

Chapter 21 - TREES⁽¹⁾

Footnotes:

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Editor's note— Ord. No. 4521, § 1, adopted September 27, 2010, amended chapter 21 in its entirety to read as herein set out. Formerly, chapter 21, articles I—V pertained to similar subject matter, and derived from the Code of 1985, §§ 21-1—21-20, art. III, and Ord. No. 2447, § 11, adopted November 24, 2003. Section 2 of Ord. No. 4521 states the following: "Section 2. These amendments shall apply to all development and additions to existing sites within the corporate limits of this city and its extraterritorial jurisdiction, unless one of the following exemptions applies as of the effective date: (1) Residential and nonresidential development and additions to existing sites submitted and accepted for review; (2) Zoning use application submitted and accepted for review for uses that do not require a building permit; (3) Valid building permit issued pursuant to G.S. 153A-344 or G.S. 160A-385, so long as the permit remains valid, unexpired, and unrevoked; (4) Common law vested right established (e.g., the substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid governmental approval to proceed with a project); and/or (5) A conditional zoning district (including those districts which previously were described variously as conditional district, conditional use district, parallel conditional district and parallel conditional use district) approved, provided formal plan submission has been made and accepted for review prior to the date that the vested rights for the conditional zoning district expire pursuant to G.S. 160A-385.1 and Sec. 1.110 of the Charlotte zoning ordinance.

Charter reference— Trees, § 6.221.

Cross reference— Buildings and building regulations, ch. 5; streets, sidewalks and other public places, ch. 19; subdivisions, ch. 20.

State Law reference— Cutting, injuring or removing timber, G.S. 14-135.

ARTICLE I. - IN GENERAL

Sec. 21-1. - Short title.

This chapter will be known and may be cited as the "Charlotte Tree Ordinance."

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-2. - Definitions.

Words and phrases used in this chapter that are not specifically defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. 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 measurement of the trunk taken six inches above ground level for trees up to and including four-inch caliper size. Measurement shall be taken 12 inches above the ground level for larger trees.

City means the city engineer, the city arborist or the senior urban forestry specialist, or their designated agent.

Commission means the city tree advisory commission.

dbh (diameter at breast height) means the diameter of a tree four and one-half feet above the average ground level.

Corridors are identified on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

Designated mixed-use centers are identified on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

Drip line means a vertical line running through the outermost portions of the tree crown extending to the ground.

Existing tree canopy means tree canopy that has existed for at least two years prior to development as evidenced by city or county aerial photographs, or a tree survey of trees one-inch caliper and larger.

Heritage tree means any tree that is listed in the North Carolina Big Trees List, the American Forest Association's Champion Tree list or any tree that would measure 80 percent of the points of a tree on the North Carolina Big Trees List.

Homeowner means an owner of an existing single-family or duplex residence.

Impervious cover means buildings, structures and other paved, compacted gravel or compacted areas which by their dense nature do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.

Internal planting area means a planting area located on private property outside the public right-of-way.

Invasive plant species means plant species that spread rapidly with little or no assistance. For the purposes of this chapter the following plant species are considered invasive: Bushkiller-Cayratia japonica, Chinese wisteria-Wisteria sinensis, English ivy- Hedera helix Japanese wisteria-Wisteria floribunda, Japanese honeysuckle- Lonicera japonica, Kudzu-Pueraria montana.

Land conservation group means a nonprofit land trust or similar organization approved by the city that permanently protects land, water, trees and wildlife habitat to enhance quality of life in Charlotte and Mecklenburg County.

Off-site mitigation means requirement of the developer and the property owner to convey at no cost to the city an equal amount of land in Mecklenburg County with a mature tree canopy to Mecklenburg County or to a land conservation group pursuant to the tree ordinance guidelines. The land shall be conveyed subject to either a permanent conservation easement or deed restrictions for the purpose of preserving tree canopy. The conveyance and its terms must be:

- (1) Approved by the city;
- (2) Be acceptable to either Mecklenburg County or a land conservation group; and
- (3) Comply with the tree ordinance guidelines.

Paved area means any ground surface covered with concrete, asphalt, stone, compacted gravel, brick, or other paving material.

Payment in lieu means contribution by the developer and the property owner to a city administered tree preservation fund a dollar amount equal to a percentage of the tax value of the land being developed at the time of the plan approval in accordance with section 21-94 and the tree ordinance guidelines. The tax value shall not exceed 90 percent of the average tax value of land in the city limits of and the ETJ, excluding the land within the boundaries of I-277 and in accordance with the tree ordinance guidelines.

Pedestrian scale lighting means lighting that is specifically intended to illuminate the sidewalk, as opposed to vehicular travel ways, and shall not exceed 15 feet in height.

Perimeter planting strip means a planting strip that abuts a public street or transportation right-of-way.

Person means a public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative, or other legal entity.

Planting strip and *planting area* means ground surface free of impervious cover and/or paved material which is reserved for landscaping purposes.

Renovation means any construction activity to an existing structure which changes its square footage, changes its footprint, or modifies the exterior wall material excluding cosmetic maintenance and repairs.

Root protection zone means, generally, 18 inches to 24 inches deep and a distance from the trunk of a tree equal to one-half its height or its drip line, whichever is greater.

Single-family development shall refer to any single-family detached dwelling or duplex dwelling submitted for review subject to the subdivision ordinance.

Specimen tree means a tree or group of trees considered to be an important community asset due to its unique or noteworthy characteristics or values. A tree may be considered a specimen tree based on its size, age, rarity or special historical or ecological significance as determined by the city. Examples include large hardwoods (e.g., oaks, poplars, maples, etc.) and softwoods (e.g., pine species) in good or better condition with a dbh of 24 inches or greater, and smaller understory trees (e.g., dogwoods, redbuds, sourwoods, persimmons, etc.) in good or better condition with a dbh of ten inches or greater.

Streetscape plan means a plan that specifies planting strips, tree species, sidewalk locations, building setbacks and other design aspects for streets within the city. Such plans are effective following approval by the city council.

Suburban commercial zones mean all zoning districts other than single-family development and urban zones as defined in this section.

Topping means any pruning practices that result in more than one-third of the foliage and limbs being removed. This includes pruning that leads to the disfigurement of the normal shape of the tree.

Transit station area means high density area within approximately one-half mile of an existing or planned rapid transit station as designated by the city planning department.

Tree, large maturing means any tree the height of which is 35 feet or greater at maturity.

Tree, large maturing shade means any tree the height of which is 35 feet or greater at maturity and has a limb spread of 30 feet or more at maturity.

Tree, small maturing means any tree the height of which is less than 35 feet at maturity.

Tree evaluation formula means a formula for determining the value of trees and shrubs as published by the International Society of Arboriculture.

