



TOWN OF DAVIDSON
BOARD OF COMMISSIONERS
4th Tuesday Regular Meeting
Town Hall Board Room - 216 S. Main Street
September 24, 2019

I. CALL TO ORDER

II. ANNOUNCEMENTS

- (a) **Davidson Police Department Promotion Ceremony
Lieutenant James J. Stokes**
- (b) **Proclamation - International Walk to School Day**

III. CHANGES TO AGENDA

IV. PUBLIC COMMENTS - The Board shall provide at least one period for public comment per month at a regular meeting.

V. PRESENTATIONS

- (a) **Planning Board Liaison Report - Tree Ordinance
Ellen Donaldson, Shawn Copeland**
Summary: Planning Board members Ellen Donaldson and Shawn Copeland will present a summary of the Planning Board's discussion and recommendation concerning the tree ordinance's proposed text amendments.

VI. CONSENT - Consent items are typically non-controversial and routine items. Prior to the board's adoption of the meeting agenda the request of any member to have an item moved from the consent agenda to old business must be honored by the board. All items on the consent agenda must be voted on and adopted by a single motion.

- (a) **Consider Approval of Draft August Meeting Minutes**
Summary: Draft Meeting Minutes from August 13 work session and August 27 regular meeting.
- (b) **Consider Approval to Amend Meeting Schedule**
Summary: Amend the meeting schedule to add a Board and Staff Mini Retreat on Monday, October 14 at 6:00 p.m. in the Town Hall Board Room.

- (c) **Consider Approval of Ordinance 2019-04 Request Street Closure for Christmas in Davidson and Ordinance 2019-05 Request Street Closure for the North Mecklenburg Christmas Parade**
Summary: Each year, the Town of Davidson Board of Commissioners requests that the North Carolina Department of Transportation undertake the formal steps necessary to request street closures in order to conduct Christmas in Davidson (O2019-04) and the North Mecklenburg Christmas Parade (O2019-05) in accordance with NCGS § 20-169 (3).
- (d) **Consider Approval of Budget Amendment 2020-08 for Bradford Neighborhood Park Improvements**
Summary: This budget amendment re-appropriates funding for the Bradford Neighborhood Park Playground that was approved by the board in FY2019 so the funds are available in the current fiscal year (FY2020). The Town of Davidson was awarded a Playcore/Landscape Structures matching grant for \$50,000 from the town and \$20,000 from the Bradford Homeowners Association.
- (e) **Consider Approval of Budget Amendment 2020-11 for FEMA Grant for Fire Department**
Summary: The town was awarded a Federal Emergency Management Administration (FEMA) Assistance to Firefighters Grant (AFG) to purchase vehicle extrication equipment for \$40,000 which includes \$38,095.23 grant and \$1,904.77 town's match. The budget amendment recognizes the grant revenue from FEMA and allows for the capital equipment expenditures.
- (f) **Consider Approval of Tax Levy Adjustment**
Summary: The town received a tax levy adjustment refund check request from Mecklenburg County Assessor's Office (As approved by the Board of Equalization and Review (BER) and the Mecklenburg Board of County Commissioners (BOCC)) for \$217.31, on 1 parcel. These refund will be issued directly by the Town of Davidson. Details regarding this refund request are available in the Finance Office.

VII. OLD BUSINESS

- (a) **Consider Approval of Tree Ordinance Changes, Consistency Statement, and Tree Fund Resolution 2019-40**
Senior Planner Trey Akers
Summary: In 2018 the board of commissioners directed staff to draft revisions to Section 9 of the Davidson Planning Ordinance, which covers tree canopy, landscaping, and screening standards. Staff built on the initial recommendations provided by the Livability Board in 2016, working with the board of commissioners and Planning Board members to produce a set of text amendments to update the Section 9 and Section 15 standards (which deal with landscaping violations).

