and whether a reasonable alternative to removal
8 of the tree exists; or

9
10 f. The extent to which tree clearing is necessary to achieve the
11 proposed development or land use.

12
13 2. ~~Except as provided in subsection (B) of this section, within two working days~~
14 ~~of this notification, the Department shall post notice of the preliminary approval of the application~~
15 ~~on the property in question in plain view from the public right of way. A copy of the notice is~~
16 ~~posted on a bulletin board at the Municipal Building and on the City's web site for a concurrent~~
17 ~~period. The notice must describe the procedure and time limit for filing an appeal from the~~
18 ~~preliminary approval of the application. If no appeal is filed within 15 days after the notice has~~
19 ~~been posted, the City Manager shall issue a tree permit. If an appeal from the preliminary approval~~
20 ~~of an application is filed in accordance with Section 12.12.120, then no permit is issued until the~~
21 ~~appeal has been decided. The applicant is responsible for maintaining the notice for the entire~~
22 ~~posting period. The City Manager may extend the posting period up to an additional 15 days if he~~
23 ~~or she determines that the applicant failed to maintain the notice for the entire posting period.~~

24
25 2. The following conditions shall be considered and applied in accordance with this
26 Code and other applicable law prior to the issuance of a tree removal permit;

27
28 a. Compliance with the tree replacement requirements of
29 section 12.12.100;

30
31 b. Approval of a tree protection plan and/or inspection of the property
32 by the City to verify that all required tree protection devices for trees other than the
33 tree to be removed are in place;

34
35 c. Submission to the City of all necessary County and other permits,
36 licenses, and approvals that are required for the construction or development of the
37 property;

38
39 d. Submission of a Historic Area Work Permit if required for the
40 removal of the tree;

41
42 e. Posting of a bond or other security for tree replacement; and

43
44 f. Other applicable conditions.

45
46 3. Conditions for the issuance of a tree permit may include, but are not limited to:

1
2 a. ~~Compliance with the tree replacement requirements of Section~~
3 ~~12.12.100;~~

4
5 b. ~~Approval of a tree protection plan and/or inspection of the property~~
6 ~~by the City to verify that all required tree protection devices are in place;~~

7
8 c. ~~Submission to the City of all necessary County and other permits,~~
9 ~~licenses, and approvals which are required for the construction or~~
10 ~~development of the property; and~~

11
12 d. ~~Posting of a bond or other security for tree replacement.~~

13
14 3. Except as to tree removal permits issued pursuant to section 12.12.080.C, the
15 Department shall post notice of the preliminary approval of the application on the property in
16 question in plain view from the public right-of-way and on the City's website for a concurrent
17 period within two working days of the notification of approval described in section 12.12.080.A.
18 The notice must describe the procedure and time limit for filing an appeal from the preliminary
19 approval of the application. If no appeal is filed within 15 days after the notice has been posted,
20 the City Manager shall issue a tree removal permit upon satisfaction of any conditions on the
21 issuance of the permit. If an appeal from the preliminary approval of an application is filed, then
22 no permit is issued until the appeal has been decided and any conditions satisfied. The applicant
23 is responsible for maintaining the notice for the entire posting period. The City Manager may
24 extend the posting period up to an additional 15 days if they determine that the applicant failed to
25 maintain the notice for the entire posting period.

26
27 4. If the City Manager determines that the applicant is not entitled to a tree
28 removal permit, the City Manager shall cause the applicant to be notified that the City has
29 preliminarily denied the application.

30
31 B. ~~Tree Permit Approval Not subject to Appeals from preliminary tree removal permit~~
32 ~~decisions.~~

33
34 ~~Applicants receiving tree permits pursuant to paragraphs (1) and (2) of this section shall post notice~~
35 ~~of the issuance of the tree permit on the property beginning at least seven days before the tree~~
36 ~~removal and continuing until the completion of the removal. The notice states that residents with~~
37 ~~comments or questions regarding the activity may contact the City Manager and provides the City~~
38 ~~Manager's address and telephone number.~~

39
40 1. ~~Where an owner proposes removing one or more urban forest trees of a species~~
41 ~~identified as an undesirable species by City regulation, the owner agrees to replace the tree or trees~~
42 ~~in accordance with Section 12.12.100, and the City Manager determines that the tree or trees are~~
43 ~~undesirable because of their location, condition, or effect on other trees, the City Manager shall~~
44 ~~issue a tree permit.~~

1 A notice of appeal taken pursuant to subsection 12.12.080.A, must be in writing, state the reasons
2 for the appeal, the name, address, and email address of the appellant and the nature of the interest
3 of the appellant. Appeal notices shall be filed with the City Manager, who shall forward the notice
4 to the Department.

5
6 1. All appeals shall be heard by the City of Takoma Park Tree Commission and in
7 accordance with section 12.12.087 unless otherwise noted herein.

8
9 2. ~~Where an owner proposes removing one or more urban forest trees that the City~~
10 ~~Manager has determined to be diseased or infested beyond recovery, and the owner agrees to~~
11 ~~replace the tree or trees in accordance with Section 12.12.100, the City Manager shall issue a tree~~
12 ~~permit. Appeals from preliminary tree removal permit approvals. Except for tree removal permits~~
13 ~~issued pursuant to section 12.12.080.C, any resident of the City or owner of property in the City~~
14 ~~may appeal the preliminary approval of an application for a tree removal permit. Any such appeal~~
15 ~~shall be made within 15 days after the date notice is posted on the property. If a notice of appeal~~
16 ~~is filed during such 15-day notice period, then no permit is issued until the Tree Commission has~~
17 ~~conducted a fact-finding hearing and issued its final decision on the appeal and all conditions on~~
18 ~~the issuance of the permit have been satisfied.~~

19
20 3. Appeals from preliminary tree removal permit denials. Only the permit applicant
21 may appeal the denial of a tree removal permit. Any such appeal shall be made within 15 days
22 after the date that the City Manager notifies the applicant of the preliminary denial of an application
23 for a tree removal permit.

24
25 4. The City Manager's tree rating evaluation and tree replacement requirement
26 calculation may not be appealed.