Tree ordinance guidelines means instructions and specifications of tree planting and tree protection as published by the city and subject to amendment from time to time by the city.

Tree protection zone mean a distance equal to the designated zoning district setback or 40 feet from the front property line, whichever is less, or from the side lot line on a corner lot. For urban zones, the tree protection zone shall be the same as the planting strip required for the associated zoning district or as designated in a streetscape plan. This definition does not apply to single-family development.

Tree save area means an area measured in square feet containing existing healthy tree canopy in a single-family subdivision or an area containing existing or mitigated off site healthy tree canopy in a commercial development. The area may include up to five feet beyond the drip line of the tree.

Urban zones means property zoned as any of the following zoning districts: UMUD (uptown mixed use district), MUDD (mixed use development district), TOD (transit oriented development), UR (urban residential), and NS (neighborhood services), as well as any zoning district with a PED (pedestrian

overlay) or TS (transit supportive) overlay. Urban zones do not include single-family development, even if developed under an urban zoning district.

Urban retail site means any building site for a building that includes ground-floor non-residential use.

Wedges are those areas shown on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

(Ord. No. 4521, § 1, 9-27-2010; Ord. No. [8093](#), § 1, 8-22-2016)

Cross reference— Definitions generally, § 1-2.

Sec. 21-3. - Purpose and intent.

- (a) It is the purpose of this chapter to preserve, protect and promote the health, safety and general welfare of the public by providing for the regulation of the planting, maintenance and removal of trees located on roadways, parks and public areas owned or controlled by the city and on new developments and alterations to previous developments on private property.
- (b) It is the intent of this chapter to:
 - (1) Protect, facilitate and enhance the aesthetic qualities of the community to ensure that tree removal does not reduce property values.
 - (2) Emphasize the importance of trees and vegetation as both visual and physical buffers.
 - (3) Promote clean air quality by reducing air pollution and carbon dioxide levels in the atmosphere, returning pure oxygen to the atmosphere and increasing dust filtration.
 - (4) Reduce the harmful effects of wind and air turbulence, heat and noise, and the glare of motor vehicle lights.
 - (5) Minimize increases in temperatures on lands with natural and planted tree cover.
 - (6) Maintain moisture levels in the air of lands with natural tree cover.
 - (7) Preserve underground water reservoirs and permit the return of precipitation to the groundwater strata.
 - (8) Prevent soil erosion.
 - (9) Provide shade.
 - (10) Minimize the cost of construction and maintenance of drainage systems necessitated by the increased flow and diversion of surface waters by facilitating a natural drainage system and amelioration of storm water drainage problems.
 - (11) Conserve natural resources, including adequate air and water.
 - (12) Require the preservation and planting of trees on site to maintain and enlarge the tree canopy cover across the city.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-4. - Applicability and exemptions.

This chapter shall apply to all developers and/or owners of real property involved with the erection, repair, alteration or removal of any building or structure as well as the grading in anticipation of such development. Compliance with this chapter will be required in the following circumstances:

- (1) New development.

- (2) In the case of the following cumulative (since January 2011) additions or changes:
 - a. Additions to existing sites that are equal to or greater than five percent of the site's existing building square footage or the addition of 1,000 square feet or more of building;
 - b. When ten or more parking spaces are added to the site with no building; or
 - c. Facade changes to ten percent or more of any building wall facing a vehicular way intended for public travel regardless of ownership (e.g., adding or eliminating doors, windows, closings, openings, or increased wall area).
- (3) The following are excluded from the requirements of sections 21-94, 21-95 and 21-96:
 - a. The homeowner of a single-family or duplex residence.
 - b. Property which as altered does not meet the requirements of subsection (2).

(Ord. No. 4521, § 1, 9-27-2010)

Secs. 21-5—21-30. - Reserved.

ARTICLE II. - ADMINISTRATION²

Footnotes:

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Cross reference— Administration, ch. 2.

Sec. 21-31. - Tree advisory commission.

- (a) The city council may establish a tree advisory commission. This commission may from time to time make recommendations relative to trees to the city manager or his authorized representative and perform other duties as designated in this chapter.
- (b) The tree advisory commission shall be composed of 12 members, a majority of whom shall be residents of the city. Seven of the members shall be appointed by the city council, and three of the members shall be appointed by the mayor. The remaining two members shall be representatives of the city engineering and property management department and shall be ex officio members.
- (c) Those members appointed by the mayor and city council shall serve three years, and no member appointed by the mayor and city council shall be eligible to serve more than two consecutive full terms. Member terms shall be appointed on a staggered basis so that no more than five of the ten appointed seats become vacant at one time.
- (d) Any member who fails to attend the requisite number of meetings as set out in the boards and commission's attendance policy adopted by the city council shall be automatically removed from the commission. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided in this section. The chair of the commission will notify the proper appointing authority if a member is absent the requisite number of the meetings, and appointment will be made by the appointing authority to fill that vacancy.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-32. - City jurisdiction and authority.

- (a) The city shall have the jurisdiction, authority, control, supervision and direction over all trees planted or growing in the city, except where exempted in this chapter.
- (b) The city shall prepare and publish guidelines and specifications for tree planting, care, maintenance, removal and landscape design in a document entitled "Tree Ordinance Guidelines" for reference and use by property owners, developers, consultants and the general public in furtherance of the requirements and intent of this chapter. This document shall be reviewed periodically by the city's engineering department and the tree advisory commission.
- (c) The city shall review all applications for permits for any planting, removal and/or trimming or cutting of trees subject to this chapter and shall have the authority to grant or deny permits and to attach reasonable conditions to the granting of a permit.

(Ord. No. 4521, § 1, 9-27-2010)

Secs. 21-33—21-60. - Reserved.

ARTICLE III. - MAINTENANCE AND PROTECTION OF TREES

Sec. 21-61. - Trees on public property.

