



## Legislation Details (With Text)

**File #:** 23-4084      **Version:** 1      **Name:**  
**Type:** Action Item      **Status:** Agenda Ready  
**File created:** 11/2/2023      **In control:** Town Council Meeting  
**On agenda:** 11/13/2023      **Final action:**  
**Title:** Preserving and Enhancing Tree Canopy - Consideration of Intent to Adopt new Town code amendments to Chapters 17, 18 and 27

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 01- Option A - Brian Land Proposal, 2. 02 - Option B - Town Attorney Proposal and Christina Caplan (Tree Board Amendments), 3. 03 - Tree Ordinance - Relevant State Code, 4. 04 - Tree Ordinance - Relevant Town Code, 5. 05 - Fairfax County Tree Conservation Ordinance, 6. 06 - DPZ Memo for 11-13-23 TC Discussion of Tree Code Amendments, 7. 07 - Written testimony to PC on trees, 8. 08 - Public Hearing on Proposed Amendment to Town Code Chapters 17 18 and 27 - October 23 2023, 9. 09- Written comments from Residents - Tree Ordinance 2023, 10. 10 - Recommendation to Town Council - Tree Ordinance, 11. 11. Regulatory Requirements for Agenda Item

Date	Ver.	Action By	Action	Result
11/13/2023	1	Town Council Meeting	postponed	

**Subject:**

Preserving and Enhancing Tree Canopy - Consideration of Intent to Adopt new Town code amendments to Chapters 17, 18 and 27

**DATE(S) OF PRIOR COUNCIL CONSIDERATION OF THIS ISSUE:**

Sept. 14, 2020 - Request approval of pro bono tree project by Kirkland & Ellis and Ramboll US Corporation

Oct. 11, 2021 - Approve Urban Tree Canopy Assessment funding agreement

Oct. 17, 2022 - Presentation of Urban Tree Canopy Assessment Report

Jan. 9, 2023 - Motion to Adopt Top Four Council Priorities

March 6, 2023 - Presentation of Trees in Vienna: A Review of Programs to Help Vienna Preserve and Manage its Tree Canopy.

May 8, 2023 - Urban Tree Management Discussion

June 5, 2023 - Request formal approval to increase FY2023 spending with PlanIT Geo for tree inventory.

June 12, 2023 - Urban Tree Management Discussion

June 20, 2023 - Presentation - Tree Inventory Report

Aug. 28, 2023 - Discussion of Proposed Code Amendments to Enhance Tree Canopy, Tree Preservation and Amendments to Tree Board and/or Creation of an Independent Tree Commission; and referral of drafts to the Planning Commission for its review.

Sept. 25, 2023 - Set a Public Hearing on Proposed Amendments to Town Code Chapters 17, 18 and 27, related to Enhancing Vienna's Tree Canopy - Motion failed by Town Council vote of 3-3.

Oct. 2, 2023 - Renew the motion to set a Public Hearing on Proposed Amendments to Town Code Chapters 17, 18 and 27, related to Enhancing Vienna's Tree Canopy - Motion approved by Town Council 10/2/23.

Oct. 23, 2023 -  
Public Hearing on Proposed Amendments to Town Code Chapters 17, 18 and 27, related to Enhancing Vienna's Tree Canopy

#### **EXPLANATION AND SUMMARY :**

The purpose of this agenda item is for the Town Council to vote on the components that should be included in the ordinance that may be considered for adoption related to preserving and enhancing the Town of Vienna's tree canopy. Town Council will have previously discussed potential amendments to the Town code during the conference session on November 13, 2023.

Town Council's direction will be provided after having reviewed input from:

- 1) The public's oral and written input
- 2) The Planning Commission's recommendation memorandum
- 3) Town Council ideas
- 4) Staff recommendations

Attachment 6 is the Staff memorandum from the Department of Planning and Zoning that attempts to provide key decisions that the Town Council may choose to make.

If the Town Council wishes to direct any changes be made to Chapters 17, 18 and 27, the Town Council may provide that direction, and then direct the Town Clerk and staff to advertise the Notice of Intent to Adopt the new Town code amendments, as presented, on December 4, 2023.

**Strategic Plan Initiative:** Vienna as an environmentally sustainable community

**Board or Commission of Interest:** Planning Commission, Conservation & Sustainability Commission

#### **BACKGROUND**

Since 2020, the Town Council, community members, the Conservation and Sustainability Commission (CSC) and staff have all been bringing increased attention to the challenge of the declining amount of trees in the town limits of Vienna. Research conducted has shown that there has been a 13% decline in the tree canopy in Vienna over the 10 years from 2011 to 2021.

