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Winchester Tree Ordinance

Tree List

CHAPTER 9 WATER PROTECTION

SECTION 9-35. REVIEW AND APPROVAL OF EROSION AND SEDIMENT CONTROL PLAN.

Each erosion and sediment control plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

...

(e) If the owner is required to obtain approval of a site plan or subdivision plat, the program authority shall not approve an erosion and sediment control plan unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be deemed approved by the program authority if its approval is conditioned upon the approval of an erosion and sediment control plan pursuant to this Article, and the program authority determined that review and approval of the erosion and sediment control plan will not affect approval of the site plan or plat. The program authority may approve an erosion and sediment control plan prior to approval of a required site plan or plat in the following circumstances:

...

(2) To clear and grub stumps and other activity directly related to the selective cutting of trees, as may be permitted by law;

...

SECTION 9-81. MANAGEMENT OF A STREAM BUFFER.

Each stream buffer required to be established or maintained pursuant to this Article shall be managed as provided herein:

(a) The target vegetative cover in a stream buffer area shall be an indigenous riparian forest with ground cover, shrub and tree canopy layers.

(b) Within twenty-five (25) feet of the top of the stream bank and on land classified as nontidal wetland:

(1) Indigenous riparian vegetation shall be preserved, or, where it does not exist, it shall be restored or allowed to evolve by natural succession;

(2) Dead, diseased, and dying trees may be removed;

(3) Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;

(4) Removal or pruning of invasive shrub and vine species is allowed, provided that such removal or pruning is done in a manner that prevents erosion;

(5) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and to minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below; and

(6) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.

(c) Beyond twenty-five (25) feet from the top of the stream bank to the limits of the required buffer:

(1) Dead, diseased and dying trees may be removed;

(2) Trees 6 inches in diameter or greater, measured 48 inches from the ground, shall be preserved;

(3) Removal or pruning of invasive shrub and vine species shall be allowed, provided that such removal or pruning is done in a manner that prevents erosion; and

(4) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below.

- (5) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.
- (d) Where an existing structure (i.e. building, street, road, bridge, etc.) is located within the buffer, vegetation, not including the ground cover, can be removed within 15 feet of the structure. Removal of additional vegetation can be allowed if required by State or Federal requirements or if necessary for the health, safety or welfare of the City's citizens and approved by the City Engineer.

CHAPTER 11 GARBAGE AND REFUSE

SECTION 11-41. DEFINITIONS

Yard Waste: Any waste that consists of grass clippings, soft plant material, brush and leaves. Tree branches not exceeding two (2) inches in diameter shall also be designated as yard waste.

CHAPTER 18 PARKS AND RECREATION

SECTION 18-9. PARK PROPERTY-PROHIBITED ACTS.

At all times while upon property owned and/or operated by the Winchester Department of Parks and Recreation, patrons shall adhere to the Rules and Regulations promulgated by the Parks and Recreation Department and the Parks and Recreation Advisory Board.

Failure to adhere to these Rules and Regulations may result in immediate eviction from park property.

In addition to any penalty imposed by applicable law, any patron who fails to cease and desist a prohibited act or leave park property upon notification by a City employee or law enforcement officer, shall be subject to a criminal charge for trespass.

Such prohibited acts shall include the following:

Prohibited acts--Generally. The following shall be the general prohibited acts:

...

3. Removal of natural resources. No person in a park shall dig or remove any sand, soil, rock, stones, water, trees, shrubs, fruit, flowers or plants, downed timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency.

...

Prohibited acts--Trees, shrubbery, lawns. The following shall be the prohibited acts for trees, shrubbery, lawns, etc. on park property:

1. Injury and removal. No person in a park shall damage, cut, carve, transplant or remove any tree or plant or injure the bark, or pick the flowers or seeds of any tree or plant; nor attach any rope, nail, wire, or other contrivance to any tree or plant; or dig in otherwise distributed grass areas, or in any other way injure or impair the natural beauty or usefulness of any area.
2. Climbing trees, etc. No person in a park shall climb any tree or walk, stand, sit or attach any rope or cable or other contrivance upon monuments, vases, fountains, railings, fences, buildings, or upon any other property not designated or customarily used for such purposes.

...

