

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 (6") inches above ground level for trees up to and including four- (4) inch caliper size. Measurement shall be taken Twelve (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.

*dDbh* - (*diameter at breast height*) - ~~means~~ the diameter of a tree four and one-half (4 1/2) feet above the average ground level.

*Corridors* - ~~are those shown~~ identified 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~~ identified 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 (2) 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~~ eighty (80) percent (80%) 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*- ~~i species~~ plant species that spread rapidly with little or no assistance. 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~~ a nonprofit land trust or similar organization approved by the 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 and the property owner to convey at no cost to the city an equal amount of land in Mecklenburg County with a mature tree canopy to Mecklenburg County or to a land conservation group pursuant to the Tree Ordinance Guidelines. 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* - contribution by the developer and the property owner to a City administered tree preservation fund a dollar amount equal to a percentage of the tax value of the land being developed at the time of the plan approval in accordance with Section 21-94 and the Tree Ordinance Guidelines. The tax value shall not exceed ninety (90) percent of the average tax

value of land in the city limits of Charlotte and the ETJ, excluding the land within the boundaries of I-277 and in accordance with the Tree Ordinance Guidelines.

requirement of the ~~to a City administered tree preservation fund a dollar amount equal to a~~ percentage of the appraised tax value of the 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 fifteen (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, ceommission, 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~~ footage, changes its footprint, or modifies the exterior wall material excluding cosmetic maintenance and repairs.

Root protection zone ~~means~~ generally, eighteen (18") inches to twenty-four (24") inches deep and a distance from the trunk of a tree equal to one-half (1/2) 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 ~~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 ~~(twenty-four)~~ (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 (10) 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 Ceity Ceouncil.

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

~~Topping~~ ~~—means~~ any pruning practices ~~that results~~ that results in more than one-third (1/3) 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 one-half (1/2) mile of an existing or planned rapid transit station as designated by the Ceity Pplanning department

~~Tree, large maturing~~ ~~—means~~ any tree the height of which is thirty-five (35) feet or greater at maturity.

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

~~Tree, small maturing~~ ~~—means~~ any tree the height of which is less than thirty-five (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 instructions~~ the guidelines and specifications of tree planting and tree protection as published by the City and subject to amendment from time to time by the City.

*Tree protection zone* - a distance equal to the designated zoning district setback or forty (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.

*Tree save area* - ~~means an area measured in square feet 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. The area may include up to five (5) feet beyond the drip line of the tree.~~

~~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~~ Tree Ordinance Guidelines and as may be amended from time to time by the City.

*Wedges* - are those areas shown on the Centers and Corridors Map as part of the transportation action plan (adopted in 2006), or any adopted updates to this Map.<sup>22</sup>

### 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.
- (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 storm water 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:

-(a) New development.

-(b) In the case of the following cumulative (since July/January 2010/1) additions or changes:

(1) additions to existing sites that are equal to or greater than five (5) percent (5%) of the site's existing building square footage or the addition of one-thousand (1,000) sq. ft. or more of building or;

(2) When ten (10) or more parking spaces are added to the site with no building or;

(3) Façade changes to ten (10%) percent 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).

(c) The following are excluded from the requirements of section 21-94, 21-95 and 21.96 of this chapter:

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

(22) Property which as altered does not meet the requirements of 21-4 (b) no addition of square footage or exterior wall modification to an existing structure on that property.

Sec.s 21-5 – 21-30 Reserved

## **ARTICLE II. ADMINISTRATION**

### **Sec. 21-31. Tree Aadvisory Commission.**

(a) The ceity ceouncil may establish a tree aadvisory ceommission. This ceommission may from time to time make recommendations relative to trees to the ceity manager or his authorized representative and perform other duties as designated in this chapter.

(b) The tree aadvisory ceommission shall be composed of twelve (12)~~12~~ members, a majority of whom shall be residents of the city. Seven (7) of the members shall be appointed by the Ceity Council, and three (3) of the members shall be appointed by the mayor. The remaining two (2) 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 ceity ceouncil shall serve three (3) years, and no member appointed by the mayor and ceity ceouncil shall be eligible to serve more than two (2) consecutive full terms. Member terms shall be appointed on a staggered basis so that no more than five (5) of the ten (10) 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~~commission's attendance policy adopted by the ceity ceouncil shall be automatically removed from the ceommission. 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 ceommission 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 Ceity 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 Ceity 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 Ttree Aadvisory Ceommission.

(c) The Ceity 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.

**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 Ceity 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 Ceity 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 Ceity.

(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 Ceity 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 Ceity 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 Ceity in accordance with section 21-124 of this chapter. The person performing the work, the property owner 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.

