

## Chapter 113 - TREE PRESERVATION<sup>11</sup>

Footnotes:

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**Editor's note**— Part 1 of Ord. No. 21-2012, adopted Aug. 6, 2012, amended ch. 113 in its entirety to read as herein set out. Former ch. 113, §§ 113-1—113-19, pertained to similar subject matter, and derived from Ord. No. 20-2003, adopted Dec. 1, 2003; Ord. No. 10-2005, §§ 105-1—105-19, adopted Dec. 5, 2005; and Ord. No. 09-2009, adopted June 1, 2009.

Sec. 113-1. - Title.

The provisions of this chapter shall be known as the "Tree Preservation Ordinance."

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-2. - Purpose.

It is the policy of the city that there shall be no net loss of canopy coverage as defined in this chapter within the boundaries of the city, including property owned by the city. The purpose of this chapter is to establish the standards necessary to ensure that this policy will be realized and that the city will continue to enjoy the benefits provided by its urban forest. The provisions of this chapter are enacted to:

- (1) Establish and maintain the maximum amount of tree canopy on public and private lands in the city by prohibiting the destruction or removal of trees except in accordance with the standards set forth in this article;
- (2) Maintain trees in the city in a healthy condition through professionally accepted arboricultural practices;
- (3) Establish and revise as necessary the standards for the planting and maintenance of trees so as to improve the economic base of the city by improving property values, to enhance the visual quality of the city and its neighborhoods and to improve public health by lessening air pollution and the incidence of flooding;
- (4) Minimize hazards and damage to streets and sidewalks and lessen public rights-of-way maintenance costs;
- (5) Establish standards for the replacement of trees removed or destroyed by the site development and/or building process;
- (6) Encourage the use of creative development through the use of the Design Concept Development (DCD) district to save trees and green spaces.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-3. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Caliper* means the diameter of the trunk of a replacement tree (new nursery stock) measured six inches above the ground line for trees of four-inch caliper or smaller, and measured 12 inches above the ground line for trees larger than four inches in caliper.

*Canopy coverage* means an area of healthy tree cover, measured in square feet of projection of the healthy tree canopy onto the ground.

*Destruction* includes, but is not limited to, excessive topping out, girdling, limbing, chopping or otherwise cutting a tree to the extent that its demise is imminent. Any actions resulting in the death of a tree.

*Diameter at breast height (DBH)* means the diameter of a tree trunk measured in inches at a height of 4.5 feet above the ground line for individual trunks, and at the narrowest point below the fork for trees forked below 4.5 feet.

*Dripline* means a vertical line extending downward from the outermost tips of a tree's branches, creating a more or less circular projection on the ground.

*Land disturbing activity* means any activity that disturbs the soil, removes woody vegetation, or results in soil erosion from water or wind and the movement of sediments into state waters or onto lands within the state including, but not limited to, excavating, filling, grading, grubbing, root or stump removal, trenching, or transporting of land, but not including agricultural practices. Any activity requiring a development permit.

*Large tree* means a tree expected to grow to a minimum height of 40 feet at maturity under urban conditions.

*Medium tree* means a tree expected to grow to a maximum height of 25 to 40 feet at maturity under urban conditions.

*Small tree* means a tree expected to grow to a maximum height of 25 feet at maturity under urban conditions.

*Specimen tree* means any tree, excluding loblolly pines, which qualifies for special consideration for conservation due to its size, type, condition, location or historical significance. The following two criteria are used by the Community Development Director to identify specimen trees. Both the size and condition criteria must be met for a tree to qualify.

- (1) *Size criteria.*
  - a. Overstory tree: 28-inch diameter or larger.
  - b. Understory tree: 12-inch diameter or larger.
- (2) *Condition criteria.* Life expectancy of greater than 15 years. Relatively sound and solid trunk with no excessive decay. No more than one major and several minor dead limbs. No major insect or pathological problem.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-4. - Applicability/exemptions.

The provisions of this chapter shall apply to any land disturbing activity on real property within the corporate limits of the city and to any removal or destruction of a tree with a DBH of six inches or greater regardless of whether it is associated with land disturbing activity. The following activities shall be exempt from the provisions of this chapter.

- (1) Activities performed by a federal, state, county, municipal or other governmental agency during the course of their daily work shall be exempt from this article. However, best management practices for tree care shall be incorporated into the activities.
- (2) When the Community Development Director finds that any tree presents a danger or hazard to the health, safety and welfare of the public, such tree may be removed immediately by the owner or the owner's agent upon written authorization by the Community Development Director.