- (a) No person shall spray, fertilize, remove, destroy, cut, top, or otherwise severely prune, including the root system, or treat any tree or shrub having all or any portion of its trunk in or upon any public property without first obtaining a written permit from the city and without complying strictly with the provisions of the permit and this chapter.
- (b) No person shall plant any tree or shrub on any public street right-of-way or public property without first obtaining a permit from the city and without complying strictly with the provisions of the permit and the provisions of this chapter.
- (c) No person shall damage, cut, or carve any tree or shrub having all or any portion of its trunk in or upon any public property; attach any object, including, but not limited to, rope, wire, nail, chain or sign, to any such tree or shrub or attach any such object to the guard or stake intended for the protection of such tree.
- (d) No person shall place, store, deposit, or maintain, upon the ground in any public street or public place, any compacted stone, cement, brick, sand or other materials which may impede or obstruct the free passage of air, water and fertilizer to the roots of any tree or shrub growing in any such street or place without written authorization from the city.
- (e) No person shall change the natural drainage; excavate any ditches, tunnels, or trenches; or lay any drive within the root protection zone of any tree having all or any portion of its trunk in or upon any public property without obtaining a permit from the city and without strictly complying with the provisions of the permit and provisions of this chapter.
- (f) No person shall perform, or contract with another to perform, excavation or construction work within the drip line of any tree having all or any portion of its trunk in or upon any public property without first installing a fence, frame or box in a manner and of a type and size satisfactory to the city to protect the tree during the excavation or construction work. All building materials, equipment, dirt or other debris shall be kept outside the root protection zone. The tree protection fence, frame or box shall not be removed unless or until the city authorizes it to be removed.
- (g) Liability for damages or injuries to any tree or shrub having all or any portion of its trunk in or upon public property resulting from a violation of this article shall be determined by the city in accordance

with section 21-124. The person performing the work, the property owner and the person contracting for the performance shall be jointly and severally liable for any penalties or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this article. However, no claims shall be made more than five years after damage can be proven to have occurred.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-62. - Trees on private property.

- (a) Any person owning or occupying real property bordering on any street where trees have branches, limbs, trunks, or other parts projecting into the public street or property shall prune such trees or keep them trimmed in such a manner that they will not obstruct or shade the streetlights, obstruct or interfere with the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct views of any street or alley intersection.
- (b) Any person owning or occupying real property bordering on any street, park or other public property, on which there may be trees that are diseased or insect infested, shall remove, spray or treat any such trees in a manner that will not infect or damage nearby public vegetation or cause harm to the community or citizens therein.
- (c) No tree equal to or larger than two inches caliper may be trimmed, pruned, or removed from the tree save area, and no tree equal to or larger than eight inches caliper may be trimmed, pruned, or removed from the tree protection zone, without a permit. No grading, demolition, trenching, or other activity which may adversely affect trees in this zone may proceed prior to approval and issuance of necessary permits by the city.
- (d) It shall be the duty of the property owner to maintain all trees planted pursuant to, or protected by, this chapter in a healthy condition in accordance with this section and the tree ordinance guidelines developed by the city. Trees shall be allowed to grow to their natural height and form. Topping is prohibited.
- (e) When trees that are subject to or protected by this chapter die, are missing, or are otherwise deemed unhealthy by the city, they shall be removed and replaced by the property owner to comply with any existing streetscape plan or as directed by the city, normally during the next planting season which is November through March. New owners of properties already in compliance must maintain that compliance. Trees of the same, approved species as those existing may be used to replace dead, missing or unhealthy trees. The property owner is encouraged to use large maturing shade trees as replacements when possible. Nothing in this section is intended to impose a requirement that the property owner maintain more trees than those required for the site even if he has voluntarily done so in the past.
- (f) If the owner or occupant of such property does not perform the duties set out in subsections (a), (b) and (e), the city may order the pruning, removal or treatment of trees on private property that cause obstructions, present insect or disease problems or otherwise present a danger to public health or safety. The order shall be in writing to the owner or occupant responsible for such condition and shall be acted upon within 30 days from the time of the receipt of the order. If, after 30 days, the owner or occupant has not responded or acted to prune, remove or treat the trees, the city shall have the authority to enter upon the property to perform the work necessary to correct the condition and bill the owner or occupant for the actual costs incurred. In situations deemed necessary to the public health, safety, or welfare, the city may act without prior notification to the property owner or occupant.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-63. - Permits.

- (a) Persons requesting to do any planting, removal, trimming, or cutting of trees subject to this chapter, or any of the activities prohibited by this article, shall secure a permit for tree work from the city engineering and property management department before the activities commence. For purposes of this subsection, a landscape plan approved by the city constitutes a permit.
- (b) The city shall have the authority to review all requests for permits and to grant or deny permits or attach reasonable conditions to the permits.
- (c) Individual permits will not be required for city and state department of transportation projects so long as tree preservation and protection requirements are included in the project plans.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-64. - Utilities.

- (a) Public and private utilities which install overhead and underground utilities, including CATV installations and water and sewer installations by or at the direction of the Charlotte-Mecklenburg Utilities, shall be required to accomplish all work on property subject to this article in accordance with the company's written pruning and trenching specifications or as mutually agreeable to the property owner, the city and the utility.
- (b) Public and private utilities shall submit written specifications for pruning and trenching operations to the city for approval. Specifications shall be reviewed periodically by the city and the tree advisory commission for necessary improvements and as required by modifications in this chapter. Upon approval of its specifications, a utility shall not be required to obtain a permit for routine trenching and pruning operations affecting a tree having all or any portion of its trunk in or upon any public property so long as such work is done in strict accordance with the approved specifications. Requests for the removal of trees shall be handled on an individual permit basis. Failure to comply with the approved specifications is a violation of this chapter.
- (c) Refer to section 21-96 for light pole location requirements.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-65. - Tree protection and/or planting required on public property.

This chapter shall apply to public entities and owners of public property, and it shall be unlawful for such owners to fail to comply with all sections of this chapter unless specifically exempted therefrom.

(Ord. No. 4521, § 1, 9-27-2010)

Secs. 21-66—21-90. - Reserved.

ARTICLE IV. - GENERAL LAND DEVELOPMENT REQUIREMENTS

Sec. 21-91. - Tree survey.

Tree save area boundaries shall be required to be surveyed and be described in meets and bounds and be recorded on the final plat.

All applications for grading, building, demolition, land use, change of use or rezoning permits on all property, except single-family development shall require a tree survey. The survey shall identify all trees

of eight-inch dbh or greater and all planted trees of two-inch caliper or greater and six feet in height that grow partially or wholly within the city right-of-way.

All applications for grading, building, demolition, land use, change of use or rezoning permits on all property, except single-family subdivision, subject to subsection 21-94(d)(1) [21-96(f)(1)] shall require a tree survey. The survey shall identify all trees of eight-inch dbh or greater within the tree protection zone.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-92. - Tree protection plan.

- (a) All applications for grading, building, demolition, land use, change of use, or rezoning shall include a tree protection plan of all tree save areas and tree protection zones. On sites where less than one acre is being graded, tree protection is still required and may be incorporated in the tree planting plan submitted in accordance with section 21-94. A tree protection plan shall include the following:
 - (1) A tree and root protection zone plan for any existing trees having all or any portion of their trunks in or upon any public property, which are:
 - a. All trees of eight-inch dbh or larger; and
 - b. Any planted trees of two-inch caliper or larger.
 - (2) A tree and root protection zone plan for the following:
 - a. Existing trees of two-inch caliper and larger in the tree protection zone and tree save area; and
 - b. Any trees of two-inch caliper or larger being saved for credit toward planting requirements.
- (b) All applications for single-family development shall include a tree and root protection zone plan for the following:
 - (1) Heritage trees;
 - (2) Specimen trees; and/or
 - (3) Tree save areas being protected for credit toward the tree save requirement for single-family development.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-93. - General tree save requirements.

