CHARLOTTE

Charlotte City Council

# Environment Committee

Meeting Summary for May 24, 2010

## COMMITTEE AGENDA TOPICS

**I. Subject: Coca-Cola "Recycle and Win – Bigger and Better" Proposal**

Action: Committee voted to recommend approval of the Coca-Cola "Recycle and Win – Bigger and Better" Proposal to the full Council. Motion passed unanimously 4-0 (Peacock, Carter, Dulin and Howard – for)

**II. Subject: Proposed Revisions to the Tree Ordinance**

Action: None.

**III. Subject: Next Meeting – Special Called**

Action: Monday, June 7 at 11:00 a.m. in Rooms 270/271

## COMMITTEE INFORMATION

Present: Edwin Peacock, Nancy Carter, Andy Dulin, and David Howard
Absent: Susan Burgess
Time: 3:45 p.m. to 5:15 p.m.

## ATTACHMENTS

1. Agenda Package
2. Presentation: Proposed Tree Ordinance Revisions

# DISCUSSION HIGHLIGHTS

**Committee Discussion:**

Committee Chair Edwin Peacock welcomed everyone to the meeting and asked those around the table to introduce themselves.

## I. Coca-Cola "Recycle and Win – Bigger and Better" Proposal

Julie Burch advised the Committee that she would turn the discussion immediately over to Victoria Garland. And, that if Council is ready to approve the proposal, staff is ready as well.

Ms. Garland reminded the Committee the 2009 Recycle and Win program was very successful and staff believes this new promotion will be helpful following the new rollout container program starting in July. The second phase of the Coca-Cola program will only be six months, but the prize will increase to $100. They plan to distribute 175 prizes, but instead of basing them on North, South, East and West they will be divided into days of the week to mirror the new collection schedule. The prize patrol will be out every week and our service provider is aware of the newest program. Staff is looking forward to this program. It will start on October 4, 2010, which is roughly 90 days after starting single-stream. It will be a good opportunity to re-educate folks and help us. There are no operating increases, the vendor picks up the costs. So, this really is a great partnership.

Peacock: Are there any questions? Mr. Bailey, do you have anything to add?

Bailey: Just that we are grateful to be back and excited about merchandising this with the rollout of single-stream.

Peacock: Are we the first single-stream community you've worked with?

Bailey: Yes.

Dulin: Why is this six months instead of a year? And, will you be back to us in four and half months to extend this program in the future?

Bailey: We think six months is the best time to try and capture folk's attention. We plan to take a break at the end of the six months and probably come back in the future and ask for your feedback.

Dulin: Will you be sending out new stickers?

Garland: Yes, and they are much larger. They will go on the side of the container. And, folks can still use the red bins, so there will be stickers for both.

Patient: There is an opportunity to re-educate folks about what can be recycled on the sticker.

Dulin: So, if you've been assigned a new container, but want to continue using the red bins you can and then the green rollout container will be picked back up?

Garland: You will receive a green cart, unless you opt out of the program. If you received the cart, but want to opt out you can call 311 for pick up. We've picked up about 8,000 containers and the RFDI readers have scanned those carts out of service. They will be reused before ordering any more.

Peacock: Will you all identify yourselves for the record.

**Jim Bailey, Red Moon Marketing**
**Alison Patient, Coca-Cola Consolidated**

Dulin: I will make a motion to proceed as described for six months with the Coca-Cola Recycle and Win – Bigger and Better campaign.

Howard: Second.

*Motion passes unanimously (Peacock, Carter, Dulin, Howard – for)*

Peacock: What is the schedule?

Garland: This will be on a June agenda.

Dulin: Quick question regarding the chips. For the record, we are not trying to track what people are recycling, this is so we can do business better. There are 216,000 new carts, so this helps track inventory.

Garland: Correct. Now we have a visual way for staff to track inventory without having to ride around. This is a large asset. It will also ensure the vendor did service the can.

Dulin: I know there is no sense in tracking participation, but the City said we'd be able to tell if folks were not participating. We need to educate folks how to better recycle.

Garland: Yes, we need to educate folks so we get as much volume as possible. We will be able to tell where we are getting the lowest participation.

Carter: I think this is an opportunity to get the district reps closely involved to help engage citizens. Could you forward that information to us?

Garland: We'd be happy to.

## II. Proposed Revisions to the Tree Ordinance

Ms. Burch advised the Committee that staff would be presenting the final recommendations to the Tree Ordinance today and turned the meeting over to David Weekly.

Mr. Weekly referred the Committee to the handouts in the agenda package [copy attached]. The first page is an overview of what staff plans to discuss: review highlights; chronology of events; proposed revisions – consensus items, grandfathering, most controversial items; path forward; and attachments. Mr. Weekly then began a powerpoint presentation [copy attached].

**[Urban Ecosystem Analysis – Slide]**

Mr. Weekly said the chart shows the County was within the appropriate range in 2008 and it appears to have been effective in minimizing losses. That is good news, the bad news is there is still a downward trend. The revisions staff is proposing to the tree ordinance has some housekeeping items, but also some items that should impact the tree canopy and hopefully to level out the graph. Staff will be back with a recommended goal in the future.

Dulin: The chart shows downward trends in Mecklenburg County and Charlotte but those are continued with dashed lines, so are those just guesses?

Weekly: It is an estimation of the two points of the line extending out to 2010.

Dulin: But, we are doing things already so in the future we could stop the trend? We have jacked the budget for tree replacement, so we are taking some positive steps, but the slide seems to point to bad news.

Weekly: The reports from the Urban Ecosystem Analysis show 50% tree loss from 1985 to 2008. We have looked at lower resolution satellite imagery in the past, but with this report we were able to use higher resolution imagery, so it is accurate. We feel comfortable with what have shown as a net loss.

Dulin: In 1935 Dilworth was a cattle farm, as was Myers Park and we wouldn't trade developing the city for saving trees. We couldn't have built SouthPark. There were whole forests when we built I-485. Then, we had the ice storm in 2003 and lost 80,000 trees, which was an act of God. We lost trees in Hugo. We are committed to putting trees back.

Weekly: Now, we have a more scientific approach to managing the canopy with losses and gains.

Dulin: The report just seems doom and gloom and I think we are being proactive.

Weekly: We certainly don't mean to be doom and gloom. There is good and bad news here.

Howard: Has someone looked at the correlation between population growth and the tree canopy? Is that something we've really worried about? I think population growth affects the tree canopy. I don't want to add to the load, but is there data out there or just development trends?

Weekly: There is definitely a correlation with development.

Howard: Would the line be as steep if we had the time but not the population? We can deal with development. How is population planned? At what rate is that affecting the shrinking tree canopy?

Peacock: I had to leave right after American Forests presented. Did they answer any of those questions?

Howard: What are we trying to deal with? People moving here or how we develop?

Carter: And, businesses too, warehouses and industrial.

Peacock: Rick Roti is here and he gave the presentation.

Roti: There are local studies that show as the population grows land consumption goes up about 4%. And, as you grow sprawling, you take up more trees.

Howard: So, it's not just population, but there are other factors to losing trees.

Peacock: Was this summarized information presented to the subcommittee and stakeholders?

Weekly: The stakeholders only.

Peacock: So, are you just hearing this information today or it just so happened you had the information?

Roti: I think everyone was very well-informed and no one was overly surprised.

Porter: I agree. After 3 ½ to 4 years down the road, there were no surprises.

Mr. Weekly quickly reviewed the **Chronology of Events** and the **Proposed Revisions to the Tree Ordinance 2007 Consensus Items** [copies attached]. The first consensus item was the biggest issue.

**[Current Tree Protection – Slide]**

Howard: Is this just for trees around the edges?

Weekly: Around buildings and the street.

**[Topography Challenges – Slide]**

Carter: Have we tracked the intervention of trees in detention ponds? We have seen what erosion does. Is there a correlation between roots and the walls?

Johnson: We don't plant on embankments because roots will cause the walls to fail.

Howard: You did not want to just save part of it?

Johnson: There is an overlay with the undisturbed buffers, so that double counts. Swim buffers are part of the tree save.

Howard: Why?

Weekly: Because it is currently in the set-back.

Howard: What about open space?

Johnson: If it is a natural area, it can double as the tree save.

Carter: If it has trees.

Johnson: Yes.

Howard: What if it's an open field?

Johnson: If it's open, they would need to plant trees to meet the 15%. It's at their discretion.

Howard: So, it's 15% of the site no matter what.

Weekly: That is why the second item was the next most significant because of trees in parking lots.

Dulin: I had some questions early on related to this based on personal experience, but I'm now okay with the 40'.

**#8 Define distance from utility rights of way and tree save areas – Consensus Item**

Howard: This is for new stuff, not the existing right-of-way utilities has now?

Weekly: It defines how trees can be used in easements.

Howard: Will you let Duke know once this has been adopted?

Weekly: Now there is nothing allowed. But, there is a Duke representative on the Committee, who is also here today.

Peacock: All thirteen of these began the process that was brought forward first in 2010?

Weekly: In 2010 to meet the regulations, we provided some options.

**Proposed Revisions to the Tree Ordinance 2010 Consensus Items**

Mr. Weekly stated that after the cost/benefit analysis report recommendations was produced the stakeholders went through and discussed each item. They looked at the analysis and proposed solutions.

Howard: With the greenway, it only works if it is donated by the developer, but if you are donating to greenways, then are you allowing the easement?

McLaren: You get credit or you give your property trees.

Porter: It should be a capital "G" for greeway. It is your land, so you can create a tree save or you can give it away to the County if you can't do things on your land.

Carter: This works if trees are saved for the Greenway.

Johnson: That is the intent. The language says Mecklenburg County Park & Rec will work with City staff. So, trees won't be lost, it is a partnership.

**[Allow Greenway trails to be constructed in tree save areas – Slide]**

Peacock: So, the process is to evaluate the site, but provide more flexibility to accomplish preserving as many trees on the site as possible?

Johnson: That's right.

**Chart: Tree Save Requirements and Exceptions for Commercial Development (Section 21.94)**

Peacock: Are these examples like the Home Depot site? When we talked about doing the cost/benefit analysis we made a point of saying to the group

look at as many examples as possible and come up with an actual cost and actual benefit. This was after the industrial groups came to us.

Weekly: That's what the subgroup did.

Johnson: There were 13 total sites and all with a different land use.

Peacock: So, you looked at industrial?

Weekly: Yes.

Peacock: Were the top five choices the result of that?

Johnson: We took industrial out of the top row to give them more flexibility.

Peacock: That's what everyone agreed upon?

Carter: One thing that hasn't been discussed is what happens after you approve the tree save and then they cut trees down?

Johnson: Once the site is approved and constructed we go back at one year, two years, and five years to check. There are some scenarios where violations happen, but sooner or later they are found out.

Carter: With easements etc., the tree canopy is over streets, but have we taken away street trees with these exceptions?

Johnson: No.

Weekly: That is referenced in the footnote. The perimeter tree requirements must still be met.

**#5 – Allow options for tree save requirements for Industrial zoned sites**

Dulin: John Porter, do you want to add anything to number five?

Porter: Number five is correct as to what the group agreed too. Number two also bears directly with industrial. It is a significant piece of the ordinance.

Council member Peacock reminded the Committee they needed to be finished by 5:00 p.m. and asked that all questions and comments be held until the end of the presentation.

**Consensus on Grandfathering**

This statement was prepared by the Attorney's office and covers any rezoning or development that is approved before the ordinance kicks in.

**2010 Non-Consensus Items**

1) Address tree save requirements for redevelopment (additions to existing sites). There are three triggers for this requirement. And, it is challenging to meet the tree save on redevelopment. Staff's recommendation is actually a variation of Options A and B, not B and C as noted.
2) Address how to calculate payment in lieu. The staff recommendation is Option A because it keeps the majority of trees onsite. You could get more by opting out, but the goal is to keep trees onsite. There is also a concern that with off-site mitigation we end up with a ring around the County. So, that is something staff will have to closely monitor.

**Path Forward**

Carter: Is the assessment done pre-developed or post-developed?

Weekly: We just look at the property, not the buildings.

Carter: With the in-lieu, it is crucial to me that trees be replanted in the area. I am ready to vote today.