- (3) During a period of any emergency, such as a tornado, ice storm, flood or any other act of nature, the requirements of this chapter may be waived by the Community Development Director.
- (4) The removal of trees within burial plots.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-5. - Tree Preservation Board.

- (a) *Purpose.* A Tree Preservation Board (hereinafter referred to as the "Board") is hereby established to assist the Community Development Department in interpreting and enforcing the provisions of this chapter and to advise the Mayor and City Council on matters pertaining to the preservation of trees and conservation of tree canopy cover within the city.
- (b) *Members.* The Tree Preservation Board shall consist of five members. The members shall be residents or property owners of the city, except that up to two members may be nonresidents or nonproperty owners with professional expertise in arboriculture or horticulture or the land development/construction field. The members shall be appointed by the Mayor and City Council.
- (c) *Term of office.* Each member of the Tree Preservation Board shall serve for three years.
- (d) *Meetings.* The Tree Preservation Board shall meet not less frequently than quarterly and shall establish rules and regulations for its operations consistent with the provisions of this chapter.
- (e) *Administrative guidelines.* The Tree Preservation Board shall have the power to adopt and promulgate such further administrative guidelines and standards as may be necessary or desirable to carry out the provisions of this chapter. The maintenance of the city's community tree species list shall be the responsibility of the board. Current copies of the community tree species list and other such administrative guidelines, standards, or regulations shall be maintained at the city Community Development Department and shall be made available to the public for inspection and copying during normal business hours.
- (f) *Appeals.* The Tree Preservation Board shall have the power to hear appeals of any person aggrieved or adversely affected by an administrative decision made by the Community Development Director in the course of administering this chapter.
- (g) *Variances.* The Tree Preservation Board shall have the power to grant variances to this chapter based on a hardship not created by the applicant.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-6. - Permits.

No person, corporation or association shall remove or destroy any tree either on public or private property with a DBH of six inches or greater without having first obtained a tree removal permit from the Community Development Department. A tree plan approved as a part of an approved development permit shall constitute a tree removal permit.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-7. - Application.

- (a) An application for a tree removal permit when land disturbing activity is involved shall include three copies of a tree conservation and landscape plan which shall be completed and signed by a registered forester, a certified or degreed arborist, or a registered landscape architect whose credentials shall be made available to the Community Development Director.

- (b) The tree conservation and landscape plan shall include, at a minimum, the following information:
- (1) Project name;
  - (2) Project description;
  - (3) Project location and tax parcel number;
  - (4) Name, address, and telephone number of property owner;
  - (5) Name, address, and telephone number of developer;
  - (6) Name, address, and telephone number of the person responsible for preparing the soil and tree conservation plan, and the seal, signature, and statement of professional qualifications of such person;
  - (7) Size of project area in acres or square feet;
  - (8) Size of the buildable area in acres or square feet;
  - (9) Total landscaped area required in percent and square foot area;
  - (10) Total canopy cover required in percent and square foot area;
  - (11) Summary table of tree canopy coverage for conserved trees by individual tree or tree groups, and for planted trees by species, mature size and canopy category;
  - (12) Delineation of required buffers, landscaped areas, open space, and recreation areas;
  - (13) Location and size of proposed structures or additions to existing structures, paved areas, and all other site improvements;
  - (14) Construction entrance and exit;
  - (15) Delineation of tree conservation areas;
  - (16) Species, DBH, and location of trees to be conserved (include both trunk location and extent of tree protection zone). Trees in excess of required canopy coverage are not required to be located, however all specimen trees shall be located on the survey;
  - (17) For existing developments, location, species, and size of any tree previously conserved or planted to achieve required tree canopy cover, including trunk location, DBH, and location and dimensions of tree protection zones;
  - (18) Location of all existing and proposed overhead and underground utilities;
  - (19) Type and location of tree protection fencing and other tree protection structures required;
  - (20) Type and location of tree protection area signs;
  - (21) Species, caliper, and location of trees to be planted;
  - (22) Tree protection statement for all conserved trees: "Tree protection measures will be maintained at all times. Additional tree protection measures will be installed if deemed necessary by on-site inspection";
  - (23) Tree maintenance statement for all planted trees: "The owner will maintain trees throughout their life using best management practice. Maintenance after planting will include watering, mulching, and pruning. The owner shall replace any planted tree which dies prior to issuance of the final certificate of occupancy for the project or during the first three years, whichever occurs last";
  - (24) Species, DBH, and location of trees growing on the adjacent public street right-of-way or public property.
- (c) A permit to remove or destroy a specimen tree not associated with land disturbing activity shall be accompanied by photographs, a site drawing and a written statement of the condition of the tree and/or the threat it poses by the owner of the property and a registered forester, a certified or

degreed arborist or a registered landscape architect whose credentials shall be made available to the Community Development Director. In cases where such permit is requested on R100, R75, R65, or RMD property, said request shall be exempt from subsection 113-10(a). If in the determination of the Community Development Director the specimen tree is obviously dead or immediately hazardous then the requirements in this subsection may be waived by the Community Development Director.