#### **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~~ two (2") inches caliper dbh may be trimmed, pruned, or removed from the tree save area, and no tree equal to or larger than eight (8) inches caliper may be trimmed, pruned, or removed from the tree protection zone, ~~or 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 Ceity.

(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~~ Tree Ordinance Guidelines developed by the Ceity. 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 Ceity, they shall be removed and replaced by the property owner to comply with any existing streetscape plan or as directed by the Ceity, 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 Ceity 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 thirty (30) days from the time of the receipt of the order. If, after thirty (30) days, the owner or occupant has not responded or acted to prune, remove or treat the trees, the Ceity 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 Ceity may act without prior notification to the property owner or occupant.

#### **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 Ceity constitutes a permit.

(b) The Ceity 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 Ceity and the utility.

(b) Public and private utilities shall submit written specifications for pruning and trenching operations to the Ceity for approval. Specifications shall be reviewed periodically by the Ceity and the Ttree Aadvisory Ceommission 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 ~~therefrom~~ therefrom.

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

**ARTICLE IV. GENERAL LAND DEVELOPMENT REQUIREMENTS**

**Sec. 21-91. Tree survey.**

Tree save area boundaries shall be required to be surveyed and be 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 (8")~~ (8) inch -dbh or greater and all planted trees of ~~two-~~inch (2" caliper)~~ (2) inch caliper~~ or greater and six (6) 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~~ subdivision, subject to 21.94 (d) (1) shall require a tree survey. The survey shall identify all trees of eight-~~inch (8")~~ (8) 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 (8")~~ (8) inch dbh or larger; and
- b. Any planted trees of ~~two-inch (2")~~ (2) inch caliper or larger.

(2) A tree and root protection zone plan for the following:

- a. Existing trees of ~~two (2) inch~~ two-inch (2") ~~caliper~~ dbh and larger in the tree protection zone and tree save area; and
- b. Any trees of ~~two (2) inch~~ two-inch (2") 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.**

(a) Tree save areas shall be free of invasive plant species unless approved otherwise by the Ceity. 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.

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

(cd) Puersuant to ~~the tree ordinance guidelines~~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 Ceity.

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

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

(gf) 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 cCity.

(ghg) 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 cCity, tree save areas may include the planting of small maturing trees in accordance with Duke Energy's, or its successor's, approved planting list and within twenty (20) feet of the centerline of power distribution easements that are accessible for maintenance by mechanical equipment.

Sec. ---.

Sec. 21-94. Tree save area and tree protection zone requirements for commercial development.

A minimum of fifteen (15) percent of the overall commercial site must be preserved as tree save area (hereinafter for purposes of this Section, "commercial tree save area"). If less than fifteen (15) percent of the site has existing trees, additional trees shall be planted at a rate of thirty-six (36) trees per acre to meet the commercial tree save area requirement. In the event any area of the commercial tree save area cannot be protected trees must be re-planted at one-hundred-fifty (150) percent of the area removed.

Additions to existing sites that meet the criteria in Section 21-4 (b) shall protect all trees of eight (8) inch dbh or greater within the tree protection zone or maintain existing tree save areas for sites developed in accordance with the effective date of this ordinance.

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

The following exceptions to ~~this~~ the tree save area requirement apply:

(a) 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 one-half (1/2) mile of an existing or proposed transit station location identified on the approved Metro Transit Commission (MTC) System Plan.

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

(b) In transit station areas, designated mixed-use centers, NS zoning districts (for sites of twelve (12) 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 one-hundred (100) percent of any portion of the commercial tree save area not preserved as required above:

1) Plant or replant trees at a rate of thirty-six (36) trees per acre on-site.

2) 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 pursuant to the Tree Ordinance Guidelines.

3) 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.

(c) In corridors that are outside of transit station areas the following measures may be chosen, individually or in combination, such that the measures are equal in area to one-hundred-fifty (150) percent of any portion of the required commercial tree save area not preserved as required above:

1) 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 pursuant to the Tree Ordinance Guidelines.

2) 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.

~~(15) for purposes of this Section, commercial (15) percent commercial tree save area commercial (150) percent~~

~~Any perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96. 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) 100% of any portion of the commercial tree save area not preserved as required above: on-site Tree Ordinance Guidelines Ceither , or payment in lieu. Off-site mitigation and payment in lieu may not be used together to meet this requirement. in accordance with Section 21-96 the following measures may be chosen, individually or in combination, such that the measures are equal in area to (150) 150% of any portion of the required commercial tree save area not preserved as required above:~~

~~) Neither off-site mitigation or payment in lieu. Off-site mitigation and payment in lieu may not be used together to meet this requirement. in accordance with Section 21-96.~~