Dulin: I still have questions. Number six on page five, I'm thinking about redevelopment. There are some places that desperately need redevelopment, like Upton's at Eastland Mall. But, there are no trees there. That could make redevelopment more expensive.

Weekly: Upton's was a tear-down, so that is actually new development. It is not correct on the chart, we need to change that. It's only if they are adding to what is on the site that the ordinance kicks in.

Dulin: If redeveloping the Upton's site or even Eastland Mall isn't redevelopment, then what is it?

Weekly: If it is a tear down, that is a new building.

Dulin: 1,000 square feet is not that big. If you are adding a small 1,000 square feet to a building that kicks in the entire ordinance?

Weekly: This would be for projects being developed under the new ordinance. If a project is built in 2012 it would be subject to the tree save using the chart. In 2022 if it is redeveloped adding 1,000 square feet must establish the 15%. They might just need to maintain what was already built in the set back. They have to maintain it today.

Dulin: I hate to rush this and number six just kind of popped up for me. On page seven, I think "B" is the better option.

Weekly: We didn't go over the votes, but payment in lieu was 4-4. With payment in lieu regarding the open space, we are also going with the appraised value and not the tax value. That keeps it more in line with the Post Construction Controls Ordinance.

Dulin: But, the PCCO is pushing people out.

Weekly: These are options and not requirements. Consensus had been reached, but there was no decision on payment in lieu when this was discussed. So, we reached agreement without payment in lieu being handled.

Dulin: If we moved the staff recommendation from A to B that would be helpful, but I'm still not comfortable with item six. I'm willing to consider it though.

Peacock: I have a question about the façade trigger. If someone is redeveloping in-town like NoDa or on the Plaza and are getting rid of the façade of an ugly building, why are they penalized?

Johnson: When we were discussing triggers for the tree ordinance, we attached it to pulling permits. Pulling <u>all</u> permits is too broad, so we need smaller thresholds and that fit.

Weekly: When we went back to the old sites and the required data to comply, a lot of these were shot down.

Peacock: I don't want this to be heavily debated again, I just know like the façade change for Myers Park Hardware, that was such a small amount, maybe $20,000.

Johnson: That just happened, it didn't trigger the ordinance.

Weekly: This item was heavily debated.

Johnson: It has been a past policy for several years.

Peacock: Option C references a hybrid solution for hardship. What does that mean?

Weekly: The requirement to save up to 15%. If there are requirements that cause you do some other improvements and that includes removing trees, we won't force the issue.

Peacock: In Section 21 it mentions effective date? Is that the effective date of the ordinance?

Weekly: Yes, we will be inserting the date. We are proposing January 1, 2011.

Peacock: It seems like Option A in 21.94 doesn't match up.

Weekly: Section 4 is really Section 3. And, the payment in lieu will be defined. We'll go back and check on this.

Peacock: There is an understanding that we need to finalize this. Option 1 is to revisit this with all the changes at our next meeting. Option 2 is to call a separate meeting in a couple of weeks.

I also received from staff other American Forests reports: 2009 Albuquerque, 2009 San Antonio and Belleview, WA. I wanted to see how other cities who have lost their tree canopies are struggling with how to coordinate with an effective ordinance. I understand the basic figures and have read the reports which seem like bad news but in reality there is another context. I also noticed the amount of detail in these other reports was substantially more with charts to break down further. Why?

Roti: Due to the economic downturn, there was no money initially, so this was completed with a grant. Since there was little money, the scope had to be cut down. But, you have the data and the software, so you could produce those reports any time.

Howard: With the percentage, what is the dollar amount?

Dulin: It's the percentage of the tax value versus the appraised value versus $40,000 to $50,000. Whichever seems more economical to the person paying the bills.

Howard: It could be high then.

Peacock: Is it no more than $40,000 to $50,000?

Weekly: It's the average value of the land purchases by Park & Rec.

Dulin: Or the percentage?

Weekly: It is confusing. On a 10 acre site, it's 1.5 acres so it could be $50,000 for the area or $75,000 payment in lieu.

Dulin: That's why I'm against Option A.

Howard: But, they didn't agree on Option A.

Porter: The percentage is a problem for certain areas of land. You could be penalized for the 15% if you have something like 1.5 acre field. You might plant ¾ of the acre, but have ¾ left to apply against the dirt. It could be a huge number due to the density in some parts of our community. Is a tree worth more here than someplace else in Mecklenburg County? You could pay significantly more than $40,000 or $50,000 or $60,000. This is significant for a number of people.

Buchanan: This was not the subject of our discussion.

Howard: Do you find this normally done as payment in lieu in other cities?

Weekly: No, and we also have the Post Construction Controls Ordinance, so there are options related to that too. If the PCCO is applied for natural areas, then payment in lieu is not used for BMPs.

Burch: Council member Howard, are you asking for more information on that?

Howard: Yes.

Dulin: What about new development in TODs like the Northeast Corridor?

Weekly: TODs are exempt.

Johnson: And, that is a ½ mile radius.

Dulin: I don't want to push this, but it is interesting the new condo projects have exemptions. So, no condos have tree saves. That will be interesting to see. I would hate to see this body get stuck out there on exemptions.

Burch: As for the **Path Forward** on page nine, your next meeting is June 28.

Peacock: I know this is a lot to digest today, but we are going into summer schedule and I would like to see us conclude this.

Howard: I would make a motion today. I know we have more to discuss, but we can do that from the Council level.

Burch: The recommendation would be for a formal public hearing and then this could come back to the Committee or not.

Dulin: I don't understand A or B or redevelopment on page six and this is adding costs.

Carter: We want to do this right.

**Next Meeting – Special Called**

The Committee agreed to call a special meeting with the Tree Ordinance as the only subject for **Monday, June 7 at 11:00 a.m. in Rooms 270/271**.

Meeting Adjourned

# Environment Committee

Monday, May 24 at 3:45 p.m.
Charlotte-Mecklenburg Government Center
Room 280

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|---|---|
| Committee Members: | Edwin Peacock, Chair<br>Nancy Carter, Vice Chair<br>Susan Burgess<br>Andy Dulin<br>David Howard |
| Staff Resources: | Julie Burch |

## AGENDA

**I. <u>Coca-Cola "Recycle and Win – Bigger and Better" Proposal</u>**
*Staff Resources: Victoria Garland, Gerry Gorbey, Solid Waste Services*

The Coca-Cola partnership proposal was introduced to the Committee at the March meeting. <u>Attached</u> is an overview of the proposal, which is very similar to the 2009 partnership. With Committee approval, Council will be asked to authorize the City Manager to execute a six-month partnership agreement with Coke, beginning October 4, 2010.

**II. <u>Proposed Revisions to the Tree Ordinance</u>**
*Staff Resources: David Weekly and Tom Johnson, Engineering and Property Management*

Final stakeholder and staff recommendations for changes to the ordinance will be presented for consideration by the Committee. <u>Attached</u> is a summary of the stakeholder process, final recommendations, and draft ordinance language.

**III. <u>Next Meeting</u>**
Monday, June 28, 2010 at 3:45 p.m. in Room 280

| | | | |
|---|---|---|---|
| Distribution: | Mayor/City Council | Curt Walton, City Manager | Leadership Team |
| | Mac McCarley | Stephanie Kelly | Environmental Cabinet |

# Program Overview

## Coca-Cola "Recycle and Win – Bigger and Better"
## May 20, 2010

Coca Cola Consolidated has approached the City with a proposal to conduct a second recycling promotional program throughout Mecklenburg County, similar to the "Recycle and Win" program that was conducted in 2009. As before, the intent of the program would be to educate and expand citizen participation in residential recycling.

**Timing:** October 4, 2010 through March 31, 2011 (6 months)

**Market:** All of Mecklenburg County, including the City of Charlotte, the towns and unincorporated areas.

**Partners:** Coca-Cola
Harris Teeter
FOX TV
Keep Mecklenburg Beautiful
City of Charlotte
Mecklenburg County

**Policy Implications:**

1. The proposed program would support the City's Environment Focus Area Plan goal to increase annual recycling tonnage by 20% through single-stream recycling for single-family households;
2. The proposed program is consistent with the City Council's adopted Sponsorship Policy.

**Agreement:**

**With Environment Committee approval,** Council will be asked to authorize the City Manager to execute a six month partnership agreement with Coca Cola Consolidated to implement the program. The City's role in this partnership will be the same as in the previous "Recycle and Win" agreement, as follows:

- Provide input and approval of educational materials
- Maintain normal collection schedules
- Provide Coke with routing information to ensure equitable distribution of prizes
- Educate 311 representatives about the program so they can adequately respond to citizen calls

**Costs:**

**There are no out-of-pocket costs to the City to participate as a partner in this program.**

**Communication Strategy:**

The program will be explained and promoted in a variety of ways.

- Direct mailing sent to every single-family household. Includes program details and "Opt-In" sticker to be placed on citizen's cart or bin
- Point of sale materials in Harris Teeter Stores
- Additional stickers available at Harris Teeter Stores
- Kick-off press conference
- Info on City, County and town web sites
- FOX TV television support and web site support
- Harris Teeter and Coca-Cola PR support

**Program Details:**

- Mailing will go out to all residences prior to start of program (Executed by Coca-cola and Red Moon Marketing)
- Mailing packet will include:
    - Resident "opt-in" process explanation
    - Easily detachable opt-in sticker to place on cart or bin. Citizens will be clearly advised that placement of the sticker on their cart or bin grants permission for Coke representatives to visually observe the contents of their recycling cart or bin to determine if the citizen has recycled correctly
    - Educational tips on proper recycling
    - Easily detachable sticker detailing what is and is not recyclable
    - Mechanics of the promotion , how to play and how to win
    - Information phone and internet numbers
    - Specific information explaining single-stream recycling
- Coca-Cola Toyota Prius will be used as "Prize Patrol" car
    - Rewrapped with updated promotional materials
    - Operated by Coca-Cola or Red Moon Marketing personnel
- FAQ lists will be developed and provided to the municipalities and 311
- All art work and promotional materials must be pre-approved by the City

**Winner Selection Process:**

- Winning carts or bins will be randomly selected by "Prize Patrol"
    - Visual inspection verifies proper recycling
    - Winners equitably distributed across City's 5 collection zones (Total of approximately 175 winners in the City of Charlotte)

- Coca-Cola sends notification to the winner by US Mail. Explains process for receiving award
- Coca-Cola qualifies winner and mails gift card prize ($100 Harris Teeter gift card)
- One winner per month is selected to have picture taken and to participate in promos
- Coke will provide regular updates on the number and locations of prize winners

**Key Points:**

- Timing of program reinforces the City's promotional efforts for implementation of Single-Stream recycling
- Provides no-cost recycling educational opportunities
- Complements the City's efforts to increase recycling tonnage by 20%
- The original "Recycle and Win" promotional program conducted in 2009, was well-managed and well-received by the citizens of Mecklenburg County
- The "Recycle and Win" promotional strategy has been embraced and implemented by other municipalities around the country
- Promotional program will run for 6 months, instead of 12 months, and the prize awards will be in the amount of $100 instead of $50
- City staff will provide monthly updates to the City Council on recycling tonnage collected and any operational impacts resulting from the program
- The City or Coke will have the right to terminate the agreement if the other party breaches any term or condition of the agreement and fails to correct such breach within 14 days (same terms as 2009 agreement)

# Environment Committee Meeting
# May 24, 2010

**<u>Urban Ecosystem Analysis:</u>**

**Review highlights**……. Page 2

**<u>Proposed Revisions to the Tree Ordinance:</u>**

**Chronology of Events**……. Page 3

**Proposed Revisions to the Tree Ordinance**
2007 stakeholder consensus items (13)…… Page 4
2010 stakeholder consensus items (6)……. Page 5
Grandfathering consensus item (1)…….. Page 6
2010 non-consensus items/
staff recommendations (2)……. Page 7