Adoption of a consistency statement is required by statute whenever the governing board adopts a text amendment. Additionally, the recommendations include Resolution 2019-40 establishment of a Tree Fund to further the ordinance's aims of preserving, establishing,

and maintaining the town's tree canopy.

- (b) **Consider Approval of Villages at South Main Affordable Housing Plan**
Town Attorney/Affordable Housing Manager Cindy Reid
Summary: The Village at South Main developer has proposed the construction of three affordable homes. The three homes would be deed restricted and available to households earning up to 80% of the AMI. At the September 10 work session, the board discussed the project with the developer and reviewed public input.

VIII. NEW BUSINESS

- (a) **Affordable Housing Program Update and Summers Walk Unit**
Town Attorney/Affordable Housing Manager Cindy Reid
Summary: As part of an affordable housing strategy, the Affordable Housing Steering Committee recommended creating new and maintaining existing affordable homes.

1)Hope to Home Program Update:

The Ada Jenkins Center (AJC), Our Towns Habitat for Humanity, and the Hope House Foundation have formed a joint agency to collaboratively provide transitional housing together with services to help families learn how to acquire and maintain permanent housing. The program is called "Hope to Home". The town is currently leasing a town owned property to AJC for this program. At the board meeting, Georgia Krueger, Executive Director of AJC, will present an update on the program.

2)Summers Walk Affordable Housing Unit:

Consider approval to release the Town Affordable Housing Deed Restrictions to allow substitution of those proposed by AJC and Habitat for the Hope to Home Program and authorize the Town Manager to sign any documents related to this request such as the Memorandum of Understanding (MOU) with the joint agency.

- (b) **Consider Approval of Amended Town Manager's Contract**
Town Manager Jamie Justice
Summary: Each year the Board of Commissioners reviews the Town Manager's Employment Contract and considers amendments upon renewal. The only amendment to the agreement will be a salary increase of 4% to his base salary effective July 1, 2019 - June 30, 2020.

IX. SUMMARIZE MEETING ACTION ITEMS

X. ADJOURN



**Agenda Title: Davidson Police Department Promotion Ceremony
Lieutenant James J. Stokes**

Summary:

ATTACHMENTS:

Description

Upload Date

Type

No Attachments Available



Agenda Title: Proclamation - International Walk to School Day

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
▣	Proclamation - International Walk to School Day 2019	9/19/2019	Backup Material



PROCLAMATION
International Walk to School Day
Town of Davidson – October 2, 2019

WHEREAS, the lives of hundreds of children could be saved each year if communities take steps to make pedestrian and bicycle safety a priority; and

WHEREAS, a lack of physical activity plays a leading role in rising rates of obesity, diabetes and other health problems among children and being able to walk or bicycle to school offers an opportunity to build activity into daily routine; and

WHEREAS, driving students to school by private vehicle contributes to traffic congestion and air pollution; and

WHEREAS, an important role for parents and caregivers is to teach children about pedestrian and bicycle safety and become aware of the difficulties and dangers that children face on their trip to school each day and the health and environmental risks related to physical inactivity and air pollution; and

WHEREAS, community leaders and parents can determine the "walkability" of their community by using a walkability checklist; and

WHEREAS, community members and leaders should make a plan to make immediate changes to enable children to safely walk and bicycle in our communities and develop a list of suggestions for improvements that can be done over time; and

WHEREAS, children, parents and community leaders around the world are joining together to walk and bike to school and evaluate walking and bicycling conditions in their communities;

NOW THEREFORE, I, Rusty Knox, Mayor of the Town of Davidson, North Carolina, joining with Davidson area schools, parents, PTOs, businesses and community members, do hereby proclaim October 2, 2019, "International Walk to School Day" in the Town of Davidson, NC and encourage everyone to consider the safety and health of children today and every day.

Proclaimed this 24th day of September, 2019.

Rusty Knox, Mayor



Agenda Planning Board Liaison Report - Tree Ordinance

Title: Ellen Donaldson, Shawn Copeland

Summary: Planning Board members Ellen Donaldson and Shawn Copeland will present a summary of the Planning Board's discussion and recommendation concerning the tree ordinance's proposed text amendments.