27
28 5. For hearings on appeals from preliminary tree removal permit decisions, the
29 Department shall provide written notice of the time, date, and location of the hearing to the permit
30 applicant and all persons who timely file a written notice of appeal and shall post notice of the
31 hearing on the property in question in plain view from the public right-of-way and on the City's
32 website for at least 15 consecutive days prior to the hearing date. The applicant shall maintain the
33 notice on their property for the entire posting period. The City Manager may continue the hearing
34 until a later date and immediately post notice of the continuation if they determine that the
35 applicant failed to make good faith efforts to maintain the notice for the entire posting period.

36
37 6. If the appealing party unreasonably fails to cooperate with the scheduling of a
38 hearing within 45 days of the filing of the notice of appeal, the appeal will be dismissed.

39
40 C.—Tree Protection Plan Permit Approval.

41
42 1. If the City Manager determines that a tree protection plan permit application
43 is complete, that the applicant has agreed to abide by a tree protection plan approved by the City
44 Manager, and that all conditions for the issuance of a tree protection plan permit have been met,
45 then the City Manager shall notify the applicant that the City has granted preliminary approval of

1 the application. The preliminary approval of the application does not authorize the applicant to
2 take any action regarding an urban forest tree.

3
4 ~~2. Within two working days of this notification, the Department shall send to~~
5 ~~the address of the owner(s) of record of all properties sharing a common property line with the~~
6 ~~property notice of the preliminary approval of the application. The notice must describe the~~
7 ~~procedure and time limit for filing an appeal from the preliminary approval of the application. If~~
8 ~~no appeal is filed within 15 days after the notice has been mailed, the City Manager shall issue a~~
9 ~~tree protection plan permit. If an appeal from the preliminary approval of an application is filed~~
10 ~~in accordance with Section 12.12.110, then no permit is issued until the appeal has been decided.~~

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

- 14
- 15 a. ~~Protection of roots from heavy equipment;~~
- 16
- 17 b. ~~Prevention of soil compaction;~~
- 18 c. ~~Prevention of silt runoff onto roots;~~
- 19
- 20 d. ~~Prevention of grade changes;~~
- 21
- 22 e. ~~Prevention of root damage by requiring proper root pruning~~
23 ~~or tunneling under roots;~~
- 24
- 25 f. ~~Creation of a tree protection zone;~~
- 26
- 27 g. ~~Fertilization and watering requirements; and~~
- 28
- 29 h. ~~Protection of tree trunks.~~
- 30

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

33
34 ~~4. Conditions for issuance of a tree protection permit may include, but are not~~
35 ~~limited to:~~

- 36
- 37 a. ~~Inspection of the property by the City to verify that all~~
38 ~~required tree protection devices are in place;~~
- 39
- 40 b. ~~Submission to the City of all necessary County and other~~
41 ~~permits, licenses, and approvals that are required for the construction and development of the~~
42 ~~property; and~~
- 43 c. ~~Posting of a bond or other security for tree replacement.~~

44 (Ord. 2003-40 (part), 2004)

1 C. Applicants who received tree removal permits for the reasons identified in
2 subparagraphs 1 through 4 of this subsection are not subject to the preliminary approval process
3 set forth in section 12.12.080A and shall post notice of the issuance of the tree removal permit on
4 the property before the tree removal commences and continuing until seven days after the
5 completion of the removal. The notice shall state that residents with comments or questions
6 regarding the activity may contact the City Manager and shall provide the City Manager's address,
7 email address, and telephone number, but there shall be no appeals from the City Manager's
8 decision under this subsection.

9
10 1. Where an owner proposes removing one or more urban forest trees of a species
11 identified as an undesirable species by City regulation, the owner agrees to replace
12 the tree or trees in accordance with section 12.12.100.

13
14 2. Where an owner proposes removing an urban forest tree that the City Manager
15 has determined to be dead or in imminent decline because of a significant defect or
16 infestation that cannot be ameliorated reasonably. Replacement is not required
17 pursuant to section 12.12.100.

18
19 3. Where an owner proposes, or is required, to remove a tree that is hazardous
20 and the hazard can only be eliminated by removing the tree. Replacement is not
21 required pursuant to section 12.12.100.

22
23 4. Where an owner proposes removing a tree when a part of the tree is damaging
24 a permanent structure and further damage cannot be prevented via pruning or other
25 reasonable tree maintenance measures. Replacement is not required pursuant to
26 section 12.12.100.

27
28 **12.12.085 Tree protection plan permit standards and process.**

29
30 A. The City Manager shall approve tree protection plans on a case by case basis. Tree
31 protection plans may include, but shall not be limited to, the following elements:

- 32
33 1. Protection of roots from heavy equipment;
34
35 2. Prevention of soil compaction;
36
37 3. Prevention of silt runoff onto roots;
38
39 4. Prevention of grade changes;
40
41 5. Prevention of root damage by requiring proper root pruning or tunneling under
42 roots;
43
44 6. Creation of a tree protection zone;
45
46 7. Fertilization, watering and treatment requirements; and

1
2 8. Protection of tree trunks.
3

4 B. The purpose of a City Manager shall approve only such tree protection plans is to that
5 prescribe all reasonable measures to protect any trees required to be preserved under this chapter.
6 The City Manager shall not approve a tree protection plan unless it meets the stated purpose set
7 forth in this subsection. If the City Manager rejects a proposed tree protection plan, the City
8 Manager ~~will~~ shall advise the applicant in writing of additional tree protection measures necessary
9 for approval of the plan and, when reasonably feasible, explain why such measures are necessary
10 after which the applicant may submit a revised application.
11

12 C. Conditions for issuance of a tree protection plan permit may include, but are not limited
13 to:
14

15 1. Inspection of the property by the City to verify that all required tree protection
16 devices are in place;
17

18 2. Submission to the City of all necessary County and other permits, licenses, and
19 approvals that are required for the construction and development of the property;
20

21 3. Posting of a bond or other security for tree removal, replacement and/or
22 preservation; and
23

24 4. Use of equipment or techniques, such as pneumatic excavation to determine
25 the location of roots.
26

27 D. Preliminary tree protection plan permit decisions. When an applicant submits a tree
28 protection plan permit application as required by section 12.12.04, the City Manager, after
29 communicating regarding the process and the requirements, shall issue a preliminary decision on
30 the application.
31

32 1. Preliminary tree protection plan permit approval.
33

34 a. If the City Manager determines that a tree protection plan permit
35 application is complete and that the applicant has agreed to abide by a tree protection plan approved
36 by the City Manager, then the City Manager shall notify the applicant that the City has granted
37 preliminary approval of the application. The preliminary approval of the application does not
38 authorize the applicant to take any action regarding an urban forest tree unless and until a tree
39 protection plan permit has been issued.
40

41 b. Within two working days of this notification, the Department shall
42 send notice of the preliminary approval of the application to the address of the properties adjoining
43 the applicant's property. If no appeal is filed within 15 days after the notice has been mailed, the
44 City Manager shall issue a tree protection plan permit. If an appeal from the preliminary approval
45 of an application is filed in accordance with subsection (D) of this section, then no permit is issued
46 until the appeal has been decided.

