

**Code of Ordinances, Town of Abingdon, Virginia
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Chapter 30 ENVIRONMENT

ARTICLE II. NOISE

Sec. 30-31. Definitions.

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

Public right-of-way means any street, avenue, boulevard, highway, alley or public space, which is owned or controlled by a public governmental entity.

(Ord. of 7-1-10(1), § 3)

ARTICLE IV. EROSION AND SEDIMENT CONTROL

Sec. 30-87. Definitions.

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

Clearing means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

Land-disturbing activity means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, disturbing 10,000 square feet or more, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

...

(6) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; or as additionally set forth by the board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of chapter 11 (§ 10.1-1100 et seq.) of the Code of Virginia, or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163; of the Code of Virginia;

...

Transporting means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

(Ord. of 4-4-77, § 6-2; Ord. of 1-9-95(1), § 6-2; Ord. of 9-10-01; Ord. of 4-7-14(1))
Cross reference— Definitions generally, § 1-2.
State Law reference— Definitions, Code of Virginia, § 62.1-44.15:51.

ARTICLE V. STORMWATER MANAGEMENT

Sec. 30-101. Definitions.

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this ordinance have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

Best management practice or *BMP* means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

Land disturbance or *land-disturbing activity* means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 30-102 (b) of this article.

(Ord. of 4-7-14(2), § 3)

Chapter 38 HEALTH AND SANITATION

ARTICLE II. CONDITION OF PREMISES*

Sec. 38-26. Definitions.

For the purpose of this chapter, certain terms and words used herein shall be defined as follows:

...

(8) *Weed or weeds* means any plant grass, or other vegetation over ten inches in height growing upon a parcel in the Town of Abingdon, including but not limited to, any sage brush, poison oak, poison ivy, Ailanthus Altissima (commonly called Tree of Heaven or Paradise Tree), ragweed, dandelions, milkweed, Canada thistle, and any other undesirable growth, excluding trees, ornamental shrubbery, vegetable and flower gardens purposefully planted and maintained by the property owner or occupant free of weeds, cultivated crops, or undisturbed woodland not otherwise in violation.

(Ord. of 7-7-05; Ord. of 9-3-13)

Sec. 38-27. Weeds and trash declared public nuisance; abatement required.

Weeds growing or trash lying on any parcel shall constitute a public nuisance, except that in the case of a parcel greater than one acre in area natural vegetation growing more than 50 feet from every property line shall not constitute a public nuisance. It shall be unlawful to cause or allow a public nuisance with any respect to a parcel. The owner of any parcel shall abate any public nuisance with respect to his parcel.

(Ord. of 7-7-05; Ord. of 9-3-13)

Sec. 38-28. Weeds and trash prohibited; duty of owner to remove weeds and trash.

It shall be unlawful and a public nuisance for the owner of any parcel to allow weeds, as defined herein, to grow or trash to stand upon such parcel. It shall be the duty of the owner

of any parcel to immediately cut, remove or destroy any and all weeds and to remove trash on his parcel. Any owner who shall violate any provision of this section shall be deemed guilty of a Class 4 misdemeanor and each day that such weeds shall remain uncut or such trash is allowed to stand after the period within which they are required hereunder to be cut or removed shall be deemed to constitute a separate offense under this section. (Ord. of 7-7-05; Ord. of 9-3-13)

Sec. 38-29. Notice of removal of weeds; preabatement hearing.

(a) Notwithstanding the criminal sanctions provided for elsewhere in this Code, and in addition to them, whenever the town manager determines that a public nuisance exists with respect to any parcel, the town manager shall mail by United States postal service certified mail to the owner of the parcel at the owner's address, as determined by public records, written notice that there exists a public nuisance with respect to the parcel and demand the abatement of the nuisance within 14 days following the mailing of the notice. Such notice, when so addressed and deposited with the postal service with proper postage prepaid, shall be deemed complete and sufficient. In the event that such notice is returned by the postal authorities or if the owner's address is unknown, the town manager shall cause a copy of the notice to be posted in a conspicuous place on the parcel. The posting shall be accomplished at least seven days prior to abatement of the public nuisance with respect to that parcel.

(b) The notice shall:

- (1) Be in writing;
- (2) Set forth the alleged violation of this article;
- (3) Describe the parcel of real property where the violations are alleged to exist or to have been committed;
- (4) Advise that if the weeds or trash are not removed within prescribed time, and that if the weeds and trash do not remain abated or removed, the town will proceed to abate the nuisance with the costs thereof together with an administrative fee and interest authorized by this article being specially assessed against the owner and the parcel;
- (5) Advise that the cost of abatement together with the administrative fee and interest constitutes a lien against the property in favor of the town; and
- (6) Advise that within 14 days of the certified mailing of the notice or posting, whichever is applicable, the owner may appeal to the town manager stating in detail the reasons why the proposed action should not be taken.

(c) In the event the owner appeals the proposed abatement as provided for above, the town manager shall set a hearing and notify the owner of time and location of a hearing to be held within five days from the date of the town manager's receipt of the appeal. At any hearing, the town manager shall hear and investigate any objection that may be raised and take action in response as he may deem reasonable.

(d) Any notice sent by the town manager to any owner of a parcel which, because of weeds or trash, has been declared a public nuisance under this article and which notice otherwise complies with the requirements of this section, shall constitute complete and sufficient notice for any similar condition during the same period of April 1 until November 1 in the year which the notice was sent.