- (a) Tree save areas shall be free of invasive plant species unless approved otherwise by the city. If an area proposed for tree save contains invasive plant species at the time of such proposal, such invasive plant species shall be removed prior to the issuance of final certificate of occupancy for commercial and multi-family properties or at final plat approval for subdivisions. Invasive plant species are considered removed if they are no longer living in the tree canopy. Subsequent property owners are required to maintain this condition for compliance with the chapter.
- (b) Tree removal in a tree save area will require a permit from the city pursuant to section 21-63 and may require mitigation. Invasive plant species and hazardous trees may be removed without city approval.
- (c) Pursuant to the tree ordinance guidelines, any alterations to the tree save area must be accomplished without mechanized equipment and made of organic, environmentally friendly materials, unless approved otherwise by the city. For sites located in urban zones, alterations to the trees save area do not have to meet the above standard. However, if alterations are made or

amenities are added, these changes must be made in a manner that is not detrimental to the trees required to be saved and must be approved by the City.

- (d) Any tree save area less than 30 feet in width must have boundary and property lines delineated on site by a surveyor prior to the first submittal of plans.
- (e) No structure will be allowed within ten feet of the tree save area. A building restriction must be noted on the record plat in accordance with the tree ordinance guidelines. **This standard does not apply to Amenitized Tree Areas in urban zones.**
- (f) Tree save areas may include Mecklenburg County Park and Recreation Greenways. Trail placement must be coordinated with the city so that the effective tree save area required is maintained.
- (g) Tree save areas on commercial properties may include existing tree canopy which overhangs existing underground utility easements based upon adherence to the tree ordinance guidelines and approval by the city.
- (h) On commercial properties in cases where no other viable tree save areas exist and based upon adherence to the tree ordinance guidelines and approval by the city, tree save areas may include the planting of small maturing trees in accordance with Duke Energy's, or its successor's, approved planting list and within 20 feet of the centerline of power distribution easements that are accessible for maintenance by mechanical equipment.
- (i) **In local Historic Districts designated by a Historic District Overlay (see Chapter 10, Part 2 of the Zoning Ordinance), the requirements of the Historic District Overlay apply in addition to the regulations of this ordinance.**

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-94. - Tree save area and tree protection zone requirements for commercial development.

- (a) A minimum of 15 percent of the overall commercial site must be preserved as tree save area (hereinafter for purposes of this section, "commercial tree save area"). If less than 15 percent of the site has existing trees, additional trees shall be planted at a rate of 36 trees per acre to meet the commercial tree save area requirement. In the event any area of the commercial tree save area cannot be protected, **tree save area must be provided** at 150 percent of the area removed. **Trees must be planted at 36 trees per acre,**

Additions to existing sites that meet the criteria in subsection 21-4(2) shall protect all trees of eight-inch dbh or greater within the tree protection zone or maintain existing tree save areas for sites developed in accordance with the effective date of the ordinance from which this chapter derives.

- (b) In all cases, any perimeter tree and parking area planting requirements must still be met in accordance with section 21-96.

The following exceptions **and alternatives** to the tree save area requirement apply:

- (1) UMUD & UMUD-O within the I-277 loop and any TOD, MUDD or UMUD zoned parcels in transit station areas, as designated in a transit station area plan, are exempt. If no transit station area plan has been adopted, the transit station area will be designated as the property within one-half mile of an existing or proposed transit station location identified on the approved Metro Transit Commission (MTC) System Plan.
- (2) In transit station areas, designated mixed-use centers, NS zoning districts (for sites of 12 acres or less), and I-1 and I-2 zoning districts, the following measures may be chosen, individually or in combination, such that the measures are equal to 100 percent of any portion of the commercial tree save area not preserved as required above:

- a. Plant or replant trees at a rate of 36 trees per acre on-site.
 - b. Install and maintain a living green roof on the project to be maintained in perpetuity. The owner shall submit an annual inspection and maintenance report pursuant to the tree ordinance guidelines.
 - c. Undertake either off-site mitigation, or payment in lieu. Off-site mitigation and payment in lieu may not be used together to meet this requirement.
 - d. In urban zones, create Amenitized Tree Areas that include 36 trees per acre on-site and meet the following:
 - 1. Planting areas shall be a minimum of 10 feet wide.
 - 2. No impervious paved areas within the Amenitized Tree Area will be allowed. All pavement within the Amenitized Tree Area must be pervious.
 - 3. Trees may be planted in alternative locations, such as but not limited to rooftops, permanent planters, raised or at grade plazas, over parking decks, or other locations approved by the City. Planting in alternative locations shall be per the Land Development Standards Manual or as approved by the City.
 - 4. Amenities may include, but are not limited to irrigation, landscaping, grass, seating, pathways and lighting or other items, as approved by the City.
- (3) In corridors that are outside of transit station areas the following measures may be chosen, individually or in combination, such that the measures are equal in area to 150 percent of any portion of the required commercial tree save area not preserved as required above:
- a. Install and maintain a living green roof on the project to be maintained in perpetuity. The owner shall submit an annual inspection and maintenance report pursuant to the tree ordinance guidelines.
 - b. Undertake either off-site mitigation or payment in lieu. Off-site mitigation and payment in lieu may not be used together to meet this requirement.
 - c. In urban zones, create Amenitized Tree Areas that include 36 trees per acre on-site and meet the following:
 - 1. Planting areas shall be a minimum of 10 feet wide.
 - 2. No impervious paved areas within the Amenitized Tree Area will be allowed. All pavement within the Amenitized Tree Area must be pervious.
 - 3. Trees may be planted in alternative locations, such as but not limited to rooftops, permanent planters, raised or at grade plazas, over parking decks, or other locations approved by the City. Planting in alternative locations shall be per the Land Development Standards Manual or as approved by the City.
 - 4. Amenities may include, but are not limited to irrigation, landscaping, grass, seating, pathways and lighting or other items, as approved by the City.
- (4) In urban zones located in wedge areas, if any portion of the required commercial tree save area cannot be protected, Amenitized Tree Areas may be created for that portion. Amenitized Tree Area must be provided at 150 percent of the area removed. Trees must be planted at 36 trees per acre on-site and meet the following:
- 1. Planting areas shall be a minimum of 10 feet wide.
 - 2. No impervious paved areas within the Amenitized Tree Area will be allowed. All pavement within the Amenitized Tree Area must be pervious.

3. Trees may be planted in alternative locations, such as but not limited to rooftops, permanent planters, raised or at grade plazas, over parking decks, or other locations approved by the City. Planting in alternative locations shall be per the Land Development Standards Manual or as approved by the City.

