



**TOWN OF DAVIDSON
PLANNING BOARD
Board Room
Davidson Town Hall
July 29, 2019**

PLANNING BOARD MEETING - 6:00 PM

(Held in the Town Hall Board Room)

I. CALL TO ORDER

II. SILENT ROLL CALL AND DETERMINATION OF QUORUM

III. CHANGES TO THE AGENDA

IV. REVIEW/APPROVAL OF THE MINUTES

- (a) Review/Approval of the June 24, 2019 Minutes

V. B.O.C. LIAISON REPORT

VI. NEW BUSINESS

- (a) Certified Local Government Model Ordinance: FYI Presentation

VII. OLD BUSINESS

- (a) DPO 9 Tree Canopy, Preservation, & Screening - Text Amendments

VIII. PLANNING STAFF REPORT

IX. B.O.C. LIAISON SELECTION

X. ADJOURNMENT



Agenda Title: Review/Approval of the June 24, 2019 Minutes

Summary: The Planning Board will review and consider approval of the previous meeting's minutes.

ATTACHMENTS:

Description	Upload Date	Type
<input checked="" type="checkbox"/> June 24, 2019 Minutes	7/25/2019	Cover Memo

MEETING MINUTES

Planning Board
Town of Davidson, NC
June 24, 2019

A meeting of the Davidson Planning Board was held at 6:00 p.m. in the Davidson Town Hall Board Room.

I. CALL TO ORDER: 6:02 pm

II. SILENT ROLL CALL AND DETERMINATION OF QUORUM

- **Present Board Members:** Susan Cooke; Kelly Ross; Matt Dellinger (Chair); Ellen Donaldson; Shawn Copeland; Nora Barger; Bob Miller; Mike Minett; Kate Barr
- **Absent Board Members:** Lindsey Williams; John Swope; Michael Flake
- **Town Representatives:** Trey Akers, Travis Johnson, Lindsay Laird, David Cole

III. CHANGES TO THE AGENDA: Trey Akers introduced new Planning Dept. staff member David Cole to the Planning Board.

IV. REVIEW/APPROVAL OF THE MINUTES

- a. **Approval of Minutes from May 20th, 2019:** Planning Board members voted to approve the May 2019 Minutes.
- Motion to Approve: Susan Cooke
 - Second: Bob Miller
- Vote: 9-0 (Minutes Approved. Absent: Williams, Swope, Flake)

V. B.O.C. LIAISON REPORT: None

VI. OLD BUSINESS:

- a. **Mobility Plan Recommendation:** Senior Planner Travis Johnson provided an overview of the Mobility Plan, including steps taken by the Planning Board's Mobility Plan Committee to review various plan drafts and incorporate feedback into the final plan. Members discussed the importance of pedestrian/cyclist safety on Concord Rd. and the need to prioritize this in the plan; the process by which projects are identified, prioritized, and reviewed/recommended annually; and, how qualitative measure impact prioritization (with the NC 73/Concord Rd. intersection improvements cited as an example of an important short-term project being pursued but would soon become obsolete due to planned NCDOT improvements). Kelly Ross motioned to recommend the plan with a proposal that a multi-use path, not a sidewalk, be the recommended improvement on Concord Road.
- Motion to Recommend: Kelly Ross
 - Second: Ellen Donaldson
- Vote: 9-0 (Plan Recommended. Absent: Williams, Swope, Flake)

- b. **DPO 9 Update:** Senior Planner Trey Akers and board member Ellen Donaldson gave an update on the proposed text amendments for Davidson Planning Ordinance Section 9, which covers Tree Canopy, Landscaping, & Screening. Members discussed specimen trees, including the new

definition and care plans associated with these trees as part of master plan development. Members also asked about the role of native species, and how the amendments would be applied to existing agricultural uses.

VII. NEW BUSINESS:

- a. **Davidson Bay Phase 2 Master Plan Amendment - FYI Presentation:** Planner Lindsay Laird provided an overview of the proposed amendments to the plan, which include reducing the amount of commercial area and residential units. Members asked how much parking would be required; what the height of the proposed buildings would be; whether all of the required BMPs from the original plan would be constructed; whether a TIA would be required and what types of streets are proposed; and, whether there's a need for senior housing in this location as well as whether the affordable housing requirement would be met (it is being planned for in two of the quadplex buildings).
- b. **Lake Forest Church Conditional Master Plan - FYI Presentation:** Planner Lindsay Laird provided an overview of the proposal, which includes a commercial building along South Main St. and a church towards the rear of the property. Along with project team member Bill Worsley, members discussed the context of the site and its surrounding properties, whether surrounding landowners had been consulted yet, the church's long-term vision for the site, and the role that parking will play for the site and South Main St. area. Worsley indicated the church's intent to make a positive investment in the community through how the site is developed and designed.

VIII. PLANNING STAFF REPORT: Senior Planner Trey Akers provide an update regarding various sites, development proposals, and policy initiatives underway throughout town.

IX. B.O.C. LIAISON SELECTION: N/A

X. ADJOURNMENT: 9:23 pm

- Motion to Adjourn: Mike Minett
- Second: Bob Miller

APPROVAL OF MEETING MINUTES

Signature/Date
Matt Dellinger
Planning Board Chair



Agenda Title: Certified Local Government Model Ordinance: FYI Presentation

Summary: Planner Lindsay Laird will provide a brief overview of a model ordinance being drafted by the Historic Preservation Commission for use by this body in administering preservation guidelines as part of the town's role as Certified Local Government.

ATTACHMENTS:

Description	Upload Date	Type
□ Certified Local Government Model Ordinance - Memo	7/25/2019	Cover Memo



MEMO: CLG MODEL ORDINANCE

Date: July 29, 2019
To: Planning Board
From: Lindsay Laird, Planner
RE: Certified Local Government Model Ordinance

The following sections highlight the purpose of proposed text amendments, alignment with town aims, and anticipated schedule/potential action.

1. PURPOSE

The Town of Davidson was recently designated as a Certified Local Government (CLG) by the State Historic Preservation Office (SHPO). The CLG program seeks to assist the development, maintenance and enrichment of local historic preservation programs in cooperation with state and federal preservation programs. In North Carolina, governments which qualify for certification must have an active and legally adequate historic preservation commission, and must meet the federal requirements for certification.

The CLG Model Ordinance is a document drafted by SHPO to be used as a guide for local historic preservation commissions. The Historic Preservation Ordinance (attached) was drafted using the state model ordinance language with Davidson-specific references. The purpose of working to adopt a version of the CLG Model Ordinance is to ensure that the town enforces appropriate state and federal legislation for the designation and protection of historic properties.

2. RELATED TOWN GOALS

Strategic Plan Alignment

- **Historic Preservation Strategy:** The proposed model ordinance language more clearly outlines the required processes for designation and protection of historic properties. Clarifying historic preservation-related processes will become even more important as the town explores expansion of the Local Historic District.
- **Operations:** The model ordinance language will clarify the administrative and approval processes for historic properties.
- **Partnerships:** The town's Historic Preservation Commission has been and will continue to be involved throughout the process.

Core Values

- **Open Communication:** Advisory board (Historic Preservation Commission) members have and will continue to play an instrumental role in reviewing/revising standards.

- **Traditional Character:** The proposed ordinance language would reinforce the historic character of town by more clearly outlining processes for preservation of historic resources in town.

3. FYI/RECOMMENDED ACTION

The Historic Preservation Ordinance draft is being presented to the Planning Board as an FYI.

4. PROCESS & NEXT STEPS

- January-June 2019:
 - Historic Preservation Commission review of model ordinance language
- July 29, 2019:
 - Planning Board FYI
- August 2019:
 - Board of Commissioners FYI (tentative)
 - Planning Board update
- September/October 2019:
 - Board of Commissioners hearing
 - Planning Board recommendation
- November 2019:
 - Commissioner consideration of approval

5. ATTACHMENTS

- Historic Preservation Ordinance - Draft



Agenda Title: DPO 9 Tree Canopy, Preservation, & Screening - Text Amendments

Summary: The Planning Board will review and make a recommendation regarding proposed changes to Section 9 of the Davidson Planning Ordinance, which covers Tree Canopy, Preservation, and Screening.

ATTACHMENTS:

Description	Upload Date	Type
DPO 9 Text Amendments - Memo	7/25/2019	Cover Memo
DPO 9 Text Amendments - Presentation	7/25/2019	Presentation
DPO 9 Text Amendments - Schedule of Changes	7/25/2019	Exhibit
DPO 9 Text Amendments - Section 9 Proposed Amendments	7/25/2019	Exhibit
DPO 9 Text Amendments - Section 15 Proposed Amendments	7/25/2019	Exhibit



MEMO: TREE ORDINANCE DRAFT TEXT AMENDMENTS

Date: July 23, 2019
To: Board of Commissioners
From: Planning Board Ordinance Committee Members; Trey Akers, Senior Planner
Re: DPO Sections 9/15 (Trees/Landscaping Ordinances) – Proposed Text Amendments

The following sections highlight the proposed text amendments' history, alignment with town aims, public engagement, pros/cons, and anticipated schedule/potential action. Note: The Davidson Planning Ordinance is abbreviated "DPO" throughout the memo.

1. OVERVIEW

BACKGROUND

- **Purpose:** The standards promote the creation of a healthy tree canopy and landscape by establishing rules to regulate the establishment, preservation, and maintenance of natural features at the lot and site/master plan level.
- **Background:** In December 2016 the Livability Board suggested revising the standards to institute best practices, make adjustments, and clarify administration procedures. Updating the tree ordinance is listed as a high priority on the planning department workplan.

ATTACHMENTS

- **Presentation:** This presentation covers the most substantive topics from DPO 9 Tree Canopy, Landscaping, and Screening and the related DPO 15 Landscaping Violations. These are highlights and this presentation should be paired with review of the actual amendments and comments in the margins of the DPO 9/15 documents.
- **Schedule of Changes:** This is the schedule of changes by ordinance section, including a few cross-reference changes that are required. All DPO 9 and 15 changes are listed outside of this document.
- **DPO 9 and DPO 15 Documents:** As noted above, these contain the actual changes. Many components in each of these sections included significant rewriting or reorganization; comments regarding substantive topics are included in the document margins.

2. RELATED TOWN GOALS

STRATEGIC PLAN ALIGNMENT

- **Land Use Strategy:** The proposed standards consider the revision of development processes to more effectively guide the approval of landscape plans and tree permits.

- **Historic Preservation Strategy:** The proposed standards contemplate how to increase incentives for the preservation of healthy, mature trees that contribute to the town's authenticity as a historic, small college town.
- **Operations:** The standards would clarify the administrative and approval processes for DPO 9/15.
- **Partnerships:** The town's advisory boards have been and will continue to be involved throughout the process. Additionally, guidance has been sought from arborists with the City of Charlotte. Lastly, the proposed amendments contemplate partnering with local organizations that could help incentivize tree canopy establishment and preservation.

CORE VALUES

- **Open Communication:** Advisory board members have and will continue to play an instrumental role in reviewing/revising standards and engaging citizens.
- **Traditional Character:** The proposed standards would indirectly reinforce the historic character of existing streets throughout town while ensuring new streets are built in the same manner.
- **Healthy Environment:** The standards help to protect and enhance the town's tree canopy.

COMPREHENSIVE PLAN

- **Enable Faithful Stewardship, Goal 2 - Preserve Natural Habitats, the Lakeshore, and the Tree Canopy:** This goal recommends a variety of approaches being contemplated by the proposed policies and amendments, including:
 - » Promote healthy pruning techniques;
 - » Set measurable goals to increase and sustain forest cover;
 - » Create incentives and/or funds to assist landowners in mitigating tree removal through care practices or replanting;
 - » Create a tree canopy replanting and management plan;
 - » Revise requirements to better preserve existing tree canopy.