(Ord. of 7-7-05; Ord. of 9-3-13)

Sec. 38-30. Abatement of public nuisance.

(a) If the owner shall fail or neglect to complete abatement of the public nuisance as required within 14 days of mailing of notice or of posting, whichever is applicable, or if the owner fails to continue to comply with the requirements of this section, the town manager may direct in writing that town forces abate or complete the abatement of such a public

nuisance, or the town manager may contract for his abatement on behalf of the town with a private contractor.

(b) Any owner may abate the public nuisance himself without liability to the town provided he completes the abatement prior to commencement of the abatement by town personnel or any private contractor on behalf of the town.

(Ord. of 7-7-05; Ord. of 9-3-13)

Chapter 50 OFFENSES AND MISCELLANEOUS PROVISIONS

Sec. 50-1. Advertising matter; attaching to poles, trees, public property.

It shall be unlawful for any person to tack or otherwise attach any advertising matter or other substance to any telephone, telegraph or electric transmission pole or tree on public property or any public property within the town.

(Code 1985, § 13-1)

Chapter 58 SOLID WASTE

ARTICLE II. STORAGE AND COLLECTION

DIVISION 1. GENERALLY

Sec. 58-26. Definitions.

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

Solid waste means unwanted or discarded waste materials in a solid or semisolid state, including but not limited to garbage, cooled ashes, street refuse, rubbish, dead animals, animal and agricultural wastes, yard wastes, discarded appliances, special wastes, industrial wastes and demolition and construction wastes.

Yard wastes means grass clippings, leaves and trimmings from shrubbery, brush and trees.

(Ord. of 8-6-93, § 14-1)

DIVISION 2. TOWN COLLECTION

Sec. 58-44. - Placement for collection; permitted and excluded contents.

(a) All residential receptacles containing solid waste for collection by the town shall be set out not later than 7:30 a.m. on collection days and shall be placed in such location as may be specified by the town manager so that they can be reached easily and conveniently by the town's employees. No town employee shall enter any building for the removal of solid waste.

(b) All solid waste from premises to which collection services are provided by the town, as well as tree limbs and yard wastes, as described in sections 58-46 and 58-69 respectively, shall be placed at the curb or edge of the street or alley for collection. Recycled materials must be placed in the container provided by the town or its agent and placed at the curb or edge of the street or alley for collection. Any solid waste containers, recycling containers, yard wastes or other solid wastes either required or permitted to be placed at the curb or edge of the street or alley for collection shall be placed so as not to create a nuisance. Empty containers shall be removed from the right of way and returned to their place of storage, behind the building setback line, within a reasonable period of time after collection.

...

(Ord. of 8-6-93, § 14-8)

Sec. 58-46. Trimmings from shrubbery, brush and trees.

(a) Tree limbs less than six inches in diameter and trimmings from shrubbery and brush to be collected by the town or its agents shall be placed in stacks parallel to the street in a manner which will not block the drainage and shall be not greater than ten feet in length.

(b) If that accumulation of such materials is greater than one-half truckload, such materials will be hauled at such time as a vehicle is available in order not to interrupt the regular collection schedule. Lawn trimmings and leaves shall not be placed in the gutter or in any drainage ditch. Materials shall not be of a hazardous nature nor shall any individual item weigh more than 50 pounds.

(Ord. of 8-6-93, § 14-10)

Chapter 62 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE I. IN GENERAL

Sec. 62-1. Obstructions generally.

...

(g) Definitions. The terms used in this section and not further defined herein shall carry their ordinary meanings. For purposes of this section, the terms set out below shall carry the following meanings, accordingly:

...

Utility strip means a vegetated strip of ground typically located between the sidewalk and the back of the curb or edge of the pavement of a public or private street. The utility strip is usually intended for the placement of street trees and underground or above ground utilities.

...

(Code 1985, § 16-1; Ord. of 5-3-99; Ord. of 7-5-11(1))

State Law reference— Obstructions and encroachments, Code of Virginia, § 15.1-893.

ARTICLE II. STREETS AND ALLEYS

DIVISION 2. ACCEPTANCE OF RIGHTS-OF-WAY

Sec. 62-36. Generally.

The town shall accept on petition of the owners of any footage abutting any previously unopened or unaccepted right-of-way 30 feet in width or wider, platted or dedicated for public use before July 1, 1950, on the following terms and conditions:

...

(8) When the town accepts a right-of-way the abutting property owners shall release the town from responsibility for the cost of or damage to any abutting property by reason of any change in grade; lowering or raising of driveway entrances; walkways; lowering, raising, replacing, or repairing any utility connections; transplanting or replacing trees, flowers, shrubs or grass; or any other work incidental to the improvements.

(Code 1985, § 16-10)

ARTICLE III. SIDEWALKS; CURBS; GUTTERS; DRIVEWAYS

DIVISION 1. GENERALLY

Sec. 62-62. Sidewalks to be kept clear of weeds.

It shall be unlawful for any owner or occupant of premises in the town to allow weeds to accumulate on the sidewalks or borderway of sidewalks or alleys adjacent to such premises.

(Code 1985, § 16-4)

Cross reference— Vegetation, ch. 78.

State Law reference— Removal of weeds, Code of Virginia, § 15.1-867.

