

ARTICLE I. - IN GENERAL

Sec. 21-1. - Short title.

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

(Ord. No. 4521, § 1, 9-27-2010)

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.

*Charlotte Tree Manual (CTM)* means technical instructions, specifications, standards, best practices, procedures, and guidance for tree planting, tree protection, tree canopy management as published by the City and subject to amendment from time to time by the City. The City shall prepare, amend, update, and publish the CTM for reference and use by property owners, developers, consultants, design professionals, contractors and the general public in furtherance of the tree canopy policy objectives, requirements, and intent of the Charlotte Future 2040 Comprehensive Plan, the Charlotte Unified Development Ordinance, the Charlotte Urban Forest Master Plan, and this Chapter. The CTM shall be reviewed by the Chief Urban Forester and the Charlotte Tree Advisory Commission.

*City* means the director of Charlotte Planning, Design and Development Department, the Chief Urban Forester, director of General Services, the City Arborist, or their designated agent.

*City tree.* All planted trees in the street right-of-way and any naturally occurring trees three inches diameter in breast height (DBH) or greater in street right-of-way as specified in the (CTM). For the purposes of this term, street right-of-way includes all segments of City-accepted and/or City Landscape Management-maintained public street rights-of-way (Charlotte Department of Transportation (CDOT) or North Carolina Department of Transportation (NCDOT)) in Charlotte's corporate city limits. Landscape Management maintains trees on NCDOT street right-of-way in the city limits except for road segments identified in Charlotte Tree Manual – City Landscape Management Maintenance Areas.

*Commission* means the Charlotte tree advisory commission.

*Critical root zone.* The area of soil around the tree where roots that provide stability and uptake of water and minerals are located, the main structural and functional part of the root system. It is a protected circular area around a tree with a radius equal to one foot per inch of tree diameter at breast height (DBH) with the tree trunk at the center of the circle.

*DBH (diameter at breast height)* the diameter of a tree 4.5 feet above the average ground level.

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

*Heritage Tree.* Any tree native to North Carolina per the US Department of Agriculture Natural Resource Conservation Service Plants Database with a DBH of 30 inches or greater.

*International Society of Arboriculture (ISA).* An international industry group that promotes the professional practice of arboriculture.

*Land Disturbing Activity.* Any use of the land by any person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the groundcover or topography and that may cause or contribute to sedimentation.

*NCDOT* means North Carolina Department of Transportation.

*Pedestrian scale lighting* means 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(s).* An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the state of North Carolina and its agencies and political subdivisions, or other legal entity.

*Planting area.* Ground surface free of built upon area and/or paved material which is reserved for required trees.

*Planting Strip.* Ground surface free of built upon area and/or paved material, located between the back of curb and the sidewalk or shared use path. Planting strips typically include perimeter trees and other plantings.

*Property Owner, Landowner, or Owner.* The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the Mecklenburg County tax abstract to determine who is a property owner.

*Topping or top* means any pruning practices that 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.

*Tree Disturbing Activity.* It shall be considered a disturbing activity when a person performs or contracts to perform any of the following activities:

- (a) Spray, fertilize, remove, destroy, cut, top, damage, trim, prune, remove, cut, or carve or otherwise severely prune any tree or its root system not in accordance with the CTM
- (b) Attach any object, including, but not limited to, rope, wire, nail, chain, or sign, to any such tree or shrub not in accordance with the CTM
- (c) Alter the natural drainage, excavate, or lay any drive within the critical root zone.
- (d) Perform excavation or construction work, which shall include but not be limited to driveway installations, irrigation work, tree removal and/or grading of any kind, within the drip line of any tree without first installing a fence, frame, or box in a manner and of a type and size satisfactory to the City to protect the during construction

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

*Unified Development Ordinance for the City of Charlotte* means a document containing all adopted development regulations pursuant to the authority conferred by the North Carolina General Statutes, and through special legislation enacted by the North Carolina General Assembly for the City of Charlotte. This document is referred to as the "UDO" throughout the Charlotte Tree Ordinance.

(Ord. No. 4521, § 1, 9-27-2010; Ord. No. 8093 , § 1, 8-22-2016; Ord. No. 9671, § 1.A.1, 10-21-2019)

Sec. 21-3. - Purpose and intent.