CONSTITUENTS SERVED

- **All Residents:** Residents across town experience the beauty of trees on our streets and in our public spaces and are positively impacted by the improved air quality that trees provide.
- **Administration/Government:** The proposed amendments increase administrative clarity, including application of standards and processes, compared to the current standards. This benefits landowners, too, who will have a better idea of steps needed to obtain approval.

3. SUMMARY OF CHANGES

OVERVIEW OF PROPOSED AMENDMENTS

The following list highlights the substantive changes undertaken to each ordinance sub-section.

- **Section 9 Tree Canopy, Landscaping, & Screening:**
 - » **9.1 Purpose & Intention:** This section has been reordered to address overarching goals first, then impacts addressed through the ordinance, then issues of property and aesthetics.
 - » **9.2 Applicability & Administration:** This section has been revised to designate an Arborist as a key figure in educating stakeholders as well as in the approval of plans and permits. And, various changes have been made to clarify the documentation requirements for landscape plans as well as the criteria governing landscape bonds, inspections, and the replacement of damaged vegetation. Lastly, a Tree Fund to support on-going canopy management activities has been proposed.

- » **9.3 Tree Coverage & Preservation:** This section includes the following revisions:
 - **9.3.1, Table 9-1 Minimum Canopy Coverage:**
 - An establishment requirement has been added and a limit on the amount of coverage that can come from preserved areas is proposed (meaning that new trees are required in each development);
 - the coverage requirements have been made prescriptive (rather than non-binding as in the current DPO) and, as a result, many coverages have increased;
 - the coverage requirements have been revised to be based on project area, which results in greater canopy coverage;
 - the coverage requirements have been informed by local data (tree canopy study);
 - caliper planting sizes have been increased and a minimum height at planting requirement has been added;
 - and, a payment-in-lieu option has been proposed (which acknowledges growth in built-up areas and directs resources to areas intended for preservation. Street tree and parking lot planting requirements must still be met). The proposed value is \$8/square foot and is derived from local data in the Street Tree Inventory. This is based on a mid-point between a pure environmental services value of a tree (\$4-\$5/square foot) and the average asset value of a large maturing tree (\$10-12/square foot).
 - **9.3.2, Table 9-2 Preservation:** Preservation requirements ranging from 10%-40% have been calibrated based on Planning Area, rather than a generic requirement that exists in the current ordinance (20%). Additionally, a payment-in-lieu option has been proposed as described above.
 - **9.3.3, Permitting:** A clearer, more rigorous permitting process has been established and requires involvement by a professional arborist to facilitate tree care and preservation. The area covered by permitting has increased from setback areas only to the entire lot, while the minimum size of a tree requiring a permit for removal has increased from eight inches to twelve inches. Note: The permitting process does not prohibit the removal of trees.
- » **9.4 Street Tree Plantings:** This section has been revised in a few minor but important ways – namely, instituting standards to ensure robust plantings along streets but with flexibility accorded to the arborist in making sure the intent of the requirements are met. References to third-party standards are included as a best practice.
- » **9.5 Site Landscaping:** Minimal adjustments have been made to this section, which establishes clear standards for depicting landscape/vegetation on site plans and minimum planting standards for areas around buildings.
- » **9.6 Parking Area Landscaping:** This section covers planting and design requirements for existing as well as new parking lots. Minimal adjustments to this section were needed.
- » **9.7 Screening:** This section covers special use circumstances. Minimal adjustments to this section were needed; redundancies with Section 4.3.1.E of the ordinance were eliminated.
- » **9.8 Installation & Maintenance Standards:** This section covers miscellaneous topics ranging from soil compaction to fencing to encroachments. Minimal adjustments to this section were needed.
- » **9.9 Alt. Methods of Compliance:** This is a new section that includes text relocated from earlier in the ordinance. Titles and documentation references have been added for clarity, and relocating this section from the beginning to the end reinforces the notion that the meeting ordinance's requirements is the first priority – with alternative compliance reserved for select cases.

- » **9.10 Planting Specifications & Appendices:** This is a new section that contains various reference documents such as what types of trees/vegetation to plant, the appropriate mix of species, and third-party guidance on landscape practices.
- **Section 15.3.1 Landscaping Violations:**
 - » **A. Applicability:** This section has been revised to be more clearly organized.
 - » **B. Replacement:** This section has been revised to be more clearly organized. Additionally, replanting requirements specific to specimen trees have been added, along with more flexibility on when replantings can occur (i.e. a mutually-agreed-to timeframe based on planting season).
 - » **C. Penalties:** This section has been reorganized and features a number of changes:
 - each responsible party can be subject to a civil penalty (i.e. not just the landowner but the entity performing the work);
 - failing to plant original or replacement trees may be subject to a penalty;
 - penalties have been calibrated based on total or partial loss as well as whether the affected tree/area is a specimen tree, part of an approved plan, or in the right-of-way;
 - non-monetary penalties have been introduced to allow for flexibility in assessing violations where financial hardship exists or unintentional/not grossly negligent actions result in a violation; and
 - the process for issuing a violation has been clarified.
 - » **D. Appeals & Variances:** This section has been added to make the process for disputing violations clear, fair, and linked to existing ordinance procedures (i.e. the Board of Adjustment proceedings).

4. OPTIONS/PROS & CONS

RECAP. OF OPTIONS DISCUSSED

Beginning with the November 13, 2018 board of commissioners meeting and including additional meetings listed below, the following topics were discussed and policy direction sought/confirmed:

- **Arborist Involvement:** Established in 9.2.2.B and referenced throughout Section 9.
- **Tree Fund:** Identified in 9.2.2.B; requires Board of Commissioners resolution.
- **Landscape Bonds/Warranty:** Established in 9.2.2.D-E.
- **Canopy Preservation & Establishment:** Tree canopy study completed Spring 2019; results shared at the March 12, 2019 and May 24, 2019 board of commissioner meetings and commissioners supported the use of this data to inform Table 9-1 and Table 9-2 changes and supporting criteria (i.e. calibrated approach pursued). Modifications to these tables based on this data, including pricing alternatives, were discussed at the June 11 and July 9, 2019 board of commissioner meetings.
- **Permitting/Removal Criteria:** Clarified and increased in rigor in 9.3 based on discussions at the June 11 and July 9, 2019 board of commissioner meetings.
- **Remediation Provisions/Civil Penalties:** Clarified and increased in rigor in 9.3 based on discussions at the June 11 and July 9, 2019 board of commissioner meetings.

PROS & CONS

Below is a list of potential benefits if commissioners enact the ordinance changes:

- **Arborist Involvement:** The inclusion of this practitioner in the review/approval of plans and permits will greatly increase the community's collective understanding of how to properly plant,

care for, and remove trees. Effectively, this consultation is being offered as a service to residents.

- **Administrative Clarity:** The proposed changes significantly improve the processes to secure plan and permit approval.
- **Flexibility/Responsibility :** A number of standards or processes have been revised to afford greater flexibility in site design, tree location, and tree installation while simultaneously ensuring that plans are executed as approved and maintained in an enduring manner.
- **Canopy Preservation & Establishment:** The proposed changes tailor the preservation and planting requirements based on planning area, meaning that the standards are appropriate to each part of town rather than the current approach's generic standards. These criteria have been updated using local data based on the recently-completed tree canopy study (2019); they will result in additional canopy being preserved and planted compared to the current ordinance.
- **Remediation Provisions/Civil Penalties:** The replanting/mitigation process has been clarified and the penalties section revamped to more directly discourage non-permitted tree removal. Additionally, alternatives have been included to allow for flexibility of application.

Below is a list of potential drawbacks if commissioners enact the ordinance changes:

- **Education:** The changes must be communicated clearly to a broad audience, especially early on. Ensuring that the public and practitioners are appropriately informed of understand the changes will be very important in the months immediately following adoption.

4. FYI/RECOMMENDED ACTION

- **Hearing:** The July 23, 2019 meeting is an opportunity for commissioners to further understand the proposed revisions as well as to hear input from the public on the proposed changes.

5. NEXT STEPS

- **July 2019:**
 - » Board of Commissioners Hearing – July 23, 2019
 - » Planning Board Recommendation – July 29, 2019
- **August 2019:**
 - » Livability Board Recommendation – August 20, 2019
 - » Commissioner Consideration of Approval – August 27, 2019



DPO 9 TEXT AMENDMENTS

TREE CANOPY, LANDSCAPING, & SCREENING

Public Hearing: July 23, 2019

PURPOSE

Healthy, Mature Canopy

Preserve, Protect, Enhance

Improve/Calibrate Standards

Enduring Compliance

OVERVIEW OF CHANGES

▪ Highlights

- » Informed by Local Canopy Data & Science
- » Integrates Education & Regulation
- » Adds Features: Arborist, Tree Fund
- » Adds Rigor & Prescriptive Requirements
- » Retains Flexibility
- » Reorganized/Reformatted for Clarity
- » **Results = Greater Tree Canopy Coverage**

CHANGES BY SECTION

- **9.1 Purpose & Intention:** Aspirations, Goals
- **9.2 Applicability & Administration:** Doc. Reqs., Processes
- **9.3 Tree Coverage & Preservation:** Coverage Requirements, Processes
- **9.4 Street Tree Plantings:** Flexibility, Planting Strip Width
- **9.5 Site Landscaping:** Reformatted
- **9.6 Parking Area Landscaping:** Reformatted
- **9.7 Screening:** Discrepancies Reconciled
- **9.8 Installation & Maintenance Standards:** Third-Party References
- **9.9 Alt. Methods of Compliance:** Relocated/Reformatted
- **9.10 Planting Specifications & Appendices:** Consolidated Info.
- **15.3 Landscaping Violations, Civil Penalties:** Violation Types, Procedures

PROPOSED CHANGES SUMMARY

- **Master Plans/Permits:**
 - » ***Arborist Involvement****
 - » Increases Coverage & Preservation
 - » Payment-In-Lieu Option
 - » Enhances Street Trees: Wider Planting Strips; Count Towards Coverage
 - » Larger Planted Trees
 - » Increases Penalties

- **Individual Lots:**
 - » ***Arborist Involvement****
 - » Retains No Fee for Tree Removal
 - » Regulates Entire Lot
 - » Increases Penalties with Flexible Application

****Education is Foundational Principle of Amendments***

9.3 COVERAGE COMPARISON

- **Current Ordinance:**

- » Targets/Not Binding
- » Unclear, Inconsistent

Table 9-1: Tree Planting Requirement		
Planning Area	Tree Planting Requirement	Approx. Canopy Coverage**
Rural	2 large maturing trees per 5,000 square feet of parcel area, OR 1 large maturing tree and 1 small maturing tree per 3,000 square feet of parcel area	30% - 50%
NE/NG/VI/ EC1/EC2/CC	2 large maturing trees per 7,000 square feet of parcel area, OR 1 large maturing tree and 1 small maturing tree per 4,500 square feet of parcel area	20% - 40 %
LK/VC/VE/ VCom/NC1/ NC2/CBD/ NS	2 Large maturing trees per 9,000 square feet of parcel area, OR 1 large maturing tree and 1 small maturing tree per 6,000 square feet of parcel area	15%

- **Proposed Ordinance:**

- » Prescriptive/Binding
- » Simplified

TABLE 9-1: TREE COVERAGE REQUIREMENT	
PLANNING AREA	MINIMUM PROJECT CANOPY COVERAGE
RPA	60%
NE	50%
EC1/EC2/CC	40%
NG	30%
VI	20%
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	15%*

*Payment-in-lieu permitted in select areas (\$8/SF, street/parking trees required). Nor more than ½ from required preservation areas.