Chapter 78 TREES, SHRUBS AND VEGETATION

ARTICLE I. IN GENERAL

Sec. 78-1. Short title.

This article shall be known and may be cited as the town's "Vegetation Ordinance".
(Ord. of 8-7-00)

Sec. 78-2. Purpose and intent.

The town recognizes that its urban forest is a vital part of the community and wishes to ensure its citizens right to enjoy the many benefits provided by public trees while being protected from the attendant risks of personal injury and property damage. Accordingly, it is the purpose and intent of this ordinance to preserve and protect the public health safety and general welfare by regulating the planting, maintenance and removal of public trees and the removal or trimming of vegetation where a hazard exists; and, it shall be the policy of the town to:

- (a) Establish and maintain maximum tree cover.
- (b) Maintain trees in a healthy condition through good arboricultural practices.
- (c) Establish and maintain trees at an optimal level of age and species.
- (d) Promote conservation of tree resources.
- (e) Select, situate and maintain trees appropriately to maximize benefits and minimize hazard, nuisance, hardscape damage and maintenance costs.
- (f) Centralize tree management under one person having the necessary expertise.
- (g) Promote efficient and cost-effective management of the urban forest.
- (h) Foster community support for a local urban forestry program and encourage good tree management on privately owned properties.

(Ord. of 8-7-00)

Sec. 78-3. Definitions.

For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meanings respectively ascribed to them in this section:

Town means the town administration and/or town council unless the context indicates otherwise.

Town arborist means a person with the qualifications set out in sec. 78-5(a) of this article who is trained or competent in the practice of arboriculture or forestry; and, who is employed by or under contract with the town and charged with the responsibility for carrying out the provisions of this ordinance.

Critical root zone means the area beneath a tree's canopy that falls within the tree's drip line; "drip line" is defined as a continuous line which is a vertical projection of the outermost portion of the tree's canopy onto the ground.

DBH means the diameter of a tree trunk measured at 4.5 feet above grade.

Hazardous tree means any tree which because of condition, surroundings and/or tendency to fail constitutes a risk to life, health or property.

Maintenance means all operations which might be performed on a tree, including (without limitation) trimming, pruning, spraying, injecting, fertilizing, treating, bracing, cabling, and cutting either above or below the ground.

Park means that portion of the public area so named and designated by the town.

Public area means all land and rights-of-way within the town's corporate limits owned or held by the town, including parks, cemeteries and rights-of-way for streets, alleys, sidewalks, utility lines and facilities and median strips.

Public tree means any tree planted in a public area.

Public utility company means any corporation, company, individual, association or cooperative that is a "public utility" as defined in Code of Virginia, 1950, § 56-232 as amended.

Tree means any self-supporting woody plant growing upon the earth that usually possesses one main trunk and produces a more or less distinct and elevated head with many branches.

Top or topping means the cutting of the branches and/or trunk of a tree in a manner that substantially reduces the overall size of the spatial area occupied by the tree and destroys the symmetrical appearance or natural shape of the tree as shown at Page 21 of the A300 Pruning Standard described in Sec. 78-10(b) of this ordinance.

Urban forest means the collection of trees, shrubs and other vegetation that make up a community's urban landscape.

(Ord. of 8-7-00)

Sec. 78-4. Applicability of ordinance.

All trees and shrubs now existing or hereafter planted in any public area shall become the property of the town, and be subject to the provisions of this ordinance.

(Ord. of 8-7-00)

ARTICLE II. CREATION OF TOWN ARBORIST POSITION AND TREE COMMISSION

Sec. 78-5. Town arborist.

There is hereby created the position of town arborist, who shall act under the direction and control of the town manager. The town manager shall employ or contract for the services of the town arborist.

(1) *Qualifications.* Where possible the town arborist shall be a person trained in arboriculture or forestry, with appropriate certification in the particular field or fields concerned, failing which the town manager may employ or enter into a contract with a person who has at least three years experience in municipal tree work or its equivalent and possesses sufficient administrative and management skills to perform the duties specified in this ordinance. If the person appointed is not so certified, the town manager shall specify a six month probationary period within which the person must, as a condition of employment, obtain an arborist certification by the International Society of Arboriculture or comparable certification.

(2) *Duties.* The town arborist shall; in coordination with the town's public works or other departments, or private contractors when approved by the town manager, plant, maintain and otherwise care for, or if necessary remove, any public tree or shrub. The responsibilities of the town arborist shall include but not be limited to:

- a. Advising the town manager, town council and the town's public works and other departments on all matters pertinent to public trees; and, reviewing, and supervising all municipal tree care operations and site plan work involving public trees.
- b. Attending each meeting of the tree commission and informing it in advance about all pending and proposed municipal tree care operations and site plan work involving public trees in sufficient time for the tree commission to take any action permitted or required under the provisions of this article.
- c. Under the supervision of the town manager, applying for federal, state or private grants, funding or other assistance to accomplish the purposes and intent set forth in sec. 78-2 of this article.
- d. Developing, implementing and maintaining an urban forestry management program which provides for annual public tree planting and establishes care, maintenance and replacement standards and procedures for public trees. Reducing such program to writing in the form of a comprehensive tree management plan for review by the tree commission and the town council.
- e. Preparing annually for review by the town public works department and tree commission, a municipal tree care budget together with an annual report on the work of the town arborist including (but not limited to) all municipal tree care operations and site plan work involving public trees and an evaluation of the progress made in meeting the goals of this ordinance.
- f. In cooperation with the town manager and tree commission, promoting, by conducting public seminars, courses, lectures, workshops, continuing education and other educational programs, public appreciation for the town's urban forest and importance of the standards and procedures established in this article.
- g. When and as requested by the town manager and tree commission, providing private citizens with advice regarding the care and maintenance of their trees. Supporting other groups interested in urban forestry.
- h. Reporting directly to the town manager on any or all municipal tree operations and site plan work involving public trees, as the town manager may from time to time direct, and taking such other action as shall be needed to accomplish the purposes of this ordinance.
- i. Coordinate, by meeting and consulting with appropriate public utility personnel in advance, all public utility operations that might adversely affect public trees.

