

Notes: Creates a new chapter to pull out the existing article “Trees and Shrubs” from the above chapter: “Streets, Sidewalks and Other Public Places” - our work goes beyond just public spaces

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New Chapter ___#___ ARTICLE IV. TREES AND SHRUBS Urban Forestry and Landscaping

DIVISION 1. GENERALLY

Sec. 1 46-116. Purpose of chapter article.

The purpose and intent of this chapter article is to manage, preserve, plant, and protect trees, shrubs, and other natural vegetation within the city and its extraterritorial jurisdiction by:

- (1) Saving existing trees, shrubs, and other natural, non-invasive vegetation from indiscriminate destruction or unnecessary removal;
- (2) Diversifying the tree, shrub and other natural vegetative species in the area, prioritizing the use of native plants;
- (3) Recommending standards for the maintenance, planting, pruning, protection, limiting and regulating the removal of trees, shrubs and other natural vegetation;
- (4) Building an awareness of the need for and the value of properly managing, and preserving trees, shrubs, and other natural vegetation;
- (5) Establishing an education program providing information and guidelines for tree, shrub and other natural vegetative maintenance, preservation, and planting; and for other aspects of improving the natural vegetative environment;
- (6) Establishing standards for tree, planting, maintenance and protection;
- (6) Enhance, maintain and replenish trees, shrubs and other natural vegetation in the Hendersonville area to improve the community's natural beauty and appearance, the ecological and biological integrity of the city's landscaping, and improve the overall natural environment;
- (7) Establishing an Urban Forestry and Landscaping Management Plan;
- (8) Integrating trees, shrubs and other natural vegetation into all development plans reviewed by the Community Development Department;
- (9) Recommending standards and requirements for the removal and control of invasive vegetative species;
- (10) Promoting the reduction of non-native lawn grasses that have little ecological, biological and environmental value and recommending native plant alternatives;

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- (11) Recommending standards for planting, maintenance, limiting and regulating the removal of tree, shrubs and other natural vegetation along all blue line waterways;
 - (12) Conducting periodic city-wide tree canopy and individual public tree inventories;
 - (13) Recommending fee schedules for all forestry and landscaping functions for on-site development, utility, pruning, violation, inventory, planting, removal, and permit inspections;
 - (14) Recommending retention and/or contracting the services of/or hire Certified Arborists and/or Urban Foresters and/or other professionals for the on-site development, utility, pruning, violation, inventory, planting, removal, management, and inspection of trees, shrubs, and/or other natural vegetation;
 - (15) Recommending working relationships with appropriate nonprofit, state and federal entities to carry out the requirements and programs of this chapter;
 - (16) Review all city planning efforts as they relate to the management of trees, shrubs and/or all other natural vegetation.

(Code 1971, § 28-45; Ord. No. 08-0525, § 1, 5-8-08)

Sec. 2 46-117. Benefits of trees and natural vegetative landscaping.

The city finds it important to amend this article chapter to better preserve and protect trees, shrubs and other natural vegetation since numerous benefits are derived from this practice, including the following:

- (1) Assists in the stabilization and fertilization of soil and in the prevention of soil erosion;
- (2) Contributes to the process of groundwater recharge and storm water run off retardation and protecting against flood hazards and the risk of landslides;
- (3) Contribute to the process of air purification and oxygen regeneration;
- (4) Intercepts airborne particulate matter, and reduces some air pollutants;
- (5) Provides a haven proper habitat (food, water, and shelter) for birds, reptiles, insects and mammals. .which in turn help control the insect population Healthy and diverse wildlife populations can assist in keeping insect populations naturally balanced;
- (6) Provides nuts and fruits for wildlife;
- (6) Aids in glare, heat, noise abatement, along with maintaining the climate balance and decreasing wind velocity;
- (7) Provides important psychological, sociological, and aesthetic counterpoints to the urban setting;
- (8) Provides aesthetic natural beauty, ecological, and biological qualities which enhance human livability and in the urban environment;
- (9) Promotes energy conservation by maximizing the shading and cooling effects of trees;
- (10) Buffers uncomplimentary and often incompatible land uses by providing a transitional area;
- (11) Promotes better health by providing a more natural environment to create incentives for more active outdoor lifestyles and to reduce stress and improve mental health;
- (12) Increases commercial and residential property values as well as the retail economy;
- (13) Improves our green economy by providing natural resource jobs and enterprises

(Ord. No. 08-0525, § 2, 5-8-08)

Sec. 3 46-118. Definitions.