**Note: The Min. Project Canopy Coverage is the coverage at maturity.

9.3 COVERAGE COMPARISON

TABLE 9-1 CANOPY COVERAGE COMPARISON					
1. Planning Area	2. Current Coverage Req.	3. Area Covered (Ac.)	4. Proposed Coverage Req.	5. Area Covered (Ac.)	6. Difference
RPA	30%	566	60%	1,132	566
NE	20%	279	50%	697	418
EC1/EC2/CC	20%	180	40%	361	180
NG	20%	159	30%	239	80
VI	20%	203	20%	203	0
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	15%	56	15%	56	0
<i>Total Canopy Difference (Acres of Canopy)</i>					+ 1,245 Ac.
<i>Total Canopy (% Increase)</i>					+ 18%

9.3 PRESERVATION COMPARISON

TABLE 9-2 PRESERVATION COMPARISON

1. Planning Area	2. Current DPO Pres. Req.	3. Area Preserved (Ac.)	4. Future DPO Pres. Req.	5. Area Preserved (Ac.)	6. Difference (Ac.)
RPA/NE	20%	656	40%	1,313	657
EC1/EC2/CC	20%	181	30%	270	89
NG/VI	20%	362	20%	362	0
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	20%	75	10%	37	-38
<i>Total Preserved Difference (Acres of Canopy)</i>					+ 708 Ac.
<i>Total Preserved Canopy (% Increase)</i>					+ 10%

FEES & PENALTIES

- **Permit Fees:**
 - » Master Plans & Building Permits: Covered in Base Fee
 - » Individual Lots: No Fee (Permit Triggers Arborist Consultation)
- **15.3.1 Landscaping Violations & Civil Penalties**
 - » Reorganized: Clarity of Process, Standards
 - » Responsible Parties: Each Potentially Liable
 - » Replacement Criteria: Updated, Contextualized
 - » Total/Partial Loss: Calibrated Penalties
 - Appeals + Non-Monetary Penalties Included

FEES & PENALTIES

	Approved Plans/Permits	Individual Lots
Total Loss	<ul style="list-style-type: none">Tree: \$500/Caliper InchSpecimen Tree: \$500/Caliper Inch up to 24 Inches; \$800/Caliper Inch over 24 Inches (\$25,000 Max.)	<ul style="list-style-type: none">Tree: \$500/TreeSpecimen Tree: \$1,000/Tree
Partial Loss	<ul style="list-style-type: none">Tree: \$500/TreeSpecimen Tree: \$1,000/Tree	N/A

*Additional shrub and vegetative cover penalties may apply.

**Alternative non-monetary penalties or replanting strategies may be pursued in select cases.

NEXT STEPS

Public Hearing

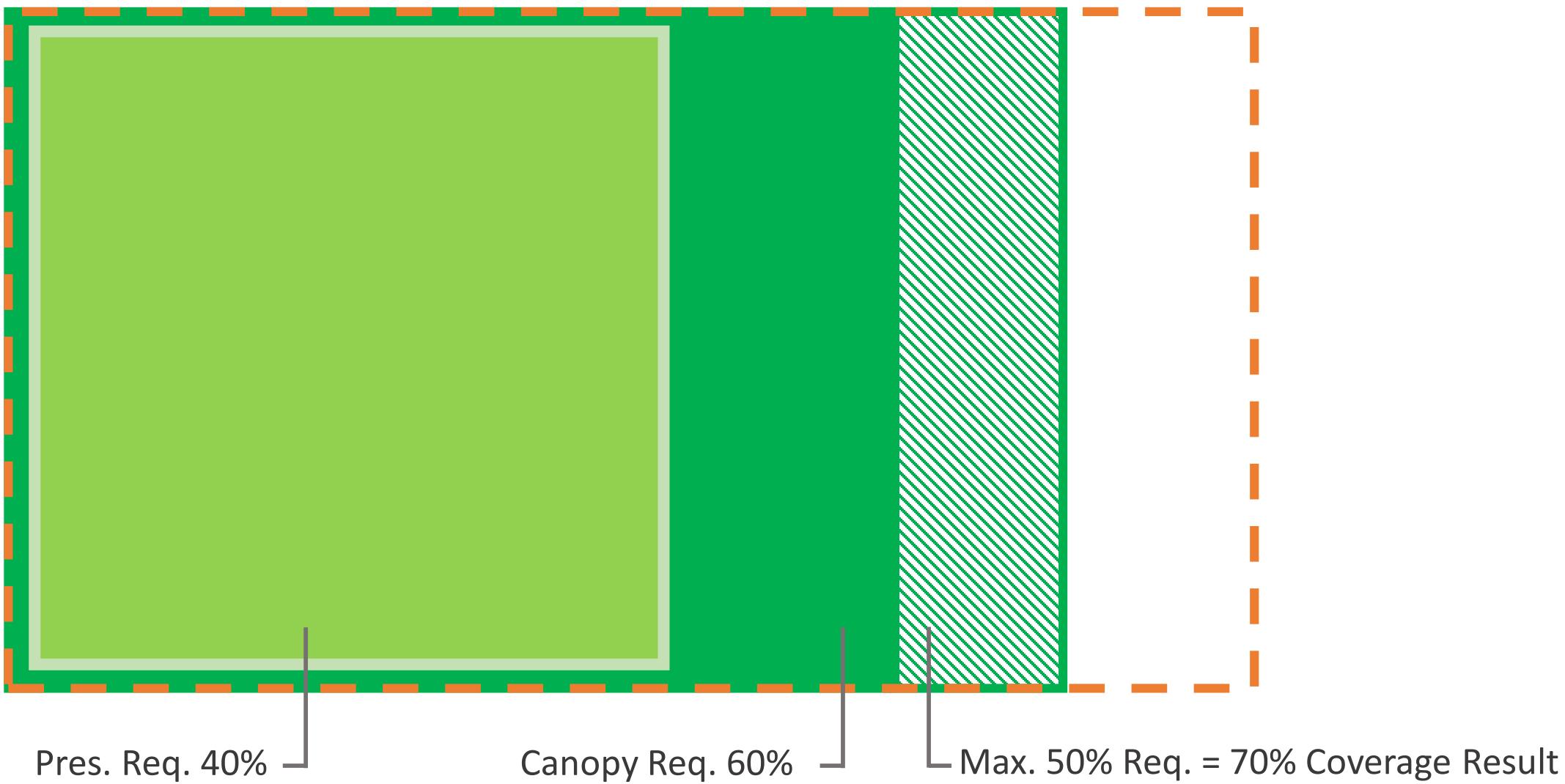
Planning Board Recommendation

Livability Board Recommendation

Additional Modifications

BOC Consideration of Approval

9.3.3 COVERAGE EX.





MEMO

Date: July 9, 2019
To: Board of Commissioners
From: Planning Board Ordinance Committee; Trey Akers, Senior Planner
Re: Davidson Planning Ordinance Section 9 + Related Draft Text Amendments, Schedule of Changes

1. TEXT AMENDMENTS

TEXT CHANGES – PROPOSED AMENDMENTS

The following is a list of proposed text changes to the Town of Davidson Planning Ordinance (DPO). The listed changes are being undertaken to improve the establishment and maintenance of tree canopy as well as clarify the processes/administration related to plan and permit approvals . Proposals are organized by page number.

PROPOSED TEXT CHANGES				
PAGE	SECTION	TITLE	ISSUE	PROPOSED ACTION
SECTION 4 – SITE & BUILDING DESIGN STANDARDS				
4-4	4.3.1.E	Loading/Areas, Mechanical Equipment and Utilities	Section 4 deals with screening using non-natural materials only. Section 9 includes standards for screening requirements with natural materials.	Include a reference within Section 4 to direct ordinance users to Section 9.
TEXT CHANGES		<p>Old Text: 2. Mechanical equipment (except small items such as fans and vents), utility meters, storage areas, solid waste containers (including dumpsters, compactors, recycling containers, and solid waste and recycling handling areas), transformers, generators, HVAC units and similar features, or other utility hardware on the building, roof, or ground shall be screened from public view with materials similar to the structure; OR they shall be so located as not to be visible from a primary fronting public street.</p> <p>New Text: 2. Mechanical equipment (except small items such as fans and vents), utility meters, storage areas, solid waste containers (including dumpsters, compactors, recycling containers, and solid waste and recycling handling areas), transformers, generators, HVAC units and similar features, or other utility hardware on the building, roof, or ground shall be screened from public view with materials similar to the structure; OR they shall be so located as not to be visible from a primary fronting public street. In certain</p>		

			cases, screening using natural materials may be preferable. See Section 9 for landscape screening requirements. Note: Natural screening alternatives must be approved by the Planning Director in consultation with the Arborist.	
SECTION 9 – TREE PRESERVATION, LANDSCAPING, & SCREENING				
9-1	9.1-9.10	ALL SECTIONS	Section 9 requires a number of revisions to clarify the processes and requirements by which plans and permits are approved.	See Section 9 proposed changes in the related attachment.
TEXT CHANGES			Old Text: See attachment. New Text: See attachment.	
SECTION 15 – VIOLATIONS & PENALTIES				
15-4	15.3.1	LANDSCAPING VIOLATIONS	Section 15 requires a number of revisions to clarify the processes and requirements by which violations and penalties are administered.	See Section 15 proposed changes in the related attachment.
TEXT CHANGES			Old Text: See attachment. New Text: See attachment.	
SECTION 16 – DEFINITIONS				
16-27	16.3	Tree, Large Maturing	Section 16 requires revision because a new tree type – Medium Maturing – has been referenced in Section 9.	Revise the definition to indicate a different range of height, etc. due to the new definition for Tree, Medium Maturing.
TEXT CHANGES			Old Text: A tree, usually deciduous, whose height is greater than 35 feet at maturity and meets the specification of “American Standards for Nursery Stock” published by the American Association of Nurserymen, that is planted to provide canopy cover shade. In the case of tree removal permits, the minimum size is 12” DBH. See also canopy tree. New Text: A tree, usually deciduous, whose height is greater than 40 feet at maturity and meets the specification of “American Standards for Nursery Stock” published by the American Association of Nurserymen, that is planted to provide canopy cover shade. In the case of tree removal permits, the minimum size is 12” DBH. See also canopy tree.	
16-27	16.3	Tree, Medium Maturing	Section 16 requires revision because a new tree type – Medium Maturing – has been referenced in Section 9.	Update Section 16 to include the new definition of Tree, Medium Maturing
TEXT CHANGES			Old Text: N/A – Does not exist.	

			New Text: A tree, usually deciduous, whose height is between 25 to 40 feet at maturity and meets the specification of "American Standards for Nursery Stock" published by the American Association of Nurserymen, that is planted to provide canopy cover shade. In the case of tree removal permits, the minimum size is 12" DBH. See also canopy tree.
16-27	16.3	Tree, Small Maturing	Section 16 requires revision because the minimum DBH for permitting now starts at 12". Revise the definition to reference 12" as the minimum DBH requiring a permit for removal.
TEXT CHANGES			Old Text: A small to medium tree, growing up to 25 feet in height at maturity, that is planted for aesthetic purposes such as colorful flowers, interesting bark, or fall foliage. In the case of tree removal permits, the minimum size is 8" DBH. New Text: A small to medium tree, growing 15 feet to 40 feet in height at maturity, that is planted for aesthetic purposes such as colorful flowers, interesting bark, or fall foliage. In the case of tree removal permits, the minimum size is 12" DBH.
16-27	16.3	Tree, Specimen	The current definition of Tree, Specimen is vague and refers only to a singular tree. Revise the definition to account for a variety of characteristics to assist the Arborist in determining whether a tree is a specimen tree; and, include reference to groups of trees for cases in which several trees contribute to a significant landscape element.
TEXT CHANGES			Old Text: A tree that is unusually large or well-shaped or provides a focal point or point of interest. New Text: Tree, Specimen: 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 Arborist. Examples include large hardwoods (e.g., oaks, poplars, maples, etc.) and softwoods (e.g., pine species) in good or better condition with a DBH of 24" or greater, and smaller understory trees (e.g., dogwoods, redbuds, sourwoods, persimmons, etc.) in good or better condition with a DBH of 10" or greater.

