

DIVISION 2. PRESERVATION

Sec. 98-46. Purpose and intent.

The purpose of this division is to encourage the preservation of mature trees and natural areas, to preserve protected trees during construction, and to provide for the removal of protected trees when necessary. It is the intention of the town to:

- (1) Prohibit the indiscriminate clearing of property;
- (2) Protect and increase the value of residential and commercial properties within the town;
- (3) Maintain and enhance a positive image for the attraction of new businesses and residents to the town;
- (4) Protect healthy mature trees and promote the natural ecological, environmental and aesthetic qualities of the town; and
- (5) Preserve the rural forested character of the town.

(UDC 1994, art. IX, § 1)

Sec. 98-47. Applicability.

(a) *Protected trees.*

- (1) A protected tree is any tree that has a trunk caliper of six inches or more, as measured 4.5 feet above natural grade level, and is not one of the following species:
 - a. *Ailanthus altissima* (Tree of Heaven).
 - b. *Alibizzia julibrissen* (Mimosa).
 - c. *Maclura pomifera* (female only) Bois d'Arc.
 - d. *Melia azeoarach* (Chinaberry).
 - e. *Salix nigra* (Black Willow).
 - f. *Celtis occidentalis laevigata* (Hackberry).

- (2) A person must not, directly or indirectly, cut down, destroy, move or remove, or effectively destroy through damaging, any protected tree situated on property regulated by this division without first obtaining a tree removal permit unless otherwise specified in this division.
- (b) *Properties requiring a tree removal permit.* All public or private properties, including rights-of-way, public easements, franchises and utility easements, shall be subject to a tree removal permit.
- (c) *Exceptions.*
- (1) *Residential properties.* A residence used as an owner-occupied homestead shall be exempt from the tree protection and replacement requirements of this chapter as it pertains to that residential property. However, this exemption does not apply to existing trees located within a roadway landscape zone on or adjacent to that property, or to undeveloped single-family property.
- (2) *Identified on an approved landscape plan.* A tree removal permit shall not be required for the removal of a protected tree if the protected tree to be removed is shown and noted as such on an approved landscape plan, and on construction plans approved by the building official.
- (3) *Public safety.* A tree removal permit shall not be required if a tree endangers the public health, welfare or safety, and immediate removal is required as determined in writing by an official of the town.
- (4) *Utility service disruption.* A tree removal permit shall not be required if a tree has disrupted a public utility service due to a tornado, storm, flood or other act of God. Removal shall be limited to the portion of the tree reasonably necessary to reestablish and maintain reliable utility service.
- (5) *Landscape nursery.* All licensed plant or tree nurseries shall be exempt from the tree protection and replacement requirements and from the tree removal permit requirements only in relation to those trees planted and growing on the premises of the licensee which are so planted and growing for the sale or intended sale to the general public in the ordinary course of the licensee's business. This may also apply to a nursery established and so designated by a developer of a large project within the town, where trees are intended for landscaping future phases of such larger project.

(UDC 1994, art. IX, § 2)

Sec. 98-48. Tree replacement requirements.

- (a) *Replacement trees.* In the event that a tree removal permit is granted, the applicant shall replace the protected trees being removed with trees listed in appendix D, Town's Approved Plant List. A sufficient number of trees shall be planted to equal, in caliper, the diameter of the tree removed. Replacement trees shall be a minimum of three-inch caliper measured 12 inches from the ground, and ten feet in height when planted.
- (b) *Replacement procedures.* Replacement trees shall be located on the subject site whenever possible. However, if this is not feasible, the building official has the authority to allow the planting to take place on another property.
- (c) *Reforestation Fund.* If approved by the building official, the applicant, in lieu of compliance with this division, may make a payment into the reforestation fund, which shall be a special account administered by the town. The funds shall be used only for purchasing, planting and maintaining trees for a period of one year on public property, or for acquiring and preserving wooded property. The amount of payment required shall be calculated based on current market prices for the cost of acquiring, planting and maintaining a tree for a period of one year.

(UDC 1994, art. IX, § 3)

Sec. 98-49. Tree protection.

The following procedures are required to protect all protected trees which have not been approved for removal.

