

PROPOSED ORDINANCE

Proposed by: Town Attorney

A proposed ordinance to amend Chapter 18 –specifically repealing and replacing Chapter 18, Article 4A. Development Standards – Public, Institutional, and Community Uses, Division 3. Landscape, Screening, Fences and Walls, Section 18-409; Chapter 18, Article 4B, Division 3. Landscape, Screening, Fences and Walls, Section 18-462; Article 5A, Division 3. Landscape, Screening, Fences and Walls, Section 18-510; and Article 5B, Division 3. Landscape, Screening, Fences and Walls, Section 18-559, Amending Chapter 18, Article 6, Division 6, Section 18-628.13, Chapter 18, Article 8, Division 6, Section 18-855.5, and adopting a new Chapter 17 – Tree Preservation and Canopy Requirements During Development to Chapter 18 of the Town Code with new provisions related to Tree Preservation and canopy requirements during development.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

Section 1: The Town Code, Chapter 18, Sections 18-409, 18-462, 18-510 and 18-559, Planting and replacement of trees, amending, repealing, and adopting new replacement provisions to Chapter 18 as indicated in a new Chapter 17, Sections 17-1001 *et seq.*, and amending Chapter 18, Sections 18-628.13 and 18-855.5 of the Code of the Town of Vienna, to read as follows:

Chapter 18 - DIVISION 3. LANDSCAPE, SCREENING, FENCES, AND WALLS

Section 18-409 Minimum Tree Canopy Coverage

See, Chapter 17, §1001 *et seq.*

- ~~1. Under the following circumstances, a plan shall be submitted for the planting and replacement of trees on the site such that a twenty (20) percent minimum tree canopy coverage will be achieved within twenty (20) years:~~
 - ~~A. The development of an undeveloped tract;~~
 - ~~B. The redevelopment of any existing tract by removal of a dwelling and replacement with a new dwelling; or~~
 - ~~C. The addition to an existing dwelling that results in an area of disturbed soil exceeding 2,500 square feet.~~
- ~~2. All planting and replacement of trees shall be in accordance with the Town of Vienna Tree Preservation and Planting Specifications Manual, which is available online for download at www.viennava.gov.~~
- ~~3. Existing trees that are to be preserved, and with no relevant citations having been issued by the Town of Vienna throughout the duration of the project, may be included in the plan to meet all or part of the canopy requirements if the site plan identifies such trees and the trees meet standards of desirability and life expectancy established by the Town. Town of Vienna staff will perform a minimum of two unannounced site inspections to determine compliance with tree protection and~~

preservation regulations during construction.

- ~~4. The Town Council may grant reasonable exceptions or deviations from the requirements of this section (See §18-830) when strict application of the requirements would result in unnecessary or unreasonable hardship to the developer, or to allow for reasonable development of the following:~~

~~A. Areas devoid of woody materials.~~

~~B. Dedicated school sites.~~

~~C. Playing fields and other non-wooded areas and uses of a similar nature.~~

Section 18-462 Minimum Tree Canopy Coverage

See, Chapter 17, §1001 et seq.

- ~~1. Under the following circumstances, a plan shall be submitted for the planting and replacement of trees on the site such that a fifteen (15) percent minimum tree canopy coverage will be achieved within a maturation of twenty (20) years:~~
- ~~A. The development of an undeveloped tract;~~
- ~~B. The redevelopment of any existing tract by removal of a principal structure and replacement with a new principal structure; or~~
- ~~C. The addition to an existing principal structure that results in an area of disturbed soil exceeding 2,500 square feet.~~
- ~~2. All planting and replacement of trees shall be in accordance with the Town of Vienna Tree Preservation and Planting Specifications Manual, which is available online for download at www.viennava.gov.~~
- ~~3. Existing trees that are to be preserved, with no relevant citations having been issued by the Town of Vienna throughout the duration of the project, may be included in the plan to meet all or part of the canopy requirements if the site plan identifies such trees and the trees meet standards of desirability and life expectancy established by the Town. Town of Vienna staff will perform a minimum of two unannounced site inspections to determine compliance with tree protection and preservation regulations during construction.~~
- ~~4. The Town Council may grant reasonable exceptions or deviations from the requirements of this section (See §18-830) when strict application of the requirements would result in unnecessary or unreasonable hardship to the developer, or to allow for reasonable development of the following:~~
- ~~A. Areas devoid of woody materials.~~
- ~~B. Dedicated school sites.~~
- ~~C. Playing fields and other non-wooded areas and uses of a similar nature.~~

Section 18-510 Minimum Tree Canopy Coverage

See, Chapter 17, §1001 et seq.