Summary:

ATTACHMENTS:

Description

Upload Date

Type

No Attachments Available



Agenda **Consider Approval of Draft August Meeting Minutes**
Title: **Summary:** Draft Meeting Minutes from August 13 work session and August 27 regular meeting.

Summary:

ATTACHMENTS:

Description	Upload Date	Type
<input type="checkbox"/> Draft Meeting Minutes 08-13-19	9/19/2019	Backup Material
<input type="checkbox"/> Draft Meeting Minutes 08-27-19	9/19/2019	Backup Material



August 8, 2019

**SECOND TUESDAY WORK SESSION
TOWN OF DAVIDSON BOARD OF COMMISSIONERS**

The Town of Davidson Board of Commissioners held its regularly scheduled meeting on Tuesday, August 8, 2019 in the Town Hall Board Room. Present were Mayor Rusty Knox and Commissioners Jane Campbell, Matthew Fort, Jim Fuller, Autumn Rierson-Michael, and David Sitton. Town Manager Jamie Justice, Economic Development Manager Kim Fleming, Human Resources Director Megan White, Parks and Recreation Director Kathryn Spatz, Planning Director Jason Burdette, Police Chief Penny Dunn, Public Works Director Doug Wright, Town Attorney Cindy Reid and Town Clerk Betsy Shores were also present.

- **CALL TO ORDER**

Mayor Knox called the meeting to order at 5:00 p.m.

- **CLOSED SESSION**

Commissioner Fort made a motion to move to closed session per NCGS §143-318.11. (a) (3) – Consult with Attorney. The motion passed unanimously (5-0).

At 5:55 p.m., Commissioner Campbell made a motion to return to open session. The motion passed unanimously (5-0).

- **ANNOUNCEMENTS**

Communications Director Amanda Preston read the following announcements:

Congratulations to Davidson Police Corporal Joe Squashic for completing the North Carolina Traffic Enforcement and Investigation Certification Program. This rigorous program required 500 training hours through the North Carolina Justice Academy, which Joe exceeded, and must be completed in just five years. Officers, upon completion of the program, will have mastered several important aspects of traffic enforcement and related topics, thus achieving a high level of professionalism for themselves as well as the department. This program began in 1999 and Joe is the 305th police officer in the state to complete the program since inception. Congratulations, Cpl. Squashic!

The next Quarterly Q&A Session with the Mayor and Board of Commissioners will be held on Tuesday, September 3 at 6:30pm at the clubhouse in Summers Walk, 17240 Summers Walk Blvd. This is open for all citizens to attend.

Sunday, August 18, the Lake Norman Fondo Bike Race, a cycling event benefitting Lake Norman Area charities, will take place throughout Davidson. All event activities will be hosted here at the Village Green.

The next Concert on the Green features our annual GospelFest performance on Sunday, August 25 at 6pm.

- **CHANGES TO THE AGENDA**

No changes to the agenda.

- **DISCUSSION**

(a) **Continuum**, formerly known as MI-Connection, is the broadband/cable company owned by the towns of Mooresville and Davidson. In March, the towns announced starting the process for the sale of Continuum and retainment of RBC Capital Markets as the exclusive financial advisor for the sale. Town Manager Justice presented an overview of the sale process to date.

On Tuesday, August 13, the boards of Mooresville and Davidson voted by resolution to approve an Asset Purchase Agreement from TDS Broadband Service, LLC and the sale of Continuum in the amount of \$80 million. Per NC State Statute, a referendum will be on the November ballot asking eligible Mooresville and Davidson voters to approve the sale of Continuum. Pending voter approval in November, transfer of ownership is expected to occur by the end of 2019.

Continuum employees will be offered positions within TDS to support local and national operations. TDS employs nearly 2,700 people in 30 states and currently has strong momentum in the broadband and cable industry with expansion of fiber optic networks in multiple markets across the U.S.

