

CHAPTER 29 - TREE CONSERVATION

ARTICLE 1. GENERAL PROVISIONS

Sec. 29-1-1. Title.

This chapter shall be known as the “Vienna Tree Conservation Ordinance.”

Sec. 29-1-2. Authority.

This chapter is enacted pursuant to the authority of Va. Code Ann. §§ 10.1-1127.1, 15.2-961, and 15.2-961.1.

Sec. 29-1-3. Purpose and intent.

The purpose and intent of this chapter is to provide for the conservation and management of Town trees, and to provide for the conservation of trees during land development. 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. 29-1-4. Administration.

The Director of Parks and Recreation shall be responsible for the administration and enforcement of this chapter.

Sec. 29-1-5. Severability.

If any of the articles, sections, paragraphs, sentences, clauses, or phrases of this chapter shall be declared unconstitutional or invalid by a valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of this chapter in its entirety or any of the remaining articles, sections, paragraphs, sentences, clauses, and phrases herein.

ARTICLE 2. VIENNA TREE COMMISSION.

Sec. 29-2-1. Tree Commission Purpose.

There is hereby created and established a commission to be known as the Vienna Tree Commission, which shall advise and assist Town Council and Town Staff on matters relating to the conservation and management of the Town’s Trees and Tree canopy and assist the Town in the development and maintenance of specifications and guidelines related to the same.

Sec. 29-2-2. Tree Commission Membership.

The commission shall consist of seven members, all of whom shall be appointed by Town Council. At least one member shall be selected from the Conservation and Sustainability Commission. In addition, a Town representative(s) from the Departments of Parks and Recreation and/or Planning and Zoning shall serve as an ex-officio member(s) of the commission. Except for the Town representative(s), all appointees shall be either residents of the Town or representatives of businesses or professions located in and licensed by the Town. In making all appointments to the commission, Town Council shall give consideration to persons who have evidenced an interest or expertise in Tree conservation and tree policy.

Sec. 29-2-3. Tree Commission Term of Members.

The term of all members shall be for two years. Initially, four members of the board shall be appointed for a term of one year and three members shall be appointed for a term of two years. Thereafter, all appointments to the commission, except for those to fill an unexpired term, shall be for a period of two years. All members shall serve without compensation. Vacancies occurring on the commission for reasons other than the expiration of terms shall be filled by Town Council for the remainder of the unexpired term. Members shall

be eligible for reappointment. Members may be removed from the commission by a majority vote of Town Council.

Sec. 29-2-4. Tree Commission Powers and Duties.

(a) The commission shall have the following powers and duties:

1. To recommend rules, regulations, policies and programs to the mayor, Town Council, and Town staff relating to tree conservation and management, the care and improvement of the Town's urban forest, and protecting and enhancing the Town's tree canopy.
 2. To advise and assist the mayor, Town Council, and Town staff regarding the planting, protection, maintenance, preservation, and removal of trees, shrubs, and other plants located on public property within the Town.
 3. To advise and assist the Town Arborist to ensure that the planting, maintenance, pruning, and removal of trees and shrubs on public property within the Town are done in accordance with current accepted standards.
 4. To help develop, maintain, and administer a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in parks, along streets, and in other public areas. Such plan will be reviewed annually, updated as necessary, and presented to Town Council; upon acceptance and approval by Town Council, such plan shall constitute the official public tree management plan for the Town
 5. To assist the Town with compiling and analyzing data to measure the Town's progress in restoring the Town's tree canopy.
 6. To serve as the Town's representative at, and to attend and bring back knowledge and information from, area regional and interagency meetings, seminars, summits, and conferences concerning urban forestry programs and policies.
 7. To undertake an ongoing program of public outreach and education in order to promote public understanding and support of the Town's public tree management plan and to increase public awareness of the value and benefits of a diversified, sustainable community forest.
 8. To work with Town staff to compile, publish, and update annually information and statistics regarding the Town's efforts with regard to trees, including a) the amount spent each year by the Town for the purchase and planting of trees, b) the number of trees planted on Town property each year, c) the number of trees on Town property cut down or removed, d) any available data regarding the extent of or changes to the Town's tree canopy, and e) any available data regarding an inventory of the Town's street trees, such as the percentage of street tree planting sites that are filled, and priority street tree planting sites that are unfilled. The commission shall present a report to Town Council each year that includes a description of the commission's activities, key data and statistics, and ongoing and anticipated future activities.
- (b) Town Council shall have the right to review the conduct, acts, and decisions of the Town tree commission. Further, the tree commission, when requested by Town Council, shall consider, investigate, make findings, report on, and recommend any special matter or question coming within the scope of its work.

ARTICLE 3. TOWN TREE REPORT

Sec. 29-3-1. Annual Tree Report.

