

Resolution No:
Introduced:
Adopted:
Effective Date:

WHEREAS, Article 23A, Section 2 (a) of the Annotated Code of Maryland authorizes the Town to adopt ordinances deemed necessary to secure the good government of the Town, to protect and preserve the Town's rights, property and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the Town ; and

WHEREAS, Article III, Section 301(a) of the Town Charter similarly authorizes the Town to adopt ordinances deemed necessary for the good government of the town; for the protection and preservation of the town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the resident(s) of the town and for such other police or health matters as it may deem necessary.

WHEREAS, the Natural Resources Article, Title 5, Subtitle 4, Part IV of the Annotated Code of Maryland authorizes a municipal corporation to implement a local urban and community forestry program within its jurisdiction; and

WHEREAS, trees benefit the Town by filtering the air, buffering noise, harboring wildlife and stabilizing soils, and the Town Council has determined that the existing trees in the Town constitute an important natural resource that must be protected, preserved and, replaced:

NOW THEREFORE, the Town Council for the Town of Chevy Chase adopts a revised Chapter 29 of the Municipal Code, entitled "Urban Forest."

Chapter 29 URBAN FOREST

Sec. 29-1. Findings and Purpose.

Sec. 29-2. Tree Ordinance Board.

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Sec. 29-1 Findings and Purpose.

The Town Council finds that it is in the interest of the residents of the Town of Chevy Chase to preserve, protect, and maintain the Town's tree canopy. Because trees require the span of a human lifetime to mature and can be subject to disturbance at many points in their lives, the Town places a high value on the mature trees that have survived to form an intrinsic part of the fabric of our community and a defining feature of its character.

The Town benefits from the mature tree canopy because it:

- Contributes significant aesthetic value
- Measurably increases property worth
- Fosters a cherished quality of life
- Recycles the air we breathe by absorbing carbon dioxide and producing oxygen
- Absorbs air pollutants
- Moderates climate extremes and reduces wind speed, thus conserving energy otherwise used for increased air conditioning and heating
- Provides food and shelter for innumerable plant and animal species
- Forms an interrelated part of the regional forest ecosystem, connecting with adjoining forest communities
- Muffles noise
- Stabilizes soils, reducing soil erosion and stormwater runoff

Each mature tree in the Town's urban forest plays a critical role in controlling storm water runoff and supporting the biological and hydrological integrity of the Lower Rockville and Little Falls Branch

watersheds, part of the larger Chesapeake Bay watershed. Thus, the regulation of actions affecting the Town's tree canopy provides benefits to all Town residents and property owners and contributes to the greater good of the Suburban Maryland and Washington region.

Sec. 29-2. Tree Ordinance Board.

The provisions of this chapter will be administered by a Tree Ordinance Board made up of residents of the Town appointed by the Mayor. The Board will consist of five members. A quorum shall consist of a majority of the members of the board. A decision may be made by a majority of those present at the hearing as described in Sec. 29-7. Members will be appointed to serve staggered terms of three years.

Sec. 29-3. Trees included.

This chapter applies to all Canopy Trees on private and public property in the Town of Chevy Chase. A Canopy Tree is defined as a tree with a trunk that measures at least twenty-four (24) inches in circumference at four and one-half (4 1/2) feet above ground. If a tree divides into branches at less than four and one-half (4 1/2) feet, the trunk shall be measured immediately beneath the dividing point.

Sec. 29-4. Permit Required.

(a) No person shall remove or destroy, or cause the removal or destruction, of a Canopy Tree, or undertake any action that will substantially impair the health or growth of a Canopy Tree without first obtaining a permit from the Town.

(b) In the case of an emergency that threatens imminent harm to life or property as determined by the Town Manager, the provisions of this chapter are waived and the Town Manager may issue an immediate Tree Removal Permit.

Sec. 29-5. Permit Procedure.

In order to remove or destroy or undertake any action that will substantially impair the health or growth of a Canopy Tree, a property owner shall first apply in writing for a Tree Removal Permit from the Town Office using an official Town application form that will include:

- (1) the street address of the property upon which the proposed action is to be taken;
- (2) the name, address and telephone numbers of the property owner;
- (3) the species and approximate circumference four and one-half feet above the ground of the tree(s) to be removed;

- (4) a description and diagram of the proposed action including the location on the property of the tree(s) to be removed.

Sec. 29-6. Permit Standards.

(a) The Town Manager is authorized to issue a Tree Removal Permit if, in consultation with the Town Arborist, it is found that one of the following conditions applies:

- (1) The tree is dying, dead, or in danger of falling;
- (2) The tree constitutes a hazard to the safety of persons or property;
- (3) The tree is a nuisance tree on the Town's list of undesirable tree species as adopted by the Town Council.