Between now and the Closing of the Sale, Continuum customers will continue to receive their voice, internet and video services, pricing, and customer service to which they are accustomed during this period.

Commissioner Campbell made a motion to open the Public Hearing at 6:10 p.m. The motion passed unanimously (5-0).

No one signed up to speak.

Commissioner Fuller made a motion to close the Public Hearing at 6:10 p.m. The motion passed unanimously (5-0).

Commissioner Fort made a motion to approve Resolution 2019-36 Approving Sale of the Continuum Communications System Subject to Voter Approval and Resolution 2019-37 Calling for a Vote of the Eligible Voters of the Town of Davidson Regarding Sale of the Continuum Communications System to TDS Broadband Service LLC. The motion passed unanimously (5-0).

(b) Parks and Recreation Director Kathryn Spatz and Town Attorney Cindy Reid presented the **Park at Beauty Conservation** Agreement. On March 26, 2019, the board of commissioners voted unanimously to

adopt the recommendations of the Park at Beaty Street Task Force, including permanently protecting all 6 parcels (20+acres) that make up the Beaty Property with a conservation easement. The Park at Beaty Leadership Committee, primarily Dave Cable, and staff have been working to develop easement language that addresses town, neighbor, and Davidson Land Conservancy (DLC) interests. The draft conservation easement was presented to the board of commissioners on July 9.

Commissioner Fuller made a motion to excuse Commissioner Rierson Michael from voting on the conservation easement due to her position as Executive Director of Davidson Lands Conservancy, who is the recommended holder of the conservation easement agreement. The motion passed unanimously (4-0).

Commissioner Fuller made a motion to approve Resolution 2019-35 to Convey the Beaty Conservation Easement Agreement and Budget Amendment 2020-07 to appropriate \$30,000 to DLC for stewardship of the conservation easement. The motion passed unanimously (4-0).

The purpose and terms of the easement will be published in the Charlotte Observer beginning Saturday, August 17 and, after that, the conveyance can be finalized by Mayor Knox signing the easement agreement.

(c) Town Manager Justice presented a recap of the **Public Facilities Bond Referendum**. On July 9, the board approved the introduction of the bond order to issue \$14 million dollars in G.O. Public Facilities Bonds and held a Public Hearing on July 23. The board discussed receiving additional public input for the 5 acres around the 251 South Street property, the Sloane House, and the Pump House.

Commissioner Campbell made a motion to approve Resolution 2019-33 Providing for the Adoption of a Bond Order Authorizing the Issuance of \$14,000,000 General Obligation Public Facilities Bonds and Resolution 2019-34 Setting a Special Bond Referendum and Notification of the Mecklenburg County Board of Elections and the Iredell County Board of Elections. The motion passed (4-1) with Commissioners Campbell, Fort, Fuller, and Rierson-Michael voting yes and Commissioner Sitton voting no.

(d) **Consider Approval of Davidson Mobility Plan**

Commissioner Rierson Michael made a motion to defer the item to the August 27 regular meeting. The motion passed unanimously (5-0).

(e) Planning Director Jason Burdette presented a proposal for **River Run Phase VI** to re-designate approximately 74.8 acres located east of Shearer Rd and south of E. Rocky River Rd. from a combination of Neighborhood Edge/Conditional Planning Areas to entirely Conditional Planning Area. The applicant is working with Epcon Communities to develop a 130-unit active adult (age-restricted) community. As part of the conditional request, the applicant is asking for a number of exceptions to the Davidson Planning Ordinance. After a discussion, the board of commissioners provided feedback to the applicant about the proposed development.

(f) Planning Director Jason Burdette and representatives from **CFA Church** presented a **proposal for a Conditional Map Amendment** (rezoning) for 261 Griffith Street (Sadler Square Shopping Center) from Village Commerce Planning Area to Conditional Planning Area. The purpose of the rezoning would be to permit a religious use in the space formerly occupied by Healthy Home Economist grocery store. After a discussion, the board of commissioners provided feedback to the applicant about the proposed rezoning.