On Aug. 28, 2023, the Vienna Town Council indicated its desire to adopt amendments to the Town code with the purpose of preserving and enhancing the Town's overall tree canopy.

Three categories of potential code amendments were discussed:

1. Changing the regulatory approach regarding tree canopy during development from the Town's current approach, which operates under the State's tree replacement provision (Virginia Code Section 15.2-961), to the other approach permitted by the State, which is more focused on providing incentives for tree conservation (Virginia Code Section 15.2-961.1).
2. Changing the Town's approach to the Tree Board, which is currently in Section 27-5 of the Code of Vienna and subservient to the CSC.
3. Adding a code requirement for regular reporting on tree management.

On Aug. 28, 2023, the Town Council considered two legislative options to accomplishing these amendments, one submitted by Brian Land (Option 1, which is Attachment 1), who had participated in studying the problem since 2020; and one submitted by the Town Attorney (Option 2, which is Attachment 2 which includes proposed edits to the Town's current Tree Board Code submitted by Christina Caplan). Both versions were developed with input from Christina Caplan, Chair of the Conservation and Sustainability Commission (CSC), and others.

Attachment 3 provides the relevant Virginia Code Sections.

Attachment 4 provides the relevant Town of Vienna Code sections from Chapters 17, 28 and 27.

Attachment 5 provides the comparable Fairfax County Tree Conservation Ordinance.

Features of the two options are as follows:

Option 1 - This set of code amendments would place all tree canopy and preservation components into a single new Chapter 29 of the Town Code, to include requirements regarding tree conservation/planting on development lots, a new Tree Commission (replacing the Tree Board), and a new requirement for regular reporting on tree management. The proposal also includes instituting a tree bond and a 12-month inspection provision, and placing responsibility for implementation of the entire chapter with the Department of Parks and Recreation (including the development standards).

To adopt this new chapter before the effective date (January 1, 2024) of the newly adopted Chapter 18 would require:

- 1) Deleting the existing tree canopy standards from within the existing Town Code Chapters 17 (Subdivision) and 18 (Zoning), replacing them in the new chapter with the new tree canopy requirements and incentives, and providing references from Chapters 17 and 18 to the new Chapter.
- 2) Deleting the existing definition and description of the Tree Board from Town Code Chapter 27 (Conservation and Sustainability Commission (CSC)) and replacing it within the new chapter with a Tree Commission and an updated description of roles, responsibilities and membership.
- 3) Adopting whichever provisions of the new proposed Chapter that the Town Council wishes to adopt.

Option 2 - The proposal submitted by the Town Attorney attempts to achieve the same overall goals, follows the Virginia State Code provisions set forth in the enabling provision of Va. Code Section 15.2-961.1 in a format very similar to Fairfax County's Ordinance (but without grandfathered provision and provisions related to tree heritage code provisions that are currently not in the Town Code)c, but proposes to do so in the following manner:

- 1) Amend Chapters 17 and 18, to update the standards in their current locations, by incorporating whichever optional provisions of 15.2-961.1 the Council wishes.
- 2) Amend Chapter 27, to update the description of the Tree Board to include the reporting responsibility, in conjunction with staff, within the amended Tree Board description. The requirement of regular reporting on the tree management and the overall tree canopy would be in this chapter. The proposed amendments to Chapter 27 were submitted by Christina Caplan.

Currently the Department of Planning and Zoning, in consultation with the Department of Parks and Recreation and Department of Public Works enforces the Town's existing development standards with respect to trees. The Town Attorney recommends that this approach remain in place (under either 15.2-961 or 15.2-961.1), because the Department of Planning and Zoning (the Zoning Administrator) has final decision authority for all development standards, as well as enforcement. However, the Zoning Administrator would, as is done now, rely on the other two departments for technical expertise. Both options (15.2-961 and 15.2-961.1) state that the "Penalties for violation of ordinances adopted pursuant to this section shall be the same as those applicable to violations of the zoning ordinances of the locality." For reference, Fairfax County's Tree Conservation Ordinance places responsibility for administration and enforcement with the Director of Land Development Services.

Attachment 6 is a memorandum from the Department of Planning and Zoning that attempts to enumerate the questions that the Town Council may wish to answer in making final decisions regarding the proposed code amendments.

On Aug. 28, 2023, the Town Council voted to forward both approaches to the Planning Commission for review and recommendation to the Town Council.