- ~~1. A tree canopy coverage plan shall be submitted along with applications for the following projects:~~

- A. The development of an undeveloped tract;
 - B. The redevelopment of any existing tract by removal of a principal structure and replacement with a new principal structure; or
 - C. The addition to an existing principal structure that results in an area of disturbed soil exceeding 2,500 square feet.
2. A tree canopy coverage plan shall illustrate how the site will, after a maturation of twenty (20) years, achieve the tree canopy coverage minimums set forth in the table below.

Zone or District	Tree Canopy Coverage (as a percentage of total lot area)
Residential Single Unit Detached Zones (RS-10, RS-12.5, RS-16)	Twenty (20) percent min.
Residential Multi Unit Zone (RMU)	Fifteen (15) percent min.
Avenue Center (AC), Avenue East (AE), Avenue West (AW), Gateway South (GS), Mill (M), and Corporate Park (CP) Districts, Transitional (T) and Neighborhood Mixed Use (NM) Zones	Ten (10) percent min.

3. All planting and replacement of trees shall be in accordance with the Town of Vienna Tree Preservation and Planting Specifications Manual, which is available online for download at www.viennava.gov.
4. Existing trees which are to be preserved, and with no relevant citations having been issued by the Town of Vienna throughout the duration of the project, may be included in the plan to meet all or part of the canopy requirements if the site plan identifies such trees and the trees meet standards of desirability and life expectancy established by the Town. Town of Vienna staff will perform a minimum of two (2) unannounced site inspections to determine compliance with tree protection and preservation regulations during construction.
5. The Town Council may grant reasonable exceptions or deviations from the requirements of this section (See §18-230) when strict application of the requirements would result in unnecessary or unreasonable hardship to the developer, or to allow for reasonable development of the following:
- A. Areas devoid of woody materials;
 - B. Dedicated school sites;
 - C. Playing fields and other non-wooded areas and uses of a similar nature.

Section 18-559 Minimum Tree Canopy Coverage

See, Chapter 17, §1001 et seq.

1. A tree canopy coverage plan shall be submitted along with applications for the following projects:
- A. The development of an undeveloped tract;
 - B. The redevelopment of any existing tract by removal of a principal structure and replacement with a new principal structure; or
 - C. The addition to an existing principal structure that results in an area of disturbed soil exceeding 2,500 square feet.
2. A tree canopy coverage plan shall illustrate how the site will, after a maturation of twenty (20) years, achieve the tree canopy coverage minimums set forth in the table below:

Zone or District	Tree Canopy Coverage (as a percentage of total lot area)
Residential Single Unit Detached Zones (RS-10, RS-12.5, RS-16)	Twenty (20) percent min.
Residential Multi Unit Zone (RMU)	Fifteen (15) percent min.
Avenue Center (AC), Avenue East (AE), Avenue West (AW), Gateway South (GS), Mill (M), and Corporate Park (CP) Districts, Transitional (T) and Neighborhood Mixed Use (NM) Zones	Ten (10) percent min.

3. All planting and replacement of trees shall be in accordance with the Town of Vienna Tree Preservation and Planting Specifications Manual, which is available online for download at www.viennava.gov.
4. Existing trees which are to be preserved, and with no relevant citations having been issued by the Town of Vienna throughout the duration of the project, may be included in the plan to meet all or part of the canopy requirements if the site plan identifies such trees and the trees meet standards of desirability and life expectancy established by the Town. Town of Vienna staff will perform a minimum of two (2) unannounced site inspections to determine compliance with tree protection and preservation regulations during construction.
5. The Town Council may grant reasonable exceptions or deviations from the requirements of this section (See ~~§19-830~~) when strict application of the requirements would result in unnecessary or unreasonable hardship to the developer, or to allow for reasonable development of the following:
- A. Areas devoid of woody materials;
 - B. Dedicated school sites;
 - C. Playing fields and other non-wooded areas and uses of a similar nature.

Section 18-628.13. Property Trees and Landscaping.

