

Introduced by: Councilmember Clay
Drafted by:
Kenneth Sigman, Assistant City Attorney
Todd Bolton, City Arborist

First Reading: July 11, 2011
Second Reading: July 25, 2011
Effective Date: September 6, 2011

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2011-28

(Revision of Chapter 12, Trees and Vegetation, of the *Takoma Park Code*)

WHEREAS, the City of Takoma Park has the authority to make and administer laws and regulations to protect the public's health and safety, and to protect the environment; and

WHEREAS, the City has the authority under Section 5-427 of the Natural Resources Article of the *Annotated Code of Maryland* to implement a local urban and community forestry program; and

WHEREAS, trees and other plants provide significant public benefits in terms of air, noise and visual pollution control, control water run-off and support the biologic and hydrologic integrity of watersheds and ecosystems, and have significant aesthetic value affecting property values and the quality of life in the City; and

WHEREAS, *Takoma Park Code*, Chapter 12.12, Urban Forest, requires that property owners who remove substantial trees from their property replace those trees by planting one or more trees on their property or by making a contribution to the City's tree planting fund so as to maintain the City's tree canopy; and

WHEREAS, the cost of tree replacement places a financial burden on property owners often at the same time that residents are incurring significant expenses relating to home improvements and the removal of existing trees; and

WHEREAS, allowing for the pre-planting of replacement trees will allow property owners to spread out tree replacement costs; and

WHEREAS, the planting of replacement trees in advance of the tree removal will provide immediate environmental benefits and will hasten the restoration of tree canopy lost as a result of tree removal; and

WHEREAS, many violations of the City's tree preservation laws occur because new property owners in the City are unaware of the laws; and

WHEREAS, requiring that the sellers of real property provide notice of the City's tree preservation laws to buyers of the property will help prevent unintentional violations of these laws.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND.

SECTION 1. Title 12, Trees and Vegetation, Chapter 12.12, Urban Forest, of the *Takoma Park Code* is amended as follows:

12.12.100 Tree replacement required.

A. * * *

B. Replacement trees are equal to or superior to the removed trees in terms of species quality, shade potential, and other characteristics. In the case of undesirable trees removed pursuant to Section 12.12.080(B)(1), the replacement tree is of superior species quality. Replacement trees are nursery stock trees with a ~~minimum~~ size of 1½²² to 3 inches in caliper for deciduous trees, or 6 to 10⁴ feet in height for evergreen trees and guaranteed for one year.

C. The basal area of the replacement trees, measured at caliper height, must be no less than a percentage of the total basal area of the tree to be removed measured at 4½² feet above the ground. The percentage is determined using the following health quality analysis rating scale.

* * *

D. * * *

1. For trees removed or excessively damaged in violation of this chapter or an approved tree protection plan, the total basal area of the replacement tree at caliper height must be no less than 10% of the basal area at 4½² feet above the ground of the tree removed or damaged.

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E. Where it is not feasible or desirable to replace trees on site, the replacement requirement may be satisfied by planting trees at another location approved by the City Manager within the City or by paying a contribution fee in lieu of planting replacement trees equivalent to the installed market value of the required replacement trees to the City's tree planting fund.

12.12.105 Pre-planting of replacement trees.

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

B. Pre-planted replacement trees must satisfy the size, species quality, shade potential, and other characteristic requirements of section 12.12.100.A.1 as determined by the Department.

C. Calculation of pre-planted tree replacement credit.

1. At the time a property owner applies for a tree permit, the basal area of pre-planted

replacement trees shall be calculated by taking the caliper of the tree at the time of planting, as indicated in the sales receipt for the pre-planted tree or other documented and verifiable evidence of the caliper of the tree, and imputing a 10% annual growth rate. The imputed growth rate of 10% per year shall be based upon the initial caliper and shall not be compounded. For example, for a 1½ inch caliper deciduous tree, the initial basal area will be 1.76 square inches, and 0.176 square inches of growth shall be imputed per year.

2. If the purchase of a pre-planted tree was subsidized by the City, the credit will be calculated by reducing the initial caliper by a percentage equal to the percentage of the purchase price paid by the City.
3. If a property owner makes a contribution to the City's tree planting fund, the credit will be based upon an imputed 1½ inch caliper tree, with imputed annual growth calculated in accordance with subsection C.1 above, from the date of the contribution.

D. Registration of pre-planted trees.

1. Owners may only register trees purchased from a nursery to receive pre-planting credit.
2. Owners must register pre-planted trees within 90 days of the date of purchase as documented on the receipt or other verified evidence, which must be submitted with the registration form.
3. The following documents and information must be included with the owner's pre-planting registration.
 - a. A receipt or other verifiable evidence that includes the tree's date of purchase, species, size, and the address of the property where the tree is to be installed.
 - b. A site drawing of the property that identifies the replacement tree in relation to the street and the structures on the property.
 - c. A photograph of the installed tree that indicates the location of the tree in relation to nearby streets or structures.
 - d. Any other documents and information required by the Department.

E. Utilization of pre-planting credit.

1. When a property owner wishes to utilize a pre-planted tree to satisfy the tree replacement conditions of a tree permit, the property owner shall attach a copy of the previously filed tree registration form to the application.
2. If the applicant receives a tree permit that requires tree replacement, the Department shall inspect the pre-planted tree to confirm that the tree is still alive, healthy, and structurally sound, and to determine whether the tree satisfies the species quality, shade potential, and other characteristics of the tree to be replaced. No credits shall be allowed for a pre-

planted tree that is dead, in significant decline, or structurally unsound.