2. PUBLIC PLANS AND POLICIES

The proposed text changes are consistent with the existing policy and ordinance frameworks adopted by the town. Specifically, the changes reflect the 2010 Town of Davidson Comprehensive Plan's guidance for Goal 2: Preserve Natural Habitats, the Lakeshore, and the Tree Canopy: Revise open space or tree preservation requirements to better preserve existing tree canopy in all planning areas (Pg. 60).

All proposed changes meet the requirements set forth in Davidson Planning Ordinance 1.5.1 Implementation of Adopted Plans & Policies: "Any amendments to, or actions pursuant to, this ordinance should be consistent with these adopted plans and policies, as amended."

3. PLANNING BOARD RECOMMENDATION

This section will be completed once the Planning Board makes a recommendation.

4. STAFF RECOMMENDATION

This section will be completed later in the process.

TREE CANOPY, LANDSCAPING & SCREENING

9.1 PURPOSE & INTENTION

The purpose and intent of this ordinance¹ is to establish minimum standards for the preservation of existing and the planting of new trees and shrubbery in order to:

- Protect and improve the existing tree canopy in order to enhance the health and quality of life of citizens;
- Maintain or increase the tree cover in all areas of the planning jurisdiction;
- Preserve and enhance the natural environment;
- Increase species and age diversity of the urban forest;
- Protect specimen trees;
- Provide habitat resources to native plants and animals;
- Promote use of non-invasive and native plant materials;
- Ensure compatibility between vegetation and adjacent infrastructure or utility systems;
- Better control soil erosion;
- Reduce the hazards of flooding;
- Stabilize ground water tables;
- Capture, treat, or store carbon dioxide, particulate matter, and other pollutants;
- Provide shade for cooling;
- Screen noise, dust, and glare;
- Provide architectural interest and human scale;
- Maintain and/or improve aesthetic values;
- Enhance property values.

Commented [TA1]: This section includes minor revisions to remove duplicate text, remove terms not defined in the DPO (i.e. "heritage" tree), reorder items in a logical sequence, and add/refine some explanations to be more descriptive/accurate.

9.2 APPLICABILITY & ADMINISTRATION

9.2.1 APPLICABILITY

Except as set forth in exemptions specified in this ordinance, the provisions of this ordinance shall apply to all land within the town's zoning jurisdiction, both public and private, according to the following:

- A. New Development:** All provisions of this ordinance shall apply.
- B. Existing Development:** All provisions of this ordinance shall apply to changes of use and/or expansions of existing conforming and non-conforming development.

Commented [TA2]: This section clarifies to what types of projects the standards apply.

¹ As used herein, "ordinance" shall refer to Section 9, including all subsections thereof, of the Davidson Planning Ordinance, unless specifically noted otherwise.

9.2.2 ADMINISTRATION

- A. **Administration:** The Public Works Department shall assist the Planning Director and Board of Commissioners in the above Purposes & Intention. Additionally, an advisory board(s) shall assist in the periodic review and update of the standards in this section. As needed, the Planning Director may allocate responsibilities to town staff, authorized representatives, and/or the Arborist (as defined below) in order to administer this ordinance.
- B. **Arborist:** The town shall retain one or more certified arborists ("Arborist") to assist with maintaining a town-wide tree inventory, developing and approving plans for the development of property (both public and private) consistent with the provisions of this ordinance, conducting inspections, and such other matters related to the administration of this ordinance as the Planning Director may request. The fees and expense of the Arborist may be paid by the town from amounts available in the Tree Fund.
- C. **Documents & Approvals:**
1. **Permits and Inspections:** Permits and inspections shall be required for the activities as set forth in this ordinance.
 2. **Landscape Plans:** Site work proposed as part of a Conditional Planning Area, Master Plan, or Individual Building process requires approval of plans and participation in activities as described in this ordinance.
 - a. **Plan:** All plans shall meet the documentation standards set forth in this ordinance and, to the extent required by Section 14, the criteria for Landscape Schematic Design or Landscape Construction Documents set forth in Section 14. Depending on site conditions or characteristics, the documents may require additional site or building information to be displayed.
 - b. **Specimen Tree Preservation:** In addition to the required landscape plan, any specimen trees as defined in this ordinance shall require a specific care plan developed in concert with the Arborist. The care plan shall be consistent with the practices set forth by the International Society of Arboriculture.
 3. **Revisions to Approved Landscape Plans:** Revisions may be requested by a property owner or required by the Town of Davidson prior to release of landscape bonds. All revisions to landscape plans must be approved by the Planning Director, who may consult with the Arborist.

All revisions should ensure that:

- There is no significant change in quantity, size, or location of plant

Commented [TA3]: This section clarifies the parties responsible for administering the ordinance. Note: Tree permits are currently handled by the Public Works Department. It is recommended that an Arborist assume responsibilities for administering many parts of this ordinance.

Commented [TA4]: The proposed amendments recommend the use of this professional to assist in reviewing building permits, master plans, and managing tasks related to the Street Tree Inventory and other activities.

Commented [TA5]: This needs to be set up in coordination with the Finance Department. It will require a resolution by the Board of Commissioners establishing the fund and outlining its purposes. It is intended that the fund receive proceeds from permits, civil penalties, and related fees outlined in this ordinance. These proceeds would then be used to further tree care, protection, and management throughout town under the direction of the Arborist.

Commented [TA6]: Three types of processes are introduced because they are the three types of "plans" that would be required to produce site documentation as part of the approval process. All other work (i.e. to individual lots) would be handled via permit.

Commented [TA7]: This clarifies what documentation standards must be met and where those requirements are located.

Commented [TA8]: This introduces enhanced requirements for specimen trees based on professional insight and a third-party standard.

materials, as determined in the discretion of the Planning Director or the Arborist; and

- The new plants are of the same general category (i.e., shade tree, ornamental tree, evergreen, or shrub) and have the same general features (mature height, crown spread) as the materials being replaced.

1. **Major Revisions:** Include but are not limited to: grading changes, buffer alterations, and/or changes to more than 20% of the approved plant quantities, types, or species. These changes may require approval by Mecklenburg County in addition to approval by the Town of Davidson.
2. **Minor Revisions:** Include but are not limited to: seasonal planting problems, lack of plant availability, and/or any identified site issues (i.e., dead and/or diseased trees, constrained/inadequate planting conditions).

Commented [TA9]: This clarifies what constitutes a major revision and the process for approval. The current ordinance references minor revisions but not major revisions.

- D. **Final Plat:** Final Plat documents shall reflect all relevant site details pertaining to trees and vegetation in accordance with DPO 14, including: Designated tree save and/or open space areas; buffers; and, easements.

Commented [TA10]: This section ensures that all documentation – including plats reviewed when buyers purchase homes – reflect all pertinent information related to required trees and preservation areas.

E. **Landscape Maintenance Bond:**

1. **Bond:** Prior to the Initial Inspection for Certificate of Occupancy, a landscape maintenance bond shall be posted to ensure timely and proper completion of improvements identified in the approved landscape plan.
2. **Requirements:** The bond shall meet all applicable bonding requirements of Mecklenburg County, as well as the following criteria:
 - The bond shall be obtained from a surety bonding company authorized to do business in North Carolina and approved by the Planning Director or their designee; and
 - The bond shall be payable to the town or its designee and shall be in an amount equal to 125% of the estimated cost to complete the improvements identified in the approved landscape plan.

Commented [TA11]: • Landscape bonds are monies that the applicant secures in the event that the approved work is not completed (i.e. it makes sure the required plantings get installed even if the project or property owner does not complete them).
• The revision formally recognizes this important safeguard, which heretofore has been utilized only for Conditional Planning Area (CPA) projects and violations. The standards are derived from conditions used to execute recent legal contracts related to landscaping for CPAs and violations in the Town of Davidson; the standards are also derived from best practices put forth by Trees Charlotte.

F. **Inspections:**

1. **Site Visits:** Both before and after occupancy the Planning Director, the Arborist or authorized representatives of the town may periodically inspect sites subject to the provisions of this ordinance to confirm compliance therewith.

Commented [TA12]: As referenced above, these standards are derived from current conditions that govern CPAs and violations in Davidson. The Warranty standards (see E.3. Warranty Period) are based on best practices employed by the City of Charlotte.

2. **Initial Inspection for Certificate of Occupancy:** After initial improvements required by the approved plans are complete, the Arborist shall inspect the tree and vegetative installations to confirm compliance with this ordinance and, as applicable, the American Standard for Nursery Stock, published by the American Association of Nurserymen. A Certificate of Occupancy for the building(s) or final plat for the development shall not be issued unless:
 - a. The landscaping required under this section is installed in accordance with these standards and in accordance with the approved permit, landscape plan or preliminary plat, as certified by the Arborist; and,
 - b. A Landscape Maintenance Bond is posted as required by section 9.2.2.D, above.
3. **Warranty Period:** After installation of all required plantings, a twenty-four (24) month warranty period for trees and eighteen (18) month warranty period for all other plantings shall commence from the date of notification to the town that installation is complete.
4. **Second Inspection & Release of Bond:** At the end of the warranty period, the Arborist shall re-inspect the required improvements for continued compliance with the approved landscape plan and to ensure that the landscaping is properly maintained. If any installations or areas require remedy, the town shall notify the owner in writing of (i) the necessary remedies, and (ii) a reasonable time period within which such remedies shall be completed by the owner (such time period to be determined by the Arborist or Planning Director or designee, but it shall in no event be less than 30 days or a timeline agreed to by all parties). If no remedies are required, the bond may be released to the owner.
5. **Remedies:** If the owner fails to complete the requested remedies within the time period determined by the Arborist or Planning Director in accordance with section 9.2.2.E.4, above, the town may obtain and use such portion of the bond funds as necessary to complete the remedies based on actual costs. The town shall return any bond funds not spent in completing such work. Prior to using any bond funds, the town shall notify the owner, in writing, of its intention to do so if the owner fails to complete the required remedies within ten (10) days. If the owner has not completed the required remedies (or, in the case that the required remedies reasonably cannot be completed within such time, has commenced and is diligently continuing work toward completing them) within ten (10) days of such notice, the town may obtain and use bond funds for the required remedies.

Commented [TA13]: These are rigorous periods that go beyond the periods that many other communities require. They ensure that plantings are well-established and in good condition prior to the landscape bond being released.

Commented [TA14]: This is a best practice that's being incorporated into the ordinance. With the addition of an Arborist familiar with Davidson requirements and processes, the Town can ensure that the plantings meet the specific criteria outlined in this ordinance – rather than relying on Mecklenburg County to understand and enforce the nuances of our requirements.

G. Replacement of Disturbed, Removed or Damaged Vegetation (Post-Warranty): Any landscape areas and vegetation preserved or planted as part of an approved landscape plan or permit shall be continually maintained in good condition by the property owner. Failure to adequately maintain approved vegetation, including trees, or to comply with the replacement provisions of this ordinance may result in a civil penalty. Replacement requirements, processes, and civil penalties are listed in Section 15.3 Landscaping Violations.

9.3 TREE COVERAGE & PRESERVATION

9.3.1 TREE COVERAGE

A. Minimum Tree Coverage: All Conditional Planning Area, Master Plan, or Individual Building projects shall maintain or establish a minimum tree coverage according to their planning area classification as listed in Table 9-1. The minimum project canopy coverage can be met through a combination of preserved areas, planting requirements, and street trees (where applicable). For the purposes of this requirement, project area refers to the entire area within the project scope that is not encumbered by easements, uses, or other features that prohibit tree plantings.