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

Administrator means the director of the Public Works Department or his designated representative or the director of the Community Development Department or his designated representative as appropriate.

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

Heritage trees. See section 10 46-125.

Park trees means trees, shrubs, bushes and all other woody vegetation in public parks, greenways, having individual names, and all areas owned by the city or to which the public has free access as a park.

A public utility company means a railroad company, pipeline company, gas company, electric power company, telephone company or any other company that performs a public service and is regulated as such by a public authority, such as the state utilities commission or the city as franchisor.

Right-of-way means that property located within and adjoining the streets, roads, and highways, utility corridors and related easements within the city and extra jurisdictional territories, which rights-of-way are owned dedicated by the city or state or are otherwise maintained by the city or state, or are otherwise maintained by the city or state.

Species list means the official list of street trees Approved Landscape Plant List for Developers, Gardeners, and Homeowners adopted by the tree board, comprised of three groups of trees: small trees, medium trees and large trees Urban Forestry and Landscaping Board.

Street trees means trees, shrubs, bushes and all other woody vegetation on land lying within the right-of-way of all streets, avenues or ways within the city.

Topping means the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown, so as to remove the normal canopy and disfigure the tree.

Tree canopy means the layer of branches, stems, and leaves of trees that cover the ground when viewed from above.

(Code 1971, § 28-46; Ord. No. 08-0525, § 3, 5-8-08)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 4 46-119. Penalty for violation of article chapter.

Any person violating any provision of this article chapter shall be, upon conviction or a plea of guilty, subject to a fine not to exceed \$500.00 per offense. All offenses, with the exception of violations of pruning standards, shall be corrected at the expense of the violator.

(Code 1971, § 28-57; Ord. No. 08-0525, § 4, 5-8-08)

Sec. 5 46-120. Public Land tree distance and spacing requirements.

- (a) Reserved.
- (b) Reserved.
- (c) No street tree shall be planted closer than 35 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than ten feet from any fire hydrant.

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- (d) No street trees, other than those species listed as small trees on the species list, may be planted under or within ten lateral feet of any overhead primary voltage wire (not including service wire entering a structure), or over or within five lateral feet of any underground water line, sewer line, transmission line or other utility. This does not apply to the municipal service tax district.

(Code 1971, § 28-49; Ord. No. 01-0429, § 1, 4-5-01)

Sec. 6 46-121. Tree care, planting, and removal.

- (a) *Rights of city.* The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the rights-of-way of all streets, alleys, avenues, lanes, squares and public grounds as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The city may take these actions without the prior approval of the Urban Forestry and Landscape Board.
- (b) *Permit required for removal of trees or shrubs.* It shall be unlawful to remove or cut down any tree or shrub in any right-of-way or public place without having first secured a permit therefore. Applications for such permits shall be made to the director of public works and shall be referred to the Urban Forestry and Landscape Board for approval before permission is granted.
- (c) *Easements.* Along any street where the existing right-of-way is not wide enough to accommodate trees, the city, with the consent of the owner of the property adjacent to that street, may enter into a temporary easement agreement with the property owner to permit the city to plant trees within the easement. The easement shall abut the property line that divides the street right-of-way from private property. The easement shall not be more than 15 feet wide. The city shall maintain the trees planted within the easement for a maximum period of five years, as specified in each agreement. The city shall not plant trees on easements where their placement will interfere with travel on public streets or endanger the use of those streets by the public. The city shall follow the tree planting and maintenance specifications and standards in all planting on easements. If, at a later date, the city acquires, by purchase or condemnation, the land upon which trees were planted by the city pursuant to a temporary easement agreement, the city shall not be required to compensate the property owner for these trees.
- (d) *Removal of trees.* The administrator may remove or cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is affected with any injurious fungus, insect or other pest. This does not prohibit the planting of street trees by adjacent property owners on public property, provided that the selection and location of such trees is in accordance with this article and a permit is obtained.
- (e) *Signs.* It shall be unlawful to attach any sign, advertisement or notice to any tree or shrub in any right-of-way or public place.
- (f) *Poles and wires.* It shall be unlawful to attach any wire or other rope to any tree without permission of the director of public works or their designated representative. Any person having the right to maintain poles and wires in the streets, alleys or other public places in the city shall, in the absence of provisions in the franchise concerning the subject, keep such wires and poles free from and away from any trees or shrubs in such places so far as may be possible, and shall keep all such trees and shrubs properly trimmed and subject to the supervision of the public works department of the city so that no injury shall be done to the poles or wires or shrubs and trees by contact.
- (g) *Excavations.* In making excavations in streets or other public places, proper care shall be taken to avoid injury to the roots of any tree or shrub wherever possible.
- (h) *Topping.* It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the

normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this article at the determination of the director of public works.

- (i) *Pruning.* A permit is not required for the pruning of trees other than designated Heritage Trees. However, in order to prevent excessive pruning and topping of trees, and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance is required with pruning standards as approved and outlined in the American Society of Consulting Arborists ANSI (American National Standards Institute) A300. Failure to meet these standards is a violation of this article chapter. The administrator shall maintain on file at all times a copy of the current edition of ANSI A300 Pruning Standards by the American Society of Consulting Arborists and shall make copies of such standards available for the cost of reproduction upon request.
- (j) *Removal of dead or diseased trees.* The city shall have the right to cause the removal of any dead or diseased trees on private property within the city when such trees constitute a hazard to life and property or harbor insects or disease which constitutes a potential threat to other trees within the city. The director of public works will notify in writing the owners of such trees. Removal shall be done by such owners at their own expense within 60 days after the date of receipt of notice. In the event of failure of owners to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal on the owner's property tax notice.

(Code 1971, § 28-50; Ord. of 10-11-95; Ord. No. 08-0525, § 5, 5-8-08)

Sec. 7 46-122. Utility companies.

Public and private utility companies shall file with the director of public works the policies and procedures followed in their tree trimming and removal practices, and such utilities shall abide by the policies and procedures filed pursuant thereto. Public and private utility companies shall notify the director of public works or their designee seven days prior to any tree trimming or removal work being done within the city limits.

(Code 1971, § 28-51; Ord. No. 08-0525, § 6, 5-8-08; Ord. No. 11-0632, § 1, 6-2-11)

Editor's note(s)—Ord. No. 11-0632, § 1, adopted June 2, 2011, changed the title of § 46-122 from public utility companies to utility companies.

Cross reference(s)—Utilities, ch. 52.

Sec. 8 46-123. Exceptions.

In the case of emergencies such as windstorms, ice storms, fire or other disasters, the requirements of this article may be waived by the city during the emergency period so that the requirements of this article would in no way hamper private or public work to restore order in the city. This shall not be interpreted to be a license to circumvent the intent of this article.

(Code 1971, § 28-52)

Sec. 9 46-124. Public and private land arborist's license and insurance.

It shall be unlawful for any person to engage in the business or occupation of pruning, treating or removing street or park trees within the city or extraterritorial jurisdiction without first applying for and procuring a license. The license fee shall be \$25.00 annually in advance; provided, however, that no license shall be required of any public utility company or city employee doing such work in the pursuit of their public service endeavors. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of \$50,000.00 for bodily injury and \$50,000.00 for property damage, indemnifying the city or

any person injured or damaged resulting from the pursuit of such endeavors as described in this section. In addition, each applicant or at least one employee of the business must be a Certified Arborist (ISA).

(Code 1971, § 28-54)

Cross reference(s)—Licenses generally, § 14-31 et seq.

Sec. 10 46-125. Heritage trees.