(b) Upon receiving an approved Tree Removal Permit, the property owner will post a copy of the approved permit on the property at least seven (7) days before removal may begin, in a conspicuous manner similar to the posting of County building permit notices.

(c) If the Town Manager determines that none of the above conditions apply, he/she shall issue a written denial of the application.

Sec. 29-7. Appeals.

An applicant who is denied a permit by the Town Manager may appeal the decision by filing a written appeal to the Tree Ordinance Board within thirty (30) days of the Town Manager's denial of the application for a permit. The appeal must include the following information:

- (1) a copy of the denied Tree Permit Application.
- (2) a brief statement explaining why the proposed action is reasonable and necessary and consistent with the purposes of this chapter; and
- (3) a statement whether the applicant intends to perform reforestation after tree removal is completed and if so, a diagram showing the number, size and species of the replacement tree or trees.

Sec. 29-8. Appeals procedures.

(a) Upon the filing of an appeal, the Town Manager will transmit to the Tree Ordinance Board the appeal record.

(b) Upon receipt of the appeal, the Tree Ordinance Board will schedule a public hearing.

- (c) At least seven (7) days prior to the public hearing the Town Manager shall:
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- (1) issue a Notice of Public Hearing to the applicant and to owners of all adjacent and confronting properties or to those persons who are in residence, which shall include nature of the application, the date and time of the public hearing, and the location of the public hearing;
 - (2) post the Notice of Public Hearing at the property in a conspicuous manner similar to the posting of a County building permit notice; and
 - (3) provide a copy of the appeal file to the owners of all adjacent and confronting properties or to those persons who are in residence.
- (d) At the hearing, any party may appear in person or by agent or by attorney. The decision by the Tree Ordinance Board shall be issued in writing as soon as practical following the hearing.
- (e) In exercising its powers, the Tree Ordinance Board may affirm the denial of a permit, may direct the Town Manager to issue a permit, or may direct the Manager to issue a permit upon such conditions, terms or restrictions as the Board may deem necessary to accomplish the intent and purposes of this chapter.

Sec. 29-9. Factors to be considered in evaluating an appeal.

The Tree Ordinance Board shall consider the following factors in deciding whether to approve or deny a request for a Tree Removal Permit for a tree that does not qualify for removal under Sec. 29-6.

- (1) The reasons cited by the applicant for wanting to remove the tree.
- (2) The applicant's intention to plant replacement trees, with consideration of the number, size and desirability of species, and with a minimum goal of replacing the tree to be removed.
- (3) The applicant's intention to retain and protect existing trees.
- (4) The facts in support or opposition presented by town residents.
- (5) Information provided by the Town Arborist.
- (6) The extent to which no alternative to tree removal exists that would allow the proposed development, construction, or land use otherwise permitted under the Town Building Code.
- (7) The desirability of preserving a tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species.

- (8) The overall effect on the tree canopy of the adjacent properties, the neighborhood and the Town.

Sec. 29-10. Judicial Review of a Decision of Tree Ordinance Board.

Within 30 days of the date of the issuance of a decision of the Tree Ordinance Board any aggrieved party may seek judicial review of the decision by filing a petition for judicial review in accordance with Title 7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure.

Sec. 29-11. Protection of Trees at Risk.

(a) Before undertaking any activity that poses a potential risk to any Canopy Tree on the property in question, or poses a potential risk to any Canopy Tree on an adjoining property or on the Town right-of-way, a property owner shall submit a Tree Protection Plan for review and approval by the Town Manager in consultation with the Town Arborist. It is the responsibility of the property owner to ascertain whether a construction-related activity places any Canopy Tree in jeopardy.

(b) Activities that pose a potential risk to Canopy Trees include but are not limited to (i) the demolition, in whole or in part, of an existing home or structure; (ii) the construction of a new home or structure; (iii) the expansion of the footprint of an existing home or structure; (iv) the construction of a driveway, patio or other impervious surface; (v) the construction of walls, (vi) installation of underground utility lines, and (vii) regrading or excavating within the drip line of a Canopy Tree.

(c) In those instances in which a Town building permit is required, compliance with the Tree Protection Plan will become a condition of the building permit.

Sec. 29-12. Tree Protection Plans

(a) A Tree Protection Plan is defined as a plan that delineates tree root protection areas and other measures to be taken to ensure the safety and survivability of all Canopy Trees on the subject property and all trees at risk on adjoining properties and on the Town right-of-way.

(b) Tree Protection Plans shall comply with the standards set forth in Sec. 29-13 of this chapter.

(c) A Tree Protection Plan shall include a certification that, prior to submission to the Town Manager, a copy of the complete Plan with any attachments has been provided to owners of all adjacent and confronting properties or to those persons who are in residence.