4. Amenities may include, but are not limited to irrigation, landscaping, grass, seating, pathways and lighting or other items, as approved by the City.(5) In all cases, any perimeter tree and parking area planting requirements must still be met in accordance with section 21-96.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-95. - Tree save requirements for single-family development.

- (a) *Percentage of area required.* Whenever the existing tree canopy of a single-family development site is at least ten percent of the total property area, a tree save area equal to ten percent of the total property area must be saved during development of the site. If the existing tree canopy of the site is less than ten percent but more than five percent, a tree save area equal to ten percent of the total property area must be achieved by saving the entire existing tree canopy and planting new trees to reach the required percentage area. Single-family development sites with an existing tree canopy of less than five percent of the total property area must have a tree save area equal to five percent of the total property area, which may be achieved by saving the existing tree canopy and planting new trees.
- (b) *Tree save area method for calculation.* Square footage for existing and dedicated road rights-of-way and utility easements and for existing ponds and lakes will be subtracted from the total site area before the required percent of the tree save area is calculated. Where there are groups of trees that have areas within the group that are not expected to fill in with time, additional trees can be planted, pursuant to city approval, so that the entire area can qualify as a tree save area. A planted shade tree shall be equivalent to 2,500 square feet of saved area and new trees must be planted at a rate of 18 per acre. If root disturbance or construction activities occur within the drip line of any tree designated as protected in the tree protection plan, only the area actually being protected will be included in the calculated tree save area. Credit received for trees designated as heritage or specimen trees will be one and one-half times the actual square footage of the drip line. The city may adjust applicable land development standards to protect and preserve heritage or specimen trees.
- (c) *Criteria for new trees.* New trees planted in common open spaces to satisfy the requisite tree save area requirement must be at least three-fourths-inch caliper shade trees. New trees planted within individual lots to satisfy the requirement must be at least one and one-half inch caliper trees. Trees planted for mitigation where the existing tree canopy must be removed due to conflicting design criteria or hardship approved by the city must be planted in accordance with this section to obtain the required percentage.
- (d) *Heritage trees.* A person requesting to remove a heritage tree must obtain a permit from the city before the activities commence. Owners and persons who remove a heritage tree without a permit are subject to the civil penalties set out in section 21-124. For purposes of this subsection, a landscape plan approved by the city constitutes a permit. Permits for the removal of Heritage trees will be granted only where:
 - (1) The tree is located in the buildable area or yard area where a structure or improvement may be placed and there is no other reasonable location and/or preservation would unreasonably restrict use of the property.
 - (2) The tree is diseased, injured, in danger of falling, creates unsafe sight distance or conflicts with other sections of this Code or provisions of other ordinances or regulations.
 - (3) One five-inch caliper tree or three two-inch caliper trees are planted in mitigation for the removal of each healthy tree under this subsection.

- (e) *Incentives for increasing area.* Incentives for increasing tree save areas are designed to achieve the specific objective to:
- (1) Enhance the city's tree canopy in residential settings.
 - (2) Improve the overall quality of life within the larger single-family developments.
 - (3) Further the land use policies of the city, including encouragement of open spaces and the preservation of wooded sites.
 - (4) Discourage clear cutting of sites before and during construction of single-family development.
- (f) The following incentives apply to single-family development as defined by this chapter.
- (1) *Reduced yards.* For single-family development requiring a tree save area, setback requirements as specified in subsections 12.805(3)(a), (b), and (c) of the zoning ordinance are reduced as follows:
 - (a) Front setbacks can be reduced to a minimum of 15 feet for all lots; front loaded garages must maintain a minimum setback of 20 feet; and
 - (b) Rear yards can be reduced to 30 feet on all internal lots. Rear yards forming the outer boundary of a project must conform to the minimum rear yard of subsection 9.025(1)(g) for the zoning district in which the development is located.
 - (2) *Density bonus.* Single-family development sites may be granted a density bonus provided the entire tree save area is dedicated to common open space. Such dedication must be to a homeowners' association or a public or private agency that agrees to accept ownership and maintenance responsibilities for the space. The density bonus is calculated as follows: the entire dedicated tree save area in acres multiplied by the maximum residential density number of the underlying zoning district.
 - (3) *Reduced lot sizes.* A development need not meet the minimum lot area and lot width requirements set forth in table 9.205 of the zoning ordinance if it complies with one of the following incentives:
 - (a) Sites with more than ten percent and up to 25 percent of tree save area(s) in common open space may apply the cluster provisions for lot size and lot width of that zoning category.
 - (b) Sites with greater than 25 percent of tree save area(s) in common open space, including the buffer area and where the perimeter protection is provided either by perimeter lots that meet the underlying zoning cluster provisions or by a minimum 20-foot perimeter tree save area, may apply the cluster provisions for lot size and width of the next lower zoning category as shown in the following table and in accordance with section 9.205(5) of the zoning ordinance.

	R-3	R-3 Cluster	R-4	R-4 Cluster	R-5	R-5 Cluster	R-6	R-6 Cluster
Min. Lot Area	10,000	8,000	8,000	6,000	6,000	4,500	4,500	3,500
Min. Lot Width	70'	60'	60'	50'	50'	40'	40'	40'

- (g) *New supplemental plantings.* If the existing tree canopy is insufficient to meet the desired incentive level, new supplemental plantings may be used to reach the desired level. This only applies for sites that have less than ten percent existing tree canopy prior to development or for sites that have more than ten percent existing tree canopy and the entire canopy is being saved.

(Ord. No. 4521, § 1, 9-27-2010; Ord. No. 4766, § 1, 10-17-2011; Ord. No. [8093](#), §§ 1, 2, 8-22-16)

Note— Ord. No. 8093, § 2, adopted August 22, 2016, states "That this ordinance shall become effective upon its adoption, with the exception of the revised text for Section 21-95(f)(3)(b) that reads, "including the buffer area and where the perimeter protection is provided either by perimeter lots that meet the underlying zoning cluster provisions or by a minimum 20 foot perimeter tree save area." The revised section shall become effective on November 22, 2016."

Sec. 21-96. - Tree planting requirements.