On Sept. 27, 2023, the Planning Commission held a public hearing, which is required under State law for any proposed changes to zoning. As of the date of this report, the Planning Commission intends to complete its recommendation at its meeting of November 8, 2023, after which its recommendation document will be forwarded to the Town Council and attached to the agenda item as Attachment 10. The written testimony to the Planning Commission, as part of its public hearing process, is provided as Attachment 7. The Planning Commission took particular care to ask the Department of Parks and Recreation about its views and the challenges of implementation. Based on the Planning Commission's discussion, the Department believes that the Planning Commission will be taking its views into account as part of the recommendation.

On Oct. 23, 2023, Town Council held its required public hearing and received written input through November 3, 2023. Attachment 8 the minutes from the public hearing. Written comments are provided as Attachment 9.

On Nov. 13, 2023, Town Council held a conference session to discuss potential amendments to the Town code related to preserving and enhancing the Town of Vienna's tree canopy.

These items are discussed further in the Background Material referenced below.

**Attachments:**

1. Option 1, the version submitted by Brian Land. It proposes a new Chapter 29 of the Town Code, to include all tree components of the code.
2. Option 2, the version submitted by the Town Attorney. It proposes amendments within Chapters 17, 18 and 27, to accomplish similar overall goals, and includes input from Christina Caplan related to the edits to Chapter 27.
3. Relevant portions of the State code, which are *Virginia Code Section 15.2-961 - Replacement of Trees During Development* and *Virginia Code Section 15.2-961.1 - Conservation of Trees During Land Development*.
4. Relevant portions of Town of Vienna code, from Chapters 17, 18 and 27.
5. Fairfax County's Tree Conservation Ordinance
6. Staff memorandum from the Department of Planning and Zoning that attempts to provide key decisions that the Town Council may choose to make.
7. Written testimony to the Planning Commission for its public hearing.
8. All public comments made at the Town Council public hearing on October 23, 2023.
9. {When Completed} Planning Commission's recommendation memorandum to the Town Council.
10. Regulatory Requirements for Council Actions

**Departmental Recommendation :**

The Department of Parks and Recreation (DPR) and the Department of Planning and Zoning recommend that the Town Council provide direction to staff on proposed changes to Chapters 17, 18 and 27 of the Town Code. The Town Council could then vote to direct the Town Clerk and staff to advertise and conduct all required notifications of the Intent to Adopt, on Dec. 4, 2023, the amendments to Chapter 17, 18 and 27 with an effective date of April 26, 2024.

**Finance Recommendation :**

**Purchasing Recommendation :**

**Town Attorney Recommendation :** The Town Council and Planning Commission have conducted public hearings to receive public input on proposed amendments to the Town's tree canopy replacement Code provisions. After receipt of the recommendations of the Planning Commission (currently pending as of 11/07/2023), the Town Council may consider adopting proposed amendments to the Town's tree canopy replacement Code provisions in its discretion.

**Town Manager's Recommendation :** I recommend the Town Council direct the Town Attorney, with staff support, to produce a consolidated ordinance that reflects the decisions made during this meeting, as long as those decisions are in compliance with the Virginia State Code.

Cost and Financing: N/A

Account Number: N/A

Prior Funding Approval: *Annual General Budget (Year), Amendments, CIP Budget (Year), or ARPA.*  
Decision Needed by This date: November 13, 2023

**PROPOSED/SUGGESTED MOTION**

Staff recommends that the Town Council start by making decisions as enumerated in Attachment 6, as amended by the Town Council during the prior conference session and this discussion during this

agenda item. A motion may be made for each of the items in Attachment 6.

After making that series of decisions, the Town Council has at least the following two options for a motion to move forward:

"I move to direct the Town Attorney, with staff support, to produce a consolidated ordinance that reflects the decisions made during this meeting, and to direct that the Town Clerk advertise and conduct all required notifications regarding the Town Council's Intent to Adopt, on December 4, 2023, the new amendments to Chapters 17, 18 and 27 of the Town Code, with an effective date of April 26, 2024."

Or

"I move to direct the Town Attorney, with staff support, to produce a consolidated draft ordinance that reflects the decisions made during this meeting; to establish the date of *{date to be decided}* for a special meeting of the Town Council to review the consolidated draft ordinance for final changes and, at that same meeting, subsequently to direct the Town Clerk to conduct all required advertising and notifications regarding the Town Council's Intent to Adopt, on December 4, 2023, the new amendments to Chapters 17, 18 and 27 of the Town Code, with an effective date of April 26, 2024."

Or

Other action deemed necessary by Council.