1
2 2. Preliminary tree protection plan permit denial.

3
4 a. If the City Manager determines that a tree protection plan permit
5 application is incomplete or that the applicant has not agreed to abide by a tree protection plan
6 approved by the City Manager, then the City Manager promptly shall notify the applicant that the
7 City has preliminarily denied the application, advise the applicant in writing of additional tree
8 protection measures necessary for approval of the plan, and, when reasonably feasible, explain
9 why such measures are necessary.

10
11 b. The notice must describe the procedure and time limit for filing an
12 appeal from the preliminary denial of the application. If no appeal is filed within 15 days after the
13 notice has been mailed, no tree protection plan permit shall issue.

14
15 E. Tree protection plan permit appeals.

16
17 1. All appeals shall be heard by the City of Takoma Park Tree Commission
18 and in accordance with section 12.12.087 unless otherwise noted herein.

19
20 2. A notice of appeal must be in writing, state the reasons for the appeal, the
21 name, address, and email address of the appellant, the nature of the interest of the appellant, and
22 satisfy the requirements of paragraph 2 B of this subsection. Appeal notices shall be filed with the
23 City Manager, who shall forward the notice to the Department.

24
25 3. Appeals from preliminary tree protection plan permit decisions. The permit
26 applicant or the owner(s) of record of all properties on which an urban forest tree that is likely to
27 be substantially impacted by the applicant's proposed activity is located, as determined by the City
28 Manager, may appeal the preliminary decision on an application for a tree protection plan permit
29 within the 15-day notice period. Persons filing an appeal must authorize the City Manager to enter
30 their property for the purpose of determining their standing to appeal or their appeal will not be
31 accepted. A notice of appeal from the preliminary approval of an application for a tree protection
32 plan permit must allege with particularity facts upon which the Tree Commission could determine
33 that the tree protection plan is insufficient to protect the trees to be protected under the plan. If a
34 notice of appeal containing the requisite factual allegations is timely filed by a person who has
35 standing to appeal, then no permit is issued until the Tree Commission has conducted a fact-finding
36 hearing and has issued its final decision on the appeal.

37
38 4. Hearing Notices. For hearings on appeals from preliminary tree protection
39 plan permit decisions, the Department shall send written notice of the time, date, and location of
40 the hearing to the permit applicant and to the address of the owner(s) of record of all properties on
41 which an urban forest tree that is likely to be substantially impacted by the applicant's proposed
42 activity is located, as determined by the City Manager. Such notice shall be sent at least 15 days
43 before the scheduled hearing date.

44
45 **12.12.087 Tree removal and tree protection plan permit appeal hearings and decisions.**

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

7
8 B. The Tree Commission may dismiss any appeal for good cause, approve the permit,
9 disapprove the permit, or approve the permit with modifications and/or conditions. If the
10 appealing party unreasonably fails to cooperate with the scheduling of a hearing within 45 days of
11 the filing of the notice of appeal, the appeal shall be dismissed.

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

20
21 D. On appeal from the preliminary decision on a tree removal permit application, after
22 due consideration of the evidence and testimony and the criteria for tree removal permit decisions
23 set forth in section 12.12.080 A.1., the Tree Commission shall issue its decision on the appeal and
24 shall give notice to all interested parties.

25
26 E. On appeal from a preliminary decision on a tree protection plan permit application,
27 after due consideration of the evidence and testimony and application of the standard for approval
28 of tree protection plans set forth in section 12.12.085, the Tree Commission shall issue a decision
29 on the appeal affirming or modifying the decision and shall give notice to all interested parties.

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

36
37 **12.12.090 Application and permit validity time period.**

38
39 A. When tree replacement or ~~tree replacement~~ the posting of security is required by the
40 City Manager pursuant to Section 12.12.100, permit applicants must ~~post security~~ or sign a tree
41 replacement agreement or post security approved by the City Manager within 6 months of
42 submitting their application, or their application will be denied: or their preliminary approval
43 revoked.

1 1. Applicants who execute a tree replacement agreement must file a certification
2 of compliance with the tree replacement agreement on a form prepared by the City Manager and
3 a photographic evidence that each tree has been planted pursuant to the agreement within six
4 months of the issuance of the tree removal permit.

5
6 2. Failure to timely to submit the certification will result in the issuance of a
7 municipal infraction citation for failure to comply with the tree replacement requirements of this
8 chapter.

9
10 B. Permits are valid for one year from the date of issuance unless extended by the City
11 Manager for good cause when an extension is consistent with the purposes of this chapter. (Ord.
12 2003-40 (part), 2004)

13 **12.12.100 Tree replacement required.**

14
15 A. Tree replacement as specified in this section is required in the following cases:

16
17 1. The applicant's agreement to replace removed urban forest trees shall be
18 required as a condition of issuance of a tree removal permit, except as stated section 12.12.080C.2-
19 4, to remove a tree under Section 12.12.040, and may be required as a condition of issuance of a
20 tree protection plan permit for other actions under Section 12.12.050 activity that are is likely to
21 lead to destruction of a tree.

22
23 2. Applicants are required to replace trees originally indicated and intended to
24 be saved in a tree protection plan when such trees are excessively damaged or removed, including
25 such trees that are on property adjacent to the applicant's property.

26
27 3. Any person who removes or excessively damages a tree in violation of
28 Section 12.12.040 this chapter is required to replace the tree within six months.