(Ord. of 8-7-00)

Sec. 78-6. Tree commission.

There is hereby created a commission to be known as the "tree commission". The tree commission shall be composed of five voting members appointed by the town council. In addition, the town arborist shall be a non-voting member. A quorum for the transaction of business by the commission shall be at least three voting members.

(1) *Qualifications and compensation.* The five voting members of the tree commission shall be persons who have expressed interest in the care and preservation of the town's urban forest. All of the members of the tree commission shall serve without compensation, but all necessary expenses of the tree commission shall be paid by the town pursuant to appropriate action by the town council.

(2) *Terms of office.* The five voting members appointed by the town council shall be appointed for three year staggered terms and serve until their respective successors are appointed. Of the members initially appointed one shall serve for one year, two shall serve for two years, and two shall serve for three years. Thereafter, all members shall serve three year terms. Vacancies caused by death, resignation or

otherwise shall be filled for the unexpired term in the same manner original appointments are made. The mayor shall have the discretion to appoint members to serve consecutive terms and also to remove them for habitual failure to attend meetings. Members may serve any number of terms but not more than two terms consecutively.

(3) *Duties of tree commission.* The duties of the tree commission shall be as follows:

- a. Within a reasonable time after appointment, conduct an organizational meeting to elect a chairman, vice-chairman and standing committee chairs as needed, and provide for the adoption of rules and procedures for holding public meetings. The town arborist shall act as secretary and conduct the daily affairs of the tree commission. The secretary shall cause a record to be kept of all proceedings, resolutions, findings and actions taken by the tree commission. The commission's records shall be filed with the town clerk.
- b. To provide regular meetings at least once each month and such special meetings as the tree commission deems necessary, each open to the public; to support the efforts of other groups interested in urban forestry: to sponsor tree planting projects and the observance of National Arbor Day; and, to conduct seminars, workshops and other public education programs.
- c. To assist the town arborist with the formulation and revision of the comprehensive tree management plan, as well as a yearly evaluation of progress toward meeting the goals set in this section.
- d. To assist the town arborist in applying for federal, state or private grants, funding or other assistance.
- e. With the assistance of the town arborist, to review each pending and proposed municipal tree care operation and site plan work involving trees. Any differences of opinion about what protective procedures should be followed in any such matter shall be resolved by majority vote at a meeting of the commission.
- f. To provide by its public meetings a forum in which interested persons shall have the opportunity to submit for discussion their questions and opinions regarding the town's tree management.

(Ord. of 8-7-00)

Sec. 78-7. Tree management plan.

With the advice and participation of the tree commission, the town arborist is hereby authorized and directed to formulate, revise and administer a comprehensive tree management plan to govern the planting, maintenance and replacement of trees planted in public areas. The comprehensive tree management plan shall make provision for educating the public about trees and include (but not be limited to) an inventory of tree resources, standard planting, maintenance, replacement and tree cover specifications and needed maintenance work complete with cost and time schedules.

(Ord. of 8-7-00)

ARTICLE III. SUPERVISION AND AUTHORITY IN MUNICIPAL TREE CARE OPERATIONS

Sec. 78-8. Responsibility of town arborist coordination with town departments.

The town arborist shall be responsible for reviewing, preparing comments on and supervising all proposed municipal tree care operations and site plan work and taking such other action as shall be needed to accomplish the purposes of this article. To enable performance of such duties, the town's public works and all other affected departments shall coordinate with the town arborist prior to commencing any public work that might require the removal of or cause injury to any public tree or its root system, as follows:

(1) *Applicability to specific projects.* This section covers but is not limited to all (a) plans to install water or sewer lines, curbs, gutters, sidewalks, driveways or any other improvements that might cause injury to public trees; and, (b) planting, maintenance, protection and all other work pertinent to public trees.

(2) *Notice requirement.* Prior to the commencement of any work specified in this section, the department concerned shall give notice outlining the proposed project in sufficient detail and providing a sufficient amount of time to enable the town arborist to inspect the work site, evaluate the degree of the risk of injury and submit to the party responsible for the work written instructions designed to protect any tree or trees at risk.

(3) *Supervisory authority.* When and as appropriate the town arborist shall advise town work crews about matters relating to planting, maintenance, removal and protection of public trees. Additionally, the town arborist shall have supervisory authority in all municipal tree care and site plan work and authority to inspect such work, together with the duty to inspect, to the end that all work done under the terms of this section shall be in full compliance with any instructions by the town arborist.