- (a) Tree planting plan. All applications for building permits or land use permits shall include a tree planting plan. The tree planting plan shall be submitted in written/design form and shall conform to the general provisions of this section and all specifications set out in the applicable tree ordinance guidelines as issued by the city.
- (b) Tree and soil specifications. All trees planted pursuant to this article must be planted in amended soils as specified in the tree ordinance guidelines. The trees also must be from an approved list supplied by the city. Trees not on the list may be approved by the city on a case-by-case basis. Where trees are specified to be two-inch caliper, the minimum height shall be eight feet. If a multi-stem tree is used, it must have three to five stems and be eight to ten feet tall at the time of planting. Where three-inch caliper trees are specified, the minimum height shall be ten feet tall, and multi-stem trees shall be ten to 12 feet tall. All trees must comply with the American Standard for Nursery Stock, published by the American Association of Nurserymen.
- (c) A minimum of 50 percent of new trees must be native species, and sites with more than 20 trees required will have to install multiple species pursuant to the tree ordinance guidelines.
- (d) Site lighting must be a minimum 30 feet away from a tree. If pedestrian scale lighting is being used, then lighting must be a minimum of 15 feet away from a tree, unless approved otherwise by the city. However, for urban zones, the following standards apply. Light poles taller than 15 feet must be a minimum of 20 feet away from a tree, and light poles 15 feet or less in height must be at least 10 feet away from a tree.
- (e) For urban zones, the following standards apply:
 - (1) Required trees must be located at least 10 feet from onsite underground utilities unless approved by the City.
 - (2) Required trees must be located at least 10 feet from buildings unless approved by the City.
 - (3) The minimum spacing between large maturing trees may be reduced from 40 feet to 30 feet. The minimum spacing between small maturing trees may be reduced from 30 feet to 20 feet. Tree species identified for reduced spacing may be found in the Tree Ordinance Guidelines or as approved by the City.
- (f) Perimeter planting requirements. Requirements for perimeter planting are as follows:
 - (l) *Single-family development zones.* Trees of a minimum two-inch caliper must be planted within 20 feet of the back of the curb on new streets, and any existing streets with lot frontage, in new single- family development. Trees may be planted between the sidewalk and the curb if a

minimum six-foot planting strip is provided. Spacing will be an average of 40 to 50 feet apart for large maturing shade trees, and 30 to 40 feet apart for small maturing shade trees. Where a single-family development is directly across the street from multifamily development, the spacing between trees will be an average of 40 feet. Existing two-inch caliper or greater large maturing shade trees preserved within 20 feet of the back of the curb may be counted towards the street tree requirement if they are adequately protected during construction. The city may grant a modification for other existing trees on a case-by-case basis.

- (2) *Suburban commercial zones.* A continuous perimeter planting strip, located in the public right-of-way between the curb and sidewalk or on private property abutting the public right-of-way, with a minimum width of eight feet, shall be required. If large maturing trees are planted, each tree shall have a minimum two-inch caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted, the same conditions apply, but the increment drops to 30 feet.
- (3) *Urban zones.* Planting requirements for urban zones are as follows:
 - a. *Planting strip.* A continuous perimeter planting strip, located between the street and sidewalk, with a minimum width of eight feet, shall be required.
 1. If large maturing trees are planted, each tree shall have a minimum three-inch caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted, each tree shall have a minimum two-inch caliper. One such tree shall be planted for every 30 feet of frontage or fraction thereof.
 2. If the required number of trees cannot be planted as required by Section 21-96(e)(3)a.1 due to site constraints, the alternatives listed below, individually or in combination, may be used. Site constraints include, but are not limited to, driveway locations, sight triangles, sight lines, and above ground utility locations, as determined by the City.
 - i. Spacing between large maturing trees may be reduced to 30 feet. Spacing between small maturing trees may be reduced to 20 feet. Tree species identified for reduced spacing may be found in the Tree Ordinance Guidelines or as approved by the City.
 - ii. Trees that cannot be planted in the perimeter planting strip may be planted in alternative locations within 20 feet of the future back of curb, or in locations approved by the City.
 - iii. A payment in lieu may be made to the City for trees that cannot be planted in the perimeter planting strip.
 - b. *Urban retail sites.* The following options are available for urban retail developments:
 1. *Relocation of trees.* The number of perimeter trees required in subsection (e)(3) may be reduced by up to 50 percent if the same quantity of trees reduced are planted elsewhere on the site and at least one perimeter tree is installed.
 2. *Tree pits.* The perimeter trees required in subsection (e)(3) may be installed in tree pits with irrigation and sub-drainage as specified in the tree ordinance guidelines in lieu of a continuous perimeter planting strip. If large maturing trees are planted in the pits, each tree shall have a minimum three-inch caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted in the pits, each tree shall have a minimum two-inch caliper. One such tree shall be planted for every 30 feet of frontage or fraction thereof and as long as at least one perimeter tree is installed.
- (4) *Renovated sites.* When a building permit is requested for renovation of a previously developed site where the required perimeter planting strip does not exist, trees are still required. However,

in lieu of a minimum eight-foot wide planting strip, a pavement cutout equal to 200 square feet and with a minimum width of five feet may be substituted.

- (5) *Railroad or utility rights-of-way.* When a railroad or utility right-of-way separates the perimeter planting strip from a city right-of-way, the perimeter planting strip and tree planting requirements must still be met.
 - (6) *Large shade trees required.* In locations without overhead power distribution lines that obstruct normal growth, 75 percent of the trees required under subsections (e)(1), (2), and (3) shall be large maturing shade trees.
 - (7) *Streetscape plans.* In applicable cases where the city council has approved a streetscape plan, its provisions shall supersede those set forth in subsections (e)(2), (3) and (5).
- (g) Internal planting requirements, excluding single-family development. Requirements for internal planting, excluding single-family development, are as follows:
- (1) *Planting areas.*

a. *Suburban commercial zones.* Whenever the impervious cover exceeds 10,000 square feet, a planting area equal to ten percent of the total impervious surface must be provided for landscape purposes and tree planting. Internal tree planting is required at the rate of one large maturing shade tree per 10,000 square feet of impervious cover or fraction thereof. This planting area must be located on private property and shall be in addition to any perimeter **planting and tree save area** requirements.

b. *Urban zones.* Whenever the impervious cover exceeds 10,000 square feet, a planting area for landscape purposes and tree planting is required as follows:

1. The planting area shall equal ten percent of the total impervious surface for all urban zoning districts except for UMUD and MUDD.
2. In MUDD and UMUD zoning districts outside the I-277/I-77 loop, the planting area may equal five (5) percent of the total impervious surface. The planting requirements for UMUD zoning districts within the I-277/I-77 expressway loop are set out in subsection 9.906(4)(e) of the zoning ordinance in appendix A to this Code.
3. Internal tree planting is required at the rate of one large maturing shade tree per 10,000 square feet of impervious cover or fraction thereof. This planting area must be located on private property and shall be in addition to any perimeter planting, tree save area, and tree amenity area requirements.
4. Trees may be planted in alternative locations, such as but not limited to rooftops, permanent planters, raised or at grade plazas, over parking decks, or other locations approved by the City. Planting in alternative locations shall be per the Land Development Standards Manual or as approved by the City.