- (a) The purpose of this Chapter is to preserve, protect and promote the health, safety, and welfare of the public by providing for the regulation of the planting, maintenance, and removal of trees.
- (b) The intent of this Chapter is 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 tree cover.
  - (6) Maintain moisture levels in the air of lands with tree cover.
  - (7) Emphasize the importance of safeguarding native ecosystems through native tree preservation.
  - (8) Preserve underground water reservoirs and facilitate the return of precipitation to the groundwater strata.
  - (9) Prevent soil erosion.
  - (10) Provide shade.
  - (11) 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.
  - (12) Conserve natural resources, including adequate air and water.
  - (13) Maintain and enhance the tree canopy cover across the city.

(Ord. No. 4521, § 1, 9-27-2010)

ARTICLE II. - ADMINISTRATION

Sec. 21-4. – Chief Urban Forester, or their designee.

- (a) To interpret, administer and enforce the provisions of Chapter 21, the Charlotte Tree Ordinance.
- (b) To lead and supervise the work and activities of staff, and supervise the tree regulation review, enforcement, and compliance.
- (c) To lead City-wide and department urban forestry goals and initiatives.
- (d) To serve as a liaison for the Charlotte Tree Advisory Commission, and interdepartmental committees.
- (e) To interpret and translate information to the public on regulatory processes, planning initiatives, and land use policies related to urban forestry and tree canopy.

Sec. 21-5. - City jurisdiction and authority.

- (a) The City of Charlotte shall have the jurisdiction, authority, control, supervision and direction over for the requirements of this Chapter over all trees planted or growing in the corporate limits of the city except where exempted in this Chapter.
- (b) The City shall prepare and publish guidelines and specifications in a document entitled the Charlotte Tree Manual for reference and use in furtherance of the requirements and intent of Article 20 of the UDO and this Chapter. This document shall be reviewed periodically by the Chief Urban Forester and 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.

- (d) No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the City to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City, as determined by the City. For purposes of this Chapter, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(Ord. No. 4521, § 1, 9-27-2010) (2021-113; 6-21-21)

### ARTICLE III. - MAINTENANCE AND PROTECTION OF TREES

#### Sec. 21-6. – Applicability.

The requirements of this Article shall apply to all properties including public entities and owners of public property. Additional information related to tree planting and preservation development requirements, long-term compliance, and protected trees may be found in Article 20. Landscape, Screening, & Tree Preservation of the UDO.

#### Sec. 21-7. - Trees on public property.

Trees located on City property and on public street right-of-way are considered assets of the City of Charlotte and are always protected by this Chapter. The City manages city trees to provide the highest level of benefits possible to the Charlotte community while maintaining a high standard of public safety and acceptable risk.

- (a) No person shall perform a tree disturbing activity to any City tree, without first obtaining a tree work permit from the City. The provisions of said permit, this Chapter, and (CTM) shall be strictly complied with. Failure to comply with the provisions of an issued tree work permit shall constitute a willful violation of this Chapter.
- (b) No person shall plant any tree or shrub on any public street rights-of-way or City property without first obtaining a tree work permit from the City and without complying strictly with the provisions of said permit, this Chapter, and the CTM.
- (c) 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.
- (d) All building materials, equipment, dirt, and debris shall be kept outside the critical root zone. Any tree protection fence, frame, or box required by this Chapter, Article 20. of the UDO, the CTM, or Charlotte Land Development Standards Manual (CLDSM) shall not be removed unless or until the City authorizes such removal.
- (e) It shall be the duty of the property owner to plant required perimeter trees in public street rights-of-way as required by a City-approved development plan pursuant to the CTM, CLDSM, and Article 20. of the UDO. Trees required by the Article 20. of the UDO, or trees protected by this Chapter as a condition of a previously approved development plan, which die, are missing, or are otherwise deemed unhealthy by the City, shall be removed and replaced by the property owner normally during the next planting season which is November through March. New owners of properties already in compliance shall

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 required to use large maturing shade trees as replacements whenever 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 they have voluntarily done so in the past.