29
30 B. Replacement trees are must be equal to or superior to the removed trees in terms of
31 species quality, shade potential, and other characteristics identified in the species list prepared by
32 the Urban Forest Manager, unless the City Manager authorizes deviation from this requirement to
33 facilitate planting replacement trees on site. In the case of undesirable trees removed pursuant to
34 Section 12.12.080(B)(1) C, the replacement tree is of superior species quality. Replacement trees
35 are nursery stock trees with a size of one and one-half to three inches in caliper for deciduous trees,
36 or six to 10 feet in height for evergreen trees and guaranteed for one year.

37
38 C. The basal area of the replacement trees, measured at caliper height, must be no less
39 than a percentage of the total basal area of the tree to be removed, measured at four and one-half
40 feet above the ground. The percentage is determined using the following health quality analysis
41 rating scale, which shall be applied in accordance with International Society of Arboriculture
42 standards.

CRITERION	VALUE			RATING
	5 or 4	3 or 2	1 ⁴	
Trunk Roots and Root Collar	Sound and solid <u>Roots are healthy.</u> <u>Root collar clearly visible and healthy.</u>	Sections of bark missing <u>Some root damage/decay.</u> <u>Root collar is somewhat buried and/or some root collar damage/decay.</u>	Extensive bark loss and hollow <u>Significant root damage/decay.</u> <u>Root collar is buried and/or significant root collar damage/decay.</u>	
Growth/Rate per	More than 6 inch <u>year twig elongation</u>	2 to 6 inch twig <u>elongation</u>	Less than 2 inch twig elongation	
Structure Trunk	Sound and solid.	1 major or several minor <u>limbs dead Sections of bark missing. Some trunk/codominant stem damage/decay.</u>	2 or more major limbs dead <u>Extensive bark loss. Significant trunk/codominant stem damage/decay.</u>	
Insects/Diseases Crown/Branches	Normal pest presence <u>Healthy, full and balanced crown.</u>	Moderate affliction or <u>Infestation 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.</u>	Severe affliction or infestation <u>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.</u>	
Crown/ Development Tree Health and Species Profile	Full and balanced <u>Tree vigor is high.</u> <u>Foliage is healthy.</u>	Full but unbalanced <u>Tree vigor is normal. Foliage shows some signs of biotic/abiotic damage. Species is somewhat prone to failure.</u>	Unbalanced and lacking a full crown <u>Tree vigor is low. Foliage shows significant signs of biotic/abiotic damage. Species is very prone to failure.</u>	
Life Expectancy	Over 30 years	5 to 30 years	Less than 5 years	
			Total Rating	

- 1 D. Using the above scale, trees are to be replaced according to the following formula,
- 2 with the actual number of replacement trees required rounded up to the next whole number.
- 3 Replacement calculation.
- 4

1 1. For trees rated 4-9 using the above scale, no replacement tree is required, but
 2 is strongly encouraged on or off site.

3
 4 2. For trees rated 10-20 using the above scale, trees are to be replaced according
 5 to the following formula, with the actual number of replacement trees required rounded up to the
 6 next whole number:⁵

Total Rating of Tree to Be Removed	Percentage of Basal Area to Be Replaced	
	Undesirable 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
4-9	0%	0%
10 to 16	.5%	1%
16 to 24	1%	2%
25 to 30	1.5%	3%

7 13. For trees removed or excessively damaged in violation of this chapter or an
 8 approved tree protection plan, the total basal area of the replacement tree at caliper height must be
 9 no less than 10% of the basal area at four and one-half feet above the ground of the tree removed
 10 or damaged.
 11

⁴ The City Code currently locates this scoring value in the Rating column. Here, it is situated in the Value Column so that the evaluator may select it, if appropriate, when calculating the overall rating.

⁵ The Tree Commission recommended the percentage replacement of 1.5% to 3% for the 10-16 rating and 2.5 % to 5% for the 17-20 rating. Staff would prefer that the percentages remain at .5% to 1% and 1.5% to 3% respectively for a number of reasons including the likely increase of associated fees up to \$300 which will be in regulations as opposed to the Code.

1 2. ~~In the case of an applicant's removing trees for the purpose of developing~~
2 ~~property, the replacement trees must be adequate to insure that the extent of tree cover at the time~~
3 ~~of development will be achieved by newly planted trees on or off site within 25 years.~~
4

5 E. Where it is not feasible or desirable to replace trees on site, the replacement
6 requirement may be satisfied by planting trees at another location approved by the City Manager
7 within the City or by paying a fee in lieu of planting replacement trees, to be established by
8 regulation, which shall be equivalent to the installed market value of the required replacement trees
9 plus two years of maintenance to the City's tree planting canopy fund. The City Manager shall
10 establish the fee amount via regulation. Maintenance expenses shall include, but not be limited to,
11 watering, protection from infestation, and protection from deer. In cases where replacement or fee
12 in lieu is not required, the City shall annually make plantings within the City that replace the trees
13 removed, to the extent feasible.
14

15 F. As a condition precedent to the issuance of a tree removal permit or approval of a tree
16 protection plan, the City may require the applicant to post a bond, letter of credit, or other security
17 acceptable to the City or to deposit a sum of money with the City (hereafter referred to as
18 "security"). The amount of the security required to be posted or deposited with the City is equal to
19 the tree replacement costs of trees for which a tree removal permit has been issued and the cost of
20 removing and replacing any tree or trees covered by a tree protection plan ~~which that~~ die or become
21 hazardous, including such trees that are on properties adjacent to the applicant's property.
22

23 1. The security may be retained by the City until the later of the date that the tree
24 replacement requirements of this section are satisfied or, in the case of construction or development
25 activities, until two years following the completion of the construction or development on the
26 property as evidenced by final inspection approval by the County or other applicable governmental
27 agency or entity.
28

29 2. The security may be forfeited to the City, in whole or in part, if the tree
30 replacement requirements are not timely met or if any tree or trees on the property or adjacent
31 properties die, become hazardous, are excessively damaged, or are removed in violation of the
32 terms of a tree removal permit or an approved tree protection plan for the property.
33