(g) Town Manager Justice requested the board of commissioners to approve a resolution and budget amendment to purchase four homes for the purpose of preserving those homes as affordable. The addresses are 202 Mock Road, 145 Mock Road, 144 Mock Circle, and 211 Lakeside. The purchase price for all four homes is \$820,000. One of the strategic goals of the board is to preserve existing affordable housing, and other indicia of inclusion, and work with a variety of partners to create new available, affordable workforce and elderly housing. These homes will be rented or sold to households with incomes between 50% and 80% AMI.

Commissioner Campbell made a motion to approve Resolution 2019-38 to authorize the purchase of 211 Lakeside Drive, 145 Mock Road, 144 Mock Circle, and 202 Mock Road and approve Budget Amendment 2020-08 for \$820,000 plus related expenses. The motion passed unanimously (5-0).

(h) No additional items were presented during **Miscellaneous/Open Discussion**.

- **ADJOURN**

Commissioner Campbell made a motion to adjourn. The motion passed unanimously (5-0).

The meeting adjourned at 8:58 p.m.

Attest:

Elizabeth K. Shores
Town Clerk

Rusty Knox
Mayor



August 27, 2019

**REGULAR MEETING
TOWN OF DAVIDSON BOARD OF COMMISSIONERS**

The Town of Davidson Board of Commissioners held its regularly scheduled meeting on Tuesday, August 27, 2019 in the Town Hall Board Room. Present were Mayor Rusty Knox and Commissioners Jane Campbell, Matthew Fort, Jim Fuller, Autumn Rierson Michael, and David Sitton. Town Manager Jamie Justice, Assistant Town Manager Karen Whichard, Communications Director Amanda Preston, Economic Development Manager Kim Fleming, Finance Director Pieter Swart, Planning Director Jason Burdette, Police Chief Penny Dunn, Town Attorney Cindy Reid, and previous Town Clerk Carmen Clemsic were also present.

- **CALL TO ORDER**

Mayor Knox called the meeting to order at 5:02 p.m.

- **CLOSED SESSION**

Commissioner Campbell made a motion to move to closed session per NCGS § 143.318.11(a)(3) Davidson Acquisition Company, et. al. v. Town of Davidson, et. al.. The motion passed unanimously (4-0). Commissioner Sitton was not present for the start of the closed session.

At 5:55pm, Commissioner Campbell made a motion to return to open session. The motion passed unanimously (5-0).

- **ANNOUNCEMENTS**

Communications Director Amanda Preston made the following announcements:

The next Concert on Green will be held this Sunday, September 1 at 6:00 p.m. featuring Chicago Rewired.

The Town of Davidson offices will close in observance of the Labor Day holiday. We will re-open Tuesday, September 3. Garbage and recycling collection will be on a regular pick-up schedule.

The next Quarterly Q&A Session with the Davidson Mayor and Board of Commissioners will be on Tuesday, September 3 at 6:30 p.m. at the clubhouse in Summers Walk, 17240 Summers Walk Blvd. Everyone is invited to attend.

Mayor Knox read a **proclamation** in recognition of **Hoke Lumber Company** and their 75 years as a Davidson business. Mayor Knox signed the **Beaty Park Conservation Easement Resolution**.

- **PUBLIC COMMENTS**

The public comments period opened at 6:15 p.m. and closed at 6:29 p.m. Five citizens spoke.

- **CHANGES TO THE AGENDA**

No changes to the agenda.

- **PRESENTATIONS**

In 2014, the Town of Davidson contracted with TischlerBise to develop the town's **Cost of Land Use Fiscal Impact Analysis**. It is best practice to update this type of study every 5 years and/or when there is a significant change in the municipal cost structure or revenue stream. Economic Development Manager Kim Fleming and Carson Bise, President of TischlerBise, discussed with the board the 2019 analysis which will update the study based on the county-wide revaluation and the addition of fire station no. 2. This study will also help inform the town's Comprehensive Plan by providing a Fiscal Sustainability Policy Document.