- (f) It shall be the duty of the property owner to maintain and/or replace required amenity zone streetscape elements, including tree pits, installed in public street rights-of-way as required by a City-approved development plan pursuant to the CTM.
- (g) The removal of City trees may be subject to mitigation payment and/or planting requirements, pursuant to the CTM. Collected fees from City tree mitigation shall be deposited in the Street Tree Planting Fund.
- (h) City trees shall be allowed to grow to their natural height and form. Topping is prohibited.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-8. - 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 maintain or prune such trees, pursuant to the CTM, in a manner that they will not do any of the following:
  - (1) Obstruct or shade the streetlights or pedestrian scale lighting in public rights-of-way.
  - (2) Obstruct or interfere with the passage of pedestrians or bicyclists on sidewalks, shared-use paths, greenways, bicycle lanes, and other similar multimodal transportation facilities.
  - (3) Obstruct vision of traffic signs or signals.
  - (4) Obstruct views of any street or alley intersection.
- (b) Any person owning or occupying real property bordering on any public street, City park, or other City 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 any person or domestic animal.
- (c) No tree disturbing activity may impact any tree equal to or larger than two inches within a required green area, any tree equal to or larger than eight inches caliper within a tree protection zone, any heritage tree, and/or any other tree required or protected by Article 20. of the UDO or this Chapter prior to approval and issuance of applicable tree work permits by the City.
- (d) It shall be the duty of the property owner to maintain, plant, and/or replace required and protected trees on private property as required by Article 20. of the UDO or this Chapter, including heritage trees, and perimeter trees planted in network-required private streets. Trees shall be allowed to grow to their natural height and form. Pruning of these trees shall be allowed where a tree work permit has been issued and another requirement of Article 20. of the UDO, this Chapter, or another City Code requires pruning of these trees. Topping is prohibited. Property owners will not be held liable for any pruning conducted by utility providers.
- (e) Trees required or protected by Article 20. of the UDO, this Chapter, or by a condition of a previously approved development plan, which die, are missing, or are otherwise deemed unhealthy by the City, shall be removed and replaced by the property owner, normally during the next planting season which is November through March.

Owners of properties, sites, and parcels that are already in compliance shall maintain that compliance with the standards of Article 20. of the UDO, this Chapter, CTM, and CLDSM. Trees of the same approved species as those existing may be used to replace dead, missing, or unhealthy trees. The property owner is required to use large maturing shade trees as replacements whenever 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 they have voluntarily done so in the past.

(f) If the owner or occupant of such property does not perform the duties set out in subsections 21-8(a) and 21-8(b), 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.

(g) Heritage trees - Heritage trees shall be protected at all times within the corporate limits of the city, subject to the requirements of this Chapter as specified below.

(1) Heritage trees may be removed when a City-issued tree work permit is requested and approved. No removal activities shall commence until such permit is issued, any applicable mitigation payments have been received, and a planting plan has been approved.

Tree work permits for the removal of heritage trees that have been preserved related to development requirements associated with a previously City-approved development plan shall only be granted when one or more of the standards of Article 20.14.B.1. of the UDO, or when the standards of item 2 below are met.

(2) Heritage trees that are sufficiently diseased, injured, dead, or are in danger of falling shall not be required to obtain a City-issued tree work permit or mitigate the tree loss prior to removal. Trees removed without a permit due to health or hazard shall be either certified by an ISA-certified arborist or adequately documented through picture, video or other documentation prior to removal. Heritage trees that are in declining health may be removed without a City-issued tree work permit only when certified by an ISA-certified arborist prior to removal. For the purpose of this section, a "tree in declining health" shall mean a tree that can be expected to fall within a 1-3 year time period per an assessment by an ISA-certified arborist.

(3) Mitigation - Owners and persons authorized by the City to remove a heritage tree shall comply with the following mitigation actions:

a. Required Tree Replanting - One or more trees shall be planted on the property in mitigation pursuant to the CTM. Trees replanted to meet this mitigation requirement shall be in addition to other trees required by this Chapter and Article 20. of the UDO.

b. Heritage Tree Mitigation Payment - A heritage tree mitigation payment shall be required for every heritage tree removed per the fee set by the CTM. The required mitigation payment may be reduced or eliminated where trees are replanted on the property in addition to those required by item (3)a. above. The rate of reduction shall be subject to the CTM.

(4) Specimen Tree Preservation - Specimen trees may be preserved to meet all Heritage Tree mitigation requirements specified above. Only large hardwoods and large softwoods, per the definition of this term in the UDO, shall be used to meet this mitigation requirement. One specimen tree preserved shall meet the mitigation requirements for the removal of one Heritage Tree approved for removal.

(5) Collected fees from mitigation per this item shall be deposited into the Canopy Care Fund

(6) It shall be the duty of the property owner to maintain, plant, and/or replace mitigation and heritages trees on private property as required by this section. Trees shall be allowed to grow to their natural height and form.