**Path Forward**……... Page 9

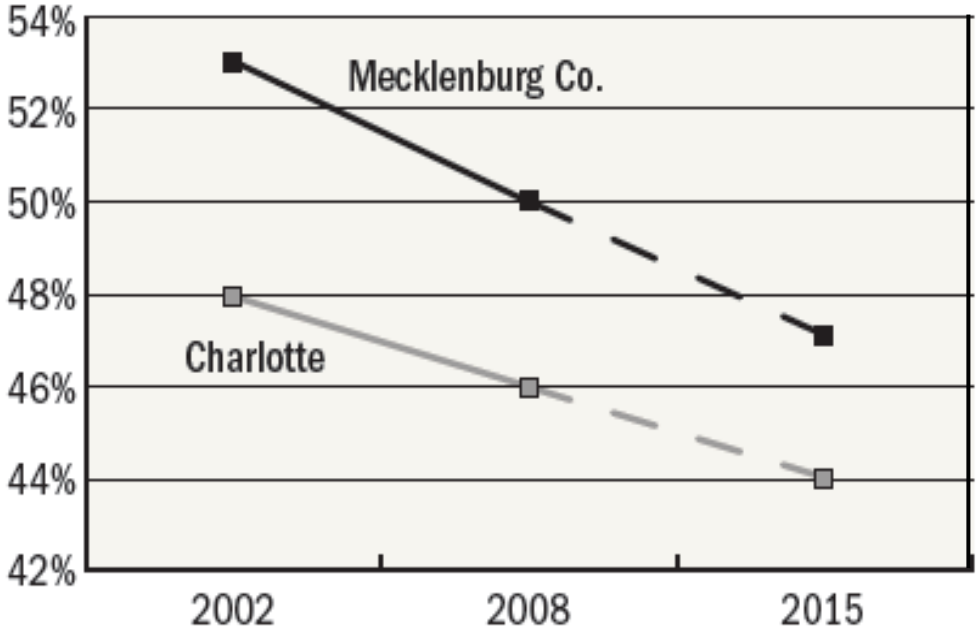
**Attachments**……..Page 10

*Attachment 1: Chart explaining Section 21.94*

*Attachment 2: Draft of Revised Ordinance Language (still under review by the Attorney's Office)*

# Urban Ecosystem Analysis - Highlights

**Figure 1) Percent tree canopy for Mecklenburg County and the City of Charlotte, NC**




**2002**

| | **Total Acres** | **Canopy Acres** | **Population** |
|---|---|---|---|
| **Mecklenburg County** | 349,000 | 184,000 **(53%)** | 746,427 |
| **Charlotte** | 183,000 | 88,000 **(48%)** | 579,684 |

**2008**

| | **Total Acres** | **Canopy Acres** | **Population** |
|---|---|---|---|
| **Mecklenburg County** | 349,000 | 175,000 **(50%)** | 902,803 |
| **Charlotte** | 183,000 | 85,000 **(46%)** | 695,995 |

What do these results tell us?

- The County is within the tree canopy range recommended by American Forests (50-55%)
- The City's tree programs and tree ordinance has been effective in minimizing the loss of trees due to development
- However, net losses between 2002 and 2008 reveal we are losing tree canopy

# Proposed Revisions to the Tree Ordinance
# Chronology of Events

| | |
|---|---|
| Dec. 1, 2005 | Stakeholder Committee formed |
| **Aug. 9, 2007** | **Stakeholder Committee reaches consensus on proposed revisions (see page 4 for list of 2007 consensus items)** |
| June 16, 2008 | Staff meets with Environment Committee and receives questions |
| Sept. 15, 2008 | Staff meets with Environment Committee to answer questions |
| Sept. 22, 2008 | Staff reconvenes Stakeholder Committee to address outstanding issues |
| Oct. 20, 2008 | Staff meets with Environment Committee |
| Dec. 2008 | Staff finalizes tree ordinance language |
| Jan. 2009 | Stakeholder Committee reaches consensus on proposed ordinance language |
| Jan. 12, 2009 | Staff meets with Environment Committee |
| Jan. 20, 2009 | Staff meets with representatives from NAIOP and REBIC to address outstanding issues |
| Jan. 30, 2009 | Staff reconvenes Stakeholder Committee to address outstanding issues |
| Feb. 16, 2009 | Staff meets with Environment Committee. Environment Committee asks Stakeholder Committee to complete a cost/ benefit study |
| Feb. 27, 2009 | Initial Stakeholder Committee cost/ benefit meeting |
| Mar. 27, 2009 | Stakeholder Committee engages Subgroup (development and design community) to assist in development of cost/benefit analysis |
| Sept. 29, 2009 | Staff updates Environment Committee on cost/ benefit analysis |
| Dec. 8, 16, & 21 | Subgroup completes cost/benefit analysis and reports to Stakeholder Committee |
| Jan. 19, 2010 | Staff meets with Environment Committee for a status update |
| Jan. 22, 2010<br>Feb. 4, 11, &18<br>March 4, 12 | Stakeholders meet to discuss subgroup's report and develop consensus |
| March 22, 2010 | Staff meets with Environment Committee for a status update |
| March 25 & 31, 2010<br>April 20 | Stakeholders meet to discuss subgroup's report and develop consensus |
| **April 26, 2010** | **Final Stakeholders meeting. Consensus reached on six proposed revisions plus grandfathering (see pages 5 and 6). Consensus not reached on two proposed revisions. Stakeholders understand that staff will be making a recommendation on these two items (see page 8).** |

# Proposed Revisions to the Tree Ordinance
# 2007 Consensus Items

1. Require 15% minimum tree save in commercial development with flexible options for compliance. This is needed to continue efforts of maintaining an appropriate tree canopy. *(Applicable Section 21.94)*

2. Increase the number of trees in parking lots or increase growing space for trees. This is needed to continue efforts of maintaining an appropriate tree canopy, and to shade parking lots and reduce urban heating. (*Applicable Section 21.96(f)(2)(a)(1))*

3. Ensure that tree save tree save areas are free of invasive species (kudzu, etc.). This protects trees from impacts of invasive plants and vines. (*Applicable Section 21.93 (a))*

4. Require specific distance between trees and site lighting for long term growth and public safety. Ensuring both survivability of trees and lighting for safety. (*Applicable Section 21.96(d))*

5. Require 50% of new trees to be native species and specify diversity within guidelines document. Mono-culture in trees is not sustainable. (*Applicable Section 21.96(c))*

6. Create a minimum distance between tree save areas and the footprint of buildings to ensure trees can be preserved during construction. Tree save is allowed within single family lots and can create conflicts if it is too close to the building footprint. (*Applicable Section21.93 (e))*

7. Allow tractor trailer and bus parking lots to plant the required parking lot trees around the perimeter of parking lots. This measure will resolve conflicts between large vehicles and landscaped areas. (*Applicable Section 21.96(f)(2)(a)(2))*

8. Define distance from utility rights of way and tree save areas. This prevents protected trees from being removed by utility companies after plan approval. *(Applicable Section 21.93(g)&(h))*

9. Define activities allowed in tree save areas such as installation of paths, removal of dead trees and invasive species. Currently those areas are off limits and guidance is needed.( *Applicable Section 21.93(c))*

10. Specify what the tree ordinance triggers are for redevelopment and when compliance is required. *(Applicable Section 21.4 (iii))*

11. Amend the penalties section of the ordinance to include single family property because this was overlooked with the last revision in 2002. *(Applicable Section 21.124 (b)(4))*

12. Include incentive limits for single family development in section 21-95 for clarification so designers don't have to refer to another document for the details. *(Applicable Section 21.95 (f))*

13. Require field verification of tree save areas less than 30 ft in width on first plan submittal to allow staff ability to inspect sites to ensure trees within narrow tree save areas can be expected to survive. *(Applicable Section 21.93(d))*

# Proposed Revisions to the Tree Ordinance
# 2010 Consensus Items

The following are proposed revisions to the tree ordinance as a result of the reconvening of the Stakeholder committee in 2010 in response to the cost/benefit study prepared by the subgroup. These revisions elaborate on item 1 of the 2007 consensus items (Require 15% minimum tree save in commercial development with flexible options). These are additional revisions and do not conflict with other proposed revisions.

1. Allow greenway trails to be used as tree save areas
   Tree save areas may be allowed to contain Mecklenburg County Park and Recreation greenway trails. Trail placement must be coordinated with City so that the effective tree save area required is maintained *(Applicable Section 1 – Sec. 21.93 (e)).*

2. Allow trees in utility easements to count towards the tree save requirement for commercial development
   Existing tree canopy which overhangs existing underground utility easements may satisfy the tree save requirement at the discretion of City pursuant to the tree ordinance guidelines *(Applicable Section 1 – Sec. 21.93 (f)).*

3. Allow small maturing trees to be planted beneath over head power lines to satisfy the tree save requirement for commercial development
   Redeveloping sites may plant approved small maturing trees based on Duke Energy's approved planting list beneath or within 20 feet of the centerline of an overhead (roadside) power distribution easement that are accessible by mechanical equipment for maintenance. This placement may be used to satisfy the tree save requirement when no other viable tree save areas exists as agreed upon by City. To be placed into guidelines: When the same lines are located along the side and rear property lines and do not permit vehicular access for maintenance, small maturing trees may be planted within 20 feet of the distribution centerline. There will be no tree save designated within transmission easements. *(Applicable Section 1 – Sec. 21.93 (g)).*

4. Allow options for tree save requirements for Neighborhood Services zoned sites
   Neighborhood Services zoned sites less than or equal to 12 acres are to have the same options as transit station areas and mixed use centers. *(Applicable Section 1 – Sec. 21.94 (ii) / See also chart in Attachment 2).*

5. Allow options for tree save requirements for Industrial zoned sites
   Industrial zoned sites are to have the same options as transit station areas and mixed use centers. *(Applicable Section 1 – Sec. 21.94 (ii) / See also chart in Attachment 2).*

6. The following triggers for redevelopment (additions to existing sites) would require compliance with the tree ordinance:
   - Adding 5% to a building or 1,000 sq. ft. impervious area
   - Adding 10 or more new parking spaces
   - Façade change of 10% or more to any one wall by adding doors, windows, closing or openings, and or increasing walls

   Façade – any building wall facing a vehicular way intended for public travel regardless of ownership. *(Applicable Section 1- Sec. 21.4)*

## Proposed Revisions to the Tree Ordinance
## Consensus on Grandfathering

Exempt existing subdivision plans and rezonings from proposed revisions.

The stakeholder committee reached consensus on the proposed language regarding applicability and, more specifically, what projects shall be exempted from the new requirements of the tree ordinance. The item discussed most was the vesting rights for a conditional zoning district. See Section 2 of the revised ordinance (Attachment 1) for the specific language.

# Proposed Revisions to the Tree Ordinance
# 2010 Non-consensus Items
# Staff Recommendations

There were two items where the stakeholder committee was unable to reach consensus. The following lists the two issues, the options considered, the final vote by the stakeholder committee, and staff's recommendations and justification:

**1) Address tree save requirements for redevelopment (additions to existing sites):**
For additions to existing sites that meet one or more of the following criteria:

- Adding 5% to a building or 1,000 sq. ft. impervious area
- Adding 10 or more new parking spaces
- Façade change of 10% or more to any one wall

The tree save requirements shall be met by one of the following options:
Option A: Incorporate the 15% tree save and the replanting requirements. Tree planting requirements may be altered due to City approved hardship. **(1 vote)**
Option B: Follow the tree planting requirements and protection of trees 8 inches and larger in diameter in the set-backs along public frontage as required in the current ordinance. Tree planting requirements may be altered due to City approved hardship. **(2 votes)**
Option C (hybrid solution): Adhere to the tree planting requirements and protect all trees outside of the existing impervious area footprint up to 15% of the total site. Tree planting requirements may be altered due to City approved hardship. **(5 votes)**

**Staff's recommendation:**
A variation of options B and C:

- Tree save requirement for additions to existing sites approved prior to "effective date" shall maintain tree save area in the setback as required by the current ordinance.
- Tree save requirement for additions to existing sites approved after the "effective date" shall provide 15% tree save and have options to aid in compliance.

*Applicable Section 1 – Sec. 21-4 / See also chart in Attachment 2*

Justification:
Provides relief for owners/developers when they wish to redevelop sites that were originally developed under the current ordinance (a finding in the cost/benefit analysis was that many redevelopment sites are challenged to meet the new 15% tree save requirement). Requires owners/developers who wish to redevelop to preserve the tree save already established for sites that were developed under the new ordinance. The later requirement will aid the City in meeting its tree canopy goal.