- **CONSENT AGENDA**

Meeting Minutes from the July 9 work session and July 23 regular meeting
Recommended Change to Parks and Recreation Department Policies and Procedures
Changes to the Fee Schedule
Budget Amendment 2020-10 for Fire Department purchase of Self-Contained Breathing Apparatus (SCBA)
FY2019 Tax Collector's Settlement Statement for Mecklenburg and Iredell Counties
FY2020 "Order of Collection" for Mecklenburg and Iredell Tax Collectors

Commissioner Fort made a motion to approve the consent agenda. The motion passed unanimously (5-0).

- **OLD BUSINESS**

(a) Town Attorney/Affordable Housing Manager Cindy Reid presented an update on **the Affordable Housing program**. The Affordable Housing Steering Committee recommended creating new and maintaining existing affordable homes.

One of the recommendations was to use \$200,000 of payment in lieu monies for a critical repair program. The town partnered with Our Towns Habitat for Humanity for the program. Chris Ahearn, CEO of Habitat, shared an update on what has been accomplished through this partnership.

The Steering Committee also indicated a strong preference for homes being built rather than a payment in lieu. Attempts to get developers to build homes have been unsuccessful because building "affordable" homes is not what market rate builders do, and the numbers did not work. Cindy Reid presented a proposal from the developer of the Village at South Main. The board asked that staff solicit public input through open town hall and have further discussion at the September 10th work session.

(b) Senior Planner Travis Johnson presented an overview of the proposed **Davidson Mobility Plan**, a local comprehensive transportation plan that provides a town-wide vision and coordinated

recommendations for multi-modal travel and access within and through town. The Mobility Plan is a culmination of 18 months of public engagement and feedback.

Commissioner Campbell made a motion to approve the Davidson Mobility Plan contingent on possible amendments after the upcoming Board Retreat.

(c) Assistant Town Manager Karen Whichard presented information related to the staff funding recommendation for the \$14.0 million in **general obligation bonds** required to renovate the current town hall for public safety purposes and the renovation of the property at 251 South Street as a town community center. The board discussed two different options to share with the community during the information sharing campaign planned for the lead-up to the bond referendum.

Commissioner Fort made a motion to approve the recommended Public Facilities Debt Payment plan to communicate to citizens that the projected property tax rate increase is 2 pennies however, if the Continuum sale proceeds as planned, the town could dedicate the \$1 million annual contribution for Continuum to public facilities debt service resulting in no increase to the tax rate. The motion passed (4-1) with Commissioners Campbell, Fort, Fuller, and Rierson Michael voting yes and Commissioner Sitton voting no.

(d) Assistant Town Manager Karen Whichard provided an update on the **251 South Street Steering Committee**. This past spring, the board of commissions engaged a group of citizens to provide recommendations for the building at 251 South Street as part of the public facilities project. At that time, the board adopted a scope of work and charge for the citizen-led steering committee, which included a future Phase II site plan conceptual design. The board was asked to approve **Resolution 2019-39** with an updated charge for Phase II, which asks the citizen steering committee to investigate various public service elements that are aligned with the board adopted strategic plan with amenities appropriate for the site.

Commissioner Rierson Michael made a motion to approve Resolution 2019-39 South Street Steering Committee Phase II Charge with changes to bullet 3: "Investigate various public service elements that are aligned with the board adopted strategic plan with amenities appropriate for the site". The motion was passed unanimously (5-0).

- **SUMMARIZE MEETING ACTION ITEMS**

Commissioner Fort summarized the public comments.

- **ADJOURN**

Commissioner Rierson Michael made a motion adjourn. The motion passed unanimously (5-0).

The meeting adjourned at 8:31 p.m.