(h) Tree save standards

- (1) Tree save areas shall be free of invasive plant species unless otherwise approved by the Chief Urban Forester. If a tree save area contains invasive plant species invasive plant species shall be removed. Invasive plant species are considered removed if they are no longer living in or under the tree canopy. Property owners are required to maintain this condition for compliance with this Chapter.

Pursuant to the CTM, any alterations to the tree save area in Tier 3 and Tier 4 Place Types shall be accomplished without mechanized tools and vehicular equipment and made of organic, environmentally friendly materials, unless otherwise approved by the Chief Urban Forester. For sites located in Tier 1 or Tier 2 Place Types, alterations to the tree save area do not have to meet the above standard. However, if alterations are made or amenities are added, these changes shall be made in a manner that is not detrimental to the saved trees or their critical root zone. Alterations and addition of any amenities shall be approved by the Chief Urban Forester.

- (2) No structure shall be allowed within ten feet of the tree save area. A building restriction note shall be indicated on the record plat pursuant to the CTM.
- (3) Additional amenity elements including, but not limited to, benches, trails, gazebos, sheds, fences, may be permitted in the tree save area by the Chief Urban Forester pursuant to the CTM.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-9. - Permits.

- (a) Persons requesting to perform any tree disturbing activity to trees subject to this Chapter shall obtain a tree work permit from the General Services Department or the Charlotte Planning, Design and Development Department before the activities commence, pursuant to the CTM. For purposes of this subsection, a tree work permit issued by the City or a development plan subject to the applicability of the UDO that is approved by the City constitutes a tree work permit.
- (b) The City shall have the authority to review all requests for tree work permits and to grant, deny, or attach reasonable conditions to such permits.
- (c) Individual tree work permits shall not be required for Charlotte Department of Transportation (CDOT), Charlotte Area Transit Services (CATS), and North Carolina Department of Transportation (NCDOT) projects so long as tree preservation and protection requirements are included in the project plans.

(Ord. No. 4521, § 1, 9-27-2010)

Sec. 21-10. - Utilities.

- (a) Public and private utilities that install aboveground or underground utilities shall be required to accomplish all work on property subject to this Chapter in accordance with the utility 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 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 tree work permit for routine trenching and pruning operations affecting a tree protected by this Chapter 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 shall be deemed a willful violation of this Chapter.

(Ord. No. 4521, § 1, 9-27-2010)

#### ARTICLE IV. - MODIFICATION, INSPECTION, ENFORCEMENT, COMMISSION, AND APPEAL

##### Sec. 21-11. – Modifications

- (a) If strict compliance with the standards of this Chapter conflict with existing federal or state statutory or regulatory requirements the owner may submit a specific alternate plan for planting to the Chief Urban Forester for consideration. This plan shall meet the purposes and standards of this Chapter but may suggest measures other than those listed in this Chapter. In addition, if the owner 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 shall 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 Chief Urban Forester 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 Sec. 21-16.
- (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 Charlotte Planning, Design and Development 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 21-14.

(Ord. No. 4521, § 1, 9-27-2010)

##### Sec. 21-12. - Inspections and investigations of sites.

- (a) Administrative staff of the City are authorized to inspect the sites subject to this Chapter to determine compliance with this Chapter, the terms of applicable development approval, or rules or orders adopted or issued pursuant to this Chapter. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.
- (b) 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 Chief Urban Forester may issue a written notice of violation in accordance with Sec. 21-14(d) of this Chapter. As specified by G.S. Sec. 160D-404(a), the notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of the violation may be posted on the property. The person providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. 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 and 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 Sec. 21-14(b) of this Chapter, the CTM, or any other authorized enforcement action.
- (c) 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 as specified by G.S. Sec. 160D-403(e) and subsection (a) of this section.

(Ord. No. 4521, § 1, 9-27-2010) (2021-113; 6-21-21)

### Sec. 21-13. - 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.

(Ord. No. 4521, § 1, 9-27-2010)