- (a) *Designation.* In order to protect significant trees within the city, the city hereby establishes the heritage tree designation. A heritage tree may be designated by resolution of the city council at the request of the Urban Forestry and Landscape Board. Heritage trees may be located on public or private property. For trees located on private land, the property owner shall consent to the designation, in writing, before the heritage tree is designated. A heritage tree may lose its designation upon the written consent of the property owner to the administrator of the articles. The administrator shall notify the Urban Forestry and Landscape Board of the request.
- (b) *Criteria.* A tree being considered for heritage tree status shall have at least a 3.0 rating on the Heritage Tree Nominee Scoring Sheet. In addition, a tree shall meet one of the following criteria in order to be designated as a heritage tree:
- (1) It has reached its mature growth as specified in *Hortus Second*, compiled by L. H. Bailey and Ethel Zoe Bailey, Macmillan Co., N.Y., 1941, and *Carolina Landscape Plants*, by R. Gordon Halfacre, Sparks Press, Raleigh, N.C., 1971.
 - (2) It is listed as a Champion Big Tree, as designated by the state division of forest resources.
 - (3) It has significant historic value to the community.
 - (4) It is a rare species, or provides a habitat for rare species of plants, animals or birds.
 - (5) No such trees shall be trimmed, cut or removed without prior written notice within 30 days to the director of public works
 - (5) Heritage Trees, on private land, may be pruned or removed if a tree or part of a tree constitutes a hazard to life and property, or has been severely damaged by storms or other causes (insects or disease). In addition, any removal or pruning must be based on the recommendation of a certified arborist (ISA) and with a permit from the director of public works and notification to the Urban Forestry and Landscape Board.
- (c) *Responsibility of the Urban Forestry and Landscape Board.* It shall be the responsibility of the board to locate and identify heritage trees through the assistance of appropriate civic groups and, with the consent of any owners, may designate such trees by marker or device.
- (d) *Public records.* A heritage tree file, including the kind and nature of the trees and a map sufficient to indicate their location, shall be maintained in the office of the city clerk and shall be a public document. A list of heritage trees shall be kept on file with the director of public works or his designated representative.

(Code 1971, § 28-56; Ord. No. 18-0655, § 1, 8-2-18)

Cross reference(s)—Historic preservation, ch. 28.

Secs. 11 (New Section) Planting Invasive Plant Species

It shall be unlawful for any person to plant an invasive plant species as identified in the Approved Landscape Plant List for Developers, Gardeners, and Homeowners within the city or its extraterritorial jurisdiction.

Secs. 12 - 20 46-126—46-145. Reserved.

(Supp. No. 46)

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DIVISION 2. Tree Board Urban Forestry and Landscape Board

Sec. 21 46-146. Creation, purpose and establishment; number and appointment of members.

There is hereby created and established the city Urban Forestry and Landscape tree Board, hereafter referred to as the "tree board." The tree board shall be appointed by the city council and shall be composed of seven persons, at least four of whom shall be residents of the territory subject to the zoning jurisdiction of the city or property owners of the city. The director of public works shall serve on the tree board as an ex officio member but will not have voting rights. The tree board has the responsibility to carry out all items in Section 1- Purpose of Chapter.

(Code 1971, § 28-47(a); Ord. No. 02-1045, § 1, 3-7-02; Ord. No. 06-0837, § 1, 8-10-06; Ord. No. 08-0525, § 7, 5-8-08; Ord. No. 15-1166, § 1, 11-5-15; Ord. No. 17-0217, § 1, 2-9-17)

Sec. 22 46-147. Terms; filling of vacancies.

The term of the seven persons to be appointed by the council shall be three years. If a vacancy shall occur during the term of any member, his successor shall be appointed for the unexpired portion of the term. Any member who fails to attend at least 75 percent of the regular and special meetings held by the board during any one year may be removed from the board. The chairman of the tree board shall notify the city council if a member is absent 25 percent of the meetings, and a new appointment may be made by the city council to fill that vacancy.

(Code 1971, § 28-47(b); Ord. No. 06-0837, § 1, 8-10-06; Ord. No. 07-0526, § 3, 5-3-07; Ord. No. 08-0525, § 8, 5-8-08)

Sec. 23 46-148. Compensation.

Members of the tree board shall serve without compensation.

(Code 1971, § 28-47(c))

Sec. 24 46-149. General administrative provisions; quorum.

The tree board shall choose its own officers, make its own rules of procedure and keep a journal of its proceedings. A majority of the members shall constitute a quorum for the transaction of business.