- (1) *Construction plan requirements.* In order to ensure that contractors adequately protect trees during construction, the following shall be required as a part of all construction plans submitted to the town unless determined otherwise by the building official.
 - a. *Tree survey and protection plan.* A tree protection plan shall include the following at a minimum (see sample tree survey and protection plan in the sample landscape plan in appendix C, sample landscape plan/landscape and irrigation standards):
 1. The graphic exhibits required for a tree removal application as specified in subsection (1)a.3 of this section.
 2. A graphics legend to be used throughout the plans for the purposes of showing the following: trees to be flagged, protective fencing, trees requiring bark protection, boring, and areas of cut and fill impacting protected trees.

3. Graphic tree exhibit showing the tree being removed and being preserved, and the features of those trees, including the critical root zone, trunk, canopy, drip line and caliper.
 4. Graphic exhibits showing methods of protection to include snow fences, boarded skirts, etc.
 5. Graphic exhibits showing construction methods to include grade changes, boring, trenching, etc. All requirements of the tree preservation ordinance shall be shown graphically on all applicable sheets within the construction plans.
- b. *Landscape plan.* The Tree Survey and Protection Plan must be accompanied by the landscape plan (see article III of this chapter, landscaping, and the sample landscape plan in appendix C, sample landscape plan/landscape and irrigation standards).
- (2) *Prior to construction.* Unless otherwise approved in writing by the building official, the following procedures shall be followed on all construction projects:
- a. *Tree flagging.* All protected trees on the subject property within 50 feet of a construction area or surface improvements such as driveways and walks, shall be flagged with bright fluorescent orange vinyl tape wrapped around the main trunk at a height of four feet or more, such that the tape is very visible to workers operating construction equipment.
 - b. *Open space flagging.* All trees or groups of trees within areas intended to be saved as open space shall be enclosed with fluorescent orange tape along all areas of possible access or intrusion by construction equipment. Tape shall be supported at a minimum of 25-foot intervals by wrapping trees or utilizing another approved method. Single incident access for the purposes of clearing underbrush is allowed.
 - c. *Protective fencing.* In those situations where a protected tree is so close to the construction area that construction equipment will infringe on the root system, a system, a protective fencing may be required between the tree and the construction activity.
 - d. *Bark protection.* In situations where a protected tree remains in the immediate area of intended construction, the tree shall be protected by enclosing the entire circumference of the tree with two-inch by four-inch lumber encircled with wire or other means that do not damage the tree. This will protect the bark of the tree against incidental contact by large construction equipment.

GRAPHIC LINK:Primary Tree Protection

GRAPHIC LINK:Secondary Tree Protection

- (3) *Prohibited activities adjacent to trees.* The following activities shall be prohibited within the limits of the critical root zone of any protected tree subject to the requirements of this division.
- a. *Material storage.* No materials intended for use in construction, or waste materials accumulated due to excavation or demolition, shall be placed within the limits of the critical root zone of any protected tree.
 - b. *Equipment cleaning/liquid disposal.* No equipment shall be cleaned, or other materials or liquids deposited or allowed to flow over land within the limits of the critical root zone of a protected tree. This includes, without limitation, paint, oil, solvents, asphalt, concrete, mortar or similar materials.
 - c. *Tree attachments.* No signs, wires, or other attachments other than those of a protective nature shall be attached to any protected tree.
 - d. *Vehicular traffic.* No vehicular and/or construction equipment traffic or parking shall take place within the limits of the critical root zone of any protected tree other than on an existing paved street or parking lot. This restriction does not apply to single incident access within the critical root zone for purposes of clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance or emergency restoration of utility service or routine mowing operations.
 - e. *Grade changes.* No grade changes in excess of two inches (cut or fill) shall be allowed within the limits of the critical root zone of any protected tree unless adequate construction methods are utilized which have been approved by the building official.
 - f. *Impervious paving.* No paving with asphalt, concrete or other impervious materials in a manner which may reasonably be expected to kill a tree shall be placed within the limits of the critical root zone of a protected tree except as otherwise allowed in this division.
- (4) *Permanent construction methods.*
- a. *Boring.* Boring of utilities under protected trees may be required in certain circumstances. When required, the length of the bore shall be at a minimum the width of the critical root zone, and shall be at a minimum depth of 48 inches.