**2) Address how to calculate payment in lieu:**
Option A: The requirement of the developer to contribute to a city administered tree preservation fund a dollar amount equal to a percentage of the tax value of property being developed at the time of the plan approval. This percentage will be determined in accordance with Sections 21-94(ii) (3) or (iii) (3). **(4 votes)**

**Proposed Revisions to the Tree Ordinance**
**2010 Non-consensus Staff Recommendations**
***Continued…***

Option B: Payment in lieu – requirement of the developer to contribute to a city administered tree preservation fund a dollar amount equal to a percentage of the property being developed at the time of the plan approval based on $40,000-$50,000 per acre. This percentage will be determined in accordance with Sections 21-94(ii) (3) or (iii) (3). **(4 votes)**

**Staff's recommendation:**
Option A
Applicable Sections 21-2 Definitions and 21.94 (iv) (A) & (B). See also chart in Attachment 2.

Justification:
It is City staff's intent that the majority of tree save be on-site and that the off-site mitigation option and the payment-in-lieu option be used as an exception, not a rule. If the payment-in-lieu value were set at $40,000 - $50,000 then in many cases the value would be less than the tax value (sometimes significantly less). It is staff's belief that a payment-in-lieu value established less than tax value will result in the payment-in-lieu option being used the majority of the times. Furthermore, in cases where the payment-in-lieu option is used, it is staff's desire to seek to purchase land for tree preservation in similarly zoned land to avoid a significant tree canopy loss in certain areas such as corridors and transit station areas. This will be difficult to do if the payment-in-lieu value is less than the tax value.

## Proposed Path Forward

| | |
|---|---|
| June 2010 | Finalize discussion with Environment Committee for recommendation to full Council |
| July 2010 | Dinner briefing |
| July 2010 | Authorize publication of notice and set public hearing on an amendment to the City Code to amend the Tree Ordinance |
| August 2010 | Hold a Public Hearing on amending the Tree Ordinance |
| September 2010 | City Council adoption of revised ordinance |
| January 1, 2011 | Effective date |

## Tree Save Requirements and Exceptions for Commercial Development (Section 21.94)

## (Reflects all Stakeholder and Staff Recommendations)

| *Zoning designation* | *Requirement* | *Requirement* | *Requirement* | | |
|---|---|---|---|---|---|
| **Commercial zonings: B1, O2 etc** | **Minimum 15% of the site protected as tree save** | **If less than 15% of the site has existing trees, additional trees shall be planted at a rate of 36/trees per acre** | **If any portion of the tree save area is removed, trees shall be re-planted at 150%** | | |
| ***Exceptions*** | ***Option*** | ***Option*** | ***Option*** | ***Option*** | ***Option*** |
| **UMUD & UMUD-O within I-277 loop and any TOD, MUDD or UMUD in transit station areas** | **EXEMPT** | **N/A** | **N/A** | **N/A** | **N/A** |
| **Transit station areas or mixed-use centers, NS, I1 and I2** | **Provide tree save on site** (entire or in combination) | **Plant or replant trees at 36 trees/acre on site** (entire or in combination) | **Install a green roof** (entire or in combination) | **Under take off site mitigation** (entire or in combination; may not be used with payment in Lieu) | **Provide payment in lieu** (entire or in combination; may not be used with off-site mitigation) |
| **Corridors outside of transit station areas** | **Provide tree save on site** (entire or in combination) | **Plant or replant trees at 36 trees/acre on site at 150%** (entire or in combination) | **Install a green roof at 150%** (entire or in combination) | **Under take off-site mitigation at 150%** (may not be used with payment in Lieu) (entire or in combination) | **Provide payment in lieu at 150%** (may not be used with off-site mitigation) (entire or in combination) |
| **Additions to existing sites per Section 21-4 (ii)** (for sites originally developed prior to ____) | **Maintain tree save in setback** | | | | |
| **Additions to existing sites per Section 21-4 (ii)** (for sites originally developed after ____) | **Maintain existing tree save areas** | | | | |

***in all cases internal and perimeter tree requirements must be met.**

ORDINANCE NUMBER:_____ AMENDING CHAPTER 21

**AN ORDINANCE AMENDING CHAPTER 21 OF THE CHARLOTTE CITY CODE ENTITLED "Trees"**

**BE IT ORDAINED** by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Chapter 21 of the Charlotte City Code is amended as follows:

"ARTICLE I. IN GENERAL

Sec. 21-1. Short title.

This chapter will be known and may be cited as the "Charlotte Tree Ordinance."

Sec. 21-2. Definitions.

Words and phrases used in this chapter that are not specifically defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Caliper*- ~~means~~ the diameter measurement of the trunk taken six inches above ground level for trees up to and including four-inch caliper size. Measurement shall be taken 12 inches above the ground level for larger trees.

*City*- ~~means~~ the city engineer, the city arborist or the senior urban forestry specialist, or their designated agent.

*Commission*- ~~means~~ the city tree advisory commission.
*dD*~~D~~*bh*- *(diameter at breast height)*- ~~means~~ the diameter of a tree 4 1/2 feet above the average ground level.

*Corridors* - are those shown on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

*Designated mixed-use centers* - are those shown on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

*Drip line*- ~~means~~ a vertical line running through the outermost portions of the tree crown extending to the ground.

*Existing tree canopy*- ~~means~~ tree canopy that has existed for at least two years prior to development as evidenced by city or county aerial photographs, or a tree survey of trees one-inch caliper and larger.

*Heritage tree*- ~~means~~ any tree that is listed in the North Carolina Big Trees List, the American Forest Association's Champion Tree list or any tree that would measure 80 percent of the points of a tree on the North Carolina Big Trees List.

*Homeowner* - ~~means~~ a tenant or owner of an existing single-family or duplex residence.

*Impervious cover*- ~~means~~ buildings, structures and other paved, compacted gravel or compacted areas which by their dense nature do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.

*Internal planting area*- ~~means~~ a planting area located on private property outside the public right-of-way.

*Invasive plant species*-invasive plant species are those plant species that spread rapidly with little or no assistance from people. For the purposes of this chapter the following plant species are considered invasive: Bushkiller-*Cayratia japonica*, Chinese wisteria-*Wisteria sinensis*, English ivy- *Hedera helix* Japanese wisteria-*Wisteria floribunda*, Japanese honeysuckle- *Lonicera japonica*, kudzu-*Pueraria montana.*

*Land conservation group* – a nonprofit land trust or similar organization approved by City that permanently protects land, water, trees and wildlife habitat to enhance quality of life in Charlotte and Mecklenburg County.

Off-site mitigation- requirement of the developer to convey at no cost an equal amount of land in Mecklenburg County with a mature tree canopy to Mecklenburg County or to a land conservation group. The land shall be conveyed subject to either a permanent conservation easement or deed restrictions for the purpose of preserving tree canopy. The conveyance and its terms must be: (1) approved by the city; (2) be acceptable to either Mecklenburg County or a land conservation group; and (3) comply with the tree ordinance guidelines.

*Paved area*- ~~means~~ any ground surface covered with concrete, asphalt, stone, compacted gravel, brick, or other paving material.

*Payment in lieu* – requirement of the developer to contribute to a city administered tree preservation fund a dollar amount equal to a percentage of the ~~appraised~~tax value of the land ~~property~~ being developed at the time of the plan approval. This percentage will be determined in accordance with Sections 21-94(ii)(3) or (iii)(3).

*Pedestrian scale lighting*- lighting that is specifically intended to illuminate the sidewalk, as opposed to vehicular travel ways, and shall not exceed 15 feet in height.

*Perimeter planting strip* means - a planting strip that abuts a public street or transportation right-of-way.

*Person*- means a public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative, or other legal entity.

*Planting strip* and and -*planting area*- mean ground surface free of impervious cover and/or paved material which is reserved for landscaping purposes.

*Renovation*- means any construction activity to an existing structure which changes its square footage, changes its footprint or modifies the exterior wall material excluding cosmetic maintenance and repairs.

*Root protection zone*- means, generally, 18 inches to 24 inches deep and a distance from the trunk of a tree equal to one-half its height or its drip line, whichever is greater.

*Specimen tree*- means a tree or group of trees considered to be an important community asset due to its unique or noteworthy characteristics or values. A tree may be considered a specimen tree based on its size, age, rarity or special historical or ecological significance as determined by the city arborist or urban forestry specialist. Examples include large hardwoods (*e.g.*, oaks, poplars, maples, etc.) and softwoods (*e.g.*, pine species) in good or better condition with a dbh of 24 inches or greater, and smaller understory trees (*e.g.*, dogwoods, redbuds, sourwoods, persimmons, etc.) in good or better condition with a dbh of ten inches or greater.

*Streetscape plan*- means a plan that specifies planting strips, tree species, sidewalk locations, building setbacks and other design aspects for streets within the city. Such plans are effective following approval by the city council.

*Suburban commercial zones*- means all zoning districts other than single-family development and urban zones as defined in this section.

*Topping*- means any pruning practice that resultsthat result in more than one-third of the foliage and limbs being removed. This includes pruning that leads to the disfigurement of the normal shape of the tree.

*Transit station area – high density area within approximately ½ mile of an existing or planned rapid transit station as designated by the city planning department*

*Tree, large maturing*- , means any tree the height of which is 35 feet or greater at maturity.

*Tree, large maturing shade* - , means any tree the height of which is 35 feet or greater at maturity and has a limb spread of 30 feet or more at maturity.

*Tree, small maturing* - , means any tree the height of which is less than 35 feet at maturity.

*Tree evaluation formula* - means a formula for determining the value of trees and shrubs as published by the International Society of Arboriculture.

*Tree ordinance guidelines* means instructionsthe guidelines and specifications of tree planting as published by the city.

*Tree protection zone* a distance equal to the designated zoning district setback or 40 feet from the front property line, whichever is less, or from the side lot line on a corner lot. For urban zones, the tree protection zone shall be the same as the planting strip required for the associated zoning district or as designated in a streetscape plan. This definition does not apply to single-family development.

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*Tree save area* - means an area containing existing healthy tree canopy in a single-family subdivision development or an area containing existing or mitigated off site healthy tree canopy in a commercial development measured in square footage. The area may include up to 5 feet beyond the drip line. measured in square footage to the drip line plus five feet for a stand-alone tree, or to the perimeter drip line plus five feet for a group of trees.

*Urban zones* means a zoning district zoning districts within the city as listed in the tree ordinance guidelines and as may be amended from time to time.

*Wedges* - are those shown on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map."

Sec. 21-3. Purpose and intent.

(a) It is the purpose of this chapter to preserve, protect and promote the health, safety and general welfare of the public by providing for the regulation of the planting, maintenance and removal of trees located on roadways, parks and public areas owned or controlled by the city and on new developments and alterations to previous developments on private property.

(b) It is the intent of this chapter to:

(1) Protect, facilitate and enhance the aesthetic qualities of the community to ensure that tree removal does not reduce property values.

(2) Emphasize the importance of trees and vegetation as both visual and physical buffers.

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(3) Promote clean air quality by reducing air pollution and carbon dioxide levels in the atmosphere, returning pure oxygen to the atmosphere and increasing dust filtration.

(4) Reduce the harmful effects of wind and air turbulence, heat and noise, and the glare of motor vehicle lights.

(5) Minimize increases in temperatures on lands with natural and planted tree cover.

(6) Maintain moisture levels in the air of lands with natural tree cover.

(7) Preserve underground water reservoirs and permit the return of precipitation to the groundwater strata.

(8) Prevent soil erosion.

(9) Provide shade.

(10) Minimize the cost of construction and maintenance of drainage systems necessitated by the increased flow and diversion of surface waters by facilitating a natural drainage system and amelioration of stormwater drainage problems.

(11) Conserve natural resources, including adequate air and water.

(12) Require the preservation and planting of trees on site to maintain and enlarge the tree canopy cover across the city.

Sec. 21-4. Applicability and exemptions.

This chapter shall apply to all developers and/or owners of real property involved with the erection, repair, alteration or removal of any building or structure as well as the grading in anticipation of such development. Compliance with this chapter will be required in the following circumstances: (i) new development and (ii) in the case of the following cumulative (since July 1 2010) additions or changes: (a) additions to existing sites that are equal to or greater than 5% of the site's existing building square footage or the addition of 1,000 sq. ft. or more of building; (b) or when ten (10) or more parking spaces are added to the site with no building.; or (c) Façade changes to 10% or more of any building wall facing a vehicular way intended for public travel regardless of ownership (e.g., adding or eliminating doors, windows, closings, openings, or increased wall area) The following are excluded from section 21-94 of this chapter:

(1) The homeowner of a single-family or duplex residence.