PLANNING AREA	MINIMUM PROJECT CANOPY COVERAGE
RPA	60%
NE	50%
EC1/EC2/CC	40%
NG	30%
VI	20%
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	15%

B. Requirements:

- Applicability:** The tree coverage standards apply to all Conditional Planning Area, Master Plan, and Individual Building development proposals. Permitted work related to single-family detached and duplex houses, Recreation Facility - Outdoor, and Agriculture uses are exempt from coverage requirements; however, the standards serve as a guide for each Planning Area.

Commented [TA15]: • This table and the following standards have been to achieve greater rigor and clarity of application (i.e. describing how the standards can be met). The coverage requirements are now also prescriptive rather than the non-prescriptive targets/ranges listed in the current ordinance.
• Compared to the existing ordinance they have been calibrated to a finer degree in order to reflect the context of various Planning Areas; they also reflect the varying levels of existing canopy coverage identified in the Tree Canopy Study.
• The requirements apply to properties to be developed; they do not apply to existing properties.

Commented [TA16]: This revision proposes an “establishment” requirement to further the growth of tree canopy throughout town. The requirements apply to properties to be developed; they do not apply to existing properties.

Commented [TA17]: • Minimum: Using this term establishes a prescriptive requirement for canopy coverage on each project. It represents a clearer, more definitive approach than the current ordinance.
• Project: Using this term clarifies that the standards apply to the entire project area and not just individual lots; this results in increased coverage compared to the current ordinance standard.

Commented [TA18]: The list identifies uses wherein coverage may conflict with the intended land use.

2. **Measurement:** The table assumes an average canopy area of: 1,000 square feet for large maturing trees; 800 square feet for medium maturing trees; and, 200 square feet for small maturing trees. Proposals must utilize these values unless alternative values are approved by the Arborist. For a description of each tree type, see 16.3 Definitions under Tree.
3. **Caliper & Height:** Trees planted to satisfy the Tree Coverage Requirement must have a minimum caliper of at least 2.5-3 inches and a minimum height of eight feet at the time of planting.
4. **Canopy Coverage:** For canopy preservation requirements see 9.3.2.
 - a. **Minimum:** No more than 50% of the minimum project canopy coverage in Table 9-1 may come from required preservation areas listed in 9.3.2. This requirement does not apply in the following planning areas: VI/LK/VC/VE/VCOM/NC1/NC2/CBD/NS.
 - b. **Payment-in-Lieu:** For projects located in the VI/LK/VC/VE/VCOM/NC1/NC2/CBD/NS Planning Areas, the minimum project canopy coverage may be met through payment-in-lieu so long as all applicable street tree and parking lot planting requirements are met and the payment-in-lieu option is approved by the Planning Director based on existing and proposed site features and the provisions of this ordinance. For payment-in-lieu values, see the Town of Davidson Fee Schedule.
- C. **Credit Toward Coverage Requirement:** All trees preserved or planted to satisfy the requirements of this ordinance may count toward the minimum project canopy coverage requirements established above. This means that the requirements may be met through the preservation of existing tree vegetation, new tree plantings, or a combination of both; however, every reasonable effort shall be made to meet the coverage requirement through the preservation of existing trees.

9.3.2 PRESERVATION OF EXISTING VEGETATION FOR CONDITIONAL PLANNING AREA, MASTER PLAN, AND INDIVIDUAL BUILDING DEVELOPMENT PROPOSALS

A. Required Preservation Areas: The following shall be preserved:

1. Trees and undergrowth (excluding invasive species and/or other vegetation that compromises the health of the surrounding ecosystem) in designated open space and primary conservation areas in an approved plan (see DPO 7.5), except for permitted pathways or site features as approved by the Planning Director in consultation with the Arborist.

Commented [TA19]: This section helps to clarify values so that all parties are working with the same assumptions, while allowing professional discretion by the Arborist based on site-specific circumstances, species availability, etc.

Commented [TA20]: The standard of 2.5 inches is consistent with best practices/City of Charlotte standards; a minimum height requirement has been added per that City's standards.

Commented [TA21]: This new requirement ensures that new canopy is added in every project, which helps to put required plantings near places where people will be (i.e. residential lots, common open spaces, etc.) rather than solely in periphery areas.

Commented [TA22]: Permitting this option in areas where growth is designated to occur balances the need for economic development in built-up areas with the ability – through PIL funds received – to further increase the canopy in areas where growth is not designated to occur (or in built-up areas where additional plantings may be warranted).

Commented [TA23]: The proposed value is \$8/square foot and is derived from local data in the Street Tree Inventory. This is based on a mid-point between a pure environmental services value of a tree (\$4-\$5/square foot) and the average asset value of a large maturing tree (\$10-12/square foot). For example, if a medium maturing tree (i.e. with a canopy area of 800 square feet) is proposed for removal instead of preservation, the payment-in-lieu value for that tree would be $\$8 \times 800 = \$6,400$. Assuming a cost of \$250 for a new maturing tree of 2.5 inch caliper at a nursery, $\$6,400 / \$250 = 25$ new trees could be purchased with this payment.

Commented [TA24]: It's possible that certain types of undergrowth are not healthy or desirable, such as invasive species or vegetation that is compromising the health of other vegetation, larger trees, etcetera. So, the proposed text acknowledges invasive species and allows the Arborist flexibility to determine the right approach for each plan.

Commented [TA25]: This phrase was relocated from the preceding section and reduced in its language to simply reference 7.5, which describes the different types of open spaces – including primary conservation areas.

2. Mature trees as defined by this ordinance within the right-of-way or shading the street. If the preservation of mature trees is in conflict with setback requirements, exceptions may be granted on a case-by-case basis by the Planning Director in consultation with the Arborist.
3. Specimen trees as defined by this ordinance and approved by the Planning Director in consultation with the Arborist.
4. A minimum percent of the existing mature tree canopy shall be preserved as specified in Table 9-2.

TABLE 9-2: TREE PRESERVATION REQUIREMENT	
PLANNING AREA	MINIMUM PRESERVATION AREA
NE/RPA	40%
EC1/EC2/CC	30%
NG/VI	20%
LK/VC/VE/ VCOM/NC1/ NC2/CBD/NS	10%*

***Payment-in-Lieu:** For projects located in the VI, LK, VC, VE, VCOM, NC1, NC2, CBD, NS Planning Areas, the minimum preservation area requirement may be met through payment-in-lieu if approved by the Planning Director based on existing and proposed site features and the provisions of this ordinance. For **payment-in-lieu values**, see the Town of Davidson Fee Schedule.

Commented [TA26]: This table has been created to clarify the preservation requirements, which have also been calibrated specific to each set of planning areas based on the Tree Canopy Study. It works in conjunction with Table 9-1, which sets the overall Minimum Tree Canopy Coverage requirements for a project and includes both preserved areas required by Table 9-2 and new plantings.

- B. Other Preservation Areas:** Existing vegetation in other areas shall be preserved whenever feasible according to the following standards:
1. The decision to preserve trees shown on the Environmental Inventory shall be made jointly by the Planning Director, the Arborist, the developer, and design team during the project approval process.
 2. When selecting which trees to preserve, the following shall be considered: Existing grading; age, condition and type of tree; whether the tree is invasive; and, location of site improvements and utility connections.
 3. Properties in the Local Historic District are subject to the Historic District Design Guideline's tree preservation requirements.

Commented [TA27]: Permitting this option in areas where growth is designated to occur balances the need for economic development in built-up areas with the ability – through PIL funds received – to further increase the canopy in areas where growth is not designated to occur (or in built-up areas where additional plantings may be warranted).

Commented [TA28]: For more information, see the comment for 9.3.1.B.B above.

C. Prohibited Locations: No tree save area may be located within a utility right-of-way or easement without written permission from the utility agency.

D. Credit Toward Required Plantings: Existing vegetation which is designated for preservation may be applied toward the requirements of this ordinance.

E. Construction Standards:

1. **Access:** Construction access to a site should occur where an existing or proposed entrance/exit is located. Except for driveway access points, sidewalks and curb and gutter, land disturbance within a tree dripline is prohibited as outlined below.

2. **Prohibited Activity:**

- Trenching, placing backfill in the critical root zone (CRZ), driving or parking equipment in the CRZ, and dumping of trash, oil, paint or other materials detrimental to plant health in close proximity of the trees to be preserved is prohibited.
- Construction traffic, storage of vehicles and materials, grading, and unapproved site disturbance shall not take place within the CRZ of the existing trees. The areas shall remain free of all building materials, stockpiled soil or other construction debris.

3. **Protection Requirements:**

a. **Location:** Protective barricades shall be placed around all trees designated to be saved prior to the start of development activities or grading. Such barricades shall be erected at a radial recommended minimum distance of 1.5 feet for every inch of trunk diameter at breast height (DBH) or the dripline, whichever is greater and outside the CRZ as approved by the Arborist, unless the Arborist approves a different distance based on the approved development plan or site circumstances. For example, a 12-inch diameter tree trunk at breast height should have a minimal radial protection zone of 18 feet. The circular diameter of protection around the trunk would be 36 feet from the base of the tree. Prior to approval of construction beginning, the Arborist must approve and inspect the barricade designs and installation.

b. **Materials:** Protective barricades shall consist of 2" x 4" posts with 1" x 4" rails or orange safety fence.

c. **Duration:** Protective barricades shall remain in place until development activities are complete.

Commented [TA29]: This section has been reorganized for clarity of presentation.

- d. **Grading Protocol:** Where grading within a tree dripline cannot be avoided and is approved by the Planning Director and/or Arborist, cut and fill shall be limited to 1/4 to 1/3 of the area within the dripline. Tree roots must be pruned with clean cuts at the edge of the disturbed area, and no fill shall be placed within the dripline of a tree without venting to allow air and water to reach the roots. In the case of an approved construction or grading permit within the CRZ, the Arborist shall provide and ensure recommendations to protect the affected trees are implemented.
- F. **Replacement of Preserved or Planted Trees:** The proper care and protection of trees throughout and beyond the development process is critical. Penalties for violations range from \$500.00 to \$1,000.00 or more per tree or \$5.00 to \$10.00 per square foot disturbed and, depending on the penalty, may be enforced on landowners as well as parties executing work. For information on replacement plantings and civil penalties, see Section 15.3 Landscaping Violations.

Commented [TA30]: This clarifies that trees required to be planted as part of this ordinance must be maintained in good condition.

Commented [TA31]: These values are calibrated based on local data available in the Street Tree Inventory.

9.3.3 TREE REMOVAL FOR LOTS NOT SUBJECT TO AN APPROVED PLAN

- A. **Applicability:** The following standards apply to lots (whether existing or created subsequent to this ordinance's effective date) within the town's incorporated limits that are not subject to an approved Conditional Planning Area, Master Plan, or Individual Building development proposal.
1. **General/Purpose:** No tree larger than twelve inches in diameter at breast height (DBH) may be removed without a permit from the town. A removal permit may be issued by the Planning Director only after an applicant has met with the Arborist and received site-specific information on tree protection, care, and removal.
 2. **Historic District:** Removal of a mature tree(s) located within in a locally designated historic district requires a Certificate of Appropriateness in addition to a tree permit. Mature trees shall be replaced by a tree of similar species, type, and must meet the requirements of Section 9.8.

Commented [TA32]: This represents an existing but reorganized and revised section that details the process for securing a permit for tree removal on an individual lot (processes such as master plans are dealt with in 9.3.4). The section focuses on creating a clear set of steps and decision criteria, with the aim of having property owners meet with an arborist as part of the process to better understand issues related to the site and/or building design. The permitting process does not prohibit the removal of trees; it requires a process for removal to be followed.

Commented [TA33]: This value is clearly-tied to a DPO definition (Tree, Large Maturing) and represents substantial trees. The revised text applies to a tree on any part of a property, whereas the current text regulates removal only in setback areas. As noted above, the permitting process does not prohibit the removal of trees; it requires a process for removal to be followed.