(Ord. No. 2011-16, 7-12-11)

CHAPTER 29 UTILITIES

ARTICLE II. WATER

DIVISION 1. GENERALLY.

SECTION 29-32. DECLARED WATER SUPPLY EMERGENCY; MANDATORY CONSERVATION; PENALTIES

(a) In the event the Common Council ratifies a declaration of a local emergency within the City, as required by Section 44-146.21 (a) of the Code of Virginia, 1950, as amended, and such declaration is caused by a water supply shortage within the City, then the following provisions shall take effect at the time of such ratification and shall remain in effect throughout the duration of the declared emergency:

1. The watering of trees, shrubbery, lawns, or any other vegetation from City water supplies shall be prohibited.

...

CHAPTER 30 VEGETATION

ARTICLE II. TREES ON PUBLIC PROPERTY

DIVISION 1. GENERALLY

SECTION 30-16. VIOLATIONS OF ARTICLE.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a Class 4 misdemeanor. In addition, wherever the words "City Manager" shall appear in this Article, they shall be deemed to include the City Manager's designee. (Ord. No. 020-2001, 5-8-2001)

SECTION 30-17. ISSUANCE AND EXPIRATION OF PERMITS REQUIRED BY ARTICLE; APPEALS.

- (a) All permits required by this article shall be issued by the City Arborist. Any and all such permits shall expire at such time as may be designated therein.
- (b) The City Arborist shall advise the applicant and the City Manager, or his designee, in writing of his decision to issue or deny any permit required by the Article. Any original permit applicant aggrieved by the decision of the City Arborist to issue or deny any such permit shall have the right to appeal the decision to a panel comprised of the City Manager and two members of the Environmental Sustainability Taskforce, WINCHESTER CODE as described in Section 30-32, by advising the City Manager's Office in writing within ten (10) days of the date of the City Arborist's decision. (Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-18. PERMIT TO PLANT.

It shall be unlawful for any person to plant any tree in any street, park, public place or public grounds of the City, without first having obtained a written permit therefor from the City Arborist, who may, at his option, consult the Environmental Sustainability Taskforce, setting forth the variety thereof and the location where the same may be planted, and without in all respects complying with the conditions and terms of such permit. (Code 1959, §19-9; Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-19. PERMIT FOR ATTACHMENTS, SPRAY, TRIM, ETC.

It shall be unlawful for any person, without first having obtained a written permit from the City Arborist, who may, at his option, consult the Environmental Sustainability Taskforce, to attach any wire, insulator, rope, sign, poster, handbill or other thing or substance on, spray or otherwise treat or trim any living tree or any part thereof any tree growing in any street, park or public place or grounds or on any guard or protection device of such tree. (Code 1959, §§19-1, 19-12; Ord No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-20. REPEALED.

(Ord. No. 2009-30, 10-13-09)

SECTION 30-21. PERMIT FOR CUTTING AND REMOVAL.

(a) No cutting, meaning removal and/or destruction, of any live tree in any street, park, public place or grounds in connection with the work of any City department or agency of the City, other than the City Manager, or of any public service corporation or other person having a right to use the street, park, public place or grounds shall be done except upon issuance of a permit and in such manner as directed by the City Arborist, who may, at his option, consult the Environmental Sustainability Taskforce before directing such work to be performed or issuing any permit for same.

(b) Cutting, removal, or destruction of any live tree in any street, park, or public place or grounds that is done in connection with the work of any City Department or agency of the City as authorized by the City Manager or of any public service corporation or other person having lawful a right delegated by Common Council to use the street, park, public place or grounds and cut or remove trees in connection with said use, shall be exempted from the permit requirements of Section 30-21(a).

(Code 1959, §19-11; Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-22. REMOVING OR DAMAGING PROTECTIVE DEVICES.

It shall be unlawful for any person to remove, injure or misuse any guard or device placed or intended to protect any tree growing in any street, park or public place or grounds.

(Code 1959, §19-2)

SECTION 30-23. PROTECTION DURING BUILDING OPERATIONS.

In the erection, alteration or repair of any building or structure, the owner thereof shall place, or cause to be placed, in accordance with the directions of the City Arborist, who may, at his option, consult the Environmental Sustainability Taskforce, such guards around nearby trees in the streets or public places or grounds as shall effectively prevent injury to such trees.