(2) Property which as altered requires no addition of square footage or exterior wall modification to an existing structure on that property.

## ARTICLE II. ADMINISTRATION

### Sec. 21-31. Tree advisory commission.

(a) The city council may establish a tree advisory commission. This commission may from time to time make recommendations relative to trees to the city manager or his authorized representative and perform other duties as designated in this chapter.

(b) The tree advisory commission shall be composed of 12 members, a majority of whom shall be residents of the city. Seven of the members shall be appointed by the city council, and three of the members shall be appointed by the mayor. The remaining two members shall be representatives of the city engineering and property management department and shall be ex officio members.

(c) Those members appointed by the mayor and city council shall serve three years, and no member appointed by the mayor and city council shall be eligible to serve more than two consecutive full terms. Member terms shall be appointed on a staggered basis so that no more than five of the ten appointed seats become vacant at one time.

(d) Any member who fails to attend the requisite number of meetings as set out in the boards and commissions attendance policy adopted by the city council shall be automatically removed from the commission. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided in this section. The chair of the commission will notify the proper appointing authority if a member is absent the requisite number of the meetings, and appointment will be made by the appointing authority to fill that vacancy.

### Sec. 21-32. City jurisdiction and authority.

(a) The city shall have the jurisdiction, authority, control, supervision and direction over all trees planted or growing in the city, except where exempted in this chapter.

(b) The city shall prepare and publish guidelines and specifications for tree planting, care, maintenance, removal and landscape design in a document entitled "Tree Ordinance Guidelines" for reference and use by property owners, developers, consultants and the general public in furtherance of the requirements and intent of this chapter. This document shall be reviewed periodically by the city's engineering department and the tree advisory commission.

(c) The city shall review all applications for permits for any planting, removal and/or trimming or cutting of trees subject to this chapter and shall have the authority to grant or deny permits and to attach reasonable conditions to the granting of a permit.

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## ARTICLE III. MAINTENANCE AND PROTECTION OF TREES

### Sec. 21-61. Trees on public property.

(a) No person shall spray, fertilize, remove, destroy, cut, top, or otherwise severely prune, including the root system, or treat any tree or shrub having all or any portion of its trunk in or upon any public property without first obtaining a written permit from the city and without complying strictly with the provisions of the permit and this chapter.

(b) No person shall plant any tree or shrub on any public street right-of-way or public property without first obtaining a permit from the city and without complying strictly with the provisions of the permit and the provisions of this chapter.

(c) No person shall damage, cut, or carve any tree or shrub having all or any portion of its trunk in or upon any public property; attach any object, including, but not limited to, rope, wire, nail, chain or sign, to any such tree or shrub or attach any such object to the guard or stake intended for the protection of such tree.

(d) No person shall place, store, deposit, or maintain, upon the ground in any public street or public place, any compacted stone, cement, brick, sand or other materials which may impede or obstruct the free passage of air, water and fertilizer to the roots of any tree or shrub growing in any such street or place without written authorization from the city.

(e) No person shall change the natural drainage; excavate any ditches, tunnels, or trenches; or lay any drive within the root protection zone of any tree having all or any portion of its trunk in or upon any public property without obtaining a permit from the city and without strictly complying with the provisions of the permit and provisions of this chapter.

(f) No person shall perform, or contract with another to perform, excavation or construction work within the drip line of any tree having all or any portion of its trunk in or upon any public property without first installing a fence, frame or box in a manner and of a type and size satisfactory to the city to protect the tree during the excavation or construction work. All building materials, equipment, dirt or other debris shall be kept outside the root protection zone. The tree protection fence, frame or box shall not be removed unless or until the city authorizes it to be removed.

(g) Liability for damages or injuries to any tree or shrub having all or any portion of its trunk in or upon public property resulting from a violation of this article shall be determined by the city in accordance with section 21-124 of this chapter. The person performing the work and the person contracting for the performance shall be jointly and severally liable for any penalties or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this article. However, no claims shall be made more than five years after damage can be proven to have occurred.

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**Sec. 21-62. Trees on private property.**

(a) Any person owning or occupying real property bordering on any street where trees have branches, limbs, trunks, or other parts projecting into the public street or property shall prune such trees or keep them trimmed in such a manner that they will not obstruct or shade the streetlights, obstruct or interfere with the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct views of any street or alley intersection.

(b) Any person owning or occupying real property bordering on any street, park or other public property, on which there may be trees that are diseased or insect infested, shall remove, spray or treat any such trees in a manner that will not infect or damage nearby public vegetation or cause harm to the community or citizens therein.

(c) No tree equal to or larger than ~~eight~~ 2 inches caliper ~~dbh~~ may be trimmed, pruned, or removed from the ~~tree protection zone~~ tree save area without a permit. No grading, demolition, trenching, or other activity which may adversely affect trees in this zone may proceed prior to approval and issuance of necessary permits by the city.

(d) It shall be the duty of the property owner to maintain all trees planted pursuant to, or protected by, this chapter in a healthy condition in accordance with this section and the tree ordinance guidelines developed by the city. Trees shall be allowed to grow to their natural height and form. Topping is prohibited.

(e) When trees that are subject to or protected by this chapter die, are missing, or are otherwise deemed unhealthy by the city, they shall be removed and replaced by the property owner to comply with any existing streetscape plan or as directed by the city, normally during the next planting season which is November through March. New owners of properties already in compliance must maintain that compliance. Trees of the same, approved species as those existing may be used to replace dead, missing or unhealthy trees. The property owner is encouraged to use large maturing shade trees as replacements when possible. Nothing in this section is intended to impose a requirement that the property owner maintain more trees than those required for the site even if he has voluntarily done so in the past.

(f) If the owner or occupant of such property does not perform the duties set out in subsections (a), (b) and (e) of this section, the city may order the pruning, removal or treatment of trees on private property that cause obstructions, present insect or disease problems or otherwise present a danger to public health or safety. The order shall be in writing to the owner or occupant responsible for such condition and shall be acted upon within 30 days from the time of the receipt of the order. If, after 30 days, the owner or occupant has not responded or acted to prune, remove or treat the trees, the city shall have the authority to enter upon the property to perform the work necessary to correct the condition and bill the owner or occupant for the actual costs incurred. In situations deemed necessary to the public health, safety, or welfare, the city may act without prior notification to the property owner or occupant.

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**Sec. 21-63. Permits.**

(a) Persons requesting to do any planting, removal, trimming, or cutting of trees subject to this chapter, or any of the activities prohibited by this article, shall secure a permit for tree work from the city engineering and property management department before the activities commence. For purposes of this subsection, a landscape plan approved by the city constitutes a permit.

(b) The city shall have the authority to review all requests for permits and to grant or deny permits or attach reasonable conditions to the permits.

(c) Individual permits will not be required for city and state department of transportation projects so long as tree preservation and protection requirements are included in the project plans.

**Sec. 21-64. Utilities.**

(a) Public and private utilities which install overhead and underground utilities, including CATV installations and water and sewer installations by or at the direction of the Charlotte-Mecklenburg Utilities, shall be required to accomplish all work on property subject to this article in accordance with the company's written pruning and trenching specifications or as mutually agreeable to the property owner, the city and the utility.

(b) Public and private utilities shall submit written specifications for pruning and trenching operations to the city for approval. Specifications shall be reviewed periodically by the city and the tree advisory commission for necessary improvements and as required by modifications in this chapter. Upon approval of its specifications, a utility shall not be required to obtain a permit for routine trenching and pruning operations affecting a tree having all or any portion of its trunk in or upon any public property so long as such work is done in strict accordance with the approved specifications. Requests for the removal of trees shall be handled on an individual permit basis. Failure to comply with the approved specifications is a violation of this chapter.

(c) Refer to Section 21-96 for light pole location requirements.

**Sec. 21-65. Tree protection and/or planting required on public property.**

This chapter shall apply to public entities and owners of public property, and it shall be unlawful for such owners to fail to comply with all sections of this chapter unless specifically exempted there from.

Secs. 21-66--21-90. Reserved.

## ARTICLE IV. GENERAL LAND DEVELOPMENT REQUIREMENTS

### Sec. 21-91. Tree survey.

Tree save area boundaries shall be required and described in meets and bounds and be recorded on the final plat.

All applications for grading, building, demolition, land use, change of use or rezoning permits on all property, except single-family development shall require a tree survey. The survey shall identify all trees of eight-inch dbh or greater and all planted trees of two inch caliper or greater and six feet in height that grow partially or wholly within the city right-of-way.

All applications for grading, building, demolition, land use, change of use or rezoning permits on all property, except single-family development, subject to 21.94 (iv) A) shall require a tree survey. The survey shall identify all trees of eight-inch dbh or greater within the tree protection zone.

### Sec. 21-92. Tree protection plan.

(a) All applications for grading, building, demolition, land use, change of use, or rezoning shall include a tree protection plan of all tree save areas and tree protection zones. On sites where less than one acre is being graded, tree protection is still required and may be incorporated in the tree planting plan submitted in accordance with section 21-94. A tree protection plan shall include the following:

(1) A tree and root protection zone plan for any existing trees having all or any portion of their trunks in or upon any public property, which are:
a. All trees of eight-inch dbh or larger; and
b. Any planted trees of two-inch caliper or larger.

(2) A tree and root protection zone plan for the following:
a. Existing trees of two ~~eight~~ inch caliper~~dbh~~ and larger in the tree protection zone and tree save area; and
b. Any trees of two-inch caliper or larger being saved for credit toward planting requirements.

(b) All applications for single-family development shall include a tree and root protection zone plan for the following:

(1) Heritage trees;

(2) Specimen trees; and/or

(3) Tree save areas being protected for credit toward the tree save requirement for single-family development.

**Sec. 21-93.** General tree save requirements.

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(a) Tree save areas shall be free of invasive plant species unless approved otherwise by the city. If an area proposed for tree save contains invasive plant species at the time of such proposal, such invasive plant species shall be removed prior to the issuance of final certificate of occupancy for commercial and multi-family properties or at final plat approval for subdivisions. Invasive plant species are considered removed if they are no longer living in the tree canopy. Subsequent property owners are required to maintain this condition for compliance with the chapter.

(b~~a~~) Tree removal in a tree save area will require a permit from the city pursuant to section 21-63 of this chapter and may require mitigation. Invasive plant species and hazardous trees can be removed without city approval.

(c~~d~~) Per the tree ordinance guidelines, any alterations to the tree save area must be accomplished without mechanized equipment and made of organic, environmentally friendly materials, unless approved otherwise by the city.

(d) Any tree save area less than 30 feet in width must have boundary and property lines delineated on site by a surveyor prior to the first submittal of plans.

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(e) No structure will be allowed within 10 feet of the tree save area. A building restriction must be noted on the record plat in accordance with the tree ordinance guidelines.

(f) Tree save areas may include Mecklenburg County Park and Recreation Greenways. Trail placement must be coordinated with the City so that the effective tree save area required is maintained.

(g) Tree save areas on commercial properties may include existing tree canopy which overhangs existing underground utility easements based upon adherence to the tree ordinance guidelines and approval by the City.

(h~~g~~) On commercial properties in cases where no other viable tree save areas exist and based upon adherence to the tree ordinance guidelines and approval by the City, tree save areas may include the planting of small maturing trees in accordance with Duke Energy's approved planting list and within 20 feet of the centerline of power distribution easements that are accessible for maintenance by mechanical equipment.

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Sec. 21-94. Tree save requirements for commercial development.

A minimum of 15% of the overall commercial site must be preserved as tree save area ( for purposes of this Section, "commercial tree save area"). If less than 15% of the site has existing trees, additional trees shall be planted at a rate of 36 trees per acre to meet the commercial tree save area requirement. If any portion of the commercial tree save area is removed, trees will be re-planted at 150% of the area removed.

The following exceptions to this requirement apply:

(i) UMUD & UMUD-O within the I-277 loop and any TOD, MUDD or UMUD zoned parcels in transit station areas, as designated in a transit station area plan, are exempt. If no transit station area plan has been adopted, the transit station area will be designated as the property within 1/2 mile of an existing or proposed station location identified on the approved Metro Transit Commission (MTC) System Plan.