Subdivision development is governed by the requirements of the zone or district the property is located in (see [Article 2](#)) *and the required tree preservation and canopy requirements as shown in Chapter 17.*

Section 18-Tree Canopy Coverage. Violation of *Chapter 17 4A-~~§18-409~~; Article 4B-~~§18-462~~; -Article 5A-~~§18-510~~; or Article 5B-~~§18-559~~* shall constitute a Class 3 misdemeanor punishable by fine of not more than ~~\$250.00~~**\$500**, and each day after the first during which such violation shall continue shall constitute a separate violation.

Section 2:

NEW LANGUAGE REPLACING THE FOLLOWING REPEALED SECTIONS FROM Chapter 18: Article 4A, Section 18-409; Article 4B, Section 18-462, Article 5A, Section-510; and Article 5B, Section 18-559-, AND ADOPTING NEW CHAPTER 17, ARTICLE 1 TO THE TOWN CODE AND ADDING THE FOLLOWING NEW PROVISIONS TO READ AS FOLLOWS:

CHAPTER 17 – ~~Article 1. TREE PRESERVATION AND CANOPY REQUIREMENTS- DURING DEVELOPMENT~~TREE CONSERVATION ORDINANCE

ARTICLE 1. GENERAL PROVISIONS

Sec. 17-1001. ~~Planting~~Title.

This chapter shall be known as the “Vienna Tree Conservation Ordinance” and may be cited as and referred to herein as this “Chapter.”

Sec. ~~replacement~~17-1002. Authority.

This Tree Conservation Ordinance is adopted pursuant to the powers granted and limitations imposed by § 15.2-961.1 et seq. of the Code of Virginia, 1950, as amended.

Sec. 17-1003. Jurisdiction.

This chapter and all regulations adopted hereunder shall apply to all land located within the corporate limits of the Town of Vienna, Virginia excepting those areas determined by law to be under the sovereign control of the United States of America, the Commonwealth of Virginia, or the County of Fairfax, Virginia.

Sec. 17-1004. Purpose and intent.

The Tree Conservation Ordinance is adopted in order to provide for the conservation and management of Town trees, and to provide for the conservation of trees during the land development process. The conservation (i.e., preservation and planting) of trees will protect, sustain, and enhance the Town's urban forest resources. These forest resources provide important aesthetic, social, and economic benefits and are indispensable to the conservation and management of vital atmospheric, water, soil, and ecological resources.

Sec. 17-1005. Administration.

The Director of Planning and Zoning in consultation with the Director of Parks and Recreation or his designee shall be responsible for the administration and enforcement of this chapter.

Sec. 17-1006. Severability.

If any section, paragraph, subdivision, clause, phrase, or provision of this Chapter shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Chapter as a whole or any part or provision thereof, other than the part so determined to be invalid or unconstitutional.

Sec. 17-1007. Effective Date.

The provisions of this Zoning and Subdivision Ordinance shall become effective _____, 2024.

ARTICLE 2. - TREE CONSERVATION DURING LAND DEVELOPMENT

Sec. 17-2001. Tree Canopy Requirements.

- (a) Any person, corporation, firm or other organization or association, shall, prior to or at the time of filing application for a ~~building permit~~Building Permit with land disturbance activity of 2500 square feet or more, submit to the Director of Planning and Zoning a site plan prepared by a registered architect, registered engineer or certified land surveyor authorized by the commonwealth to practice as such. This ~~Article~~chapter applies to the development of an undeveloped tract; the redevelopment of any existing tract by removal of any structure and replacement with a new structure, or the addition to an existing structure or dwelling, that results in an area of disturbed soil of 2,500 or more square feet.
- (b) All listed plans for preliminary subdivision plat, subdivision plan, development or re-development, shall provide for the preservation or replacement of trees on the development site such that, after twenty (20) years after development, minimum ~~(T)~~tree canopy is projected to be as follows:

Table 1 - Tree Canopy Requirements as applied to Town of Vienna Zoning Districts

Commented [CA1]: As this now is in its own chapter, I propose this short introductory section that would conform the new tree ordinance with the recently-approved new zoning and subdivision ordinance. It is almost the same as Article 1 in the new Chapter 18. This language is also very close to Article 1 of the FFX Co Tree ordinance. And it provides future councils and members of the legal community with some guidance on interpreting this statute.

To make the ordinance easier to navigate, I would also propose adding in clear Article numbers (like chapter 18). They have been put in the same order as the FFX Co tree ordinance.