B. **Approval Process:**

1. **Permit Required:** An approved permit, including fee payment, shall be required for the removal or destruction of a tree(s) larger than twelve inches on any property, whether publicly or privately owned, as described above.
2. **Fee:** Permit fees shall be determined by the Arborist based on considerations listed in the Arborist Report section below. See the Town of Davidson Fee Schedule for further information. Note: An initial permit fee

Commented [TA34]: The proposed fee is \$40.00, the same fee as for a building permit.

shall be remitted prior to permit acceptance by the Town of Davidson. Any additional fees shall be paid prior to permit approval.

3. **Site Information:** The permit shall include a site plan illustrating the lot area, building and development footprints, and subject tree(s) intended for removal or that may be impacted by work. Work impacting the critical root zone (CRZ) of any tree over twelve inches must be described and/or shown on the plan. Based on site conditions the Arborist may require dimensions/measurements, an official survey, and/or other relevant information such as existing conditions, topography, easement location, etcetera.
4. **Site Visit:** The permit approval may require an on-site consultation between the applicant and Arborist in order to identify existing conditions and exploration of best practices for preservation and/or removal.
5. **Arborist Findings:** The Arborist shall prepare a written report describing the applicant's intended work, site and tree characteristics, and recommended practices or potential alternatives to the proposed scope of work (if applicable). Factors that may be considered in the Arborist's findings include but are not limited to whether the tree(s):
 - a. Health/Endangerment:
 - Is dead, diseased, irreparably damaged, or the tree imminently endangers the health or safety of the general public or structures on the property or adjacent properties;
 - Has not been appropriately maintained such that its current condition is compromised and cannot be corrected through reasonable care practices;
 - b. Characteristics
 - Is not a specimen tree, as defined by this ordinance;
 - Has officially-documented historic or cultural value and requires approval by the Historic Preservation Commission.
 - c. Location:
 - Is within a designated conservation area, such as common open space or property protected by conservation easement;
 - Is located within the permitted building envelope;
 - If removed will negate the lot's ability to meet the minimum tree canopy coverage listed in Table 9-1;
 - Is part of a greater development plan for which an approved landscape plan has been issued pursuant to this section; an approved development plan for which an approved grading and landscape plan has been issued shall serve as the tree removal permit.

Commented [TA35]: In addition to the site visit, this report affords the opportunity for the Arborist to offer clear guidance and/or useful tips about tree care.

Commented [TA36]: This list provides applicants a sense of topics that may be addressed in the report.

6. Permit Issued: The permit shall be issued when the Planning Director, in consultation with the Arborist, has determined that the process requirements set forth in Section 9.3.3.B have been satisfied.

Commented [TA37]: The permitting process does not prohibit the removal of trees; it requires a process for removal to be followed.

7. Prohibitions:

- a. Tree-Topping: The topping of trees and similar practices is strictly prohibited. Topping is the practice of reducing a tree's size using heading cuts that shorten limbs or branches back to a predetermined crown limit (ANSI A300 Part 1 Pruning, Tree Care Industry Association).
- b. Root Zone Disturbance: No activity affecting the critical root zone of a tree(s) in a conservation easement or dedicated open space areas may proceed without a tree permit.
- c. Unapproved Tree Removal: The removal of a tree larger than twelve inches without an approved tree permit is strictly prohibited. See Section 15 Violations for further information.

C. Violations: See Section 15.3 Violations.

9.3.4 TREE REMOVAL FOR LOTS OR OPEN SPACE SUBJECT TO AN APPROVED PLAN

A. Applicability: The following standards apply to lots (whether existing or created subsequent to this ordinance's effective date), common areas, and/or open spaces subject to an approved Conditional Planning Area, Master Plan, or Individual Building development proposal (or any site plan requiring approval by the Town of Davidson).

Commented [TA38]: This section establishes standards for the removal of trees on lots not considered to be existing lots (i.e. they are part of an approved plan). It provides clear guidance for common open spaces and other areas required to be maintained as part of a master plan.

1. General/Purpose:

- a. Lots: Lots created pursuant to an approved plan are subject to the conditions of that plan approval until the lot is sold (i.e. after Final Plat approval), at which point a lot becomes subject to the provisions of Section 9.3.3.

Note: Unless otherwise specified, lots created pursuant to an approved plan as noted above are subject to any enduring conditions and/or easements associated with that development and recorded on the plat that pertain to tree and vegetation preservation/removal.

- b. Open Space/Common Areas: Vegetation and trees within areas designated as open space and/or common areas are required to be maintained continually per the approved plan and/or applicable easements. Such areas and plantings must meet the post-warranty provisions of this ordinance, maintain approved buffers and easements, and are subject to Section 15.3 Violations.

2. Historic District: Lots within a historic district are subject to the approved plan standards and the applicable historic district criteria as described in 9.3.3.A.2 above.

B. Approval Process:

- 1. Permit Required:** Designated common areas/open spaces and lots created pursuant to an approved plan are subject to the permit approval process outlined in Section 9.3.3. above.

C. Violations: See Section 15.3 Violations.

9.4 STREET TREE PLANTINGS

9.4.1 STREET TREE REQUIREMENTS

A. Location: Except along a rural road, alley, or the park side of a parkway (See Section 6 - Town Street Classifications), trees shall be planted wherever a new street right-of-way is constructed, or where new construction occurs along an existing street right-of-way. For certain street types, as specified in the Town Street Classifications in Section 6, street trees must be planted in tree wells in the sidewalk.

B. Minimum Number:

1. Where at least an eight-foot planting strip has been permitted and no overhead power lines are located within 15 feet of the on-center planting location, a minimum of one large maturing tree shall be planted every 40-50 feet on average linear feet, or as otherwise approved by the Arborist. With Arborist approval, existing trees may be applied toward this requirement.
2. For planting strips four to less than eight feet wide or those on-center planting locations within 15 feet of an overhead power line, trees shall consist of one small maturing tree per 25-30 feet on average, or as otherwise approved by the Arborist.
3. Large maturing trees may be planted on the back side of sidewalk when the planting strip is less than eight feet.

C. Planting Strip: In general, the minimum planting strip width for street trees shall be the width indicated for the applicable street type in Section 6. However, large canopy trees including but not limited to willow oaks and red maples shall require a minimum planting strip width of eight feet unless otherwise approved by the Planning Director in consultation with the Arborist.

D. Planting Specifications: Street trees shall be installed in accordance with Section 9.8 Installation and Maintenance Standards, Section 9.10 Tree

Commented [TA39]: Based on recent experiences with projects, site designers will default to the 6' min. illustrated in Section 6 Street Classifications. Therefore, this sentence has been rewritten to require 8' min. for certain species but allows the Arborist/Planning Director flexibility to approve alternate widths based on specific conditions.

Specification List, and the American Standard for Nursery Stock, published by the American Association of Nurserymen. Additionally, street trees shall be planted in amended soils and, where determined necessary by the Arborist, in tree pits. Large and medium maturing trees shall have a minimum caliper of three inches; small maturing trees shall have a minimum caliper of two inches. The Arborist may approve or require varying caliper sizes as appropriate.

- E. **Species:** Street tree species shall be selected from the Tree Specification List in consultation with the Arborist as follows:
1. Streets in commercial areas shall have trees which complement the face of the buildings and which shade the sidewalk.
 2. Streets in residential areas shall provide for an appropriate canopy, which shades both the street and sidewalk.
 3. High canopy trees are preferred for emergency vehicle maneuvering.
 4. A diversity of tree species shall be utilized to prevent the spread of pests and disease.

9.5 SITE LANDSCAPING

9.5.1 APPLICABILITY

The following standards apply to Conditional Planning Area, Master Plan, or Individual Building development proposals. These provisions for site landscaping shall apply to all buildings with a setback less than five feet as defined in Section 2, except where such buildings have a zero-foot setback from the public sidewalk.

9.5.2 MINIMUM REQUIREMENTS

- A. **Documentation Standards:** New landscape materials and preserved vegetation shall be noted on the Landscape Schematic Design as part of the Preliminary Plat and shall include at a minimum the following information:
1. **Scale:** Landscape plan shall be drawn to scale no smaller than 1 inch equals 100 feet and include a north arrow and necessary interpretive legends.
 2. **Existing Vegetation:**
 - a. Location: General location, type and quantity of existing plant materials.
 - b. Undisturbed & Protected Areas: Existing plant materials, areas to be left undisturbed, and areas that will be protected.
 - c. Protection Requirements: Methods and details for protecting the critical root zone (CRZ) of existing plant materials and areas to be left undisturbed.

Commented [TA40]: This section is not new but has been reformatted and includes new titles organizing the information.

3. Proposed Vegetation:

- a. Identification: Locations, size and labels for all proposed plant materials.
- b. Table/Schedule: Plant lists with common name, botanical name, quantity, and spacing and size of all proposed landscape material at the time of planting.
- c. Planting and installation details as necessary to ensure conformance with all required standards.

4. Other Landscape Improvements: Location and description of all other landscape improvements, including but not limited to earth berms, walls, fences, screens, sculptures, fountains, lights, courtyards, walks or paved areas.

5. Other Site Improvements/Features:

- a. Connections & Limits: Connections to existing and future properties, along with property boundaries.
- b. Site Features: Location of any proposed buildings, driveways, parking areas, required parking spaces, roads and other hard surface elements; location of signage; and, location of overhead and underground utilities.

6. Certification: Notes indicating compliance with the ordinance.

B. Minimum Required Area: A minimum five-foot wide area, measured perpendicular from the building, shall be provided for landscaping along any side of the building facing a public right-of-way way or park. This does not apply to portions of buildings featuring a zero-foot setback from the public sidewalk as listed in Section 2. Buildings with frontage along a street or park may, at the discretion of the Planning Director, be exempt from this requirement in order to provide entrance walkways and/or plazas.

C. Minimum Required Landscaping: The minimum required landscaping shall consist of one of the following every 40 linear feet along the property boundary where a buffer is not required:

1. Two small maturing trees;
2. 10 shrubs; or
3. Any equivalent combination thereof, subject to Planning Director or Arborist approval.

D. Location of Plantings: In locating the minimum required landscaping care shall be taken to ensure that adequate space is provided for the width of tree spread, height and root system requirements.

- E. Preferred Species:** Native plants and wildlife supporting species are generally preferred in all landscape settings; however, at the discretion of the Arborist, alternative species may be planted. See the Tree Specification List and Shrub Specification List for approved species.

9.6 PARKING AREA LANDSCAPING

Parking lots are necessary features of the built environment. However, they shall be designed to integrate natural features within parking areas in order to mitigate environmental impacts and create welcoming places for vehicles and pedestrians.

9.6.1 APPLICABILITY

The parking area landscaping standards of this section shall apply according to the following standards. For a list of tree specifications, approved tree species and prohibited vegetation, see the Tree & Shrub Specification Lists.

- A. Existing Parking Lots:** All expansions of impervious surfaces in existing parking lots with five or more spaces shall comply with this ordinance.
- B. New Parking Lots:** All new parking lots shall comply with this ordinance.
- C. Small Parking Lots:** For small lots (36 spaces or less), landscaping shall be required at the perimeter only, according to the standards of Section 9.6.2.
- D. Large Parking Lots:** For large lots (more than 36 spaces), landscaping shall be at the perimeter and the interior, according to the standards of Sections 9.6.2 and 9.6.3. In large lots, the landscaping shall be placed to break the lot into parking modules of not more than 36 spaces.
- E. Other Areas:** All other components of parking lot areas not specifically dedicated to vehicular parking or circulation shall be landscaped in accordance with this ordinance.

Commented [TA41]: These changes clarify which site areas (i.e. within the parking area) are subject to the standards. The current language is not clear.