- (a) The Town shall compile, publish, and update annually information and statistics regarding the Town's efforts with regard to trees, including a) the amount spent each year by the Town for the purchase and

planting of trees, b) the number of trees planted on Town property each year, c) the number of trees on Town property cut down or removed, d) any available data regarding the extent of or changes to the Town's tree canopy, and e) any available data regarding an inventory of the Town's street trees, such as the percentage of street tree planting sites that are filled, and priority street tree planting sites that are unfilled.

- (b) The information and reporting described in (a) above shall be published each year, including on the Town website.

ARTICLE 4. TREE CONSERVATION DURING LAND DEVELOPMENT

Sec. 29-4-1. Tree Canopy Requirements.

- (a) All land development requiring the submission of a site plan, preliminary subdivision plat, subdivision plan, conservation plan, grading plan, or a rough grading plan, shall provide for the conservation of trees on the site such that, after twenty (20) years, minimum tree canopy is projected to be as follows:

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

Use or Zoning District	Percentage of Site to be Covered by Tree Canopy in 20 Years
RS-16 - Single Family Detached Residential	Twenty five percent (25%)
RS-12.5 - Single Family Detached Residential	Twenty five percent (25%)
RS-10 - Single Family Detached Residential	Twenty percent (20%)
RM-2 - Multifamily Low Density	Fifteen percent (15%)
RTH - Townhouse	
T - Transitional	Ten percent (10%)
C-1 - Local Commercial	
C-1A- Special Commercial	
C-1B - Pedestrian Commercial	
C-2 - General Commercial	
CMP - Industrial Park	
CM - Limited Industrial	

- (b) For purposes of administering the above requirement, land development does not include: construction of additions to existing residential structures; construction of residential accessory structures; demolition of existing residential structures; reconstruction of residential structures on existing foundations; construction associated with minor site plans; construction of trails, sidewalks, sanitary sewers, storm sewers, and other public improvements of a linear nature not included as part of a larger common plan of development; and, other land disturbing activities that present a minor threat to existing tree resources as determined by the Director of Parks and Recreation.

Sec. 29-4-2. Standards for Tree Canopy 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 § 29-4-3 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. 29-4-3. Tree Preservation Requirements.

- (a) Except as provided for in § 29-4-3(b), 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 § 29-4-2(a) that should be met by means of tree preservation. This minimum portion shall be identified in plats and plans as the "tree preservation target."
- (b) 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 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.
- (c) 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 Parks and Recreation.
- (d) The Director of Parks and Recreation may grant additional canopy credits in order to encourage the preservation of forest communities that provide valuable environmental, ecological, and wildlife conservation benefits.
- (e) All tree and forested areas designated to be preserved on plans shall be protected and managed during all phases of construction.

Sec. 29-4-4. 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) Tree canopy credits shall be given to tree seedlings, shrubs and woody seed mix planted in large open spaces, low-density residential settings, or in low-impact development projects.

- (c) Additional Tree canopy credits shall be granted for the planting of trees that will provide air quality, energy conservation, water quality, wildlife conservation benefits.
- (d) Additional Tree canopy credits shall be granted for the use of native tree species, and 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.
- (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.
- (f) All plant materials used to satisfy 20-year Tree canopy requirements shall be selected, located, handled and installed in accordance with the Vienna's Tree Preservation and Planting Guide.

Sec. 29-4-5. 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 Parks and Recreation that the Tree canopy requirements set forth in § 29-4-1 cannot be met on-site, the portion of the requirement that cannot be met on-site may be met through a pro rata payment into a Tree Preservation and Planting Fund.
- (b) If it is demonstrated to the satisfaction of the Director of Parks and Recreation that the Tree canopy requirements set forth in § 29-4-1 cannot be met on-site, the Director of Parks and Recreation may allow developers to contribute a pro-rated fee into Vienna's Tree Preservation and Planting Fund. The Town may use this fund directly 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 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.

Sec. 29-4-6. 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 § 29-4-1 may be granted by the Director of Parks and Recreation 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 5. TREE CONSERVATION PLANS

Sec. 29-5-1. Submission and Review of Tree Conservation Plans.

- (a) Applicability.