### Sec. 21-14. – Penalties.

- (a) Generally. Any person who violates any of the tree regulations 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 Sec. 21-14(b) below and by the CTM. Penalties in Sec. 21-14(b) below are in addition to and not in lieu of compliance with the requirements 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, the CTM, or other provisions of law on account of work performed in violation of these regulations.
- (b) Civil Penalties. Civil penalties for violations of the tree regulations in this Chapter shall be assessed pursuant to the CTM and the following:
  - (1) Failure to plant original or replacement trees in accordance with this Chapter shall be \$50 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 Sec. 21-14(d) of this Chapter. 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 this Chapter 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. 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 this Chapter that do not result in the total loss of the trees or shrubs 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. 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 Article 20. of the UDO, this Chapter, the CTM, or CLDSM shall be a penalty of \$1,000. No civil penalty shall be assessed until the person has been issued a notice of violation by the Chief Urban Forester as provided in Sec. 21-14(d) of this Chapter. 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 and/or green 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 Chapter.
  - (5) Any other action that constitutes a violation of this Chapter may subject the violator to a civil penalty of \$50, and each day of continuing violation shall constitute a separate violation. However, the maximum amount of the penalty shall not exceed \$1,000.
- (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 or the CTM.

- (d) Notice. The Chief Urban Forester shall determine the amount of the civil penalty, in accordance with Sec. 21-14(b) and the CTM for any violations of this Chapter, and shall notify the responsible person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of violation shall be provided in accordance with Sec. 21-12(b) of this Chapter. The notice of assessment shall direct the violator to either pay the assessment or file an appeal in accordance with Sec. 21-16 of this Chapter. If payment of assessed penalties is not received within 30 days after it is due, or if no request for an appeal hearing has been made in accordance with Sec. 21-16 of this Chapter, the assessment shall be considered a debt due and owed 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 Mecklenburg County Superior Court or in any other court of competent jurisdiction.
- (e) Civil Action for Unpaid Assessment. If payment of assessed penalties if not received within 30 days after it is due, or if no request for an appeal hearing has been made in accordance with Sec. 21-16(c), the assessment shall be considered a debt due and owned 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. A civil action shall be filed within three years of the date the assessment was due. An assessment that is not appealed is due when the violator is served with a notice of assessment. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.

(Ord. No. 4521, § 1, 9-27-2010) (2021-113; 6-21-21)

- (f) Injunctive Relief. 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.

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.

- (g) Order to Take Corrective Action
  - (1) If the owner or occupant of such property does not perform the duties set out in Sections 21-8, 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, safety, or welfare. The order shall be in writing and provided by personal delivery, email, or first-class mail to the property owner or occupant responsible for such condition and shall be acted upon within 30 days from the time of the receipt of the order. Orders provided by first-class mail are deemed received on the third business day following deposit of the order for mailing with the U.S. Postal Service. The staff person, or person providing the order shall certify to the City that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud.
  - (2) 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 critical to the public health, safety, or welfare, the City may act without prior notification to the property owner or occupant.
- (h) Use of civil penalties collected. Civil penalties collected pursuant to this chapter shall only be used to further the purpose, intent, enforcement, spirit, and requirements of the Charlotte Tree Ordinance. The Charlotte Tree Advisory Commission shall be consulted with regard to use of collected funds.

Sec. 21-15. - Tree advisory commission.

(a) Powers and Duties

- (1) To serve in an advisory role in developing tree-related policy.
- (2) To review and provide guidance on best practices and education to sustain Charlotte's Tree Canopy.
- (3) To select and award recognition to exemplary trees and efforts to sustain tree canopy across the City of Charlotte.
- (4) To adopt bylaws necessary for the administration of its responsibilities not inconsistent with these regulations.
- (5) In determining appeals of administrative decisions and variances related to non-land development items regulated by this Chapter, the tree advisory commission shall follow the statutory procedures for all quasi-judicial decisions as required by G.S. Sec.160D-406.

(b) Membership, Hearings, and Procedures

- (1) The Charlotte Tree Advisory Commission shall be composed of 12 members, a majority of whom shall be residents of the City.
- (2) Seven of the members shall be appointed by the City Council.
- (3) Three of the members shall be appointed by the Mayor.
- (4) The remaining two members shall be representatives of the Charlotte Planning, Design and Development Department and Department of General Services and shall be ex officio (non-voting) members. These members shall be the Chief Urban Forester or their designee and the City Arborist or their designee.

(c) The Commission shall nominate prospective members to City Council and the Mayor based on the following experience and background:

- (1) Professional horticulturist or landscape contractor with five years of experience.
- (2) Registered landscape architect with five years of experience.
- (3) Professional with five years of experience in city planning, urban design, government ordinance and regulations.
- (4) Member of a natural resources advocacy group.
- (5) Member of the International Society of Arboriculture.
- (6) Representative of sustainable development community.
- (7) Representative of citizen interest group.
- (8) Representative of public utilities.
- (9) Representative of neighborhood group.