(2) *Parking areas.* Internal planting requirements for parking areas are as follows:

a. *Suburban commercial zones.* Planting in suburban commercial zones shall be in accordance with the following:

1. Trees must be planted so that each parking space is no more than 40 feet from a tree trunk, unless the parking lot has continuous islands running the length of the parking lot with minimum eight feet width; then the requirement will increase to 60 feet from a tree trunk.
2. Bus and tractor-trailer lots will be required to plant trees 40 feet apart around the perimeter of the parking lot in a minimum ten-foot wide planting strip. If there is

parking on the perimeter of the bus and tractor-trailer lots, bollards or wheel stops are required.

3. Seventy-five percent of the trees planted must be large maturing shade trees except as provided in subsection (f)(2)a.4. Minimum planting area per tree shall be 274 square feet with a minimum width of eight feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the tree ordinance guidelines, to a depth of 18 inches.
 4. Where small maturing shade trees are used, the minimum planting area shall be 200 square feet, with a minimum width of eight feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the tree ordinance guidelines, to a depth of 18 inches. Small maturing shade trees may be planted where overhead power distribution lines would interfere with normal growth (normally within 25 feet of overhead power distribution lines or within the Duke Power right-of-way for overhead transmission lines).
- b. *Urban zones.* Planting in urban zones shall be in accordance with the following:
1. Trees must be planted so that each parking space is no more than 40 feet from a tree trunk. Trees planted must be large maturing shade trees except as provided in subsection (f)(2)b.2.
 - i. Minimum planting area per large maturing shade tree shall be 274 square feet with a minimum dimension of eight feet. The entire planting area must contain amended on-site soil, as specified in the tree ordinance guidelines, to a depth of 18 inches.
 - ii. Minimum planting area per large maturing shade tree may be reduced to a minimum surface area and a minimum dimension of eight feet, if the entire planting area contains an approved soil mix, as specified in the tree ordinance guidelines, to a depth of 18 inches.
 - iii. For parking spaces located to the rear of single-family attached dwellings or multi-family attached dwellings (as defined by Chapter 15 of the Zoning Ordinance), the required trees may be located elsewhere on the site as approved by the City. The number of trees shall equal the quantity required by Section 21-96(f)(2)b.1.
 2. Small maturing trees may be planted where overhead power distribution lines would interfere with normal growth. Minimum planting area per small maturing tree shall be 200 square feet with a minimum dimension of eight feet. The entire planting area must contain amended on-site soil, as specified in the tree ordinance guidelines, to a depth of 18 inches.
- (3) *Renovated sites.* When a building permit is requested for the renovation of a site previously developed, internal tree planting is still required, and the minimum planting area shall be 200 square feet per tree. However, only five percent of the total impervious cover must be set aside for landscape purposes.
- (4) *Existing trees.* In meeting these internal planting requirements, credit may be given for existing trees if the following are met:
- a. The property owner must include in the tree survey referenced in section 21-91 all existing trees of two-inch dbh or greater which he/she proposes to satisfy these planting requirements.
 - b. Only healthy trees and those that have been protected during the entire development period, beginning prior to the commencement of site work and continuing through to issuance of the certificate of occupancy in accordance with approved tree protection requirements, may satisfy these tree planting requirements.

- c. If the minimum protection standards are not met, or if trees are observed by the city to be injured or threatened, it may be deemed ineligible for meeting these requirements. The city shall have the authority to modify the planting requirements of this subsection to preserve existing trees.

(Ord. No. 4521, § 1, 9-27-2010; Ord. No. 4607, 12-20-2010; Ord. No. [8093](#), § 1, 8-22-16)

Secs. 21-97—21-120. - Reserved.

ARTICLE V. - MODIFICATION, INSPECTION, ENFORCEMENT AND APPEAL

Sec. 21-121. - Modifications.

- (a) If strict compliance with the standards of this chapter conflict with existing federal or state statutory or regulatory requirements, or when planting is required by this chapter and the site design, topography, natural vegetation, or other special considerations exist relative to the proposed development, the developer may submit a specific alternate plan for planting to the city for consideration. This plan must meet the purposes and standards of this chapter, but may suggest measures other than those in article IV. In addition, if the developer seeks a modification of planting requirements based upon a contention that the planting required by this chapter would pose a threat to health and safety due to a conflict with existing federal or state statutory or regulatory requirements, a modification will only be considered upon receipt of a written explanation of the alleged conflict created by the planting requirement and a copy of the statute or regulation that creates the conflict. The city shall review the alternate proposal and advise the applicant of the disposition of the request within 15 working days of submission by the applicant. Any appeals by the applicant shall be in accordance with section 21-126.
- (b) Requests for a delay in complying with this chapter due to poor weather conditions for planting will be considered following a written request directed to the city's engineering and property management department. Certificates of occupancy will be issued upon approval of a request for planting delay. Such request for a delay will not change the timeframe during which the planting will be completed. Failure to comply will result in penalties as provided for in section 21-124.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-122. - Inspections and investigations of sites.

- (a) Agents, officials or other qualified persons designated by the city are authorized to inspect the sites subject to this chapter to determine compliance with this chapter or rules or orders adopted or issued pursuant to this chapter.
- (b) No person shall refuse entry or access to any authorized city representative or agent who requests entry for the purpose of inspection, nor shall any person resist, delay, obstruct or interfere with such authorized representative while in the process of carrying out official duties.
- (c) If, through inspection, it is determined that a property owner or person in control of the land has failed to comply or is no longer in compliance with this chapter or rules or orders issued pursuant to this chapter, the city will serve a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, rule 4, or any other means reasonably calculated to give actual notice, such as facsimile or hand delivery. A notice of violation shall identify the nature of the violation and shall set forth the measures necessary to achieve compliance with this chapter. The notice shall inform the person whether a civil penalty will be assessed immediately or shall specify a date by which the person must comply with this chapter. The notice shall advise that failure to correct the

violation within the time specified will subject that person to the civil penalties as provided in section 21-124 or any other authorized enforcement action.

- (d) The city shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose may enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites subject to this chapter.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-123. - Emergencies.

In an emergency such as a windstorm, ice storm, fire or other disaster, the requirements of this chapter may be waived by the city during the emergency period so that the requirements of this chapter will in no way hamper private or public work to restore order in the city. This shall not be interpreted to be a general waiver of the intent of this chapter.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-124. - Penalties.