3. When a property owner has made an advance contribution to the tree planting fund, the tree planted will be presumed to be alive, structurally sound, and healthy at the time the property owner seeks to utilize the credit and will be presumed to be of the highest species quality and shade potential and to possess all necessary characteristics to replace any tree that the property owner seeks to remove.
4. No single pre-planted tree may be used to satisfy the replacement requirements for more than one urban forest tree removed by the property owner, regardless of whether the pre-planted tree's imputed basal area exceeds the Department's calculation of the tree replacement requirements for the tree to be removed. However, the aggregate basal area of multiple pre-planted trees can be used to satisfy the replacement requirement for a single tree to be removed.
5. REGISTERED PRE-PLANTING TREE REPLACEMENT CREDITS CONVEY WITH THE PROPERTY AND MAY BE USED BY SUBSEQUENT OWNERS OF THE PROPERTY. HOWEVER, PRE-PLANTING CREDITS MAY NOT BE TRANSFERRED TO PROPERTIES OTHER THAN THE PROPERTY ON WHICH THE PRE-PLANTED TREE IS LOCATED. [Pre-planting credits may only be used by the property owner who registers the pre-planted tree with the City to satisfy the tree replacement requirements of a tree permit issued for the removal of trees on the owner's property. Pre-planting credits are not transferrable.]
6. Pre-planting credits may not be used to satisfy a property owner's obligation to replace a tree that is required to be preserved under a tree protection plan permit.

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

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

partner, former domestic partner, parent, sibling, child or grandchild; or

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

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

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

1. The Buyer is notified that Chapter 12.12, Urban Forest, of the *Takoma Park Code* imposes restrictions and procedural requirements relating to activity on properties located in the City of Takoma Park (“City”) that may affect urban forest trees on the property or on neighboring properties. An “urban forest tree” is a tree which: a) measures 24 inches or more in circumference at 4 ½ feet above ground level or measures 7-5/8 inches or more diameter at breast height (“DBH”) (*note*: additional requirements may apply if the property is located in the Takoma Park Historic District); b) is required to be planted or maintained pursuant to governmental order, agreement, covenant, easement or a tree protection plan, or as a condition of the issuance of a City tree permit; or c) is planted with government funding or under a government program. *See Takoma Park Code* §12.12.020.
2. The activities within 50 feet of an urban forest tree that may be regulated by Chapter 12.12, Urban Forest, of the *Takoma Park Code* include, but are not limited to, the construction or expansion of a structure, the operation of heavy equipment, land disturbing activities such as regrading or excavation, installation of paving or other hardscape, and the removal or pruning of roots or branches of trees.
3. A TREE REMOVAL PERMIT IS REQUIRED BEFORE A PROPERTY OWNER MAY REMOVE, RELOCATE, OR DESTROY AN URBAN FOREST TREE. [~~Prior to removing an urban forest tree, a property owner must apply for and obtain a tree removal permit.~~] The City may deny the TREE REMOVAL permit and require that the tree remain in place, or may require the owner to plant MULTIPLE replacement trees or pay a tree replacement fee to the City as a condition of the issuance of a permit. Tree permit waivers may also be granted allowing the removal of dead or hazardous urban forest trees.
4. Before engaging in construction or other activities that may impact urban forest trees on or near the property, the property owner must contact the City Department of Public Works to request a tree impact assessment. Following a tree impact assessment, the Department will advise the property owner whether a tree protection plan permit is required before the activity may proceed. The owner and the owner’s contractors may be required to take measures to reduce the impact of the activity upon the trees on or near the property. Such measures may add to the cost of the activity, delay the completion of the activity, or require modifications to the planned activity, including, but not limited to, the use of alternative hardscape materials and construction methods, and reductions or

modifications to the footprint of additions or new construction.

- 5. Violation of Chapter 12.12 of the *Takoma Park Code* may subject property owners and their agents to civil and criminal penalties, including fines and imprisonment.
- 6. Additional information is available from the City of Takoma Park Department of Public Works at (301) 891-7612 or at www.takomaparkmd.gov [~~click on PARKS AND GARDENS and then TREES or on CITY CODE~~].

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

Buyer	Date	Buyer	Date
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- E. A violation of this section is a Class B municipal infraction.
- F. A buyer’s failure to receive the Notice required by this section does not excuse or waive compliance with the requirement of Chapter 12.12 of the *Takoma Park Code*.

SECTION 2. Effective Date. This Ordinance shall be effective on September 6, 2011.

ADOPTED THIS 25TH DAY OF JULY, 2011, BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, BY ROLL-CALL VOTE AS FOLLOWS:

AYE: Williams, Wright, Clay, Robinson, Seamens, Snipper, Schultz
NAY: None
ABSENT: None
ABSTAIN: None

EXPLANATORY NOTE

Additions to the existing language of the *Takoma Park Code* are shown by underlining.
Deletions to the existing language of the *Takoma Park Code* are shown by ~~strikeout~~.
* * * indicates language of the *Takoma Park Code* which is not reproduced in this Ordinance and which is not being changed.

ADDITIONS to the existing language of the *Takoma Park Code* made after 1st reading of this Ordinance are shown in ALL CAPITAL LETTERS AND UNDERLINED.
Deletions to the existing language of the *Takoma Park Code* made after 1st reading of this Ordinance are shown by [brackets] and [~~strikeout~~].