~~iv) Additions to existing sites that meet the criteria in Section 21-4 (ii) shall have the following 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) existing tree save areas for sites developed in accordance with this ordinance as revised on January 1, 2011.~~

~~Any perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96. Sec. 21-9395. Tree save 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 (10) percent of the total property area, a tree save area equal to ten (10) 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 (10) percent but more than five (5) percent, a tree save area equal to ten (10) 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 (5) percent of the total property area must have a tree save area equal to five (5) 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, pursuant to Ceity 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 eighteen (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 one and one-half (1½) times the actual square footage of the drip line. The Ceity 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 (3/4)-inch-caliper shade trees. New trees planted within individual lots to satisfy the requirement must be at least one and one-half-inch (1 ½) 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 Ceity must be planted in accordance with this section to obtain the required percentage.

(d) *Heritage trees.* A person requesting to remove ~~aa~~ Heritage tree must obtain a permit from the Ceity engineering and property management department before the activities commence. Owners and persons who remove ~~aa~~ 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 Ceity 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.

(3) One ~~five-inch (5")~~ (5) inch -caliper tree or three ~~(3) two-inch (2")~~ (2) 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~~ clear cutting 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)

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

(b) Rear yards can be reduced to thirty (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 three (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:

(a)

(a)-Sites with more than ten percent (10%) (10) percent, and up to twenty-five (25%) percent 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 twenty-five (25%) percent of tree save area or areas in common open space may apply the cluster provisions for lot size and width of the next lower zoning category as shown in the following table and in accordance with section 9.205(5) of the zoning ordinance.

	<u>R-3</u>	<u>R-3 Cluster</u>	<u>R-4</u>	<u>R-4 Cluster</u>	<u>R-5</u>	<u>R-5 Cluster</u>	<u>R-6</u>	<u>R-6 Cluster</u>
<u>Min. Lot Area</u>	<u>10,000</u>	<u>8,000</u>	<u>8,000</u>	<u>6,000</u>	<u>6,000</u>	<u>4,500</u>	<u>4,500</u>	<u>3,500</u>
<u>Min. Lot Width</u>	<u>70'</u>	<u>60'</u>	<u>60'</u>	<u>50'</u>	<u>50'</u>	<u>40'</u>	<u>40'</u>	<u>40'</u>

(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 (10) percent existing tree canopy prior to development or for sites that have more than ten (10) 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~~ to the general provisions of this section and all specifications set out in the applicable ~~Tree Ordinance Guidelines~~ as issued by the Ceity.

(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 Ceity. Trees not on the list may be approved by the Ceity ~~staff~~ on a case-by-case basis. Where trees are specified to be ~~two-inch (2) (2) inch~~ caliper, the minimum height shall be eight (8) feet. If a multi-stem trees ~~is~~ are used, ~~it~~ they must have three (3) to five (5) stems and be eight (8) to ten (10) feet tall at the time of planting. Where ~~three-inch (3) inch~~ caliper ~~(3)~~ trees are specified, the minimum height shall be ten (10) feet tall, and multi-stem trees shall be ten (10) to twelve (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 fifty percent (50%) (50) percent of new trees must be native species, and sites with more than twenty (20) trees required will have to install multiple species pursuant to the ~~tree ordinance guidelines~~ Tree Ordinance Guidelines.

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

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

(1) *Single-family development zones.* Trees of a minimum ~~two- (2) inch~~ caliper must be planted within twenty (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 (6) -foot planting strip is provided. Spacing will be an average of forty (40) to fifty (50) feet apart for large maturing shade trees, and ~~(thirty) (30)~~ to ~~(forty) (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~~ forty (40) feet. Existing ~~two-inch (2) (2) inch~~ caliper or greater large maturing shade trees preserved within twenty (20) feet of the back of the curb may be counted towards the street tree requirement if they are adequately protected during construction. The Ceity ~~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 (8) feet, shall be required. If large maturing trees are planted, each tree shall have a minimum two (2) -inch caliper. One such tree shall be planted for every forty (40) feet of frontage or fraction thereof. If small maturing trees are planted, the same conditions apply, but the increment drops to thirty (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 (8) feet, shall be required. If large maturing trees are planted, each tree shall have a minimum ~~three-inch (3)~~ (3) inch caliper. One such tree shall be planted for every forty (40) feet of frontage or fraction thereof. If small maturing trees are planted, each tree shall have a minimum ~~two-inch (2)~~ (2) inch caliper. One such tree shall be planted for every thirty (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)~~(32) of this section may be reduced by up to fifty (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)~~(32) 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 forty (40) feet of frontage or fraction thereof. If small maturing trees are planted in the pits, each tree shall have a minimum two (2) -inch-~~(2)~~ caliper. One such tree shall be planted for every thirty (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~~ However, in lieu of a minimum eight (8) -foot- wide planting strip, a pavement cutout equal to two-hundred (200) square feet and with a minimum width of five (5) 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, ~~seventy-five (75)~~ percent of the trees required under subsections ~~(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)~~(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 ten-thousand (10,000) square feet, a planting area equal to ten (10) 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 ten-thousand (10,000)~~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 (5) 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 forty (40) feet from a tree trunk, unless the parking lot has continuous islands running the length of the parking lot with minimum eight (8) feet width; then the requirement will increase to sixty (60) feet from a tree trunk.