<i>Zone or District</i>	<i>Percentage of Site to be Covered by Tree Canopy in 20 Years</i>
<i>RS-16 – Residential Single Unit Detached</i>	<i>Twenty five percent (25%)</i>
<i>RS-12.5 – Residential Single Unit Detached</i>	<i>Twenty five percent (25%)</i>
<i>RS-10 – Residential Single Unit Family Detached</i>	<i>Twenty percent (20%)</i>
<i>RMU – Residential Multi-Unit</i>	<i>Fifteen percent (15%)</i>
<i>T – Transitional</i>	<i>Ten percent (10%)</i>
<i>AC – Avenue Center District</i>	
<i>AE – Avenue East Gateway District</i>	
<i>AW – Avenue West Gateway District</i>	
<i>CS – Church Street District</i>	
<i>GS – Gateway South District</i>	
<i>CP – Corporate Park District</i>	
<i>M – Mill District</i>	
<i>NM – Neighborhood Mixed-Use Zone</i>	

Sec. 17-~~4~~2002. Standards for Tree Canopy Coverage Requirements.

- (a) The Tree canopy requirements set forth in Table 1 above may be met through the preservation or planting of trees. However, when existing trees meet standards of health, condition, and suitability, and when it is feasible to preserve those trees within the framework of permissible uses, densities, design standards, and construction practices, all efforts shall first be made to meet the Tree canopy requirement through the preservation of trees before ~~tree~~ planting is allowed to meet any portion of the ~~tree~~ canopy requirement.
- (b) Tree canopy credit shall be given to existing areas of trees and forested areas designated to be preserved on plans and comprised of self-supporting and woody plant material exceeding five feet in height at time of plan submission provided that the trees and forested areas meet standards for health, condition, and suitability.
- (c) Any portion of the Tree canopy requirement that cannot first be met through the preservation of trees as provided for in §17-~~4~~2003 shall be provided through ~~tree~~ planting.
- (d) Tree canopy credits for trees and plant material used to satisfy 20-year ~~tree~~ canopy requirements shall be determined in accordance with the provisions of Vienna's Tree Preservation and Planting Guide.

Sec. 17-2003. Tree Preservation Requirements.

- (a) Except as provided for in this Article, the percentage of the development site covered by ~~Tree~~ canopy at the time of plan submission shall equate to the minimum portion of the total 20-year ~~Tree~~ canopy requirement of §17-2001(b) that should be met by means of ~~Tree~~ preservation. This minimum portion shall be identified in plats and plans as the “~~Tree~~ preservation target” and shall be included in site plan calculations or narratives demonstrating how the overall requirements set forth in sections 17-2001 and 17-2002 have been met.

Sec. 17-2004. Deviations

- (a) Deviations, in whole or part, from the ~~Tree~~ preservation target may be requested under the following conditions:
1. Meeting the ~~Tree~~ preservation target would prevent the development of uses or densities otherwise allowed by the Town Zoning and Subdivision Ordinance;
 2. Meeting the ~~Tree~~ preservation target would require the preservation of trees and forested areas that do not meet standards for health, structural condition, and other vegetation and risk management requirements.
 3. Construction activities could be reasonably expected to impact existing trees or forested areas used to meet the ~~Tree~~ preservation target to the extent they would not likely survive in a healthy and structurally sound manner for a minimum of twenty (20) years in accordance with the post-development standards for trees and forested areas.
- (b) Deviations from the Tree Preservation Target shall be granted for any of the justifications listed above provided that a written request is submitted and approved by the Director of Planning and Zoning in consultation with the Director of Parks and Recreation.
- ~~(a) The Director of Planning and Zoning, with authority delegated to the Zoning Administrator, and in consultation with the Director of Parks and Recreation, shall grant additional canopy credits as permitted or required by Virginia Code Section 15.2-961.1 in order to encourage the preservation of forest communities that provide valuable environmental, ecological, and wildlife conservation benefits.~~
- ~~(b) All tree and forested areas designated to be preserved on plans shall be protected and managed during all phases of construction.~~
- (c) If, in the opinion of the developer, the project cannot meet the Tree preservation target due to the conditions described in subdivision (b) 1, 2, or 3 above, the developer may request a deviation from the preservation requirement in subsection (a) above. In the request for deviation, the developer shall provide a letter that provides justification for the deviation, describes how the deviation is the minimum necessary to afford relief, and describes how the requirements of Sec. 17-2001 will be met through Tree planting or contribution to a Tree planting fund established by the Town.
- (d) Proposed deviations shall be reviewed by the the Director of Planning and Zoning in consultation with the Director of Parks and Recreation. The Town may propose an alternative site design based upon adopted land development practices and sound vegetation management practices that take into account the relationship between the cost of conservation and the benefits of the trees to be preserved as described in ANSI A300 (Part 5) — 2005 Management: Tree, Shrub, and Other Woody Plant Maintenance — Standard Practices, Management of Trees and Shrubs During Site Planning, Site Development, and Construction, Annex A, A-1.5, Cost Benefits Analysis (or the latest version of this standard). The developer shall consider the alternative and redesign the plan accordingly or elect to satisfy the unmet portion of the preservation threshold through on-site Tree planting or through the contribution to a Tree canopy fund, so long