(Code 1959, §19-14; Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-24. OBSTRUCTING FLOW OF WATER AND AIR TO ROOTS.

It shall be unlawful for any person to place or maintain in a street or public place or grounds, any stone, cement or other substance which shall impede the free entrance of water and air to the roots of any tree.

(Code 1959, §19-3)

SECTION 30-25. DESTRUCTION OF TREES, SHRUBS, ETC.

It shall be unlawful for any person to pick, pull, pull up, tear, tear up, dig, dig up, cut, break, injure, burn or destroy, in whole or in part, any tree, shrub, vine, plant, flower or turf found, growing or being upon any land reserved, set aside or maintained by the City as a public park, or as a refuge or sanctuary for wild animals, birds or fish without having previously obtained the permission in writing of such other or his agent or of the superintendent or custodian of such park, refuge or sanctuary so to do, unless the same be done under the personal direction, such superintendent or custodian of such park, refuge or sanctuary.

Any person violating this section shall be guilty of a Class 3 misdemeanor; provided, however, that the approval of the superintendent or custodian of such park or sanctuary afterwards given in writing or in open court shall be a bar to further prosecution or suit.

(Code 1950, §18.1-178; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 757.)

State Law Reference--Similar provision, Code of Virginia, §18.2-140.

DIVISION 2. ENVIRONMENTAL SUSTAINABILITY TASKFORCE AND CITY ARBORIST

SECTION 30-31. CITY ARBORIST

The City may employ a person or private contractor to serve as the "City Arborist". The City Arborist shall provide recommendations to the City Manager with regard to the removal of existing trees in the City of Winchester, planting and maintenance of tree in the City, and other matters for which it may be deemed that his knowledge, training, and experience could be of benefit to the City of Winchester.

(Ord. No. 2009-30, 10-13-09)

SECTION 30-32. ENVIRONMENTAL SUSTAINABILITY TASKFORCE CREATED; COMPOSITION; APPOINTMENT AND TERMS OF MEMBERS; FILLING VACANCIES.

(a) There is hereby created an Environmental Sustainability Taskforce that will assume all of the duties and functions previously assigned to the Tree Commission and the Natural Resources Advisory Board, both of which are hereby disbanded. The Environmental Sustainability Taskforce will be composed of seven (7) members, six (6) of whom shall be residents of the City appointed by Common Council. Initially, three (3) of the members shall be appointed to serve until December 31, 2015, and three (3) to serve until December 31, 2017. Thereafter all members shall serve for a term of four (4) years or until their successors take office. The City Arborist or other designee of the City Manager, shall serve as the seventh full voting member. The City Manager may remove and replace his designee at his discretion.

(b) With the exception of the City Manager's designee, who may be appointed, removed, or replaced as described in paragraph (a), vacancies occurring on the Environmental Sustainability Taskforce other than through the expiration of term shall be filled for the unexpired term by the appointment of Common Council.

(c) During the pendency of appointment to fill a vacancy as described in paragraph (b), the City Manager may appoint an interim member of the Environmental Sustainability Taskforce who shall serve until such time as Common Council makes an appointment to fill the vacancy as described in paragraph (b).

(d) In accordance with Section 30-17, within thirty (30) days of receipt of a written appeal of a decision by the City Arborist regarding the issuance of a permit pursuant to this Article, the Environmental Sustainability Taskforce shall review the City Arborist's decision and render a final written decision to sustain, reject, or modify the decision made by the City Arborist. Such determination by this committee shall be issued within thirty (30) days of review by the committee and shall be final and unappealable. The meetings of the committee convened pursuant to this section shall be an open public meeting. The City Manager or his designee shall appoint a secretary for such meetings who shall be responsible for recording minutes and ensuring that proper public notice is issued for any meetings of the committee. The City Manager or his designee shall also ensure that the City Attorney or his designee is provided with proper notice to attend the meetings to provide necessary legal advice as needed by the committee.

(Code 1959, §19-4; Ord. No. 001-80, 1-8-80; Ord. No. 2013-34, 11-12-13)

SECTION 30-33. MEMBERS NOT COMPENSATED.