9.6.2 PARKING LOTS - PERIMETER LANDSCAPING & SCREENING

- A. Minimum Width:** Perimeter landscape areas shall be a minimum of eight feet in width adjacent to all parking spaces and travel areas.
- B. Required Trees:** Large maturing canopy trees shall be planted not more than 40 feet on center. Any deviation from this standard, including the use of alternative planting intervals and/or small maturing trees if necessitated by site conditions, must be approved by the Planning Director in consultation with the Arborist.
- C. Required Shrubs:** A continuous row or staggered row of evergreen shrubs, with a minimum expected height at maturity of three feet, shall be installed at

not more than six feet on center. If used in addition to a wall or fence, the evergreen shrubs shall be planted on the exterior side of such features. See wall and fence requirements below.

D. Additional Requirements for Parking Lots Adjacent to Street Frontage: A masonry wall or garden hedge (minimum three feet in height) shall be installed along any street frontage adjacent to parking areas and the finished side of the wall or fence shall face the exterior right-of-way or neighboring property. At sidewalks with extensive pedestrian use, the masonry wall installed at the back of the sidewalk, is required but an alternate location may be approved based on site conditions.

Commented [TA42]: As the existing text indicates, this is the preferred arrangement; so, the text has been modified to require this as the default design, with adjustments permitted based on-site circumstances.

E. Additional Requirements for Parking Lots Adjacent to Detached and Attached Houses: Off-street parking areas adjacent to Detached and Attached Houses, shall be screened from such uses by one of the following:

1. A garden wall, fence or hedge (minimum six feet in height); or
2. Evergreen shrubs planted at no more than six feet on center and a minimum of three feet in height at the time of planting with an expected maturity height of at least six feet; or
3. A combination of the above options.

F. Natural Buffers: Where a natural buffer exists adjacent to parking areas, it is to remain undisturbed. Generally, only dead wood is allowed to be removed. The removal of undergrowth and limbing up of trees is prohibited unless approved by the Planning Director in consultation with the Arborist. All buffers required by the watershed protection regulations in Section 17 and the stream buffer overlay standards in Section 21 shall remain completely undisturbed, except as provided for in those sections.

Commented [TA43]: This insertion recognizes that there may be circumstances in which undesirable undergrowth (i.e. invasive species, improperly developed/unsafe vegetation) may need to be removed, or trees appropriately pruned, in order to benefit site users.

G. Existing Vegetation: Existing vegetation located in the perimeter landscape area which is designated for preservation may be applied toward the requirements of this section.

Commented [TA44]: DPO 17 and 21 allow certain improvement practices that are consistent with maintaining natural, undisturbed buffers. Therefore, the text has been revised to be consistent with the standards listed in those sections.

9.6.3 PARKING LOTS - INTERIOR LANDSCAPING

A. Landscape Islands

1. Landscape islands within parking lots shall be located so as to define and direct vehicular movement.
2. When located adjacent to parking spaces on both sides, landscape islands shall have a minimum width of eight feet.
3. Landscape islands with large maturing trees shall include a minimum of 200 square feet of pervious space per tree.

4. In large lots, the landscaping shall be placed to break the lot into parking modules of not more than 36 spaces.
- B. Minimum Spacing:** Large maturing trees shall be planted within the interior landscape islands of parking lots so that no part of any parking space is more than 40 feet from a tree.
- C. Other Landscaping Areas:** All other components of parking lot areas not specifically dedicated to vehicular parking or circulation shall be landscaped in accordance with this ordinance.

Commented [TA45]: For consistency and clarity, this text was modified to use the same text proposed in 9.6.1.E.

9.7 SCREENING

The following requirements apply to landscape screens. See [Section 4 Site & Building Design Standards](#) for non-landscape screening requirements.

Commented [TA46]: Cross-references have been added to Sections 9 and 4.3.1.E to clarify that screening standards related to natural materials (i.e. landscaping, trees, etc.) are contained in both places.

9.7.1 LANDSCAPE SCREENS

- A. Applicability:** Landscape screens shall be required anywhere Section 3 - Uses with Additional Requirements specify a requirement for a landscape screen. Where landscape screens are required, they shall be installed in accordance with the provisions below.
- B. Minimum Width:** For a landscape screen, a minimum 15-foot wide pervious space shall be provided, unless based on site conditions another width is deemed appropriate by the Planning Director in consultation with the Arborist.
- C. Minimum Required Landscaping:**
1. A minimum of six large maturing trees and 40 shrubs shall be planted for each 100 linear feet of landscape screen area to provide continuous coverage.
 2. Trees shall be a minimum 50 percent evergreen.
 3. Shrubs shall be a minimum 75 percent evergreen.
- D. Existing Vegetation:** Existing vegetation located in the required landscape screen area may be counted toward the minimum required landscaping for landscape screens provided it is:
1. Designated for preservation; and,
 2. Approved by the Planning Director in consultation with the Arborist.

9.7.2 MECHANICAL EQUIPMENT SCREENING

9.8 INSTALLATION & MAINTENANCE STANDARDS

All trees and shrubs required by this ordinance shall meet the planting specifications provided below.

9.8.1 GENERAL STANDARDS

- A. Quality of Plantings:** All new plant material shall be of good quality, installed in a sound, workmanlike manner and meet the standards set forth in the American Standard for Nursery Stock by AmericanHort.
- B. Contractor Warranty:** The contractor shall warrant all new plant material for two years from time of installation.
- C. Soil Compaction:** Installation and construction practices shall be utilized which preserve existing topsoil or amend the soil to reduce compaction.
- D. Staking and Groundcover:** All trees shall be properly guyed or staked and mulched (3-4 inch layer) in accordance with accepted practices in the landscape industry, to prevent winds from loosening the roots.
- E. Chain Link Fencing:** Chain link and similar fencing materials, if used, shall be landscaped on their exterior side with evergreen shrubs minimum three feet in height and six feet on center at installation.
- F. Sight Distance Triangles:** No plants shall be planted within the sight distance triangle at an intersection, or driveway access points unless an unobstructed view between 30 inches and 72 inches in height is maintained.
- G. Overhead Utility Lines:** Public and private utilities which install overhead and underground utilities shall be subject to this ordinance and the industry's best pruning and trenching specifications. Where large maturing trees are required and overhead utility lines exist, small maturing trees planted one per 30 linear feet shall be substituted with the approval of the Planning Director.
- H. Encroachment Agreement:** No irrigation lines may be installed within the planting strip, or other portions of the public right-of-way, without an encroachment agreement executed by the town or NCDOT as appropriate.

Commented [TA47]: This is not the appropriate location in the ordinance for these standards since no landscaping is referenced and similar information appears in 4.3.1.E. Therefore, the text in 9.7.2 and 4.3.1.E has been reconciled and redundancies have been removed.

9.9 ALTERNATE METHODS OF COMPLIANCE

9.9.1 ADMINISTRATION

Select circumstances may warrant alternative approaches to meeting the intent and purpose set forth in this ordinance. In such cases, the following shall apply:

- A. **Alternate Compliance Conditions:** Alternate landscaping plans, plant materials, or planting methods may be used where the strict application of landscaping requirements set forth in this ordinance would be unreasonable or impractical, or where it is necessary to protect existing vegetation. Such situations may result from streams, natural rock formations, topography, or other physical conditions; or from lot configuration, utility easements, unified development design, or unusual site conditions.
- B. **Plan Standards:**
 1. **Intent:** All proposed alternate landscaping plans shall be evaluated by the Planning Director, in consultation with the Arborist, to determine if the alternate plan meets the intent and purpose of this ordinance. This determination shall take into account the land use classification of adjacent property, number of plantings, species, arrangement and coverage, location of plantings on the lots, and the level of screening height, spread, and canopy of the planting(s) at maturity.
 2. **Equivalency:** The Planning Director, in consultation with the Arborist, may approve an alternate plan that proposes different plant materials or methods provided that quality, effectiveness, durability, and performance are equivalent to those required by this ordinance.
 3. **Administration & Documentation:** All administration, documentation, and other pertinent standards of this section shall be met through the approval process unless determined acceptable via the Conditions, Intent, and Equivalency provisions above.

Commented [TA48]: In the current ordinance this does not appear as its own section and it appears very early in the ordinance (it's currently the first topic under 9.2.2 Administration). As a result, the current arrangement suggests that alternate compliance is prioritized over or equal to the ordinance requirements. Therefore, this has been moved to the end of the ordinance, reorganized for clarity, and given its own section, which is consistent with pre-2015 DPO.

9.10 PLANTING SPECIFICATIONS & APPENDICES

9.10.1 APPLICABILITY

The following documents inform this ordinance's standards and shall apply to all proposals unless otherwise determined by the Planning Director in consultation with the Arborist.

Commented [TA49]: This entire sub-section C. provides a catch-all to clarify that all relevant parts of this ordinance apply, even when pursuing an alt. compliance pathway.

Commented [TA50]: This is a new section consolidating in one place the list of approved trees, shrubs, and other vegetation that may be used. Additionally, other relevant documents can be stored here under "Appendices." By including these items within this section as referenced documents they can be updated routinely and as needed based on best practices, appropriate species substitutions (i.e. due to disease or blight), and other considerations.

9.10.2 PLANTING SPECIFICATIONS

- A. **Tree Specification List:** This document contains a list of approved species, including growth characteristics and features, permitted to be considered for proposals.
- B. **Shrub Specification List:** This document contains a list of approved species, including growth characteristics and features, permitted to be considered for proposals.
- C. **DPO Tree Planting & Mix Guidelines:** This document contains guidance on the appropriate distribution of trees, shrubs, and vegetation based on canopy coverage, square footage, and other factors.

Commented [TA51]: These documents were developed by the Livability Board, adapting Huntersville's and Charlotte's ordinances to fit Davidson's needs.

9.10.3 APPENDICES

- A. **Tree Care Guidelines:** This document contains a list of terms, methodologies, and best practices related to tree establishment, maintenance, and preservation.
- B. **American Standard for Nursery Stock:** Produced by AmericanHort, this document establishes common techniques for managing the cultivation, sale, and installation of plants. Among other things, this includes standards for: Measuring plants; specifying and stating the size of plants; and determining the proper relationship between height and caliper, or height and width.

<https://www.americanhort.org/page/standards>

Commented [TA52]: These documents provided additional guidance from third-party sources that can be used in decision-making.

15.2.6 CIVIL PENALTY

In addition to the other remedies cited in this ordinance for the enforcement of its provisions, and pursuant to NCGS 160A-175, the regulations and standards in this ordinance may be enforced through the issuance of civil penalties by the Planning Director.

- A. **Procedures for Civil Citations:** Subsequent citations for the same violation may be issued by the Planning Director if the offender does not pay the citation (except as otherwise provided in a Warning Situation) after it has been issued, unless the offender has sought an appeal to the actions of the Planning Director through the Board of Adjustment. Once the ten-day warning period has expired, each day which the violation continues shall subject the violator to additional citations to be issued by the Planning Director.
- B. **Schedule of Civil Penalties:** Unless otherwise provided in this ordinance, the following penalties are hereby established:
 - 1. **Warning Citation:** Correct Violation Within 10 Days
 - 2. **First Citation:** \$50.00
 - 3. **Second Citation For Same Offense:** \$100.00
 - 4. **Third And Subsequent Citations For Same Offense:** \$500.00
- C. **Recovery of Penalties:** If the offender fails to pay the civil penalties within fifteen days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

15.3 SPECIFIC TYPES OF VIOLATIONS

15.3.1 LANDSCAPING VIOLATIONS & PENALTIES

15.3.1.A APPLICABILITY

- A. **General:** Violations of Section 9 Tree Preservation, Landscaping & Screening shall be subject to penalties, enforcement, and the procedures relating thereto set forth in Section 15.3. Any landscape areas, trees and vegetation preserved or planted as part of an approved landscape plan or permit shall be continually maintained in good condition by the property owner.
- B. **Violations:**
 - 1. **Damage:** Failure to comply with the landscaping and maintenance requirements of Section 9 of this ordinance, or the disturbance, damage or removal of any trees or vegetation prohibited by this ordinance, shall constitute a violation. This includes the intentional material damage to, or the intentional material alteration of, any landscaped area, tree, or vegetation required to be planted and/or maintained as part of an approved plan or permit. All violations shall be reported by the property owner to the Planning Director

Commented [TA1]: Section 15 has been reorganized and revised to clarify the replacement process, calibrate penalties, afford non-monetary penalty relief, and link appeals to existing ordinance processes.

immediately, prior to any corrective action.