In all cases a~~A~~ny perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96.

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(ii) In transit station areas, designated mixed-use centers, NS zoning districts (for sites of twelve acres or less), and I-1 and I-2 zoning districts, the following measures may be chosen, individually or in combination, such that the measures are equal to 100% of any portion of the commercial tree save area not preserved as required above:

A) Plant or replant trees at a rate of 36 trees per acre on-site

B) Install and maintain a living green roof on the project to be maintained in perpetuity. The owner shall submit an annual inspection and maintenance report per the tree ordinance guidelines.

C) Undertake either off-site mitigation, or payment in lieu. Off-site mitigation and payment in lieu may not be used together to met this requirement.

In all cases, any perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96.

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~~(i)~~(iii) In corridors that are outside of transit station areas, and existing commercial sites or additions to existing commercial sites in wedges, the following measures may be chosen, individually or in combination, such that the measures are equal in area to 150% of any portion of the required commercial tree save area not preserved as required above:

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A) Install and maintain a living green roof on the project to be maintained in perpetuity. The owner shall submit an annual inspection and maintenance report per the tree ordinance guidelines.

B) Undertake either off-site mitigation or payment in lieu. Off-site mitigation and payment in lieu may not be used together to meet this requirement.

In all cases, any perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96.

(iv) Additions to existing sites that meet the criteria in Section 21-4 (ii), shall have the following tree save requirements:

A) Protect all trees of 8 inch dbh or greater within the tree save area which shall be the designated zoning district setback or 40 feet from the front property line, whichever is less. If the site is on a corner lot the tree save area shall be the designated zoning district setback(s) or 40 feet from the side lot lines fronting a street, whichever is less; or

B) Maintain existing tree save areas for sites developed in accordance with this ordinance as revised on "*implementation date*".

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Any perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96.

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Sec. 21-~~93~~95. Tree save requirements for single-family development.

(a) *Percentage of area required.* Whenever the existing tree canopy of a single-family development site is at least ten percent of the total property area, a tree save area equal to ten percent of the total property area must be saved during development of the site. If the existing tree canopy of the site is less than ten percent but more than five percent, a tree save area equal to ten percent of the total property area must be achieved by saving the entire existing tree canopy and planting new trees to reach the required percentage area. Single-family development sites with an existing tree canopy of less than five percent of the total property area must have a tree save area equal to five percent of the total property area, which may be achieved by saving the existing tree canopy and planting new trees.

~~(b) *Method of calculation for area.* Square footage for existing and dedicated road rights-of-way and utility easements and for existing ponds and lakes will be subtracted from the total site~~

~~area before the required percent of the tree save area is calculated. Where there are groups of trees that have areas within the group that are not expected to fill in with time, additional trees can be planted, per staff review, so that the entire area can qualify as a tree save area. A planted shade tree shall be equivalent to 2,500 square feet of saved area, and new trees must be planted at a rate of 18 per acre. If root disturbance or construction activities occur within the drip line of any tree designated as protected in the tree protection plan, only the area actually being protected will be included in the calculated tree save area. Credit received for trees designated as heritage or specimen trees will be 1 1/2 times the actual square footage of the drip line. City staff may adjust applicable land development standards to protect and preserve heritage or specimen trees.~~

*(b)Tree Save Area Method for calculation.*

(1) Square footage for existing and dedicated road rights-of-way and utility easements and for existing ponds and lakes will be subtracted from the total site area before the required percent of the tree save area is calculated. Where there are groups of trees that have areas within the group that are not expected to fill in with time, additional trees can be planted, per city approval, so that the entire area can qualify as a tree save area. A planted shade tree shall be equivalent to 2,500 square feet of saved area and new trees must be planted at a rate of 18 per acre. If root disturbance or construction activities occur within the drip line of any tree designated as protected in the tree protection plan, only the area actually being protected will be included in the calculated tree save area. Credit received for trees designated as heritage or specimen trees will be 1½ times the actual square footage of the drip line. The city may adjust applicable land development standards to protect and preserve Heritage or Specimen Trees.

(c) *Criteria for new trees.* New trees planted in common open spaces to satisfy the requisite tree save area requirement must be at least three-fourths-inch-caliper shade trees. New trees planted within individual lots to satisfy the requirement must be at least 1 1/2-inch-caliper trees. Trees planted for mitigation where the existing tree canopy must be removed due to conflicting design criteria or hardship approved by the city must be planted in accordance with this section to obtain the required percentage.

(d) *Heritage trees.* A person requesting to remove a heritage tree must obtain a permit from the city engineering and property management department before the activities commence. Owners and persons who remove a heritage tree without a permit are subject to the civil penalties set out in section 21-124. For purposes of this subsection, a landscape plan approved by the city constitutes a permit. Permits for the removal of heritage trees will be granted only where:

(1) The tree is located in the buildable area or yard area where a structure or improvement may be placed and there is no other reasonable location and/or preservation would unreasonably restrict use of the property.

(2) The tree is diseased, injured, in danger of falling, creates unsafe sight distance or conflicts with other sections of this Code or provisions of other ordinances or regulations.

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(3) One five-inch-caliper tree or three two-inch-caliper trees are planted in mitigation for the removal of each healthy tree under this subsection.

(e) *Incentives for increasing area.* Incentives for increasing tree save areas are designed to achieve the specific objective to:

(1) Enhance the city's tree canopy in residential settings.

(2) Improve the overall quality of life within the larger residential areas.

(3) Further the land use policies of the city, including encouragement of open spaces and the preservation of wooded sites.

(4) Discourage clearcutting of sites before and during construction of single-family development.

(f) *Incentive limits.*

(1) Reduced Yards. For single family residential lots requiring a tree save area, setback requirements as specified in Sections 12.805(3)(a), (b), and (c) of the Zoning Ordinance are reduced as follows:

(a) Front setbacks can be reduced to a minimum of 15 feet for all lots; front loaded garages must maintain a minimum setback of 20 feet.

(b) Rear yards can be reduced to 30 feet on all internal lots. Rear yards forming the outer boundary of a project must conform to the minimum rear yard of subsection 9.025(1)(g) for the zoning district in which the development is located.

(c) Internal side yards can be reduced to a minimum of 3 feet provided all fire code requirements are satisfied.

(2) Density Bonus. Single-family development projects may be granted a density bonus provided the entire tree save area is dedicated to common open space. Such dedication must be to a homeowners' association or a public or private agency that agrees to accept ownership and maintenance responsibilities for the space. The density bonus is calculated as follows: the entire dedicated tree save area in acres multiplied by the maximum residential density number of the underlying zoning district.

(3) Reduced Lot Sizes. A development need not meet the minimum lot area and lot width requirements set forth in table 9.205 of the zoning ordinance if it complies with one of the following incentives:

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(a) Sites with more than 10%, and up to 25% of tree save area or areas in common open space may apply the cluster provisions for lot size and lot width of that zoning category.

(b) Sites with greater than 25% of tree save area or areas in common open space may apply the cluster provisions for lot size and with of the next lower zoning category as shown in the following table and in accordance with section 9.205(5) of the zoning ordinance.

| | **R-3** | **R-3 Cluster** | **R-4** | **R-4 Cluster** | **R-5** | **R-5 Cluster** | **R-6** | **R-6 Cluster** |
|---|---|---|---|---|---|---|---|---|
| Min. Lot Area | 10,000 | 8,000 | 8,000 | 6,000 | 6,000 | 4,500 | 4,500 | 3,500 |
| Min. Lot Width | 70’ | 60’ | 60’ | 50’ | 50’ | 40’ | 40’ | 40’ |

(g) *New supplemental plantings.* If the existing tree canopy is insufficient to meet the desired incentive level, new supplemental plantings may be used to reach the desired level. This only applies for sites that have less than ten percent existing tree canopy prior to development or for sites that have more than ten percent existing tree canopy and the entire canopy is being saved.

**Sec. 21-946. Tree planting requirements.**

(a) *Tree planting plan.* All applications for building permits or land use permits shall include a tree planting plan. The tree planting plan shall be submitted in written/design form and shall conform with the general provisions of this section and all specifications set out in the applicable tree ordinance guidelines as issued by the city.

(b) *Tree and soil specifications.* All trees planted pursuant to this article must be planted in amended soils as specified in the tree ordinance guidelines. The trees also must be from an approved list supplied by the city. Trees not on the list may be approved by the city ~~staff~~ on a case-by-case basis. Where trees are specified to be two-inch caliper, the minimum height shall be eight feet. If multistem trees are used, they must have three to five stems and be eight to ten feet tall at the time of planting. Where three-inch-caliper trees are specified, the minimum height shall be ten feet tall, and multistem trees shall be ten to 12 feet tall. All trees must comply with the American Standard for Nursery Stock, published by the American Association of Nurserymen.

(c) A minimum of 50% of new trees must be native species, and sites with more than twenty trees required will have to install multiple species per the tree ordinance guidelines.

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(d) Site lighting must be a minimum 30 feet away from a tree. If pedestrian scale lighting is being used, then lighting must be a minimum of 15 feet away from a tree, unless approved otherwise by the city.

(e) ~~(c)~~ *Perimeter planting requirements.* Requirements for perimeter planting are as follows:

(1) *Single-family development zones.* Trees of a minimum two-inch caliper must be planted within 20 feet of the back of the curb on new streets, and any existing streets with lot frontage, in new single-family developments. Trees may be planted between the sidewalk and the curb if a minimum six-foot planting strip is provided. Spacing will be an average of 40 to 50 feet apart for large maturing shade trees, and 30 to 40 feet apart for small maturing shade trees. Where single-family development is directly across the street from multifamily development, the spacing between trees will be an average of 40 feet. Existing two-inch caliper or greater large maturing shade trees preserved within 20 feet of the back of the curb may be counted towards the street tree requirement if they are adequately protected during construction. The city ~~staff~~ may grant a modification for other existing trees on a case-by-case basis.

(2) *Suburban commercial zones.* A continuous perimeter planting strip, located on private property abutting the public right-of-way, with a minimum width of eight feet, shall be required. If large maturing trees are planted, each tree shall have a minimum two-inch caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted, the same conditions apply, but the increment drops to 30 feet.

(3) *Urban zones.* Planting requirements for urban zones are as follows:

a. *Planting strip.* A continuous perimeter planting strip, located between the street and sidewalk, with a minimum width of eight feet, shall be required. If large maturing trees are planted, each tree shall have a minimum three-inch caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted, each tree shall have a minimum two-inch caliper. One such tree shall be planted for every 30 feet of frontage or fraction thereof.

b. *Urban retail sites.* The following options are available for urban retail developments:

1. *Relocation of trees.* The number of perimeter trees required in subsection (e~~c~~)(2) of this section may be reduced by up to 50 percent if the same quantity of trees reduced are planted elsewhere on the site and at least one perimeter tree is installed.

2. *Tree pits.* The perimeter trees required in subsection (e~~c~~)(2) of this section may be installed in tree pits with irrigation and sub-drainage as specified in the tree ordinance guidelines in lieu of a continuous perimeter planting strip. If large maturing trees are planted in the pits, each tree shall have a minimum three-inch caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted in the pits, each tree shall have a minimum two-inch caliper. One such tree shall be planted for every 30 feet of frontage or fraction thereof and as long as at least one perimeter tree is installed.

(4) *Renovated sites.* When a building permit is requested for renovation of a previously developed site where the required perimeter planting strip does not exist, trees are still required. However, in lieu of a minimum eight-foot-wide planting strip, a pavement cutout equal to 200 square feet and with a minimum width of five feet may be substituted.

(5) *Railroad or utility rights-of-way.* When a railroad or utility right-of-way separates the perimeter planting strip from a city right-of-way, the perimeter planting strip and tree planting requirements must still be met.

(6) *Large shade trees required.* In locations without overhead power distribution lines that obstruct normal growth, 75 percent of the trees required under subsections (e~~e~~)(1), (2), and (3) of this section shall be large maturing shade trees.

(7) *Streetscape plans.* In applicable cases where the city council has approved a streetscape plan, its provisions shall supersede those set forth in subsections (e~~e~~)(2), (3) and (5) of this section.