34 3. With respect to any tree or trees covered by a tree protection plan and within
35 two years of the completion of the construction or development activity that necessitated the
36 creation of the protection plan for said tree or trees, there is a presumption that the death, hazardous
37 condition, or significant decline in the health of said tree or trees, was caused by the same
38 construction or development activity that caused the issuance of the protection plan in the first
39 instance. The applicant has the burden of rebutting this presumption by a preponderance of the
40 evidence. ~~There is a presumption that the death, hazardous condition, or significant decline in the~~
41 ~~health of any tree on the property which that is covered by a tree protection plan within two years~~
42 ~~following the completion of the construction or development, was caused by the construction or~~
43 ~~development activity. The burden of rebutting this presumption, by a preponderance, of the~~
44 ~~evidence is on the applicant.~~
45

1 4. The amount of the security ~~which~~that is forfeited to the City is equal to the
2 tree replacement costs of the tree or trees on the property or adjacent properties ~~which~~that die,
3 become hazardous, are excessively damaged, or are removed in violation of the terms of a tree
4 removal permit or an approved tree protection plan for the property. In the case of construction or
5 development activities on the property, the amount of the security ~~which~~that is forfeited to the
6 City also may include the cost of removing any tree or trees covered by a tree protection plan that
7 die or become hazardous. The forfeited security is added to the City's tree ~~planting~~canopy fund
8 or, with the agreement of the property owner and the City, ~~may be~~may be used to remove or replace
9 the dead, damaged or hazardous tree or trees on the property. (~~Ord. 2011-28 § 1 (part), 2011/Ord.~~
10 ~~2003-40 (part), 2004~~)

11
12 G. Permissible uses of tree canopy fund. The tree canopy fund may be used to plant trees
13 on public and private property, maintain trees planted with the tree canopy fund, or other purposes
14 that promote the urban forest.

15 **12.12.105 Pre-planting of replacement trees.**

16
17 ~~A. Subject to the conditions of this section, property owners may obtain tree~~
18 ~~replacement credits to satisfy tree replacement conditions relating to future tree permits under~~
19 ~~Section 12.12.100(A)(1) by planting trees or contributing to the City's tree planting fund before~~
20 ~~filing a permit application.~~

21
22 ~~B. Pre-planted replacement trees must satisfy the size, species quality, shade potential,~~
23 ~~and other characteristic requirements of Section 12.12.100(A)(1) as determined by the~~
24 ~~Department.~~

25
26 ~~C. Calculation of Pre-planted Tree Replacement Credit.~~

27
28 ~~1. At the time a property owner applies for a tree permit, the basal area of pre-~~
29 ~~planted replacement trees shall be calculated by taking the caliper of the tree at the time of planting,~~
30 ~~as indicated in the sales receipt for the pre-planted tree or other documented and verifiable~~
31 ~~evidence of the caliper of the tree, and imputing a 10% annual growth rate. The imputed growth~~
32 ~~rate of 10% per year shall be based upon the initial caliper and shall not be compounded. For~~
33 ~~example, for a one and one half inch caliper deciduous tree, the initial basal area will be 1.76~~
34 ~~square inches, and 0.176 square inches of growth shall be imputed per year.~~

35
36 ~~2. If the purchase of a pre-planted tree was subsidized by the City, the credit~~
37 ~~will be calculated by reducing the initial caliper by a percentage equal to the percentage of the~~
38 ~~purchase price paid by the City.~~

39
40 ~~3. If a property owner makes a contribution to the City's tree planting fund,~~
41 ~~the credit will be based upon an imputed one and one half inch caliper tree, with imputed annual~~
42 ~~growth calculated in accordance with subsection (C)(1) of this section, from the date of~~
43 ~~contribution.~~

1 D. ~~Registration of Pre-planted Trees.~~

2
3 1. ~~Owners may only register trees purchased from a nursery to receive pre-~~
4 ~~planting credit.~~

5
6 2. ~~Owners must register pre-planted trees within 90 days of the date of~~
7 ~~purchase as documented on the receipt or other verified evidence, which must be submitted with~~
8 ~~the registration form.~~

9
10 3. ~~The following documents and information must be included with the~~
11 ~~owner's pre-planting registration.:~~

12
13 a. ~~A receipt or other verifiable evidence that includes the tree's~~
14 ~~date of purchase, species, size, and the address of the property where the tree is to be installed.~~

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

17
18 c. ~~A photograph of the installed tree that indicates the location~~
19 ~~of the tree in relation to nearby streets or structures.~~

20
21 d. ~~Any other documents and information required by the~~
22 ~~Department.~~

23
24 E. ~~Utilization of Pre-planting Credit.~~

25
26 1. ~~When a property owner wishes to utilize a pre-planted tree to satisfy the tree~~
27 ~~replacement conditions of a tree permit, the property owner shall attach a copy of the previously~~
28 ~~filed tree registration form to the application.~~

29
30 2. ~~If the applicant receives a tree permit that requires tree replacement, the~~
31 ~~Department shall inspect the pre-planted tree to confirm that the tree is still alive, healthy, and~~
32 ~~structurally sound, and to determine whether the tree satisfies the species quality, shade potential,~~
33 ~~and other characteristics of the tree to be replaced. No credits shall be allowed for a pre-planted~~
34 ~~tree that is dead, in significant decline, or structurally unsound.~~

35
36 3. ~~When a property owner has made an advance contribution to the tree~~
37 ~~planting fund, the tree planted will be presumed to be alive, structurally sound, and healthy at the~~
38 ~~time the property owner seeks to utilize the credit and will be presumed to be of the highest species~~
39 ~~quality and shade potential and to possess all necessary characteristics to replace any tree that the~~
40 ~~property owner seeks to remove.~~

41
42 4. ~~No single pre-planted tree may be used to satisfy the replacement~~
43 ~~requirements for more than one urban forest tree removed by the property owner, regardless of~~
44 ~~whether the pre-planted tree's imputed basal area exceeds the Department's calculation of the tree~~
45 ~~replacement requirements for the tree to be removed. However, the aggregate basal area of~~

1 multiple pre-planted trees can be used to satisfy the replacement requirement for a single tree to
2 be removed.