- (a) *Generally.* Any person who violates any of the sections of this chapter, or rules or orders adopted or issued pursuant to this chapter, shall be subject to any one, all or a combination of the civil penalties prescribed by this section. Penalties assessed under this chapter are in addition to and not in lieu of compliance with the requirements of this chapter. The person performing the work, the property owner and the person contracting for the performance shall be jointly and severally liable for any penalty or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this chapter.
- (b) *Civil penalties.* Civil penalties for violations of this chapter shall be assessed pursuant to the following:
 - (1) Failure to plant original or replacement trees in accordance with this chapter shall be \$50.00 for each tree not planted. No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in section 21-122. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received. The failure to plant each individual tree shall constitute a separate, daily and continuing violation.
 - (2) Injury or damage to, or destruction of, trees and shrubs protected by sections 21-61 and 21-62 that result in the total loss of the tree or shrub shall be assessed in accordance with the tree evaluation formula or other generally accepted industry evaluation methods. However, the maximum civil penalty for each tree injured, damaged or destroyed shall not exceed \$20,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.
 - (3) Injury or damage to, or destruction of, trees and shrubs protected by sections 21-61 and 21-62 that do not result in the total loss of the trees shall be assessed for each tree or shrub in accordance with the tree evaluation formula or other generally accepted industry evaluation methods. However, the maximum amount of the penalty shall not exceed \$1,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.
 - (4) Failure to install or maintain required tree protection measures in accordance with section 21-92 shall be \$1,000.00. No civil penalty shall be assessed until the person has been notified of the violation as provided in section 21-122. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of

violation is received. The failure to install the required tree protection measures shall constitute a separate, daily and continuing violation. Injury or damage to, or destruction of, trees in the tree protection zone and tree save area resulting from inadequate or omitted tree protection measures constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this section.

- (5) Any other action that constitutes a violation of this chapter may subject the violator to a civil penalty of \$50.00, and each day of continuing violation shall constitute a separate violation. However, the maximum amount of the penalty shall not exceed \$1,000.00.
- (c) *Nonmonetary penalty.* A nonmonetary penalty, in the form of increased or additional planting requirements, may be assessed in addition to or in lieu of any monetary penalties prescribed under this section.
- (d) *Notice.* The city shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, rule 4, and shall direct the violator to either pay the assessment or contest the assessment as specified in section 21-126. If payment of assessed penalties is not received within 30 days after it is due, or if no request for a hearing has been made as provided in section 21-126, the assessment shall be considered a debt due and owing to the city, and the matter shall be referred to the city attorney for institution of a civil action to recover the amount of the debt. The civil action may be brought in the Mecklenburg County Superior Court or in any other court of competent jurisdiction.
- (e) *Civil action for unpaid assessment.* A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (f) *Use of civil penalties collected.* Civil penalties collected pursuant to this chapter shall be credited to the general fund as a nontax revenue and shall be used to further the purposes, intent and requirements of this chapter. The commission shall be consulted with regard to use of collected funds.
- (g) *Criminal penalties.* Any person who knowingly or willfully violates any section of this chapter shall be guilty of a Class 2 misdemeanor and may, upon conviction thereof, be subject to punishment as provided in section 2-21. This remedy is in addition to any civil penalties that may be assessed.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-125. - Injunctive relief.

- (a) Whenever the city has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition or provision of an approved permit, it may, either before or after the institution of any other action or proceeding authorized by this chapter, authorize the city attorney to institute a civil action in the name of the city for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the county superior court or any other court of competent jurisdiction.
- (b) Upon determination of a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violation of this chapter.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-126. - Hearings and appeals.

- (a) *Requests for variance.* Procedures for a request for a variance from this chapter are as follows:
- (1) The decision of the city arborist or senior urban forester to deny an application for a variance from the requirements of this chapter shall entitle the person submitting the application (petitioner) to a public hearing before the commission if such person submits a written request for a hearing to the chair of the commission within ten working days of receipt of the decision denying the variance. As soon as possible after the receipt of the request, the chair of the commission will set a date, time and place for the hearing and notify the petitioner of the hearing by mail. The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The chair may appoint a three-member board selected from the appointed members of the commission to act as an appeal board and hear the request of the petitioner. The hearing shall be conducted by the commission in accordance with subsection (d).
 - (2) The commission or its designated appeal board may grant a variance from the requirements of this chapter upon a finding that:
 - a. Practical difficulties or unnecessary hardship would result if the strict letter of the law were followed; and
 - b. The variance is in accordance with the general purpose and intent of this chapter.
- (b) *Appeals of decisions, notices of violation and assessments of civil penalties.* Any party dissatisfied with a decision of the city adversely affecting such party in the application or enforcement of this chapter, including notices of violations and assessments of civil penalties, may request a public hearing before the commission. Procedures for such hearings are as follows:
- (1) The issuance of a decision, including a notice of violation or assessment of a civil penalty by the city, shall entitle the person subject to the decision or responsible for the violation (petitioner) to a public hearing before the commission if such person submits a written request for a hearing to the chair of the commission within 30 days of the receipt of a decision, notice of violation or assessment of a civil penalty.
 - (2) As soon as possible after the receipt of the request, the chair shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to subsection (d).
- (c) *Petition for review of commission's decision.* Any party aggrieved by the decision of the commission shall have 30 days from the receipt of the decision to file a petition for review in the nature of certiorari with the clerk of Mecklenburg County Superior Court.
- (d) *Hearing procedure.* The following shall be applicable to any hearing conducted by the commission pursuant to subsection (a) or (b):
- (1) At the hearing, the petitioner and the city shall have the right to:
 - a. Be present and be heard;
 - b. Be represented by counsel; and
 - c. Present evidence through witnesses and competent testimony relevant to the issues before the commission.
 - (2) Rules of evidence shall not apply to a hearing conducted pursuant to this section, and the commission may give probative effect to competent, substantial and material evidence.
 - (3) At least seven days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the commission.

- (4) Witnesses shall testify under oath or affirmation to be administered by the court reporter or another duly authorized official.
- (5) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the city and for the petitioner shall have the right to cross examine witnesses.
- (6) At the conclusion of the hearing, the commission shall render its decision on the evidence submitted at such hearing and not otherwise.
 - a. If, after considering the evidence presented at the hearing, the commission concludes by a preponderance of the evidence that the grounds for the city's actions are true and substantiated, the commission shall, as it sees fit, uphold the city's action.
 - b. If, after considering the evidence presented at the hearing, the commission concludes by a preponderance of the evidence that the grounds for the city's actions are not true and substantiated, the commission may, as it sees fit, reverse or modify any order, requirement, decision or determination of the city. The commission bylaws will determine the number of concurring votes needed to reverse any order, requirement, decision or determination of the city.
- (7) The commission shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the commission shall be based on findings of fact and conclusions of law to support its decision.
- (8) The commission shall send a copy of its findings and decision to the petitioner and the city. If either party contemplates an appeal to a court of law, the party may request and obtain, at his own cost, a transcript of the proceedings.
- (9) The decision of the commission shall constitute a final decision.

(Ord. No. 4521, § 1, 9-27-2010)