



## MEMO: TREE ORDINANCE DRAFT TEXT AMENDMENTS

Date: September 24, 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

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*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.
- **Ordinance:** 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.
- **Resolution:** The proposed text amendments recommend creation of a Tree Fund; the resolution text contains statements explaining the purpose of the fund and describing its use.

### 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 \$6/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.

## 5. ADVISORY BOARD & STAFF RECOMMENDATIONS

In August 2019 the Livability Board and Planning Board provided unanimous recommendations in favor of the proposed amendments. In July 2019 the Planning Board raised a number of topics on which they encouraged further refinement; throughout August and September the Planning Board Ordinance Committee worked to address this board's comments. Specifically, changes were made to:

- Formally Recognize Property Rights
- Clarify Bond Applicability + Warranty Period
- Highlight Agricultural Exemptions/ETJ Status
- Reward Invasive Planting Clearing + Viewshed Preservation
- Penalize Pre-Application Clearing
- Refine Payment-in-Lieu Provisions (Softwoods/Hardwoods Distinction)
- Reduce Initial Removal Penalty (Individual Lots)
- Clarify Partial Damage (Ref. ANSI Pruning Standard)

The Planning Board supported the proposed changes, noting the importance of aligning the ordinance with statutory requirements and recommending that the arborist review the updated ordinance within the first 90-days and one-year of its implementation.

Staff also recommends approval of the proposed amendments, which will provide administrative clarity as well as expertise through the integrated role envisioned for the town arborist.

## 6. RECOMMENDED ACTION

- **Consideration of Approval:** The September 24, 2019, meeting provides an opportunity for commissioners to understand the changes made since July, hear the Livability and Planning Boards' recommendations, and consider approval the proposed amendments.

## 7. NEXT STEPS

- **July 2019:**
  - » Board of Commissioners Hearing – July 23, 2019 [COMPLETE]
- **August 2019:**
  - » Livability Board Recommendation – August 20, 2019 [COMPLETE]
  - » Planning Board Recommendation – August 26, 2019 [COMPLETE]
- **September 2019:**
  - » Commissioner Consideration of Approval – August 24, 2019
  - » Finalize/Implement Communications Plan – Fall 2019