Commented [CA2]: This suggested language is taken directly from the Virginia enabling statute (§15.2-961.1.D) . . . not sure why it was left out of the draft, and see no reason not to include it.

as the developer provides the Town with a letter of explanation of why the alternative design recommendations were rejected. Letters of explanation from the developer shall be prepared and certified by a licensed professional engineer as defined in Virginia Code Section 54.1-400. If arboricultural issues are part of explanation, then the letter shall be signed by a Certified Arborist who has taken and passed the certification examination sponsored by the International Society of Arboriculture and who maintains a valid certification status or by a Registered Consulting Arborist as designated by the American Society of Consulting Arborists. If arboricultural issues are the sole subject of the letter of explanation, then certification by a licensed professional engineer shall not be required.

Sec. 17-2005~~Sec. 18-1004~~. Tree Planting Requirements.

- (a) Tree canopy credit shall be given to areas of planted ~~tree~~ canopy based on the projected 20-year ~~tree~~ canopy calculation as set forth in the Vienna's Tree Preservation and Planting Guide, provided that the proposed ~~tree~~ species meets standards established to manage proper levels of biodiversity and the spread of invasive plants, pests, and diseases.

- (b) Additional Tree Canopy Credits, as set forth in Table 2 below, shall be provided.

Table 2 - Additional Tree Canopy Credits

The Following Additional Tree Canopy Credits Must Be Provided, As Specified by Code of Virginia, § 15.2-961.1			Authority in § 15.2- 961.1
1.	Individual trees or the coalesced canopy of forested areas preserved from the predevelopment tree canopy.	Up to one and one-quarter (1.25) times the canopy area at the time of plan submission.	I.1
2.	Trees planted to absorb or intercept air pollutants, tree species that produce lower levels of reactive volatile organic compounds, or trees that act to reduce air pollution or greenhouse gas emissions by conserving the energy used to cool and heat buildings.	One and one-half (1.5) the area normally projected for such trees planted.	J.1
3.	For water quality-related reforestation or afforestation projects, and for trees planted in low-impact development and bioretention water quality facilities. The low-impact development practices and designs shall conform to Town standards in order for these supplemental credits to apply.	One and one-quarter (1.25) the area normally projected for such trees planted.	J.2
4.	For native tree species planted to provide food, nesting, habitat, and migration opportunities for wildlife. These canopy credits may also apply to cultivars of native species if the Town determines that such a cultivar is capable of providing the same type and extent of wildlife benefit as the species it is derived from.	One and one-half (1.5) the area normally projected for such trees planted.	J.3
5.	For use of native tree species that are propagated from seed or tissue collected within the mid-Atlantic region.	One and one-half (1.5) the area normally projected for such trees planted.	J.4
6.	For the use of cultivars or varieties that develop desirable growth and structural patterns, resist decay organisms and	One and one-quarter (1.25) the	J.5

Commented [CA3]: In this draft, all of the language regarding deviations in 961.1.E of the state enabling statute has been incorporated into a single section. In sections (c) and (d), I have added the language on process from 961.1.O of the state enabling statute. It seems like we need some standards for granting deviations, and that these should be spelled out explicitly in the ordinance.