(4) *Applicability to independent contractors.* All of the provisions of this section shall apply in full force and effect to independent contractors and their crews hired by the town to perform any of the services or operations specified. Nothing stated in this subsection in any way relieves the town's public works or any other department of the responsibility of providing notices to the town arborist as required in subsection (2).

(Ord. of 8-7-00)

ARTICLE IV. PLANTING, MAINTENANCE AND PROTECTION OF PUBLIC TREES

Sec. 78-9. Planting of public trees.

This article charges the town arborist with the responsibility of insuring that any tree or shrub planted in a public area is one of an approved species which is properly planted according to the standards and guidelines outlined in the comprehensive tree management plan.

(Ord. of 8-7-00)

Sec. 78-10. Maintenance of public trees.

(a) *Independent contractors.* Any independent contractor hired for pruning or other maintenance on public trees shall (1) be subject to the direction and supervision of the town arborist; (2) have, pursuant to the Code, a current town business license to provide such services; and (3) furnish proof of liability and workman's compensation insurance coverage in amounts specified by the town manager. The independent contractor must maintain such insurance coverage throughout its term of its license.

(b) *Standards for pruning or trimming public trees.* In the absence of a written waiver by the town arborist, all trees on public areas must be pruned or trimmed in accordance with the standards described in the American National Standards Institute's A300 Pruning Standard, published on January 18, 1995 by the Secretariat of the National Arborist Association, Inc., or any changes to such standards approved by the town council.

(c) *Topping public trees.* Except as permitted under a public utility franchise, it shall be unlawful to top any public tree. Provided, that trees severely damaged by storms or other causes, or certain trees in close proximity to utility wires or other obstructions may be exempted from this section, at the discretion of the town arborist.

(Ord. of 8-7-00)

Sec. 78-11. Protection of public trees and shrubs, planting restrictions and removal of unsafe vegetation.

The following provisions to protect public trees and provide protective regulations governing planting and removal of unsafe vegetation shall apply to all persons, including natural persons, independent contractors, public utility companies, public works and other town departments:

(a) *Trees endangered by excavation or construction.* In the absence of a written waiver by the town arborist, any public tree located within 20 feet of any proposed (i) excavation, or (ii) construction of a building or other structure, or (iii) street work shall have its critical root zone protected from all building material, dirt or other debris which might be generated by the operation concerned. To accomplish such protection, the town arborist shall submit written instructions and the party responsible for the excavation, construction or work shall, in advance of commencing the operation, comply with such instructions by erecting a substantial fence, frame, shield or box not less than three feet high at a location calculated to protect the tree's critical root zone.

(b) *Trees endangered by public works and other ditches.* Without prior notification of and discussion with the town arborist and strict adherence to the town arborist's instructions relative to tree protection, no person shall change the natural grade, excavate any ditches, tunnels, trenches, or lay any line, within ten feet of the critical root zone of any tree in any public area. Provided that (i) the town arborist is notified as soon as practical after the work is done and (ii) the particular operation would not increase the existing utilities beyond their original capacity, the provisions of subsection (b) shall not apply to any person performing emergency work to restore existing underground utilities within the same trench.

(c) *Trees put at risk by placement of materials on public property.* No person shall deposit, place, store or maintain upon any public place any stone, brick, sand, concrete or other materials that might impede the free passage of air, water or fertilizer to the roots of any public tree.

(d) *Distance of certain trees from public sewers.* Poplar, willow, American elm or cottonwood trees planted anywhere in the town after the effective date of this ordinance shall be placed at least 100 feet away from public sewers.

(e) *Planting in park or in or near public right-of-way.*

(1) *Shade or ornamental trees.* No shade or ornamental tree or shrub shall be planted in any public right-of-way or within five feet of such right-of-way or in any public park until such tree or shrub shall have first been approved and the place where it is to be planted designated by the town manager and a permit granted therefore.

(2) *Prohibited species.* It shall be unlawful for any person to plant in any park or public right-of-way or within five feet of such right-of-way line the following trees: poplar, willow, cottonwood, fruit trees (except ornamental types), nut trees (except oak and hickory), ailanthus, mountain ash, mimosa, silver maple, American elm and sycamore maple.

(f) *Attaching rope, sign or other device.* No person shall fasten any rope, wire, sign, poster, handbill or other device to a tree or shrub or to any guard about such tree or shrub on a public right-of-way or in a park.

(g) *Wires in right-of-way or park.*

(1) *Protection of trees and shrubs.* Every person having or maintaining any electric, telephone, telegraph or other wires running through a public right-of-way or park shall securely fasten and maintain such wires in such a manner as will safeguard the trees and shrubs against any damage therefrom and shall make periodic adjustments whenever necessary to prevent damage to trees and shrubs growing in any public right-of-way or park.

(2) *Consolidation.* Persons having or maintaining any electric, telephone, telegraph or other wire running through a public right-of-way shall consolidate their wires so as to place as few poles as possible in the right-of-way and shall, whenever possible, place such poles in alleys, utility easements and along rear lot lines.