(d) The Town Manager may require the applicant to amend or expand the Tree Protection Plan as a condition of approval of the Town Building Permit when he/she deems it necessary to protect a Canopy Tree.

(e) No construction or demolition shall begin until an approved Tree Protection Plan has been implemented. The Town Manager will provide ongoing oversight of the plan to ensure compliance through completion of the project.

(f) In those instances in which a Town Building Permit is required, the approved Tree Protection Plan shall be incorporated by reference as a condition of the Town Building Permit. Violation of the provisions of the Tree Protection Plan shall be considered a violation of the conditions of the Town Building Permit and subject to the same sanctions.

(g) The approved Tree Protection Plan shall be posted at the property prior to the commencement of construction in a conspicuous manner similar to the posting of a County building permit notice and left in place until construction is finished.

Sec. 29-13. Requirements for Tree Protection Plans.

(a) The objectives of a Tree Protection Plan are to minimize the impacts of construction activities on trees, including but not limited to: mechanical injury to roots, trunks and branches; compaction of soil which degrades functioning roots and inhibits the development of new ones; and changes in grade which can cut off or suffocate roots. A Tree Protection Plan shall, where applicable, include the following:

- (1) Existing and proposed property lines, structures, utility lines, driveways, sidewalks, and other paved surfaces.
- (2) The size (circumference at 4 ½ feet above the ground), species, state of health, estimated location of drip line, and accurate location of all trees on the project property, as well as trees on neighboring properties where their driplines lie over the proposed construction zone.
- (3) A delineation of the Tree Protection Zones within which all construction activities, grading or drainage changes, trenching, heavy equipment, or storage of materials will be excluded. All Tree Protection Zones must be surrounded by chain link fences six feet in height with signage affixed warning workers to stay away in English and Spanish.
- (4) Boundaries of Tree Protection Zones will be located to provide the maximum protection for tree roots.
- (5) The delineation of areas to be excavated, regraded, and/or disturbed, as well as mitigation measures to be used to protect remaining trees if substantial grading changes are proposed.
- (6) The location of any proposed trenching for underground utility lines.
- (7) The location of any temporary gravel construction access drives and where construction materials and equipment will be stored.
- (8) All trees proposed for removal.

- (9) All trees to be protected in Tree Protection Zones, including trees in the Town right-of-way.
- (10) The location, species and diameter of each replacement tree proposed.
- (11) The methods by which tree branches and roots are to be protected before construction. Branch and root pruning must adhere to International Society of Arboriculture standards.
- (12) The maintenance program for trees to be protected during construction as well as for replacement trees for two years following construction.
- (13) Contact information for a designated individual who will ensure that all work adheres to the approved Tree Protection Plan.
- (14) A copy of the approved Tree Protection Plan posted on the property on a board covered with plastic prior to the commencement of construction and left in place until construction is finished.

Sec. 29-14. Penalties.

- (a) Violation of any provision of this chapter, including but not limited to removing, destroying, or impairing the health of a Canopy Tree without obtaining a permit (Sec. 29-4) or undertaking any activity that poses a potential risk to any Canopy Tree without filing a Tree Protection Plan (Sec. 29-11), shall be a municipal infraction unless otherwise specifically provided. Any person or persons guilty of a municipal infraction shall be subject to a fine in the maximum amount permitted by the Town Charter for each tree.
- (b) Whenever the Town Manager finds that a violation of this chapter may jeopardize the health or safety of a Canopy Tree, he/she may issue a stop work order to halt any activity that may damage the tree and may order remedial action as appropriate.
- (c) A stop work order issued pursuant to this chapter, posted on the property in a conspicuous location, shall be sufficient service upon all persons physically on the property. A posted notice shall not be removed except under the authority of the Town Manager.
- (d) Repeated violation of this chapter or violation of a stop work order, will constitute a misdemeanor and upon conviction shall be punishable by a fine in the maximum amount permitted by the Town Charter and imprisonment for the maximum period permitted by State law for violation of a municipal code.
- (e) Any person who violates this chapter, such person's employer if such person acted in the course of his or her employment, and any property owner who allows a violation of this chapter on his or her property shall be guilty of a violation and shall be jointly and severally subject to the penalties provide in subsections (a) and (d) above. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation.

(f) The Town may institute injunctive or any other appropriate action or proceedings at law or equity for the enforcement of this chapter in any court of competent jurisdiction.

Sec. 29-15. Severability.

Should any part or provision of this chapter be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part held to be invalid.

TOWN OF CHEVY CHASE

ATTEST:

Secretary, Town Council

By: _____
Mayor, Town of Chevy Chase