3
4 ~~5. Registered pre-planting tree replacement credits convey with the property~~
5 ~~and may be used by subsequent owners of the property. However, pre-planting credits may not be~~
6 ~~transferred to properties other than the property on which the pre-planted tree is located.~~

7
8 6. Pre-planting credits may not be used to satisfy a property owner's obligation
9 to replace a tree that is required to be preserved under a tree protection plan permit. (Ord. 2011-
10 28 § 1, 2011)

11 **12.12.110 Appeals from permit decisions.⁶**

12
13 A. ~~The permit applicant or any resident of the City or owner of property in the City~~
14 ~~may appeal the preliminary approval of an application for a tree permit within the 15-day notice~~
15 ~~period. The permit applicant or the owner of a property with a common property line may appeal~~
16 ~~the preliminary approval of an application for a tree protection plan permit within the 15-day notice~~
17 ~~period. If a notice of appeal is filed during such 15-day notice period, then no permit is issued until~~
18 ~~the Tree Commission has conducted a fact-finding hearing and has issued its final decision on the~~
19 ~~appeal.~~

20
21 B. ~~A notice of appeal from the preliminary approval of an application for a tree~~
22 ~~protection plan permit must allege with particularity facts upon which the Tree Commission could~~
23 ~~determine that the tree protection plan is insufficient to protect the trees to be protected under the~~
24 ~~plan.~~

25
26 C. ~~The permit applicant also may appeal the denial of a permit within 15 days after~~
27 ~~the date that the City Manager notifies the applicant of the denial of a permit for the removal or~~
28 ~~destruction of a tree covered by this chapter.~~

29
30 D. ~~There is a rebuttable presumption that the decision of the City Manager with respect~~
31 ~~to a permit application is correct. Any decision by the Tree Commission to impose conditions~~
32 ~~upon an applicant or reverse or modify a decision of the City Manager with respect to a permit~~
33 ~~application must be based upon substantial evidence in the record. Substantial evidence means~~
34 ~~such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.~~

35
36 E. ~~There is no appeal from the tree replacement requirement or from the granting or~~
37 ~~denial of a tree permit waiver by the City Manager.~~

38

⁶ The prior City Attorney noted, in the track changes document submitted to my office, that this section had been re-located. The section was therefore completely struck through to indicate its removal. A review showed, however, that the track changes document contained a number of proposed changes to the City's Code. This version has removed those proposed changes in light of the City's apparent desire to remove the provision and utilizes the language from the City's current Code.

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

2
3 1. ~~A notice of appeal must be in writing, state the reasons for the appeal, the~~
4 ~~name, address, and email address of the appellant, and the nature of the interest of the appellant.~~
5 ~~Appeal notices shall be filed with the City Manager, who shall forward the notice to the~~
6 ~~Department and the Tree Commission.~~

7
8 2. ~~Hearing Notices.~~

9
10 a. ~~For hearings on appeals from preliminary tree protection~~
11 ~~plan permit decisions, the Department shall send written notice of the time, date, and location of~~
12 ~~the hearing to the permit applicant and to the address of the owner(s) of record of all properties~~
13 ~~sharing a common property line with the property. Such notice shall be sent at least 15 days before~~
14 ~~the scheduled hearing date.~~

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

25
26 G. ~~The Commission may dismiss an appeal if the person filing the notice of appeal, or~~
27 ~~his or her representative, fails to appear at the hearing.~~

28
29 H. ~~The Tree Commission shall conduct a fact-finding hearing on an appeal from a permit~~
30 ~~decision or issuance of a stop work order after giving reasonable notice of the hearing to all~~
31 ~~interested parties in accordance with the Tree Commission's rules. At the hearing, any interested~~
32 ~~party may present testimony and evidence to substantiate any material point. All testimony shall~~
33 ~~be given under oath or by affirmation. The burden of proof shall be on the party filing the appeal~~
34 ~~and shall be met by a preponderance of the evidence. The parties may also cross-examine opposing~~
35 ~~witnesses presenting testimony at the hearing. A verbatim record of the hearing shall be made.~~
36 ~~The record shall be open to inspection by any person and, upon request, the Tree Commission shall~~
37 ~~furnish such person with an at-cost copy of the hearing record.~~

38
39 I. ~~1. The Tree Commission may view a property that is the subject of an appeal. All~~
40 ~~parties to the appeal have the right to be present during the viewing.~~

41
42 ~~2. At the hearing, the Commission must notify the parties of the Commission's intent to~~
43 ~~view the property and the parties' right to be present at the viewing. Any party may waive their~~
44 ~~right to be present during the viewing. Parties that fail to appear at the hearing are deemed to have~~
45 ~~waived their right to be present at the viewing. The commission and the parties that have not~~

1 waived their right to be present shall schedule the viewing of the property to occur no later than
2 ten days after the hearing.

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

6
7 ~~4. The parties shall not communicate with the Commissioners regarding the subject matter~~
8 ~~of the appeal during the viewing.~~

9
10 ~~5. The Tree Commission must file a written report in the record of the proceeding stating~~
11 ~~the facts observed during the viewing upon which its decision and order is based.~~

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

16
17 ~~K. On appeal from a preliminary decision on a tree protection plan permit application,~~
18 ~~after due consideration of the evidence and testimony and application of the standard for~~
19 ~~approval of tree protection plans set forth in Section 12.12.080(e)(3), the Tree Commission shall~~
20 ~~issue a decision on the appeal affirming or modifying the decision and shall give notice to all~~
21 ~~interested parties.~~

22
23 ~~L. Within 30 days of the date of the issuance of a decision of the Tree Commission, a~~
24 ~~person who was a party to the proceedings before the Tree Commission and who is aggrieved by~~
25 ~~the decision may seek judicial review of the decision by filing a petition for judicial review in~~
26 ~~accordance with Title 7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the~~
27 ~~Maryland Rules of Procedure, or any subsequent amendments thereto. (Ord. 2007-59 § 1,~~
28 ~~2007/Ord. 2003-40 (part), 2004)~~

29
30 **12.12.120 Criteria for tree permit decisions.**

31
32 ~~A. The City Manager or, upon appeal, the Tree Commission shall issue a tree permit~~
33 ~~pursuant to Section 12.12.080(A) if so indicated by the factors set forth in subsection (B) of this~~
34 ~~section. Upon appeal, the Tree Commission shall, taking into account the factors set forth in~~
35 ~~subsection (B) of this section, approve the permit, disapprove the permit, or approve the permit~~
36 ~~with modifications and/or conditions.~~