- (h) *Trimming or cutting of overhanging trees.*
- (1) The trimming or cutting of trees, the limbs of which overhang streets or sidewalks of the town, or trees located on the sidewalks or streets of the town, shall be done in the discretion and under the authority of the town manager and supervision of the town arborist. Such work shall be done in a proper manner with the least possible damage to the trees trimmed or cut.
 - (2) Any person applying for the privilege of trimming or cutting trees to promote the efficiency of a public utility shall pay all expenses incident to such work.
 - (3) It shall be unlawful for any owner of property adjacent to a street to obstruct or interfere with the cutting or trimming of trees under the provisions of subsection (h).
- (i) *Vegetation impeding, etc., movement of vehicular or pedestrian traffic — Generally.*
- (1) Whenever it shall be determined by the department head of any department of the town that there is growing vegetation which impedes, hinders or makes unsafe the movement of either vehicular traffic or pedestrian traffic, the department head shall make a written report to the town manager, with copy to the town arborist, giving location and other pertinent information. Thereafter, the town arborist shall supervise any measures taken to correct the hazardous condition, as directed by the town manager.
 - (2) The town manager shall forthwith notify the owner of the property where such vegetation exists and shall demand that the owner shall, within the space of ten days, either completely remove such vegetation or trim such vegetation to such an extent as to remove any hazard. Such notice shall be served personally on the owner of the property if he resides on the property or is a resident of the town; otherwise, such notice shall be served on the owner by registered or certified mail with provision made for a return receipt. If the property is rental property, a copy of such notice shall be served on one of the tenants occupying it. If the owner of the property is a nonresident of the state and has an agent within the state who collects the rents from the property or has control of the property, then service of the notice upon such agent shall constitute service upon the owner. If any person shall fail to comply with the terms of such notice for a period of ten days, then the town shall abate the nuisance and all costs or charges incurred in connection therewith and duly assessed may be collected by the town from the owner of the premises as taxes and levies are collected, or may be recovered by suit as any other debt. The failure, neglect or refusal of any such owner or agent to comply with the terms of any such notice shall be unlawful. Each 24 hours subsequent to the time limit provided for by this section shall be taken to constitute a separate offense.
- (j) *Same—Lien for unpaid charges.* Every charge authorized and duly assessed under subsection (i) shall, so long as it remains unpaid, constitute a lien against the real property in question.
- (k) *Pruning, injuring, removing vegetation.* No person shall, without a permit from the town manager, cut, prune, break, injure or remove any tree, shrub or plant on a public right-of-way or in a park or cut, disturb or interfere in any way with any root of a tree, shrub or plant on a public right-of-way or in a park.
- (l) *Spraying or injecting.* No person shall, without a permit from the town manager, spray or inject with any chemical any tree, shrub or plant on a public right-of-way or in a park.
- (m) *Removing, injuring guards.* No person shall, without a permit from the town manager, remove or injure any guard or device placed to protect any tree or shrub on a public right-of-way or in a park.
- (n) *Closing or obstructing open space about base.* No person shall, without a permit from the town manager, close or obstruct any open space provided about the base of a tree or shrub to permit the access of water, air and fertilizer to the roots of such tree or shrub on a public right-of-way or in a park.

(o) *Allowing harmful substances to come in contact with roots or leaves.* No person shall, without a permit from the town manager, allow any gaseous, liquid or solid substances harmful to the trees or shrubs on a public right-of-way or in a park to come in contact with the roots or leaves of such trees or shrubs.

(Ord. of 8-7-00)

ARTICLE V. HAZARDOUS TREES ON PUBLIC PROPERTY

Sec. 78-12. Remedies for hazardous trees.

Upon determination by the town arborist that same are a hazard, the town shall provide for removal of dead, diseased or other hazardous trees or shrubs in any public area.

(Ord. of 8-7-00)

ARTICLE VI. ADMINISTRATIVE PROVISIONS

Sec. 78-13. Appeals process.

Any action by the tree commission may be appealed to and heard by the town council, the decision of which shall be final. To be effective the appeal must be in writing, specify the reason or reasons for which a hearing is requested, and be filed with the town manager within 15 days after the complaining party receives notification of the offending action of the tree commission.

(Ord. of 8-7-00)

Sec. 78-14. Penalties for violation.

Unless specifically provided in this ordinance, the violation of any of Sections 78-10(b), 10(c), 11(a), 11(b), 11(c), 11(d), 11(e), 11(f), 11(h)(3), 11(k), 11(l), 11(m), 11(n), and 11(o) shall be a Class 4 misdemeanor punishable as specified in section 1-6 of the Code.

(Ord. of 8-7-00)

Sec. 78-15. Performance evaluation of ordinance.

The town arborist shall collect and maintain all records and data necessary or desirable to evaluate whether progress is being made toward the stated goals of this chapter. At its first meeting for 2001 and each year thereafter the town arborist shall present to the town council its summary and analysis for the preceding calendar year, together with any recommendations for changes in the procedures outlined in this chapter. Thereafter, the town council shall consider the report and recommendations and take all actions deemed necessary to accomplish the goals of this ordinance, including (but not limited to) revision or amendment of the ordinance or the adoption of other resolutions or ordinances.

(Ord. of 8-7-00)

APPENDIX B ZONING ORDINANCE

ARTICLE 18. SITE PLAN REVIEW

Site plan review shall be required in addition to the other applicable requirements of this ordinance before building or occupancy permits may be issued.

Purpose. The purpose of these regulations is to promote orderly development of certain activities in the town and to ensure that such activities are developed in a manner harmonious with surrounding properties and consistent with the general public welfare.

Intent. The intent of these regulations is to provide for review of:

* The project's compatibility with its environment and with other land uses and buildings existing in the surrounding area.