All members of the Environmental Sustainability Taskforce shall serve without compensation.

(Code 1959, §19-4; Ord. No. 001-80, 01-08-80; Ord. No. 2013-34, 11-12-13)

SECTION 30-34. ORGANIZATION; ELECTION OF OFFICERS; QUORUM.

The members of the Environmental Sustainability Taskforce shall, immediately after their appointment, meet and organize. They shall elect a chairman, a vice-chairman and such other officers as they may deem necessary. A majority of the members of the Environmental Sustainability Taskforce shall constitute a quorum for the transaction of business.

(Code 1959, §19-5; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-35. POWERS AND DUTIES.

The Environmental Sustainability Taskforce is an advisory board created to identify ways to reduce the impact of the City of Winchester on its environment, to encourage environmental stewardship and education among residents, to encourage collaboration among various entities in the Shenandoah Valley to preserve the environment, and to suggest areas for policy recommendation to the City Manager and City Council. The Taskforce also assumes the responsibilities of the former Tree Commission and Natural Resources Advisory Board with respect to permits and appeals as described in Chapter 30 and may be called upon to render advice to the City Arborist and City Manager regarding the planting and preservation of trees in the City of Winchester. This board serves in an advisory capacity only and possesses no adjudicatory, executive, or legislative powers.

The Environmental Sustainability Taskforce, at the request of the City Arborist or of the City Manager, shall provide advice and expertise regarding the trees now standing or hereafter planted on the streets, parks, public places and public grounds of the City. It shall have the duty to render advice and assistance to the City Arborist, at his request, as to the planting, trimming and removing of such trees and to provide advice and expertise to the City Arborist, at his request, as to the issuance of permits therefor.

(Code 1959, §19-6; Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-36. RECOMMENDATIONS TO COUNCIL.

The City Arborist, through the City Manager, shall, on or before March 1st of each year, recommend to the Council such regulations as may be necessary for the proper preservation and protection of trees and the improvement of any public park, public place or public grounds, to specifically include recommendations for planting and maintenance of such trees. The City Arborist may consult with the Environmental Sustainability Taskforce in formulating his annual recommendations as deemed necessary by the City Arborist.

(Code 1959, §19-7; Ord. No. 020-2001, 5-8-2001; Ord. No. 2013-34, 11-12-13)

SECTION 30-37. INTERFERING WITH ARBORIST, TASKFORCE OR CITY.

It shall be unlawful for any person in any way to interfere, or cause any person to interfere, with the City Arborist, the Environmental Sustainability Taskforce, or any employee of the City of Winchester, its agents or employees while planting, spraying, removing or otherwise caring for and protecting any tree in any street, park, public place or grounds.

(Code 1959, §19-13; Ord. No. 2013-34, 11-12-13)

ARTICLE III. GRASS, WEEDS AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY

SECTION 30-49. DEFINITIONS.

For the purpose of this article, the following words shall have the meanings respectively ascribed to them by this section:

Growing Season: Time period beginning April 20th and ending October 29th.

Source: Vegetable Planting Guide and Recommended Planting Dates, Virginia Cooperative Extension Publication 426-331.

Owners: Persons holding title to any land or lot in the City; lessees, tenants and principal occupants of any land or lot in the City or agents of persons holding title to such lands or lots, and agents of persons having care, custody, control or management of the land or lot; and fiduciaries holding title to or having the care, custody, control or management of land or lots in the City for others.

Weeds: Wild or uncontrolled growth or vegetation of every kind standing on land, other than trees, ornamental shrubbery, flowers and garden vegetables.

(Code 1959, §1-5; Ord. No. 049-95, 10-17-95; Ord. No. 2013-38, 12-10-13)

SECTION 30-50. DUTY OF PROPERTY OWNERS TO CUT.

(a) Owners of property within the City shall not allow grass, weeds and other foreign growth thereon to exceed ten (10) inches in height. All grass, weeds and foreign growth on a one hundred (100) feet by one hundred (100) feet or smaller lot or acreage must be cut. In case of a larger lot or acreage, all grass, weeds and foreign growth thereon must be cut a distance of one hundred (100) feet from all adjoining property lines.