37
38 ~~B. The following factors are into account:~~

39
40 ~~1. The extent to which tree clearing is necessary to achieve proposed~~
41 ~~development or land use, and, when appropriate, the potential ameliorating effects of any tree~~
42 ~~protection plan that has been submitted or approved.~~

43
44 ~~2. The number and type of replacement trees and, if appropriate, any~~
45 ~~reforestation plan proposed as mitigation for the tree or trees to be removed.~~

1
2 3. ~~Any hardship which the applicant will suffer from a modification or~~
3 ~~rejection of the permit application.~~

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

7
8 5. ~~The extent to which the area would be subject to environmental degradation~~
9 ~~due to removal of the tree or trees.~~

10
11 6. ~~The impact of the reduction in tree cover on adjacent properties, the~~
12 ~~surrounding neighborhood and the property on which the tree or trees are located.~~

13 7. ~~The general health and condition of the tree or trees.~~

14
15 8. ~~The desirability of the tree species as a permanent part of the City's urban~~
16 ~~forest.~~

17
18 9. ~~The placement of the tree or trees in relation to utilities, structures and the~~
19 ~~use of the property. (Ord. 2003-40 (part), 2004)~~

20
21 **12.12.125 Notification of tree protection laws required prior to sale of real property.**

22
23 A. On or before entering into a contract for the sale of real property in the City, the owner
24 or agent of the property must provide the prospective buyer with a City of Takoma Park—Notice
25 of Tree Preservation and Replacement Requirements (“notice”) in accordance with subsection (D)
26 of this section.

27
28 B. At the time the notice in subsection (A) of this section is delivered, each buyer must
29 sign and date a written acknowledgment of receipt of the notice. The notice shall be included in or
30 attached to the contract of sale for the property.

31
32 C. The notice requirements established by this section do not apply to:

33
34 1. A sheriff's sale, tax sale, deed in lieu of foreclosure, or sale by foreclosure,
35 partition, or court-appointed trustee;

36
37 2. A transfer of the property by a fiduciary in the course of the administration
38 of a decedent's estate, guardianship, conservatorship or trust;

39
40 3. A transfer of the property, or any interest therein, to a spouse, former
41 spouse, domestic partner, former domestic partner, parent, sibling, child or grandchild; or

42
43 4. A transfer of property solely to provide a security or leasehold interest in
44 real property.

1 D. Except as provided in subsection (C) of this section, the notice shall be included in or
2 attached to all real property contracts of sale and shall be in substantially the form set forth below:
3

4 NOTICE OF TREE PRESERVATION AND REPLACEMENT REQUIREMENTS
5 – CITY OF TAKOMA PARK:
6

7 1. The Buyer is notified that Chapter 12.12, Urban Forest, of the Takoma Park Code
8 imposes restrictions and procedural requirements relating to activity on properties located in the
9 City of Takoma Park (“City”) that may affect urban forest trees on the property or on neighboring
10 properties. An “urban forest tree” is a tree which: a) measures 24 inches or more in circumference
11 at 4-1/2 feet above ground level or measures 7-5/8 inches or more in diameter at breast height
12 (“DBH”) (note: additional requirements may apply if the property is located in the Takoma Park
13 Historic District); b) is required to be planted or maintained pursuant to governmental order,
14 agreement, covenant, easement or a tree protection plan, or as a condition of the issuance of a City
15 tree removal permit; or c) is planted with government funding or under a government program.
16 See Takoma Park Code §12.12.020.
17

18 2. The activities within 50 feet of an urban forest tree that may be regulated by
19 Chapter 12.12, Urban Forest, of the Takoma Park Code include, but are not limited to, the
20 construction or expansion of a structure, the operation of heavy equipment, land disturbing
21 activities such as regrading or excavation, installation of paving or other hardscape, and the
22 removal or pruning of roots or branches of trees.
23

24 3. A tree removal permit is required before a property owner may remove, relocate,
25 or destroy an urban forest tree. The City may deny the tree removal permit and require that the tree
26 remain in place, or may require the owner to plant multiple replacement trees or pay a tree
27 replacement fee to the City as a condition of the issuance of a permit. ~~Tree permit waivers may~~
28 ~~also be granted allowing the removal of dead or hazardous urban forest trees.~~
29

30 4. Before engaging in construction or other activities that may impact urban forest
31 trees on or near the property, the property owner must contact the City Department of Public Works
32 to request a tree impact assessment. Following a tree impact assessment, the Department will
33 advise the property owner whether a tree protection plan permit is required before the activity may
34 proceed. The owner and the owner’s contractors may be required to take measures to reduce the
35 impact of the activity upon the trees on or near the property. Such measures may add to the cost
36 of the activity, delay the completion of the activity, or require modifications to the planned activity,
37 including, but not limited to, the use of alternative hardscape materials and construction methods,
38 and reductions or modifications to the footprint of additions or new construction.
39

40 5. Violation of Chapter 12.12 of the Takoma Park Code may subject property
41 owners and their agents to civil and criminal penalties, including fines and imprisonment.
42

43 6. Additional information is available from the City of Takoma Park Department
44 of Public Works at (301) 891-7612 or at www.takomaparkmd.gov.
45

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

3
4 _____ Buyer Date _____

5
6 _____ Buyer Date _____

7
8 E. A violation of this section is a Class B municipal infraction.

9
10 F. A buyer’s failure to receive the notice required by this section does not excuse or waive
11 compliance with the requirements of this ~~section~~ chapter. (Ord. 2011-28 § 1, 2011)

12 **12.12.130 Violations and penalties—Enforcement.**

13
14 A. Municipal Infractions.

15
16 1. Any of the following is a Class AA municipal infraction:

17
18 a. Doing any of the acts for which a permit is required under
19 Sections 12.12.040 or 12.12.050 or performing any such act in relation to a dead or
20 hazardous urban forest tree, without applying for a permit, after an application for
21 a permit has been denied, or after applying for a permit but before a permit has been
22 issued, **unless a permit waiver covering the act has been issued or the act is**
23 **described in Section 12.12.040(B) or 12.12.050(B).**

24
25 b. Failure to fulfill the tree replacement requirements of ~~Section 12.12.100.~~
26 this chapter.

27
28 c. Any violation of a decision or order of the Tree Commission, including,
29 but not limited to, the violation or nonperformance of conditions imposed in
30 connection with the issuance of a permit.