* The quantity, quality, utility, size and type of the project's required recreational space, impact upon existing natural environment and proposed landscape improvements.

...

Section 18-4. Site plan contents.

The site plan shall include the following:

...

18-4-9. The location, height, type and material of all fences, walls, screen planting and landscape details of all buildings and grounds.

18-4-10. The location of all trees existing on the site prior to construction with a caliper of eight inches or greater. The site plan shall show wooded areas which shall be designated by symbols coincident with the area of trees and an indication of which trees are to be retained and which are to be removed.

...

Section 18-5. General standards.

...

18-5-2. *Landscaping.* All nonresidential uses, including parking lots and vehicular display areas, where front yard is required shall have at least 50 percent of the street frontage landscaped with plant material. Such planting area shall have a minimum width of five feet. The planning commission may allow a deviation from these requirements if, in its judgment, such deviation is consistent with the intent of this article and beneficial to the proposed development.

18-5-5. *Standards for preservation of natural environment and energy conservation.* In order to preserve the character and natural environment of the area and to provide visual and noise buffering, the planning commission shall refuse to approve any site plan which proposes unnecessary destruction of trees and other natural features. The planning commission shall require assurances that the developer has made reasonable effort, in light of the proposed development, to preserve, replenish, protect and utilize:

- a. Trees of ten-inch caliper or larger.
- b. Ornamental trees of any size.
- c. Trees within required setbacks or along boundaries unless necessary to remove for access, grading, circulation, utilities or drainage.
- d. Streams in their natural condition.
- e. Ground area from soil erosion and excessive water runoff.
- f. Natural features of the site which promote energy conservation.

...

Section 18-6. Additional specific standards.

18-6-4. *Parking lot.* The following standards shall be followed in developing site plans for motor vehicle parking lots and off-street parking areas required by section 17-6:

...

- i. All paved parking lots shall be planted with no less than one tree for every five parking spaces or fraction thereof. Such trees shall be of a variety which provide shade or are capable of providing shade at maturity [see section 18-8 "Canopy trees"] and shall be reasonably dispersed throughout the parking lot.

...

Section 18-8. Plant materials.

The following plant materials are referenced and/or considered suitable for landscaping purposes as required in this article:

TABLE INSET:

	Canopy Trees	
Common Name	Botanical Name	Function

Ginkgo (male only)	Ginkgo biloba	Parking, street, buffer
Thornless honey locust	Gleditsia triacanthus inermis	Parking, street
Green ash	Fraxinus pennsylvanica	Parking, street, buffer
Sycamore	Platanus occidentalis	Parking, buffer
Red maple	Acer rubrum	Parking, street, buffer
Norway maple	Acer platanoides	Parking, street, buffer
Sugar maple	Acer saccharum	Parking, street, buffer
Pin oak	Quercus palustris	Parking, street, buffer
Red oak	Quercus borealis	Parking, street, buffer
Willow oak	Quercus phellos	Parking, street, buffer
Sweet gum	Liquidambar styraciflua	Parking, street, buffer
London plane tree	Platanus acerifolia	Parking, street, buffer
Japanese pagoda tree	Sophora japonica	Parking, street, buffer
Littleleaf linden	Tilia cordata	Parking, street, buffer
Silver linden	Tilia tomentosa	Parking, street, buffer
Village green	Zelkova serrata	Parking, street, buffer
Yellowwood	Cladrastis lutea	Parking, street, buffer

TABLE INSET:

	Evergreen Trees	
Common Name	Botanical Name	Function
Eastern red cedar	Juniperus virginiana	Buffer
White pine	Pinus strobus	Buffer
Austrian pine	Pinus nigra	Buffer
Norway spruce	Picea abies	Buffer
American holly	Ilex opaca	Buffer
Dark american arborvitae	Thuja occidentalis nigra	Buffer

TABLE INSET:

	Ornamental Trees	
Common Name	Botanical Name	Function
Amur maple	Acer griseum	Buffer
Dogwood	Cornus florida	Street, buffer
Washington hawthorn	Crataegus phaenopyrum	Street, buffer
American plum	Prunus americana	Street, buffer
Bradford pear	Pyrus calleryana bradford	Street, buffer
Flowering crabapple	Malus (various species)	Street, buffer
Flowering cherry	Prunus (various species)	Street, buffer
Downy serviceberry	Amelanchier arborea	Buffer
Shadblow	Amelanchier canadensis	Buffer

TABLE INSET:

	Evergreen Shrubs	
Common Name	Botanical Name	Function

English yew	Taxus baccata	Buffer
Japanese yew	Taxus cuspidata	Buffer
Azalea	(various species)	Buffer
Chinese holly	Ilex cornuta	Buffer
Japanese holly	Ilex crenata	Buffer
Rhododendron	(various species)	Buffer
Euonymous	(various species)	Buffer

TABLE INSET:

Deciduous and Flowering Shrubs		
Common Name	Botanical Name	Function
Azalea	(various species)	Buffer
Cottoneaster	(various species)	Buffer
Forsythia	(various species)	Buffer
Viburnum	(various species)	Buffer
Winged euonymous	(various species)	Buffer

TABLE INSET:

Ground Cover		
Common Name	Botanical Name	Function
Ajuga	Ajuga reptans	Buffer
English ivy	Hedera helix	Buffer
Pachysandra	Pachysandra terminalis	Buffer
Ground juniper	(various species)	Buffer
Dwarf cottoneaster	(various species)	Buffer
Periwinkle	Vinca minor	Buffer

Section 18-9. - Historic district entrance corridor overlay district.