2. Bus and tractor-trailer lots will be required to plant trees forty (40) feet apart around the perimeter of the parking lot in a minimum ten (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.

3.- Seventy-five (75) percent of the trees planted must be large maturing shade trees except as provided in subsection (f)(2)a.24 of this section. Minimum planting area per tree shall be two-hundred--seventy--four (274) square feet with a minimum width of eight (8) feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the tree ordinance guidelinesTree Ordinance Guidelines, to a depth of eighteen (18) inches.

4.-2. Where small maturing shade trees are used, the minimum planting area shall be two-hundred (200) square feet, with a minimum width of eight (8) feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the tree ordinance guidelinesTree Ordinance Guidelines, to a depth of eighteen (18) inches. Small maturing shade trees may be planted where overhead power distribution lines would interfere with normal growth (normally within twenty--five (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 forty (40) feet from a tree trunk. Trees planted must be large maturing shade trees except as provided in subsection (f)(2) b.2 of this section.

i. Minimum planting area per large maturing shade tree shall be two-hundred-seventy-four (274) square feet with a minimum dimension of eight (8) feet. The entire planting area must contain amended on-site soil, as specified in the Tree Ordinance Guidelines, to a depth of eighteen (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 (8) feet, if the entire planting area contains an approved soil mix, as specified in the Tree Ordinance Guidelines, to a depth of eighteen (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 ~~two-hundred-square-foot (200)~~ 200 square feet with a minimum dimension of eight (8) feet. The entire planting area must contain amended on-site soil, as specified in the Tree Ordinance Guidelines, to a depth of eighteen (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 two-hundred (200) square feet per tree. However, only five (5) 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 (2)~~ (2) inch dbh or greater which he/she 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 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 Ccity to be injured or threatened, it they may be deemed ineligible for meeting these requirements. The Ccity 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 Ceity 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 Ceity shall review the alternate proposal and advise the applicant of the disposition of the request within fifteen (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 Ceity'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 as 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~~ designated by the Ceity 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.

(b) No person shall refuse entry or access to any authorized Ceity 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 Ceity 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 as provided in section 21-124 or any other authorized enforcement action.

(d) The Ceity 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 Ceity 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, the property owner 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 21-6293, 21-94 and 21-936~~ this chapter 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 Ccity 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 thirty (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 Ccity, 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 Mecklenburg Ceounty Ssuperior Ccourt 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~~ Ccommission 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 Ceity 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~~ Ceommission if such person submits a written request for a hearing to the chair of the ceommission within ten (10) 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~~ Ceommission 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 ceommission 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~~ Ceommission to act as an appeal board and hear the request of the petitioner. The hearing shall be conducted by the Ceommission in accordance with subsection (d) of this section.

(2) The ~~tree advisory~~ Ceommission 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 Ceity 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 ceommission. 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 Ceity, shall entitle the person subject to the decision or responsible for the violation~~violation~~ of this chapter (petitioner) to a public hearing before the ceommission if such person submits a written request for a hearing to the chair of the ceommission within thirty (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 ceommission 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 ceommission's decision.* Any party aggrieved by the decision of the ceommission with regard to the issuance of a variance, a notice of violation or an assessment of civil penalties shall have thirty (30) days from the receipt of the decision of the ceommission to file a petition for review in the nature of certiorari in superior court with the clerk of the county Mecklenburg County Superior Ceourt.~~

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

(1) At the hearing, the petitioner and the Ceity 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 ceommission.

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

(3) At least seven (7) 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 ceommission.

(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 Ccity 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 Ccity'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 Ccity'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 Ccity'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 Ccity. The commission bylaws will determine the number of concurring votes needed to reverse any order, requirement, decision or determination of the Ccity.

(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 ~~ommission~~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 Ccity ~~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~~Section 2. These amendments shall apply to all development and ~~redevelopment~~ additions to existing sites 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) Valid building permit issued pursuant to G.S. 153A-344 or G.S. 160A-385, so long as the permit remains valid, unexpired, and unrevoked;

(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.

Section -3. This ordinance shall be effective January 2011

Approved as to form:

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City Attorney