2. **Failure to Remedy:** It shall likewise constitute a violation of this ordinance for a property owner to fail, within a reasonable period of time or as specified by this ordinance, to remedy any material damage to, or alteration of, any landscaped area, tree, or vegetation required to be planted and/or maintained as part of an approved plan or permit, irrespective of whether such damage or alteration was the result of causes beyond the property owner's control, including but not limited to natural forces.
- C. **Enforceability:** Where a landscaping violation is found to have occurred, the remedies specified in this ordinance shall be enforced and any civil penalties shall be punishable in accordance with the provisions of this ordinance. Note: Violations pursuant to this section are not enforceable under N.C.G.S. 14-4.

15.3.1.B REPLACEMENT

- A. **Extent:** All landscaped areas, trees, and vegetation required by this ordinance which are disturbed or damaged shall be replanted to meet the standards of this ordinance as well as the approved site/master plan or permit. This includes any tree designated for preservation or installation as part of the approved landscape plan or permit that is removed or dies as a result of negligence or natural forces.
- B. **Replanting:**
 1. **New Vegetation:** New trees or vegetation required as part of an approved plan that are damaged or die shall be removed and replaced with new vegetation of equal or greater size according to the standards of this ordinance. Note: In some cases, this will extend beyond the Warranty Period(s) identified in 9.2.2.F.3.
 2. **Existing Vegetation:** Where the trees or vegetation that have been disturbed or damaged existed on the site at the time the development application was filed, all replacement trees and vegetation shall meet the standards set forth in this ordinance and take into account any unique site conditions as well as significant vegetation remaining within the landscaped area.
 - i. **Location:** Replantings shall be located within the vicinity of the violation. If the area is too small for sufficient growth, a more suitable location on the site may be selected as permitted by the Planning Director in consultation with the Arborist.
 - ii. **Vegetation:** Damaged or destroyed vegetation in both perimeter and/or interior landscaped/vegetated areas shall be replaced with an equal amount of new vegetation according to the size of vegetation removed. For buffer areas, understory plantings may also be required to restore the disturbed area to meet ordinance requirements.
 - iii. **Trees:** Any tree with a caliper of at least twelve inches that is damaged or removed shall be replaced with one or more trees, as determined by the Arborist, that have a caliper of at least 2.5

Commented [TA2]: The section clarifies the processes and standards governing replacement of disturbed or damaged plantings. It largely includes text already existing in the DPO that has been reorganized.

inches and a cumulative caliper equal to or greater than the original tree. Trees less than twelve inches in diameter in developments subject to an approved plan and damaged or destroyed shall be replaced to meet ordinance requirements.

Specimen Trees: Any Specimen Tree removed or damaged such that removal is required, as determined by the Arborist, shall be replaced by one 5-inch caliper tree or three 2.5-inch caliper trees at the discretion of the Arborist.

C. Approval:

1. **Plan:** All new trees and vegetation must be approved by the Planning Director, in consultation with the Arborist. A replanting plan denoting the proposed installation(s) shall be submitted to the Planning Director for approval in consultation with the Arborist. The plan shall take into consideration the development condition of the site, significant vegetation remaining within landscaped areas, and the required replacement of plant materials.
2. **Board of Adjustment:** The Planning Director may elect to present the replanting plan to the Board of Adjustment for final approval, as necessary.
3. **Timeframe:** The responsible party shall replace the required vegetation within the current planting season, next planting season, or as approved by the Arborist. If such replacement does not occur within the specified time period, the Landscape Maintenance Bond may be drawn upon in order to pay for the cost of replacement. In such case, the replacement tree(s) and vegetation shall be installed by or at the direction of the Arborist.

Commented [TA3]: This standard comes from CLT and has been adapted to require 2.5-inch replantings (rather than 2-inch), consistent with the DPO's minimum caliper requirement.

15.3.1.C PENALTIES

A. General:

1. **Responsible Parties:** Any person or entity who violates any of the sections of this ordinance, or rules or orders adopted or issued pursuant to these sections, shall be subject to civil penalties as prescribed by this section. 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 ordinance.
2. **Scope:** Penalties assessed under this chapter are in addition to and not in lieu of compliance with the requirements of this ordinance.

Commented [TA4]: This provision affords flexibility in determining what timeframe works best for the site based on planting conditions, availability of plants, etc.

B. Penalties: Civil penalties for violations of this chapter shall be assessed pursuant to the following:

1. **Required Installations:** Failure to plant original or replacement trees and vegetation in accordance with this chapter shall be \$100.00 for each tree and \$50.00 for each shrub/other vegetation 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 15.1. In the event of a failure to comply with the Replacement provisions, the failure to plant each individual tree and/or shrub/vegetation shall

Commented [TA5]: This section lays out the monetary and non-monetary options for assessing a landscaping violation(s).

Commented [TA6]: This enables the penalty amount to be levied on both the property owner and the party that executes the work order.

constitute a separate, daily and continuing violation from the day the notice of violation is received.

Commented [TA7]: This is intended to take effect only if the violator does not go through with the Replacement process.

2. **Total Loss:** The intentional or grossly negligent injury or damage to, or destruction of, trees and shrubs/vegetation protected by this ordinance that result in the total loss of the tree or shrub/vegetation shall be assessed according to the following:

Penalties for losses in areas regulated by approved plans (Master Plans, Conditional Master Plans, Individual Building or other site plans); in designated tree save or preservation areas; or, within the public right-of-way:

- Tree: \$500 per Caliper Inch
- Shrub: \$100 per Shrub
- Vegetated Cover: \$10 per SF of Disturbed Area
- Specimen Tree: \$500 Caliper Inch up to 24 inches; \$800 per Caliper Inch over 24 inches.

Note: The maximum civil penalty for each tree injured, damaged or destroyed shall not exceed \$25,000. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

Penalties for losses in areas not regulated by an approved plan, including permits (i.e., permits filed after cutting or permits incorrectly executed):

- Tree: \$500 per Tree
- Specimen Tree: \$1,000 per Tree.

3. **Partial Damage:** The intentional or grossly negligent injury or damage to, or destruction of, trees and shrubs/vegetation protected by this ordinance that do not result in the total loss of the trees or shrub/vegetation shall be assessed according to the following:

Penalties for partial damage in areas regulated by approved plans (Master Plans, Conditional Master Plans, Individual Building or other site plans); in designated tree save or preservation areas; or, within the public right-of-way:

- Tree: \$500 per Tree
- Shrub: \$50 per Shrub
- Vegetated Cover: \$5 per SF of Disturbed Area
- Specimen Tree: \$1,000 per Tree

No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

4. **Insufficient Replanting Area:** If the tree violation occurred in a preservation area in which it is determined that the required replacement tree(s) cannot be adequately replanted due to insufficient area, a replacement fee equal to \$100 per caliper inch of each replacement tree shall be paid to the Tree Fund.

5. **Tree Protection Measures:** Failure to install or maintain required tree

Commented [TA8]: These penalties apply in areas that were required to be preserved as part of an approved plan but were not executed correctly (i.e. work was incorrectly done in these areas resulting in tree/shrub loss). The values are derived from data available in the Davidson Street Tree Inventory completed in 2018.

Commented [TA9]: Example: A 36-inch tree is removed; the Arborist determines it was a specimen tree (per the Environmental Inventory). The violator pays \$500 x 24 for the first 24 inches (\$12,000) and \$800 x 12 for the next 12 inches (\$9,600) for a total of \$19,600.

Commented [TA10]: Other communities also employ maximum amounts and their values are likewise within this range.

Commented [TA11]: These penalties apply in areas that were not subject to an approved plan (i.e. a building permit for which a tree permit was not also filed as required, or when a tree permit's approved scope of work is not executed correctly). The values are derived from data available in the Davidson Street Tree Inventory completed in 2018.

Commented [TA12]: These values mirror the preceding values but are calibrated to be based on each tree - not caliper - due to the Partial Damage nature of this penalty; the Vegetated Cover was reduced to \$5.00/SF. The Specimen Tree values were unchanged based on the value of these trees.

Commented [TA13]: This concept comes from Raleigh. This would be in addition to any other applicable violation penalty.

protection measures in accordance with Section 9 shall be punishable up to \$1,000 per violation. No civil penalty shall be assessed until the person has been notified of the violation as provided in Section 9. 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 until it is adequately corrected, as confirmed by inspection. 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 the failure to install or maintain required tree protection measures in accordance with Section 9 constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this section.

6. **Miscellaneous Violations:** 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.
 7. **Non-Monetary Penalties:** At the discretion of the Planning Director in consultation with the Arborist, alternative non-monetary penalties or replanting strategies may be assessed in addition to or in lieu of any monetary penalties prescribed under this section. Plantings shall be approved in accordance with the Replacement provisions of this ordinance.
 8. **Penalties Cumulative:** The civil penalties provided for in this Section 9.10 may be assessed cumulatively. By way of example only, if a Specimen Tree and the vegetated cover surrounding it are damaged due to inadequate tree protection measures, a total of at least three separate penalties may be assessed: (i) one for partial loss of the Specimen Tree; (ii) one for partial loss of the vegetative cover; and (iii) one for the failure to install or maintain required tree protection measures.
- C. **Assessment, Notice of Violation, & Payment:** The Planning Director, in consultation with the Arborist, 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 violation shall be served as provided in Section 15.1 and shall direct the violator to either pay the assessment or contest the assessment as specified in this ordinance. 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 this ordinance, the assessment shall be considered a debt due and owing to the Town, and the matter shall be referred to the town 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.
- D. **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 violation. A violation that is contested is due at the conclusion of the administrative

Commented [TA14]: This provision is new and affords flexibility in levying a penalty wherein financial hardship exists or unintentional/not grossly negligent actions result in a violation; it allows alternative approaches to replacement and payment.

Commented [TA15]: This section makes clear the process for issuing and resolving a violation.

and judicial review of the assessment.

- E. **Use of Civil Penalties Collected:** Civil penalties collected pursuant to this section shall be credited to the Tree Fund as a nontax revenue and shall be used to further the purposes, intent and requirements of this ordinance as prescribed by the Board of Commissioners resolution establishing the Tree Fund.
- F. **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.

15.3.1.D APPEALS & VARIANCES

- A. **General:** Any party dissatisfied with a decision of the Town adversely affecting such party in the application or enforcement of this ordinance, including notices of violations and assessments of civil penalties, may request a public hearing before the Board of Adjustment.
- B. **Request:** The issuance of a decision, including a notice of violation or assessment of a civil penalty by the Town, shall entitle the party subject to the decision or responsible for the violation (petitioner) to a hearing before the Board of Adjustment if such party submits a written request for a hearing to the Planning Director within thirty (30) days of the receipt of a decision, notice of violation or assessment of a civil penalty.
- C. **Procedure:** Appeals and variances shall follow the rules and procedures set out in NCGS Section 160 A-388, as amended, and Section 14.18 of the Davidson Planning Ordinance.

Commented [TA16]: This section clarifies the process for seeking relief from the assessed violation. It links to existing processes in the DPO, namely Board of Adjustment procedures.