18-9-8. Design standards. All applications for certificates of appropriateness must satisfy the design standards contained in this section.

(a) Landscaping.

(1) Landscaping shall be used to soften the visual impact of development and enhance the appearance of the area.

(2) Landscaping shall be sufficient to soften the visual effects of parking lots, reduce the effective visual mass of large buildings, and provide screening between the development, the street and surrounding lots.

(3) Landscape buffers, shall be provided adjacent to public streets of sufficient size to permit street trees and plantings to be installed to reduce the visibility into parking lots.

(4) Landscaping shall be compatible with landscaping on adjacent properties.

(5) Landscaping shall be of a high quality and designed in a professional manner.

...

(Ord. No. 1-2003, 4-7-03; Amd. of 7-7-03; Ord. No. 2004-65, §§ 1, 2, 9-7-04; Ord. of 9-4-07(2))

ARTICLE 20. PLANNED UNIT DEVELOPMENT (PUD) DISTRICT

Section 20-1. Applicability.

20-1-1. *Regulations.* The planned unit development is a concept which encourages and permits variation in residential developments by allowing deviation in lot size, bulk or type of dwelling, density, lot coverage and open space from that required in any one residential district.

20-1-2. *Purpose.* The purpose of this article is to establish procedures and standards for planned unit developments within the corporate limits of the town, in order that one or more of the following objectives may be attained:

a. *Flexibility in design to take the greatest advantage of natural land, trees, historic and other features.*

b. *Accumulation of large areas of usable open space for recreation, preservation of natural amenities and provision of community facilities.*

...

Section 20-6. Application, content and staged development.

20-6-3. *Contents of proposed plan of development.* The following shall be the required information to be included in a proposed plan of development:

...

f. A proposed buildings and landscape plan, including the existing and proposed structures, the existing trees with a caliper of eight inches or greater, proposed trees and landscaping, trees to be removed, topography with contour intervals of five feet or less and other significant natural features.

...

ARTICLE 26. DEFINITIONS

For the purpose of this ordinance, certain words and terms are defined as follows: Words in the present tense include the future tense; words in the singular include the plural; and the plural includes the singular. The following words, terms and phrases, when used in this chapter, will have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning.

Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

Terms defined in other codes. Where terms are not defined in this Code and are defined in the International Building Code or the International Mechanical Code, such terms shall have the meanings ascribed to them as in those codes.

26-12 *Agriculture* means the tilling of the soil, the raising of crops, horticulture, forestry, gardening, the keeping of animals and fowl.

26-60 *Buffer* means a strip of land, which may or may not have trees and shrubs planted for screening purposes, designed to set apart and protect one space or activity from an adjacent space or activity.

26-71 *Caliper* means a measure of tree size, determined by measuring the diameter of the tree at a point: six inches above the root ball, at the time of planting, or 12 inches above the ground, for established trees.

26-138 *Easement* means a right possessed by the owner of one parcel of land to use the land of another for a special purpose not inconsistent with the general property rights of that owner.

26-200 *Greenhouse*. See "nursery."

26-231 *Landscaping* means the finishing and adornment of unpaved yard areas. Materials and treatment generally include naturally growing elements such as grass, trees, shrubs and flowers. This treatment shall be permitted also to include the use of logs, rocks, fountains, water features and contouring of the earth.

26-273 *Nursery* means a business engaged in the retail sale of plants and horticultural and gardening supplies materials.

26-379 *Tree canopy* or *tree cover* means all areas of coverage by plant material exceeding five feet in height, and the extent of planted tree canopy at ten or 20 years maturity, as applicable. Planted tree canopy at maturity shall be based on published reference texts generally accepted by landscape architects, nurserymen and arborists, i.e., in *The Manual of Woody Landscape Plants* by Michael A. Dirr (4th edition, 1990).

6-397 *Yard* refers to the distance between the exterior facade of a building or any projection thereof (other than steps, unenclosed balconies and uncovered unenclosed porches) and an adjacent property line. The term "required yard," where used within this Zoning Ordinance, refers to the minimum distance required by the regulations of a particular zoning district to be unobstructed by any building, structure, or projection thereof (other than steps), extending the full length of the adjacent property line. Also commonly referred to as "setback," "required setback," and "building setback line."

26-398 *Yard, front* means a yard extending across the front of a lot between the side yard lines and being the minimum horizontal distance between the street right-of-way line and the main building or any projection thereof other than steps. On corner lots, the front yard shall be considered as being adjacent to the street on which the lot has its least dimension.

26-399 *Yard, rear* means a yard extending across the rear of a lot between side lot lines and being the minimum horizontal distance between the rear lot lines and the rear of the main building or any projection other than steps. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots, the rear yard shall in all cases be at the opposite end of the lot from the front yard.

26-400 *Yard, side* means a yard between the building and the side line of the lot and extending from the front lot line to the rear yard line and being the minimum horizontal distance between a side line and the side of the main building or any projections thereof other than steps.

(Ord. No. 3-2005, 12-5-05; Ord. of 4-6-09, eff. 5-6-09; Ord. of 7-6-09; Ord. of 8-2-10(1), eff. 9-2-10)