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) Meetings

- (1) Regular meetings shall be held periodically at a time and place determined by the Charlotte Tree Advisory Commission.
- (2) The adopted bylaws, where not inconsistent with this Ordinance, shall govern the procedures for meetings. The tree advisory commission shall keep minutes of its proceedings as required by G.S. Sec.160D- 308.

(e) Each member shall take an oath of office before starting their duties as required by G.S. Sec. 160D-309.

(f) Each member shall comply with the conflict of interest standards as specified in G.S. Sec. 160D-109 and Section 1.111 of the City of Charlotte zoning ordinance.

(Ord. No. 4521, § 1, 9-27-2010) (Ord. 2021-113 adopted 6-21-21)

Sec. 21-6. - Hearings and appeals.

- (a) *Quasi-judicial procedure.* In determining appeals of administrative decisions and variances, the commission shall follow the statutory procedures for all quasi-judicial decisions as required by G.S. Sec. 160D-406.

The commission shall vote in accordance with state law. Vacant positions on the commission and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D- 109(d) shall not be considered members of the commission for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

- (b) *Requests for variance.* Procedures for a request for a variance from this Chapter are as follows:
- (1) 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 commission if such person submits a written request for a hearing to the chair of the commission. As soon as possible after the receipt of the request, the chair of the 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 hearing shall be conducted by the commission in accordance with subsection (e).
  - (2) As per G.S. Sec. 160D-406 notices of hearings shall be mailed to (1) the person or entity whose appeal, application or request is the subject of the hearing; (2) to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and (3) to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing.

In the absence of evidence to the contrary, the county tax listing shall be used to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same period, the City shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. Staff shall transmit to the commission all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the commission prior to the hearing if at the same time they are distributed to the commission, a copy is also provided to the applicant and to the property owner if that person is not the applicant. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the commission at the hearing.

- (3) The commission may grant a variance from the requirements of this Chapter upon a finding that:
  - a. Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
  - d. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.
- (4) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
- (5) Variance approvals attach to and run with the land pursuant to G.S. Sec. 160D-104.

(c) *Appeals of 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. An appeal stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the commission as specified in G.S. Sec. 160D-405(f), unless the City staff member who made the decision certifies to the commission, after notice of appeal has been filed that because of the facts stated in the certificate a stay would cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with the enforcement of this Chapter. In that case, enforcement shall not be stayed except by a restraining order, which may be granted by a court. Procedures for appeal hearings 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 (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 a decision, notice of violation or assessment of a civil penalty. In the absence of evidence to the contrary, notice given pursuant to G.S. Sec. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
- (2) As soon as possible after the receipt of the request, the chair shall set a date, time and place for the hearing and, as specified in G.S. Sec. 160D-406, shall mail notices to (1) the person or entity whose appeal is the subject of the hearing; (2) to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and (3) to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. In the absence of evidence to the contrary, the county tax listing shall be used to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same period, the City shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

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 G.S. Sec. 160D-406 and subsection (e).

(d) *Petition for review of commission's decision.* Every quasi-judicial decision of the commission shall be subject to judicial review by the superior court by proceedings in the nature of certiorari pursuant to G.S. Sec. 160D-1402. Any petition for a review of the commission's decision in the nature of certiorari by the superior court must be filed with the clerk of superior court by the later of (1) 30 days after the decision is effective, or (2) 30 days after a written copy of the decision is given in accordance with subsection (1) of this section. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

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

- (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) Staff shall transmit to the commission all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the commission prior to the hearing if at the same time they are distributed to the commission, a copy is also provided to the petitioner and to the property owner if that person is not the petitioner. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the commission the hearing.
- (5) Witnesses shall testify under oath or affirmation to be administered by the court reporter or another duly authorized official.
- (6) For appeals of administrative decisions, the administrator or staff person who made the decision (or his or her successor if the person is no longer employed) shall be present at the quasi-judicial hearing to appear as a witness.
- (7) All parties with standing shall be allowed to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments.
- (8) 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.
- (9) 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 are true and substantiated, the commission shall, as it sees fit, uphold the City 's action.
  - 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.
- (10) 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 and shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing, reflect the commission's determination of contested facts and their application to the applicable standards, and be approved by the commission and signed by the chair or other duly authorized member of the commission.
- (11) The decision of the commission shall be delivered by personal delivery, electronic mail, or by first- class mail to the petitioner, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made. 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.
- (12) The decision of the commission shall constitute a final decision.