(Code 1971, § 28-47(d))

Sec. 25 46-150. Responsibility for comprehensive city tree urban forestry and landscape plan and standards.

It shall be the responsibility of the tree board to study, investigate, counsel, develop and/or update annually every five years, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees, shrubs, and other natural vegetation. in parks, along streets and in other public areas. Such a plan will be presented annually to the city council and, upon its acceptance and approval, shall constitute the official comprehensive city tree urban forestry and landscape management plan. The tree board shall approve voluntary planting plans by the private citizens or groups on city property or on rights-of-way. In addition to the urban forestry and landscape management plan, the tree board shall prepare an accompanying standards

document laying out the requirements for proper planting and handling of required vegetation as well as both the initial and long-term maintenance of the vegetation.

(Code 1971, § 28-47(e))

Sec. 26 46-151. Responsibility for street tree landscape plant species list.

The tree board shall be responsible for developing an official street tree landscape species list. comprised three groups of trees: small trees, medium trees and large trees. No trees or shrubs other than those included in the list may be utilized in development plans reviewed by the Community Development Department that are subject to zoning regulations as street trees without permission of the city tree board. Invasive plant species listed in the landscape species list cannot be planted in the city and its extraterritorial jurisdiction areas.

(Code 1971, §§ 28-47(f), 28-48)

Sec. 27 46-152. Recognition of individuals, businesses or organizations exceeding article requirements.

The tree board shall publicly recognize individuals, businesses or organizations which exceed landscaping requirements as outlined in article 15 of the zoning ordinance.

(Code 1971, § 28-47(g); Ord. No. 08-0525, § 9, 5-8-08)

Sec. 28 46-153. Public education and investigative responsibility.

The tree board shall educate the public as to the economic and aesthetic benefits of trees and shrubs to the city and its citizens, both on publicly and privately owned property. The tree board shall consider, investigate, make findings, report and recommend upon any special matter of question coming within the scope of its work. To investigate how effectively various city ordinance tree, shrub, and other natural vegetation requirements are being met, the tree board may visit private property when accompanied by an appropriate member of city staff.. The board may seek advice from qualified landscape architects, arborists, foresters, horticulturists or knowledgeable individuals.

(Code 1971, § 28-47(h))

Sec. 29 46-154. Responsibility to designate heritage trees.

The tree board shall have the responsibility to designate heritage trees (see section 10 46-125).

(Code 1971, § 28-47(i); Ord. No. 08-0525, § 10, 5-8-08)

Sec. 30 46-155. Authority to accept and recommend expenditure of funds.

The tree board has the authority to accept on behalf of the city grants, funds, loans or contributions from the United States, the state, the city or the county, any private or public corporation, any individual or any agency, instrumentality or agent of the above, and to recommend the expenditure of any proceeds toward the accomplishment of the tree board's purposes.

(Code 1971, § 28-47(j))

Sec. 31 46-156. Control of accounts and commitment of city.

All monies of the tree board shall be paid to the controller of the city as the agent of the tree board, who shall designate depositories and who shall earmark such monies for the purposes for which they are received. The

monies in such accounts shall be paid out on checks of the treasurer on written requisition approved by the manager. All deposits of such monies shall be secured in the manner provided by law for securing deposits of monies of the city. In any event, the tree board may not expend any city funds beyond those provided in its approved budget or in any manner commit the city without prior approval from the city council.

(Code 1971, § 28-47(k))

Sec. 32 46-157. Interference with board.

It shall be unlawful for any person to prevent, delay or interfere with the city tree board, or any of its agents, while engaging in or about the inspection, planting, cultivating, mulching, pruning, spraying or removing of any street trees, park trees or trees on private grounds, as authorized in this article chapter. Any person violating any provision of this article chapter shall be, upon conviction or a plea of guilty, subject to a fine not to exceed \$500.00 per offense.

(Code 1971, § 28-53)

Sec. 33 46-158. Review of conduct, actions and decisions by city council.

The city council shall have the right to review the conduct, acts and decisions of the city tree board. Any person may appeal from any ruling or order of the city tree board to the city council, which may hear the matter and make a final decision.

(Code 1971, § 28-55)

Secs. 34-40 46-159—46-170. Reserved.