31
32 d. Any violation of a requirement ~~for~~ of a tree removal permit or tree
33 protection plan.

34
35 e. Any violation of a condition imposed in connection with the issuance
36 of a tree removal permit or tree protection plan permit.

37
38 f. Pruning more than 10% of the live canopy of an urban forest tree, or
39 pruning live limbs with significant diameter in relation to the size of the tree, or
40 other action that would significantly and permanently detract from an urban forest
41 tree’s health or growth, unless such activity is authorized under a tree protection
42 plan or tree removal permit.

43
44 B. Misdemeanors.

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

2
3 a. To do any of the acts specified in subsection (A) of this section in
4 relation to three or more urban forest trees, whether or not such urban forest trees
5 are located on the same property, within a three-month period.

6
7 b. To do any of the acts specified in subsection (A) of this section in
8 relation to any urban forest tree ~~which~~that has been designated by the Tree
9 Commission or the City as having special botanical, ecological or historical
10 significance or as a landmark.

11
12 c. To do any of the acts specified in subsection (A) of this section in
13 relation to any tree, ~~which~~that is more than 33 inches in circumference at four and
14 one-half feet above ground level.

15
16 d. To willfully or repeatedly violate this chapter or an order of the Tree
17 Commission.

18
19 e. To violate a stop work order issued pursuant ~~to~~
20 ~~Section 12.04.050(C)~~ this chapter.

21
22 C. Each urban forest tree that is damaged or destroyed as a result of act(s) taken in
23 violation of any provision of this chapter is considered a separate violation of the appropriate
24 section(s).

25
26 D. In cases where a person has hired an individual or organization to perform tree work
27 that is in violation of any provision of this chapter, both the hired and the hirer ~~maybe~~may be
28 subject to the penalties set forth in this chapter.

29
30 E. Any person or organization that performs tree trimming or tree removal for hire within
31 the City of Takoma Park and who violates any provision of this chapter may be barred from
32 contracting with or performing work for the City of Takoma Park.

33
34 F. Fines collected for violations of this chapter are deposited by in the City's tree
35 planting canopy fund. (~~Ord. 2004-6 (part), 2004/Ord. 2003-40 (part), 2004~~)

36
37 **12.12.140 Duties of the City Arborist Reports to Council.**

38
39 The City of Takoma Park, through the Urban Forest Manager and other designees as defined by
40 the City Manager, shall:

41
42 A. Administer the provisions of this ordinance and develop regulations for
43 administering this ordinance.

44
45 B. Prepare and submit an annual report to the Council that consists of:
46

- 1 1. A description of the condition of the urban forest; ~~and~~
- 2
- 3 2. The number of applications received, ~~and tree removal permits, and tree~~
- 4 ~~protection plan permits, and waivers~~ issued by the City Manager, and a summary of each decision
- 5 ~~of the Tree Commission;~~
- 6
- 7 3. A description of the City's progress in meeting the Council's tree canopy
- 8 ~~goals as set forth from time to time by resolution of the Council, including actions to address~~
- 9 ~~differences and inequities that exist in tree canopy coverage across City neighborhoods;~~
- 10
- 11 4. Recommending, as needed, changes in law or other action the Council may
- 12 ~~wish to take to protect and promote the urban forest in Takoma Park; and~~
- 13
- 14 5. The status of the City's education and outreach strategy along with any
- 15 ~~recommended changes.~~
- 16
- 17 C. Prepare and, every five to six years, update a master tree plan focused on protecting
- 18 ~~and maintaining the urban tree canopy, which plan shall consist of a tree canopy assessment, future~~
- 19 ~~planting plans, including planting to replace trees removed by permit with no individual~~
- 20 ~~replacement requirements and utilize the most recent LIDAR data.~~
- 21
- 22 D. Maintain a species list for selection of trees to be planted on private and public
- 23 ~~property as per the requirements of this ordinance.~~
- 24
- 25 E. Notify the Council of significant events related to the urban forest on an as-needed
- 26 ~~basis.~~
- 27
- 28 F. Recommend, as needed, changes in law and other action the Council may wish to
- 29 ~~take to protect and promote the urban forest.~~⁷

⁷ Below is the version of section 12.12.140 that was in the March 9th draft of the ordinance submitted to Council. It is placed herein below for ease of reference as it seemed to make sense to simply replace it in its entirety.

~~The City Arborist Urban Forest Manager shall. The Public Works Department shall provide the following to Council:~~

- A. An annual report to the Council that ~~includes~~ consists of:
 1. A description of the condition of the urban forest; ~~and~~
 2. The number of applications received, ~~and tree removal permits, and tree protection plan permits, and waivers~~ issued by the City Manager, and a summary of each decision of the Tree Commission;
 3. A description of the City's progress in meeting the Council's Tree Canopy's goals as set forth from time to time by resolution of the Council; and
 4. Recommending, as needed, changes in law or other action the Council may wish to take to protect and promote the urban forest in Takoma Park.
 5. The status of the City's education and outreach strategy along with any recommended changes.
- B. A master tree plan which is to be prepared and updated every five years and shall consist of an inventory of trees on public space and a multi-year planting schedule; ~~Preparing and updating, at least biennially, every five years, a master tree plan consisting of an inventory of trees on public space, and a multi-year planting schedule, notify the Council of significant events related to the urban forest; and~~
- C. ~~revised canopy goals, and an education and outreach strategy;~~
- D C. Written notification to the Council of significant events related to the urban forest;

1
2
3
4
5
6
7
8
9

THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK,
MARYLAND, THIS _____ DAY OF _____, 2020, BY ROLL-
CALL VOTE AS FOLLOWS:

- A YE:
- NAY:
- ABSTAIN:

10 **Explanatory Note:**

11
12
13

- 1. Underlining indicates language being added to the Code.
- 2. ~~Strikethrough~~ indicates language being deleted from the Code.

E. ~~Recommending, as needed, changes in law or other action the Council may wish to take to protect and promote the urban forest in Takoma Park; prepare a quarterly report to the Council listing the number of applications received and the number of tree removal permits, and tree protection plan permits, and waivers issued by the City Manager; and~~

F. ~~Performing any other related duties assigned by the City Manager or by ordinance or resolution.~~
(Ord. 2003-40 (part), 2004)