Commented [CA4]: This is only a suggested formatting change . . put all of the credits into a single user-friendly table.

the development of cavities, show high levels of resistance to disease or insect infestations, or exhibit high survival rates in harsh urban environments.	area normally projected for such trees planted.	
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~~(a) In accordance with Virginia Code §15.2-961.1(f)1, tree canopy credits of one and one-quarter times the canopy area at the time of plan submission for individual trees or the coalesced canopy of forested areas preserved from the predevelopment tree canopy.~~

~~(b) In accordance with Virginia Code §15.2-961.1(f)et seq., tree canopy credits of between one and one-half and one and one-quarter the area normally projected for trees planted shall be granted for the planting of trees that will provide air quality, energy conservation, water quality, wildlife conservation benefits.~~

~~(c) Tree canopy credits of one and one-half the area normally projected for trees planted shall be granted for the use of native tree species, and of one and one-quarter the area normally projected for trees planted the use of cultivars or varieties that develop desirable growth and structural patterns, resist decay organisms and the development of cavities, show high levels of resistance to disease or insect infestations, and exhibit high survival rates in harsh urban environments.~~

~~(c) Tree preservation areas and individual trees may not receive more than one application of additional canopy credits in row 1 in Table 2 above. Individual trees planted to meet these requirements may not receive more than two categories of additional canopy credits in rows 2, 3, 4, 5, or 6 in Table 2 above. Canopy credits will only be given to trees with trunks that are fully located on the development site.~~

~~(d) All trees planted for tree cover credits shall meet the specifications of the American Association of Nurserymen and shall be planted in accordance with the publication entitled "Tree and Shrub Planting Guidelines," published by the Virginia Cooperative Extension.~~

~~(b)(e) In order to provide higher levels of biodiversity and to minimize the spread of pests and diseases, or to limit the use of species that cause negative impacts to native plant communities, cause damage to nearby structures, or possess inherent physiological traits that prone trees to structural failure, Vienna's Tree Preservation and Planting Guide may designate trees that cannot be planted to meet Tree canopy requirements or that shall only receive partial Tree canopy credits.~~

~~(e)(f) All plant materials used to satisfy 20-year tree Tree canopy requirements shall be selected, located, handled and installed in accordance with the Vienna's Tree Preservation and Planting Guide. The Vienna Tree Preservation and Planting Guide shall provide acceptable and unacceptable Tree species eligible and ineligible for Tree canopy credits. The Vienna Tree Preservation and Planting Guide shall be prepared in accordance with the specifications of the American Association of Nurserymen and the "Tree and Shrub Planting Guidelines" published by the Virginia Cooperative Extension.~~

Sec. 17-120056. Use of Tree Preservation and Planting Fund if Tree Canopy Requirement Cannot be Met On-Site.

(a) Where it can be demonstrated to the satisfaction of the Director of Planning and Zoning in consultation with the Director of Parks and Recreation that the Tree canopy requirements set forth in §17-1000(b) this Chapter cannot be met on-site, the portion of the requirement that cannot be met on-site may be met through a pro-rated payment into a Tree Preservation and Planting Fund.

(b) The Town may use the Tree Preservation and Planting Fund to preserve or plant trees on public property or may elect to disburse these funds to community-based organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code with Tree planting or community beautification missions for the purpose of implementing Tree planting projects or programs that benefit the community at large.

1. Fees collected for these purposes will be based on the cost to establish 20-year

Commented [BS1]: The various subsections of (f) set out the specific amount of credits. My thought is the Staff would follow the State Code credit amounts.

Commented [DL2]: I am not sure what this one tracks to, in the State code. Plus, I am not sure how to enforce "between one and one-half and one and one-quarter the area...." Does that range reflect that the Arborist and Zoning Administrator have the prerogative to decide? Does this one need a bit of refinement or do others think it's clear?

Commented [CA5]: These provisions are in the state enabling statute, and have been added. Seems we would want these in the ordinance, esp the double counting one. The reference to the tree authority is from 961.1.L of the state enabling statute.

Tree Canopy Cover using 2-inch caliper nursery stock tree.

2. The cost to establish 200 square feet of 20-year Tree Canopy using 2-inch caliper landscape ~~tree~~ will be set at the unit cost for a 1.5-2.0-inch caliper deciduous ~~tree~~ as stated in the current Fairfax County Land Development Services' Comprehensive Unit Price Schedule.
3. Funds collected in lieu of on-site planting shall be spent within a five-year period established by the collection date, or the Town shall return such funds to the original contributor, or legal successor.

Sec. 17-~~120067~~. Exemptions and Deviations.