- (d) A permit to remove trees with a DBH of six inches or greater that are not specimen trees or not associated with land disturbing activity shall be accompanied by a site drawing and a statement from the property owner of the condition of the tree and/or the threat it poses. Photographs and other supporting information may be required by the Director. In cases where such permit is requested on R100, R75, R65, or RMD property, said request shall be exempt from subsection 113-10(a).

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-8. - Authority to grant tree removal permits.

The Community Development Department shall have the authority to grant tree removal permits.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-9. - Time for consideration of a tree removal permit application.

All applications for tree removal permits shall be acted on within 60 days of the receipt of a complete application and permit fee, if any. The tree removal permit fee shall be established by the Mayor and Council. If the city fails to act on the application within 60 days, the application shall be deemed approved.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-10. - Canopy cover.

- (a) *Minimum tree canopy cover required.* A minimum amount of healthy tree canopy cover, measured in square feet of projection of the canopy onto the ground, shall be conserved and/or established within the net area of each parcel. The required amount of tree canopy cover shall be maintained throughout the life of the development. Tree canopy cover requirements shall be: 70 percent for residential zones, 40 percent for commercial zones, 40 percent for office zones, 30 percent for industrial zones. Trees in poor or declining condition, as determined by the Community Development Director, shall not be credited toward the required tree canopy coverage.
- (b) *Parking areas.* Within parking areas at least one overstory tree shall be planted or conserved within the interior of the parking lot for each seven parking spaces. In no case shall a parking space be greater than 40 feet from a tree. Trees planted or conserved to meet this requirement shall be counted toward the overall tree canopy cover requirement.
- (c) *Buffers, open areas, and recreation areas.* Where buffers, open areas, and recreation areas are required, the required canopy cover percentage shall apply to the net area.
- (d) *Canopy cover calculations.* In order to encourage the preservation of specimen trees and the incorporation of these trees into the design of projects, specimen trees shall be credited the diameter of the dripline times 2.5 toward canopy coverage. Other existing trees shall be credited the diameter of the dripline times 1.5 toward canopy coverage. In order to qualify for this credit 80 percent of the dripline must be protected by a tree save fence.
  - (1) Existing conifers may be used in calculating the canopy cover, however only trees from the tree species list may be used in replanting. Conifers may be used for screening in required buffers where allowed by the zoning chapter.

- (2) New trees must be a minimum of two inches caliper and the canopy provided shall be calculated as listed below:
  - a. Large trees: 1,600 square feet.
  - b. Medium trees: 900 square feet.
  - c. Small trees: 400 square feet.
- (3) When calculating the number of trees required, any fraction below one-half shall be rounded down to the next lower whole number, and any fraction equal to or greater than one-half shall be rounded up to the next highest whole number.
- (4) For existing trees, overlapping canopies may be calculated individually. This recognizes the benefits of trees to the environment other than shade.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-11. - Community tree species list.

- (a) The city shall maintain a list of tree species approved for conservation and planting within the city as well as those not recommended. The list shall be known as the city's community tree species list, hereinafter referred to as the tree species list. The tree species list includes the canopy cover category of each species, the mature size category of each species, notations on which species may be planted beneath utility lines, and other species characteristics.
  - (1) *Canopy cover category.* Each species included in the tree species list shall be assigned a canopy cover category of overstory or understory.
  - (2) *Mature size category.* Each species included in the tree species list shall be assigned a mature size category of large, medium, or small. The mature size limits of each category are as follows:
    - a. Large tree: average mature height of 40 feet or greater;
    - b. Medium tree: average mature height of 25 to 40 feet;
    - c. Small tree: average mature height of 15 to 25 feet.
- (b) The list is maintained by the Tree Preservation Board and may change without notice to incorporate results of research and experience with individual species, and is available from the city Community Development Department.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-12. - Permeable surfaces.

Minimum permeable surface area requirements are as follows.