(b) Any owner who violates any provision of this section shall be subject to a civil penalty of Fifty Dollars (\$50.00) for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of

operative facts within twelve (12) months of the first violation shall be Two Hundred Dollars (\$200.00). Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of Three Thousand Dollars (\$3,000.00) in a twelve (12) month period.

(c) Violations of any provision of this section shall be a Class 3 misdemeanor in the event three (3) civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, with a twenty-four (24) month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

(Code 1959, §11-5; Ord. No. 022-94, 07-12-94; Ord. No. 13-2006, 4-11-06)

SECTION 30-51. NOTICE TO CUT.

Where grass, weeds or other foreign growth in excess of ten (10) inches in height are found upon property, the code enforcement officer, as defined in section 11-2 shall immediately notify the owner of such property to cut such grass, weeds, or other foreign growth down to a height not to exceed three (3) inches. One written notification per growing season to the owner shall be considered reasonable notice for this article provided it is made by the same procedure as set forth in Section 11-37 of this Code.

(Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 029-91; 6-11-91; Ord. No. 022-94, 07-12-94; Ord. No. 028-97, 10-14-97; Ord. No. 2013-38, 12-10-13)

SECTION 30-52. CUTTING BY THE CITY.

(a) If grass, weeds, or other foreign growth have not been cut within ten (10) days from the date the notice provided for in Section 30-51 is sent, the code enforcement officer, as defined in section 11-2 shall cause the cutting by the City's forces or the City's agent of such grass, weeds or other foreign growth forthwith.

(b) Where grass, weeds or other foreign growth have been cut by order of the code enforcement officer pursuant to the provisions of this section, the cost of such cutting and a Fifty Dollar (\$50) fee to offset the administrative expenses shall be billed to the owner of the property. If such bill is not paid, it shall be added to the City real estate tax bill on such property and shall be a lien on such property to the same extent and effect as such real estate tax is.

(Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 029-91, 6-11-91; Ord. No. 022-94, 07-12-94; Ord. No. 028-97, 10-14-97; Ord. No. 2013-38, 12-10-13)

State Law References--Authority of city to require cutting or removal of weeds and other foreign growth, Code of Virginia, §§15.2-0-1, 15.2-1115, §15.2-1429(penalty)



CITY OF WINCHESTER, VIRGINIA

Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
540-667-1815
TDD 540-722-0782

TREE LIST

Applicants are encouraged to propose a variety of trees to reduce impacts caused by diseases to any one species and to promote an interesting landscape.

Trees that are recommended and credited toward required planting within the City per section 19-5-6.4 of the City's Zoning Ordinance

Red Maple – *Acer rubrum*
Sugar Maple – *Acer saccharum*
River Birch – *Betula nigra* (single-trunk only)
Catalpa – *Catalpa speciosa*
Katsura Tree – *Cercidophyllum japonicum*
Yellowwood – *Cladastris kentukea*
Green Ash – *Fraxinus pennsylvanica*
Thornless Honey Locust – *Gleditsia triancanthos inermis*
Sweetgum – *Liquidambar styraciflua*
Tulip Poplar – *Liriodendron tulipifera*
American Sycamore - *Platanus occidentalis*
London Plane Tree – *Platanus x acerifolia*
Callery Pear – *Pyrus calleryana* ('Aristocrat' etc, but not Bradford)
Bur Oak – *Quercus macrocarpa*
Willow Oak – *Quercus phellos*
Red Oak – *Quercus rubra*
Scarlet Oak – *Quercus coccinea*
Pin Oak – *Quercus palustris*
American Linden – *Tilia americana*
Littleleaf Linden – *Tilia cordata*
Japanese Zelkova – *Zelkova serrata*

Trees not credited toward required planting within the City and prohibited from planting within public rights of way

Any species of elm (any member of the genus *Ulmus*)
Silver Maple – *Acer saccharinum*
White Mulberry – *Morus alba*
Tree of Heaven – *Ailanthus*
Bradford Pear

Trees not credited toward required planting and not allowed within public medians less than 15' wide nor within 10' of off-street parking or sidewalk areas due to low branching

Dogwoods
Cherry
Crabapples
any multi-trunk and/or low branching trees

APPROVED: DECEMBER 21, 1993 BY CITY TREE COMMISSION