- b. *Grade change.* Grade changes within the critical root zone of a protected tree should not exceed two inches. If more than 25 percent of the critical root zone is disturbed by trenching or a grade change greater than two inches, the applicant may be required to prune the root zone or tree canopy in accordance with industry standards, or take some other mitigative measure to help preserve the health of the tree.
 - c. *Trenching.* All trenching shall be designed to avoid crossing the critical root zone of any protected tree.
 - d. *Root pruning.* It is recommended that all roots two inches or larger in diameter which are exposed as a result of trenching or other excavation, shall be cut off square with a sharp, medium tooth saw and covered with pruning compound within two hours of initial exposure.
- (5) *Preserved tree criteria.* A protected tree shall be considered to be preserved only if a minimum of 75 percent of the critical root zone is maintained at undisturbed natural grade and no more than 25 percent of the canopy is removed due to building encroachment.

(UDC 1994, art. IX, § 4)

Sec. 98-50. Tree pruning.

- (a) *Generally.* No protected tree shall be pruned in a manner which significantly disfigures the tree or in a manner which would reasonably lead to the death of the tree.
- (b) *Permit requirements.* All franchise utility companies shall be required to maintain a set of pruning specifications (updated annually) at the town to be followed by all pruning contractors working for the company within the town. Prior to beginning any pruning not requested by the owner of the tree, the contractor shall submit to the town an application for a pruning permit for approval.
- (c) *Allowed pruning.*
 - (1) *Pruning for construction.* The building official may approve pruning of a protected tree in cases where a protected tree must be pruned to remove branches broken during the course of construction, or where protected trees must be strategically pruned to allow construction of a structure. When allowed, all pruning shall be in accordance with approved arboricultural techniques.

(2) *Normal maintenance.* Normal pruning required to promote tree health and vitality is permitted provided, however, that such pruning does not remove greater than ten percent of the tree mass.

(d) *Required pruning.* The owners of any tree adjacent to a public right-of-way shall be required to maintain a minimum clearance of 12 feet above the traveled surface or curb of a public street or open space trail. The town shall also have the right to prune trees overhanging the public right-of-way as necessary to preserve the public safety.

(UDC 1994, art. IX, § 5)

Sec. 98-51. Tree planting.

(a) *Overhead lines.* Replacement trees shall not be planted in a location where the mature canopy of the tree will interfere with overhead utility lines.

(b) *Underground and surface utilities.* Replacement trees shall not be planted in a location where the mature root zone of the tree will interfere with underground public utility lines. No trees shall be planted within ten feet of a fire hydrant.

(UDC 1994, art. IX, § 6)

Sec. 98-52. Tree removal permit review and approval.

(a) *Submittal requirements.*

(1) *Tree removal permit.* A request for a tree removal permit must be submitted and approved prior to the removal of any protected tree in the town unless the tree is exempt under a provision of this division.

(2) *Tree removal application.* All requests for tree removal permits must be accompanied by a tree removal application and a graphic exhibit showing at least the following items:

- a. Appropriate title (i.e., tree removal permit exhibit);
- b. Title block includes street address, lot and block, subdivision name, city and date of preparation;
- c. North arrow, graphic and written scale in close proximity;
- d. Name, address and phone of owner and person preparing the exhibit;

- e. Location of all right-of-way lines and public easements within 50 feet of the tree proposed for removal;
- f. Location of all buildings, structures, pools, parking, and other improvements which are existing or intended on the lot easements within 50 feet of the tree proposed for removal;
- g. Areas of proposed cut/fill, and the drainage flow line, if applicable;
- h. Limits of construction line shown, if applicable;
- i. Location of all protected trees and thicket boundaries within 50 feet of any construction area, with a description of the size and types of trees;
- j. The location of all protected trees which are to be removed;
- k. Caliper (4.5 feet from ground), Latin and common name of tree to be removed; and
- l. Location of any required replacement trees shown with caliper size and common name of tree.

These requirements may be modified by the building official as needed to administer this division. An aerial photograph may be allowed if it clearly meets these requirements.