(f) ~~(d)~~ *Internal planting requirements, excluding single-family development.* Requirements for internal planting, excluding single-family development, are as follows:

(1) *Planting areas.* Whenever the impervious cover exceeds 10,000 square feet, a planting area equal to ten percent of the total impervious surface must be provided for landscape purposes and tree planting. Internal tree planting is required at the rate of one large maturing shade tree per 10,000 square feet of impervious cover or fraction thereof. This planting area must be located on private property and in urban zones shall be in addition to any perimeter planting requirements. In the mixed use development district (MUDD) and the uptown mixed use district (UMUD) outside the I-277/I-77 loop, the planting area may equal five percent of the total impervious surface. The planting requirements for UMUD zoned sites within the I-277/I-77 expressway loop are set out in subsection 9.906(4)(e) of the zoning ordinance in appendix A to this Code.

(2) *Parking areas.* Internal planting requirements for parking areas are as follows:

a. *Suburban commercial zones.* Planting in suburban commercial zones shall be in accordance with the following:

1. Trees must be planted so that each parking space is no more than ~~60~~ 40 feet from a tree trunk, unless the parking lot has continuous islands running the length of the parking lot with minimum 8 feet width; then the requirement will increase to 60 feet.

2. Bus and tractor-trailer lots will be required to plant trees 40 feet apart around the perimeter of the parking lot in a minimum 10 foot wide planting strip. If there is parking on the perimeter of the bus and tractor-trailer lots, bollards or wheel stops are required.

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3.~~-~~. Seventy-five percent of the trees planted must be large maturing shade trees except as provided in subsection (f~~d~~)(2)a.~~2~~4 of this section. Minimum planting area per tree shall be 274 square feet with a minimum width of eight feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the tree ordinance guidelines, to a depth of 18 inches.

4.~~ 2.~~ Where small maturing shade trees are used, the minimum planting area shall be 200 square feet, with a minimum width of eight feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the tree ordinance guidelines, to a depth of 18 inches. Small maturing shade trees may be planted where overhead power distribution lines would interfere with normal growth (normally within 25 feet of overhead power distribution lines or within the Duke Power right-of-way for overhead transmission lines).

b. *Urban zones.* Planting in urban zones shall be in accordance with the following:

1. Trees must be planted so that each parking space is no more than 4~~6~~0 feet from a tree trunk. Trees planted must be large maturing shade trees except as provided in subsection (~~d~~f)(2)b.2 of this section.

i. Minimum planting area per large maturing shade tree shall be 274 square feet with a minimum dimension of eight feet. The entire planting area must contain amended on-site soil, as specified in the tree ordinance guidelines, to a depth of 18 inches.

ii. Minimum planting area per large maturing shade tree may be reduced to a minimum 200-square-foot surface area and a minimum dimension of eight feet, if the entire planting area contains an approved soil mix, as specified in the tree ordinance guidelines, to a depth of 18 inches.

2. Small maturing trees may be planted where overhead power distribution lines would interfere with normal growth. Minimum planting area per small maturing tree shall be 200 square feet with a minimum dimension of eight feet. The entire planting area must contain amended on-site soil, as specified in the tree ordinance guidelines, to a depth of 18 inches.

(3) *Renovated sites.* When a building permit is requested for the renovation of a site previously developed, internal tree planting is still required, and the minimum planting area shall be 200 square feet per tree. However, only five percent of the total impervious cover must be set aside for landscape purposes.

(4) *Existing trees.* In meeting these internal planting requirements, credit may be given for existing trees if the following are met:

a. The property owner must include in the tree survey referenced in section 21-91 all existing trees of two-inch dbh or greater which he proposes to satisfy these planting requirements.

b. Only healthy trees and those that have been protected during the entire development period, beginning prior to the commencement of site work and continuing through to issuance of the

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certificate of occupancy in accordance with approved tree protection requirements, may satisfy these tree planting requirements.

c. If the minimum protection standards are not met, or if trees are observed by the city to be injured or threatened, they may be deemed ineligible for meeting these requirements.
The city shall have the authority to modify the planting requirements of this subsection to preserve existing trees.

Secs. 21-965--21-120. Reserved.

## ARTICLE V. MODIFICATION, INSPECTION, ENFORCEMENT AND APPEAL

### Sec. 21-121. Modifications.

(a) If strict compliance with the standards of this chapter conflict with existing federal or state statutory or regulatory requirements, or when planting is required by this chapter and the site design, topography, natural vegetation, or other special considerations exist relative to the proposed development, the developer may submit a specific alternate plan for planting to the city for consideration. This plan must meet the purposes and standards of this chapter, but may suggest measures other than those in article IV of this chapter. In addition, if the developer seeks a modification of planting requirements based upon a contention that the planting required by this chapter would pose a threat to health and safety due to a conflict with existing federal or state statutory or regulatory requirements, a modification will only be considered upon receipt of a written explanation of the alleged conflict created by the planting requirement and a copy of the statute or regulation that creates the conflict. The city shall review the alternate proposal and advise the applicant of the disposition of the request within 15 working days of submission by the applicant. Any appeals by the applicant shall be in accordance with section 21-126.

(b) Requests for a delay in complying with this chapter due to poor weather conditions for planting will be considered following a written request directed to the city's engineering and property management department. Certificates of occupancy will be issued upon approval of a request for planting delay. Such request for a delay will not change the timeframe during which the planting will be completed. Failure to comply will result in penalties provided for in section 21-124 of this article.

### Sec. 21-122. Inspections and investigations of sites.

(a) Agents, officials or other qualified persons authorized by the city are authorized to inspect the sites subject to this chapter to determine compliance with this chapter or rules or orders adopted or issued pursuant to this chapter.

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(b) No person shall refuse entry or access to any authorized city representative or agent who requests entry for the purpose of inspection, nor shall any person resist, delay, obstruct or interfere with such authorized representative while in the process of carrying out official duties.

(c) If, through inspection, it is determined that a property owner or person in control of the land has failed to comply or is no longer in compliance with this chapter or rules or orders issued pursuant to this chapter, the city will serve a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, rule 4, or any other means reasonably calculated to give actual notice, such as facsimile or hand delivery. A notice of violation shall identify the nature of the violation and shall set forth the measures necessary to achieve compliance with this chapter. The notice shall inform the person whether a civil penalty will be assessed immediately or shall specify a date by which the person must comply with this chapter. The notice shall advise that failure to correct the violation within the time specified will subject that person to the civil penalties provided in section 21-124 or any other authorized enforcement action.

(d) The city shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose may enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites subject to this chapter.

**Sec. 21-123. Emergencies.**

In an emergency such as a windstorm, ice storm, fire or other disaster, the requirements of this chapter may be waived by the city during the emergency period so that the requirements of this chapter will in no way hamper private or public work to restore order in the city. This shall not be interpreted to be a general waiver of the intent of this chapter.

**Sec. 21-124. Penalties.**

(a) *Generally.* Any person who violates any of the sections of this chapter, or rules or orders adopted or issued pursuant to this chapter, shall be subject to any one, all or a combination of the civil penalties prescribed by this section. Penalties assessed under this chapter are in addition to and not in lieu of compliance with the requirements of this chapter. The person performing the work and the person contracting for the performance shall be jointly and severally liable for any penalty or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this chapter.

(b) *Civil penalties.* Civil penalties for violations of this chapter shall be assessed pursuant to the following:

(1) Failure to plant original or replacement trees in accordance with sections 21-~~62~~93- and 21-9~~3~~6 shall be $50.00 for each tree not planted. No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in section 21-122. If the

site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received. The failure to plant each individual tree shall constitute a separate, daily and continuing violation.

(2) Injury or damage to, or destruction of, trees and shrubs protected by sections 21-61 and 21-62 that result in the total loss of the tree or shrub shall be assessed in accordance with the tree evaluation formula or other generally accepted industry evaluation methods. However, the maximum civil penalty for each tree injured, damaged or destroyed shall not exceed $20,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

(3) Injury or damage to, or destruction of, trees and shrubs protected by sections 21-61 and 21-62 that do not result in the total loss of the trees shall be assessed for each tree or shrub in accordance with the tree evaluation formula or other generally accepted industry evaluation methods. However, the maximum amount of the penalty shall not exceed $1,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

(4) Failure to install or maintain required tree protection measures in accordance with section 21-92 shall be $1,000.00. No civil penalty shall be assessed until the person has been notified of the violation as provided in section 21-122. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received. The failure to install the required tree protection measures shall constitute a separate, daily and continuing violation. Injury or damage to, or destruction of, trees in the tree protection zone and tree save area resulting from inadequate or omitted tree protection measures constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this section.

(5) Any other action that constitutes a violation of this chapter may subject the violator to a civil penalty of $50.00, and each day of continuing violation shall constitute a separate violation. However, the maximum amount of the penalty shall not exceed $1,000.00.

(c) *Nonmonetary penalty.* A nonmonetary penalty, in the form of increased or additional planting requirements, may be assessed in addition to or in lieu of any monetary penalties prescribed under this section.

(d) *Notice.* The city shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, rule 4, and shall direct the violator to either pay the assessment or contest the assessment as specified in section 21-126. If payment of assessed penalties is not received within 30 days after it is due, or if no request for a hearing has been made as provided in section 21-126, the assessment shall be considered a debt due and owing to the city, and the matter shall be referred to the city attorney for institution of a civil action to recover the amount of the debt. The civil action may be brought in the county superior court or in any other court of competent jurisdiction.

(e) *Civil action for unpaid assessment.* A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(f) *Use of civil penalties collected.* Civil penalties collected pursuant to this chapter shall be credited to the general fund as a nontax revenue and shall be used to further the purposes, intent and requirements of this chapter. The tree advisory commission shall be consulted with regard to use of collected funds.

(g) *Criminal penalties.* Any person who knowingly or willfully violates any section of this chapter shall be guilty of a class 2 misdemeanor and may, upon conviction thereof, be subject to punishment as provided in section 2-21. This remedy is in addition to any civil penalties that may be assessed.

**Sec. 21-125. Injunctive relief.**

(a) Whenever the city has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition or provision of an approved permit, it may, either before or after the institution of any other action or proceeding authorized by this chapter, authorize the city attorney to institute a civil action in the name of the city for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the county superior court or any other court of competent jurisdiction.

(b) Upon determination of a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violation of this chapter.

**Sec. 21-126. Hearings and appeals.**

(a) *Requests for variance.* Procedures for a request for a variance from this chapter are as follows:

(1) The decision of the city arborist or senior urban forester to deny an application for a variance from the requirements of this chapter shall entitle the person submitting the application (petitioner) to a public hearing before the tree advisory commission if such person submits a written request for a hearing to the chair of the commission within ten working days of receipt of the decision denying the variance. As soon as possible after the receipt of the request, the chair of the tree advisory commission will set a date, time and place for the hearing and notify the petitioner of the hearing by mail. The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon

thereafter as practical, or at a special meeting. The chair may appoint a three-member board selected from the appointed members of the tree advisory commission to act as an appeal board and hear the request of the petitioner. The hearing shall be conducted by the commission in accordance with subsection (d) of this section.

(2) The tree advisory commission or its designated appeal board may grant a variance from the requirements of this chapter upon a finding that:

a. Practical difficulties or unnecessary hardship would result if the strict letter of the law were followed; and

b. The variance is in accordance with the general purpose and intent of this chapter.

(b) *Appeals of ~~for~~ decisions, notices of violation and assessments of civil penalties.* Any party dissatisfied with a decision of the city adversely affecting such party in the application or enforcement of this chapter, including notices of violations and assessments of civil penalties, may request a public hearing before the commission. Procedures for such hearings ~~appeals of notices of violation and assessments of civil penalties~~ are as follows:

(1) The issuance of a decision, including a notice of violation or assessment of a civil penalty by the city, shall entitle the person subject to the decision or responsible for the violation~~violator of this chapter~~ (petitioner) to a public hearing before the commission if such person submits a written request for a hearing to the chair of the commission within 30 days of the receipt of ~~the~~ a decision, notice of violation or assessment of a civil penalty.

(2) As soon as possible after the receipt of the request, the chair shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to subsection (d) of this section.

(c) *Petition for review of commission's decision.* Any party aggrieved by the decision of the commission ~~with regard to the issuance of a variance, a notice of violation or an assessment of civil penalties~~ shall have 30 days from the receipt of the decision ~~of the commission~~ to file a petition for review in the nature of certiorari in superior court with the clerk of the county superior court.