- (a) The following uses are exempt from the requirements of this ~~Chapter~~: bona fide silvicultural activity as defined by Va. Code ~~Ann.~~ § 10.1-1181.1 and the areas of sites included in lakes, ponds, and the normal water elevation area of stormwater retention facilities.
- (b) Deviations of the overall canopy requirements set forth in ~~§18-1001(b)~~ may this Chapter shall also be granted by the Director of Planning and Zoning in consultation with the Director of Parks and Recreation and the Director of Public Works to allow for the preservation of wetlands, the development of farm land or other areas previously devoid of healthy and/or suitable ~~tree~~ canopy, or where the strict application of the requirements would result in unnecessary or unreasonable hardship to the developer.

ARTICLE 3 – TREE CANOPY COVERAGE PLANS

Sec. 17-~~10073001~~. Tree Canopy Coverage Plan Requirements

- (a) A tree canopy coverage plan shall be submitted to the Town to demonstrate achievement of the required percentage of tree canopy listed in 17-2001:

1. The plan shall graphically delineate the edges of predevelopment tree canopy, the proposed limits of disturbance on grading or erosion and sedimentation control plans, and the location of tree protective fencing or other tree protective devices allowed in the Virginia Erosion and Sediment Control Handbook.
2. Plans proposing modification to tree canopy requirements or claiming supplemental tree canopy credits will require a text narrative.
3. The plan shall include the 20-year tree canopy calculations on a worksheet provided by the Town.
4. Plans requiring tree planting shall provide a planting schedule that provides botanical and common names of trees, the number of trees being planted, the total of tree canopy area given to each species, variety or cultivars planted, total of tree canopy area that will be provided by all trees, planting sizes, and associated planting specifications. The site plan will also provide a landscape plan that delineates where the trees shall be planted.

- (b) The Vienna Tree Preservation and Planting Guide shall provide a list of commercially available tree species, varieties, and cultivars that are capable of thriving in the Town's climate and ranges of planting environments. The Vienna Tree Preservation and Planting Guide ordinance will also provide a 20-year tree canopy area credit for each tree. The amount of tree canopy area credited to individual tree species, varieties, and cultivars 20 years after they are planted shall be based on references published or endorsed by Virginia academic institutions such as the Virginia Polytechnic Institute and State University and accepted by urban foresters, arborists, and horticulturalists as being accurate for the growing conditions and climate of the Town.
- (c) The The Vienna Tree Preservation and Planting Guide shall establish standards of health and structural condition of existing trees and associated plant communities to be preserved. The The Vienna Tree Preservation and Planting Guide may also identify standards for

Commented [B53]: Are we OK using this pricing schedule?

Commented [B54]: I would defer to Staff's recommendation on this

Commented [CA6]: I have added this proposed article, so that the Vienna ordinance has the same article structure as the FFX Co ordinance. This will make it easier for developers, many if not all of whom are familiar with the FFX Co ordinance. The language is from the state enabling statute. While this could in theory be in the Tree Planting and Preservation Guide, it would seem sense to me to put it into the ordinance.

removal of trees or portions of trees that are dead, dying, or hazardous due to construction impacts. Such removal standards may allow for the retention of trunk snags where the Town determines that these may provide habitat or other wildlife benefits and do not represent a hazardous condition. In the event that existing tree canopy proposed to be preserved for tree canopy credits dies or must be removed because it represents a hazard, the Town may require the developer to remove the tree, or a portion of the tree and to replace the missing canopy area by the planting of nursery stock trees, or if a viable alternative, by tree seedlings. Existing trees that have been granted credits will be replaced with canopy area determined using the same supplemental credit multipliers as originally granted for that canopy area.

(d) All Tree and forested areas designated to be preserved on plans shall be protected and managed during all phases of construction.

(e) All Trees used to satisfy tree canopy requirements shall be selected, located, handled and installed in accordance with Vienna's Tree Preservation and Planting Guide.

ARTICLE 4. – MONITORING AND INSPECTIONS.

Sec. 17-4001. Monitoring and Inspections

The Director of Planning and Zoning in consultation with the Director of Parks and Recreation or his designee shall provide for periodic inspections of tree conservation activities in accordance with an inspection policy to be set forth in the The Vienna Tree Preservation and Planting Guide.

ARTICLE 5. – VIOLATIONS AND PENALTIES.

Sec. 17-5001. Penalties for Violations.