- (3) *Application for two or less trees.* Notwithstanding subsection (a)(2) of this section, a property owner desiring to remove up to two protected trees may submit a simplified application by submitting a letter stating the reason for removing the tree, and identifying the tree to be removed on a plot plan or aerial photograph of the site, along with the caliper, species and a photograph of the tree to be removed.
- (b) *Authority for review of application.* Upon receipt of the permit application, the building official, based on a recommendation of the town's landscape architect, may take one of the following actions:
 - (1) *Deferral of decision.* The building official may defer the approval of a tree removal permit to the planning and zoning commission for any reason. All decisions made by the planning and zoning commission shall be final.
 - (2) *Approval.* The building official shall issue a tree removal permit if it is determined that:
 - a. The tree constitutes a hazard to life or property which cannot be reasonably mitigated without removing the tree;

- b. The tree is dying, dead, or diseased to the point that restoration is not practical; or
 - c. All reasonable efforts have been made to avoid removing the tree for the development and removal cannot be avoided.
- (3) *Refusal.* The building official shall deny a tree removal permit if it is determined that:
- a. Removal of the tree is not reasonably required in order to conduct anticipated activities; or
 - b. A reasonable accommodation can be made to preserve the tree.
- (c) *Appeal of decision.* Any decision made by the building official may be appealed to the planning and zoning commission. All decisions made by the planning and zoning commission shall be final.
- (d) *Permit expiration.* Tree removal permits for tree removal issued in connection with a building permit or site plan shall be valid for the period of that building permit's or site plan's validity. A permit for tree removal not issued in connection with a building permit or a site plan shall become void 180 days after the issue date on the permit.

(UDC 1994, art. IX, § 7)

Sec. 98-53. Enforcement.

- (a) *Developer's agreement.* All developer's agreements shall state that all construction activities shall meet the requirements of the tree preservation ordinance (this division).
- (b) *Construction permits.* Prior to issuance of a permit to do site work, a tree survey, a tree protection plan and a landscape plan for the development shall be approved. These plans may be combined on one or more drawings.
- (c) *Building permit.* No building permit shall be issued unless the applicant signs an application or permit request, or a statement, that binds the applicant to ensuring that all construction activities shall meet the requirements of this division. The building official shall make a copy of this division and other relevant town policies available to the applicant.
- (d) *Acceptance of improvements.* No acceptance of public improvements shall be authorized until all fines for violations of this division have been paid to the town or otherwise disposed of through the municipal court.

- (e) *Certificate of occupancy.* No certificate of occupancy shall be issued until all fines for violations of this division have been paid to the town or otherwise disposed of through the municipal court.

(UDC 1994, art. IX, § 8.1--8.5)

Sec. 98-54. Enforcement.

Failure to comply with this division will constitute a violation of the UDC and will be subject to the provisions of chapter 26, article II, division 3.

(UDC 1994, art. IX, § 8.6)

Secs. 98-55--98-80. Reserved.

DIVISION 2. DEVELOPMENT STANDARDS

Sec. 98-101. General provisions.

- (a) *Existing trees.* Existing trees shall be preserved and protected pursuant to the provisions in article II, division 2 of this chapter.
- (b) *Consistency with other plans.* Landscaping shall be consistent with the Comprehensive Plan and Thoroughfare Plan.
- (c) *Sight distance easements at street and driveway intersections.* Landscaping must meet the requirements for sight distance easements as established in the Thoroughfare Plan.
- (d) *Provision of open space and landscaping.* Open space and landscaping shall be provided in a manner consistent with the following:
- (1) Current policies relating to key elements of open space which are embodied in the Comprehensive Plan.
 - (2) Open space elements that are located primarily along the floodplain, drainage areas, existing ponds, unique land forms, scenic vistas, land with slopes in excess of 25 percent, and natural tree thickets.
 - (3) The common open space and landscaping has been divided into the following categories:
 - a. Town edge open space zone;

- b. Open space linkages;
 - c. Roadway landscape zones;
 - d. Roadway and median landscape development;
 - e. Parking lot landscaping;
 - f. Screening of parking from public areas;
 - g. General site tree planting--Commercial districts;
 - h. Screening of loading and service areas.
- (4) All existing trees and ponds within open space zones shall be protected and preserved where possible. Ponds may be altered or relocated if approved as part of the landscape plan.
- (e) *Landscape plan.* A landscape plan shall be prepared in accordance with the sample landscape plan in appendix C, sample landscape plan/landscape and irrigation standards.

(UDC 1994, art. VIII, § 3.1)