(d) *Hearing procedure.* The following shall be applicable to any hearing conducted by the commission pursuant to subsection (a) or (b) of this section:

(1) At the hearing, the petitioner and the city shall have the right to:

a. Be present and be heard;

b. Be represented by counsel; and

c. Present evidence through witnesses and competent testimony relevant to the issues before the commission.

(2) Rules of evidence shall not apply to a hearing conducted pursuant to this section, and the commission may give probative effect to competent, substantial and material evidence.

(3) At least seven days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the commission.

(4) Witnesses shall testify under oath or affirmation to be administered by the court reporter or another duly authorized official.

(5) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the city and for the petitioner shall have the right to cross examine witnesses.

(6) At the conclusion of the hearing, the commission shall render its decision on the evidence submitted at such hearing and not otherwise.

a. If, after considering the evidence presented at the hearing, the commission concludes by a preponderance of the evidence that the grounds for the city's actions ~~with regard to issuing a notice of violation, assessing a civil penalty or ordering replanting~~ are true and substantiated, the commission shall, as it sees fit, uphold the city's action ~~on the part of the city engineer~~.

b. If, after considering the evidence presented at the hearing, the commission concludes by a preponderance of the evidence that the grounds for the city's actions are not true and substantiated, the commission may, as it sees fit, reverse or modify any order, requirement, decision or determination of the city. The commission bylaws will determine the number of concurring votes needed to reverse any order, requirement, decision or determination of the city.

(7) The commission shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the commission shall be based on findings of fact and conclusions of law to support its decision.

(8) The commission shall send a copy of its findings and decision to the petitioner and the city engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at his own cost, a transcript of the proceedings.

(9) The decision of the commission shall constitute a final decision."

Section 2. These amendments shall apply to all development and redevelopment within the corporate limits of this city and its extraterritorial jurisdiction, unless one of the following exemptions applies as of the effective date:

(1) Residential and nonresidential development and additions to existing sites submitted and accepted for review;

(2) Zoning use application submitted and accepted for review for uses that do not require a building permit;

(3) Common law vested right established (e.g., the substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid governmental approval to proceed with a project); and/or

(4) A conditional zoning district (including those districts which previously were described variously as conditional district, conditional use district, parallel conditional district and parallel conditional use district) approved, provided formal plan submission has been made and accepted for review prior to the date that the vested rights for the conditional zoning district expire pursuant to G.S. 160A-385.1 and Sec. 1.110 of the Charlotte Zoning Ordinance.

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Section 3. This ordinance shall be effective January 2011
Approved as to form:

City Attorney

DRAFT

CHARLOTTE
ENGINEERING & PROPERTY MANAGEMENT

# Environment

## Proposed Tree Ordinance Revisions

Presented by David Weekly and Tom Johnson
Engineering Department / Land Development

5/24/2010

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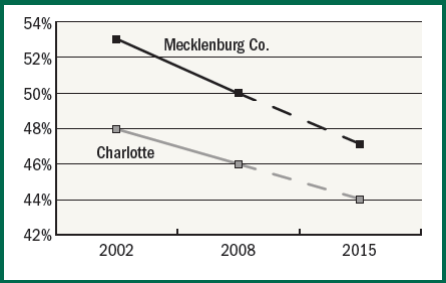
## Urban Ecosystem Analysis

**Percent tree canopy for Mecklenburg County and the City of Charlotte, NC**




2002

| | Total Acres | Canopy Acres | Population |
|---|---|---|---|
| **Mecklenburg County** | 349,000 | 184,000 **(53%)** | 746,427 |
| **Charlotte** | 183,000 | 88,000 **(48%)** | 579,684 |

2008

| | Total Acres | Canopy Acres | Population |
|---|---|---|---|
| **Mecklenburg County** | 349,000 | 175,000 **(50%)** | 902,803 |
| **Charlotte** | 183,000 | 85,000 **(46%)** | 695,995 |

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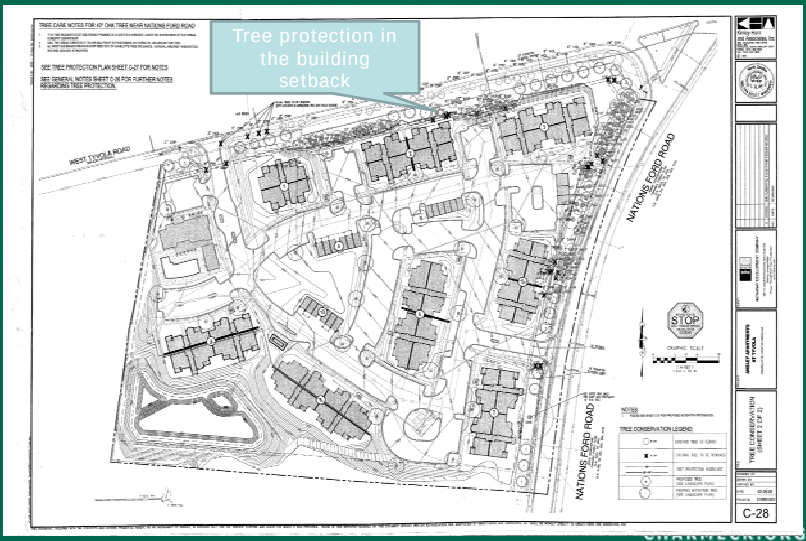
## Environment Committee

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## Environment Committee

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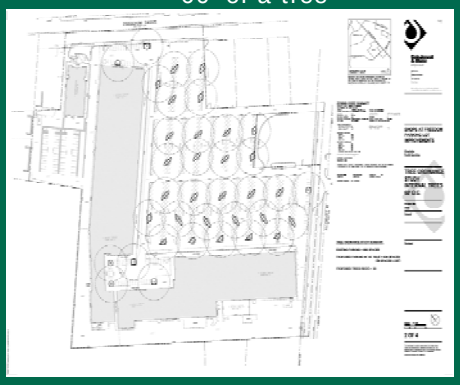
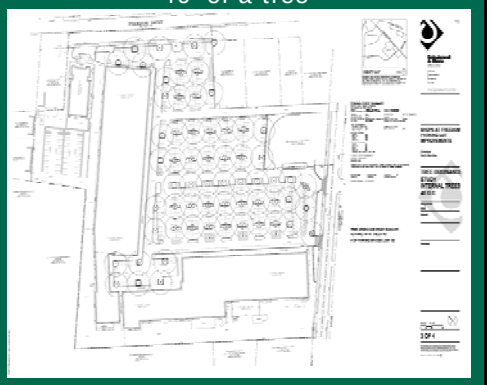
All Parking located within 60' of a tree



All Parking located within 40' of a tree



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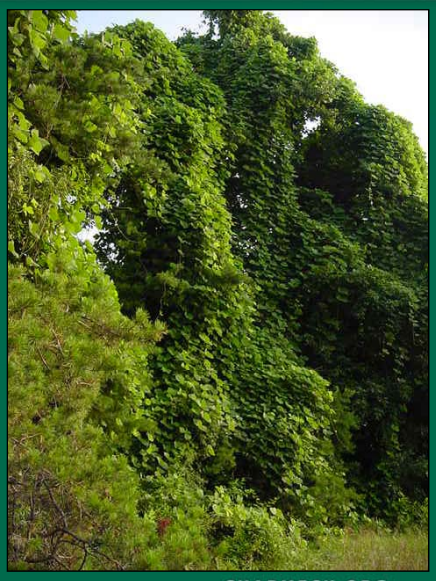
## Remove Invasive Plants From Tree Save Areas

- **Ensure that tree preservation areas are free of invasive species**
  - **Applies to commercial and siingle-family**
- **Invasive species:**
  - **Kudzu**
  - **Chinese Wisteria**
  - **Japanese Wisteria**
  - **Japanese Honeysuckle**
  - **English Ivy**



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## Require specific distance between trees and site lighting

- **Why?**
  - Conflicts between trees and lights usually resolved in favor of the lights
  - Lights don't need soil volume
  - Cost of relocating tree less than relocating light pole
  - CPTED (Crime Prevention Through Environmental Design) principle met

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## Create minimum distance between tree save and building envelopes

- **Why?**
  - Plans show building envelopes, but not building footprints
  - Difficult to save trees and build house
- In rear yards, no tree save area shall be within 10 ft of the building envelope. For side yards, no tree save shall be within 6 feet of the building envelope.

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## Define activities allowed in tree save areas

- In tree save areas, tree removal will only be allowed by approval of City Staff. Invasive species and hazard trees can be removed without City approval. Any alterations to the Tree Save area must be accomplished without mechanized equipment and made of organic, environmentally friendly materials, unless otherwise approved by City staff.

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## Require field verification of tree save areas less than 30 ft. wide

- **Why?**
  - No minimum width requirements for tree save areas
  - Very large trees without adequate root protection might not survive
- **Any tree save area less than 30 ft must be marked by a surveyor prior to the first submittal of plans (including marking the property line). Tree save less than 30 ft will be accepted if it is reasonable to expect that the trees will live.**

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## Allow Greenway trails to be constructed in tree save areas

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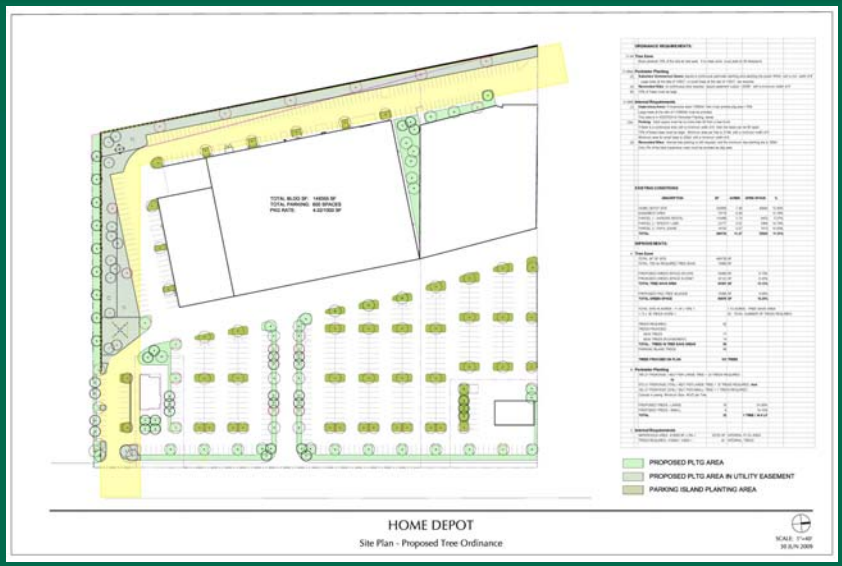
## Allow small maturing trees to be planted beneath overhead power to satisfy tree save requirement

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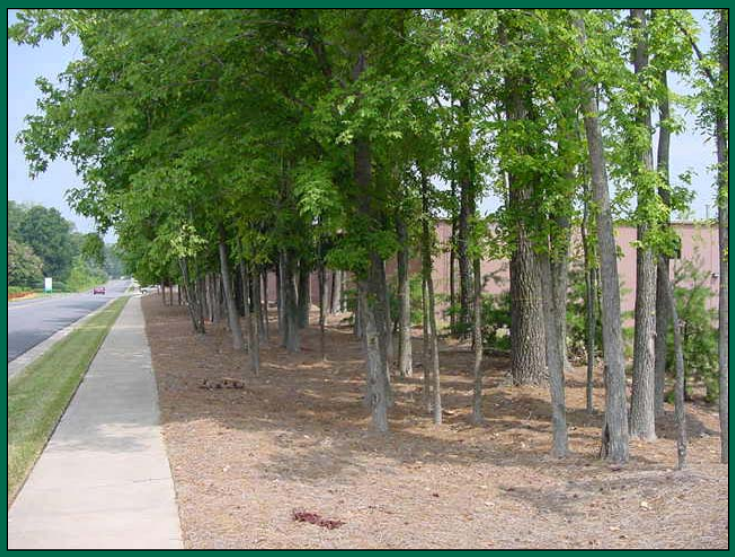
Sites approved prior to the implementation date will protect trees in the setback.



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