- (1) For conserved trees in residential zones no more than 20 percent of the dripline can be encroached upon provided the remaining area is mulched.
- (2) For planted trees in all zones the amount of permeable surface area required shall be based upon the mature tree size category as follows:
  - a. Large trees: 640 square feet;
  - b. Medium trees: 360 square feet;
  - c. Small trees: 160 square feet.
- (3) For planted trees the dripline shall be mulched.

- (4) Parking lot trees located in islands shall be allowed to double the canopy coverage formula contain in this section and shall be allowed to reduce the square footage of permeable area required by this section to 64 square feet.
- (5) The same permeable surface area cannot be counted for more than one tree except as approved by the Community Development Director.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-13. - Street trees.

A minimum of one overstory tree for every 40 linear feet of road frontage is required on both sides of any new street. The minimum caliper shall be two inches.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-14. - Tree protection.

- (a) *Conserved trees.* All conserved trees shall be actively protected during the development process and passively protected throughout the life of the development. The entire tree, including the crown, trunk, and roots, and the critical root zone, shall be protected.
- (b) *Minimum tree protection measures.* Active tree protection shall consist of, at a minimum, establishing a tree protection zone around each tree or grouping of trees by the installation of fencing at the outer edges of the critical root zone.
  - (1) Tree protection fencing and tree protection area signs shall be installed after the issuance of a permit and prior to any land disturbance activity or building activity.
    - a. Tree protection fencing shall be at least four feet high and shall be installed with either sturdy wooden or metal fence posts around the tree protection zone.
    - b. Official "Tree Save Area—Stay Out" signs acquired from the city shall be posted every 50 linear feet along all trees save fences.
    - c. Tree protection fencing shall remain in good condition throughout the development and construction processes, and shall only be removed after final plat approval or a certificate of occupancy has been issued.
  - (2) Encroachment into the tree protection area shall result in the loss of credit for canopy coverage.
  - (3) The critical root zone within the tree protection area shall be mulched with a minimum of three inches and not more than five inches of organic mulch such as pine straw, wood chips, tree leaves, or compost, for a minimum of three years, or prior to issuance of the final certificate of occupancy for the project, whichever occurs last.
  - (4) The Community Development Director may require the installation of additional tree protection measures to insure survivability of conserved trees.
- (c) *Prohibited activities.* Within the tree protection areas, without proper authorization or permit the following activities shall be prohibited:
  - (1) Vehicle traffic or parking;
  - (2) Materials or equipment storage;
  - (3) Soil disturbance;
  - (4) Soil excavation;

- (5) Removal of topsoil;
  - (6) Trenching;
  - (7) Soil fill;
  - (8) Change in soil pH;
  - (9) Change in soil drainage;
  - (10) Equipment washouts or disposal (including concrete);
  - (11) Fires;
  - (12) Chemical or trash disposal;
  - (13) Other activities harmful to the trees as determined by the Community Development Director;
  - (14) Encroachment into tree save area; and
  - (15) Destruction or removal of trees.
- (d) *Planted trees.* All planted trees shall be actively protected during the development process and passively protected throughout the life of the development. The entire tree, including the crown, trunk, and roots, and the critical root zone, shall be protected.
- (e) *Existing trees in construction zones.* All trees that are outside the formal tree protection zone(s) as outlined in the Tree Protection and Replacement Plan and are equal to or greater than 12 inches DBH, and are in areas where construction will occur inside the crown of the tree shall be required to have an enhanced protection program. In order to maximize the ability of the selected trees to survive construction the proposed program will include the following steps:
- (1) The tree will be surveyed and located with the species and DBH noted and approximate crown diameter shown.
  - (2) Prior to the beginning of construction activities the trees shall be inspected by an Arborist to determine their overall condition and ability to withstand construction activity around them.
  - (3) Should the Arborist determine that with a proper protection plan the tree would survive the construction activity the Arborist shall prepare a care plan for the tree. The plan may involve elements such as crown pruning, fertilization, irrigation, root pruning or other activities.
  - (4) The Contractor will be required to implement the Arborist's protection plan and to maintain the necessary activities to protect the tree until such time as the site construction is completed and accepted for maintenance by the property owner. The Arborist shall submit bi-weekly reports to the Contractor and the Department of Community Development and Planning during the construction process.
  - (5) The owner of the property shall receive a 20-percent bonus credit for canopy coverage for all trees that are under the enhanced protection program.