1. Tree conservation plans shall be submitted for review and approval by the Director of Parks and Recreation as provided in this Chapter. Tree conservation plans are required for any of the following located in the RS-16, RS-12.5, and RS-10 zones: the development of an undeveloped tract; the redevelopment of any existing tract by removal of a dwelling and replacement with a new dwelling; or the addition to an existing dwelling that results in an area of disturbed soil exceeding 2,500 square feet.
 2. Tree conservation plans shall be submitted for review and approval by the Director of Parks and Recreation as part of all preliminary subdivision plats, construction plans, and grading plans as required by this Code, and to the extent applicable, the Fairfax County Code.
 3. A site plan, preliminary subdivision plat, subdivision construction plan, conservation plan, grading plan, or rough grading plan approved by the Director of Parks and Recreation and meeting the requirements contained herein shall constitute an approved Tree conservation plan. Tree conservation plans and associated plans, narratives, calculations, deviations and modifications shall be prepared in accordance with Vienna's Tree Preservation and Planting Guide.
 4. If a Tree conservation plan proposes tree removal of off-site or jointly-owned trees because they have critical root zones that extend into the project site and will be encroached on by construction activities causing irreparable damage, a written notice must be sent to the affected adjacent landowner(s) notifying them that tree removal is proposed. The notice shall include a Tree conservation plan that shows which trees will be irreparably damaged by the proposed development, and a description of the size, species, and species common name and general location description of the trees and an explanation that the trees have critical root zones that extend into the project site and will be encroached on by construction activities causing irreparable damage. The letter shall explain that 1) the tree(s) are proposed for removal at the developer's expense as part of this proposed development, 2) the designated trees cannot be removed without the property owner's permission, and if the owner chooses to retain the tree(s) despite the severe impacts to the root system, the owner may be responsible for any future corrective measures, including removal. The letter must be sent from the U.S. Postal Service via certified/return receipt, or other service that provides proof of mailing, to all applicable property owners. A copy of the domestic return receipts from the U.S. Postal Service or other proof of mailing of the notification provided with the letters shall be provided with the Tree conservation plan submitted to the Town.
 5. In all cases, off-site trimming or cutting of trees requires permission of all involved landowners. Notice of intent to remove a tree does not replace a builder's responsibility to secure permission of adjacent landowners for that work.
- (b) Exceptions to Applicability. A Tree conservation plan is not required to be submitted under the following conditions:
1. For the removal of trees grown and intended to be sold as live trees in the course of business on nursery or dealer properties registered by the Virginia Commissioner of Agriculture and Immigration (Plant Pest Act of 1952). This provision does not supersede the requirement to obtain an approved conservation plan prior to engaging in any other land disturbing activity.
 2. A Tree conservation plan shall not be required to cut down any tree which has become, or threatens to become, a danger to human life or property due to accidental or natural causes or other emergency.
 3. A Tree conservation plan shall not be required for the harvesting of trees on commercial forest land if the operation is conducted in conformance with the Virginia Department of Forestry's Best Management Practices.

Sec. 29-5-2. Inspections; One Year Bonding of New Trees.

- (a) The planting of any new tree(s) specified on the tree conservation plan shall take place after the completion of construction. The Department of Parks and Recreation shall inspect the trees prior to planting and also inspect the placement and installation of the tree(s). All products and workmanship related to the planting of the tree(s) shall be in accordance with the Town's requirements as set forth in the Town of Vienna Tree Preservation and Planting Guide. A one-year tree protection bond shall be collected by the Town for all new tree(s). The amount of the bond shall be set by the Department of Parks and Recreation based on the current Fairfax County Land Developmental Services unit pricing. If the tree(s) are thriving and in good condition one year from the date of planting the bond shall be returned. Otherwise, the tree(s) shall be replaced.
- (b) The Department of Parks and Recreation shall also inspect all existing trees after completion of construction to determine what damage, if any, has been caused by the stress of construction. The Department of Parks and Recreation shall notify the permit holder in writing if any existing trees no longer qualify for canopy coverage. The letter shall state if mitigation measures are required to use a tree for canopy coverage. The permit holder shall provide an independent arborist's report to justify retaining a damaged tree or to support mitigation measures. Upon notification by the Department of Parks and Recreation that repairs or replacements to an existing tree are to be made, the permit holder shall make the required repairs and replacements and shall notify the Department of Parks and Recreation when the repairs and replacements are complete. The Department of Parks and Recreation shall inspect the repairs and replacements and notify the owner when they have been satisfactorily performed.

ARTICLE 6. INSPECTIONS, VIOLATIONS AND PENALTIES

Sec. 29-6-1. Penalties for Violations.

- (a) The Director of Parks and Recreation shall provide for periodic inspections of Tree conservation activities in accordance with this Article and Vienna's Tree Preservation and Planting Guide.
- (b) The penalties for violation of this Tree Conservation Ordinance shall be the same as those applicable to violations of the Zoning Ordinance of the Town of Vienna.

ARTICLE 7. DEFINITIONS

Sec. 29-7-1. Definitions

- (a) *Critical root zone* means the minimal surface area and associated underground root system and soil that must remain undisturbed in order for a tree to survive significant soil disturbing activities such as compaction, cutting, grading, or filling that will occur in close proximity to the tree. The Critical root zone is defined by a circle whose radius starts at the center of the tree's trunk and terminates in any direction at the outer boundary of the area that must be left undisturbed in order to ensure tree survival.
- (b) *Forested area* means areas 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.
- (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.

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- (d) *Tree canopy* includes all areas of coverage by plant material exceeding five feet in height, and the extent of planted 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.
- (e) *Tree conservation*, as applied to trees and forested areas, incorporates both tree preservation and tree planting efforts.

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