In accordance with Virginia Code §15.2-961.1(R), the penalties for violation of this Chapter/Article shall be the same as those applicable to violations of the Zoning and Subdivision Ordinance of the Town of Vienna as set forth in §18-855.5 (violations currently in §850 et seq. of the Vienna Zoning Code) and Subdivision Ordinance.

ARTICLE 6. – DEFINITIONS

Sec. 17-6001. Definitions

(a) Clearing means removing or causing to be removed the vegetation growing in the soil which protects and stabilizes the soil. Such removing or causing to be removed shall include any intentional or negligent act to: (1) cut down, (2) remove all or a substantial part of, or (3) damage a tree or other vegetation which will cause the tree or other vegetation to decline and/or die. Such acts shall include but not be limited to damage inflicted upon the root system of the vegetation by the application of toxic substances, by the operation of equipment and vehicles, by storage of materials, or by alteration of the natural grade due to unapproved excavation or filling; or damage caused by the unapproved alteration of natural physical conditions.

(a)(b) Forested area means areas as defined by the Virginia State Forester pursuant to Virginia Code §58.1-3230 and comprised of self-supporting tree and woody plants that exceed five feet in height at time of plan submission and meet criteria for health, condition and suitability as further defined in this section. Areas that meet the administrative definition provided above usually represent native forest or woodland plant communities that occur in a range of successional stages from rapidly changing early successional pioneer woodlands (often described as “scrub”) to stable long-term sub-climax and climax forests. During mid to late successional stages, these plant communities typically consist of multiple layers of vegetation and other natural features including: super- and sub- canopy tree species; woody shrubs, herbaceous plants, vines, non-vascular plants and epiphytes; decaying leaf litter, root mass, fungi, soil biota; and abiotic components which the vegetation is dependent upon such as: soils, hydrologic conditions, and underlying geomorphic features.

Commented [CA7]: This article is taken from FFX Co ordinance (although theirs has much more detail). I suggest adding it 1) to make our ordinance article structure consistent with theirs; and 2) to specify who shall be responsible for the inspections.

Commented [CA8]: Added definition of “clearing” from FFX Co ordinance. Seems like a good definition to have.

- (b)(c) Tree means any self-supporting woody plant which visually produces one main trunk and a more or less distinct and elevated head with many branches that typically reach at least 15 feet in height at maturity, and for purposes related to 20-year Tree canopy requirements exceeds five feet in height at time of plan submission.
- (e)(d) Tree canopy includes all areas of coverage by plant material exceeding five feet in height, and the extent of planted ~~t~~Tree canopy at 20 years maturity. Planted canopy at 20 years maturity shall be based on published reference texts generally accepted by landscape architects, nurserymen, and arborist in the community. The Town ~~currently uses~~shall use the Tree Canopy Spread & Coverage In Urban Landscapes <https://vmla.org/tree-canopy-spread-coverage-in-urban-landscapes/>, published Virginia Tech and the Virginia Nursery and Landscape Association, or another generally accepted document, to determine future tree canopy spread and coverage.
- (e) Tree canopy coverage means the land area directly beneath the crown and within the dripline of a tree, or in the case of a group of trees or a forested area, the coalesced area directly beneath the overlapping crowns of trees whose boundary is defined by the extents of its outermost driplines.
- (d)(f) Tree conservation, as applied to trees and forested areas, incorporates both tree preservation and tree planting efforts.
- (e)(g) The Vienna Tree Preservation and Planting Guide ~~shall be means the guide~~ prepared by, and updated as warranted, the Town– Arborist or person designated by the Director of Parks and Recreation in accordance with the specifications of the American Association of Nurserymen and the “Tree and Shrub Planting Guidelines” published by the Virginia Cooperative Extension.

Section 3: This Ordinance shall become effective April 26, 2024 (or three (3) months from the date of the notice of adoption by the Town Council).

~~notice of adoption by the Town Council~~);

Passed and approved this _____ day of _____, 2023.

Linda J. Colbert, Mayor

ATTEST:

Town Clerk

c:\SDB\Ordinances\Chapter 18 New Chapter Town Attorney DRAFT Updated 01 25 2024 SDB

Commented [B55]: Suggested reference from staff

Commented [CA9]: Added from FFX Co tree ordinance.

Commented [CA10]: Just some clarifying language.

Commented [B56]: The Town Council should pick one or the other of the effective dates.