(Ord. No. 21-2012, pt. 1, 8-6-2012; [Ord. No. 02-2015](#), § I, 2-2-2015)

#### Sec. 113-15. - Seasonal planting.

Final plat approval or a certificate of occupancy may be issued prior to the establishment of trees planned to meet the tree canopy cover requirements, if the Community Development Director determines that the season is inappropriate for planting. In such cases the trees shall be planted by the last day of February following the date of issuance of the certificate of occupancy or final plat approval. If they have not been planted by the last day of February following the issuance of the certificate of occupancy or final plat approval, the permit holder shall be considered to be in violation of the provisions of this chapter.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-16. - Site inspections.

- (a) *Authority.* The Community Development Director or his designee has the authority to perform site inspections and enforce the provisions of this chapter.
- (b) *Visits to site for discussions regarding regulations.* Prior to the issuance of a tree removal permit or right-of-way encroachment permit, a visit shall be made to the proposed site by the Community Development Director or his designee and the applicant for the purpose of discussing the provisions of this chapter.
  - (1) After a permit is issued and tree protection measures have been installed, and prior to any land disturbance, another site inspection shall be made by the Community Development Director or his designee.
  - (2) Another site inspection shall occur prior to the issuance of final plat approval or a certificate of occupancy. All provisions of this chapter shall be met before final plat approval or a certificate of occupancy can be issued.
  - (3) Other site inspections may take place without notice at any time prior to or after the issuance of a certificate of occupancy or final plat approval to ensure continuing compliance with the provisions of this chapter.
- (c) *Access by authorized representatives.* No person, corporation or association shall refuse entry or access to any authorized representative or agent of the Community Development Director who requests entry for the purposes of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-17. - Tree maintenance.

The owner shall be responsible for maintaining the health of all conserved and new trees. The owner shall replace any new tree that dies within three years, or prior to issuance of the final certificate of occupancy for the project, whichever occurs last.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-18. - Penalties.

- (a) *Failure to obtain permit.* If any person commences any land disturbing activity, tree destruction, tree cutting, tree removal or building activity requiring a tree removal permit without first obtaining said permit, the person shall be deemed to be in violation of the provisions of this chapter.
- (b) *Violations.* The owner of any property wherein a violation exists, and any builder, contractor, or agent who may have assisted in the commission of any such violation, may be chargeable with separate offenses for each such violation. Any person violating any of the provisions of this chapter other than as hereinabove provided shall, upon conviction, be punished as prescribed in subsection (e) of this section. Each day during which such violation occurs or continues shall constitute and be punishable as a separate offense.
- (c) *Stop work orders.* A stop work order may be issued by the Community Development Director or his designee for violation of any provision of this chapter. All stop work orders shall be effective immediately upon issuance and shall remain in effect until the necessary corrective action or mitigation has occurred and permission has been granted by the city to resume work. No certificate of occupancy or final plat approval shall be issued while a stop work order is in effect or until an

assessed fine has been paid and permission has been granted by the city in writing for a certificate of occupancy or final plat approval.

- (d) *Responsibility.* The Community Development Director, or his designee is responsible for determining whether a violation has occurred. Violations may include, but are not limited to: failure to obtain a tree removal permit, deviation from the approved plan; failure to properly install tree protection structures; failure to maintain tree protection structures in effective condition; evidence of harmful activities occurring within the tree protection zone; improper planting; failure to conserve or establish the required tree canopy cover; unauthorized delay in tree planting; damage to a conserved or established tree's crown, trunk, roots, or critical root zone; and damage to a city tree's crown, trunk, roots, or critical root zone.
- (e) *Monetary penalties.* Any person who violates any provision of this chapter, any permit condition, or who negligently or intentionally fails or refuses to comply with any order, notice of code violation or formal charge of violation which the Community Development Director issues as provided in this chapter shall be liable for a penalty of up to \$1,000.00 per day for each violation of the provisions of this chapter. Each day that such failure or refusal continues shall constitute a separate violation.

(Ord. No. 21-2012, pt. 1, 8-6-2012)

Sec. 113-19. - Appeals.

Any person aggrieved or adversely affected by an administrative decision of the Community Development Director pertaining to the application of the provisions of this chapter may, within 30 days of such decision, appeal the decision to the Tree Preservation Board. Any person aggrieved or adversely affected by a decision of Tree Preservation Board pertaining to the application of the provisions of this chapter may, within 30 days of such decision, appeal the decision to the City Council. Any person aggrieved or adversely affected by the decision of the City Council may, within 30 days of such decision, appeal the decision to the superior court of the county.

(Ord. No. 21-2012, pt. 1, 8-6-2012)