Attest:

Elizabeth K. Shores
Town Clerk

Rusty Knox
Mayor



Agenda Title: **Consider Approval to Amend Meeting Schedule**
Summary: Amend the meeting schedule to add a Board and Staff Mini Retreat on Monday, October 14 at 6:00 p.m. in the Town Hall Board Room.

Summary:

ATTACHMENTS:

Description	Upload Date	Type
☐ Amended 2019 Meeting Schedule 09.24.19	9/19/2019	Backup Material

Board of Commissioners Meeting Schedule 2019 - Updated 9/24/2019			
Month	2nd Tuesday Work Session 6:00 P.M.	4th Tuesday Regular Meeting 6:00 P.M.	Quarterly Meetings
January	8	22	
February	12	26	
March	12	26	
April	9	23	April 29 - 9AM
May	14	28	
June	11	25	June 6 - 6:30PM
July	9	23	
August	13	27	
September	10	24	Sept 3 - 6:30PM
October	8	22	
November	*12 (Regular Meeting)	No Meeting - Holiday	
December	*3 (Regular Meeting)	*10 (Ceremonial Meeting)	
Additional Meetings	<p>Retreat Date: March 14-15 <u>Location: Chapel Hill</u></p> <p>Special Meeting March 18 6:00 p.m. <u>May 7 6:00 p.m.</u></p> <p>Retreat October 14 6:00 p.m. Location: Town Hall</p>	<p>Civics 101 Date: Feb. 7- April 23 (Thurs) 9:30 a.m. - 11:30 a.m. 6:30 p.m. - 8:30 p.m. Town Hall - 216 S. Main</p>	<p>Quarterly Meetings 4/29 - 9am Town Hall 6/6 - 6:30pm 116 Depot St, Davidson Presbyterian Church 9/3 - 6:30pm Summers Walk Clubhouse 17240 Summers Walk Blvd</p>
All Meetings are held at Davidson Town Hall, Meeting Room - 216 South Main St.			
2nd Tuesday of the month is a Work Session			
4th Tuesday of the month is a Regular Meeting with Public Comment			
* Alternate dates to accommodate holidays and meeting requirements			



Agenda Title: Consider Approval of Ordinance 2019-04 Request Street Closure for Christmas in Davidson and Ordinance 2019-05 Request Street Closure for the North Mecklenburg Christmas Parade

Summary: Each year, the Town of Davidson Board of Commissioners requests that the North Carolina Department of Transportation undertake the formal steps necessary to request street closures in order to conduct Christmas in Davidson (O2019-04) and the North Mecklenburg Christmas Parade (O2019-05) in accordance with NCGS § 20-169 (3).

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
▢	Draft - Ordinance 2019-04 Request Street Closure for Christmas in Davidson	9/19/2019	Ordinance
▢	Draft - Ordinance 2019-05 Request Street Closure for North Meck Christmas Parade	9/19/2019	Ordinance



College Town. Lake Town. *Your Town.*

ORDINANCE 2019-4
REQUEST FOR STREET CLOSURE
FOR CHRISTMAS FESTIVAL IN THE TOWN DAVIDSON, NORTH CAROLINA

WHEREAS, the Town of Davidson Board of Commissioners requests that North Carolina Department of Transportation undertake the formal steps necessary for Town of Davidson, North Carolina to conduct “Christmas in Davidson”, an annual festival held on US Highway 115, between the intersection of Davidson-Concord Road and Highway 115 to the intersection of Jackson Street and Highway 115, on Thursday, December 5, Friday, December 6 and Saturday, December 7, 2019 from approximately 5:00 P.M. – 10:00 P.M.; and

WHEREAS, the Town of Davidson Board of Commissioners believes that it is in the best interest of the citizens of Town of Davidson that NC Department of Transportation act favorably on said request.

NOW THEREFORE BE IT ORDAINED by the Town of Davidson Board of Commissioners pursuant to the authority granted by G.S. 20-169 that they do hereby declare a temporary road closure during the day(s) and times set forth below on the following described portion of a State Highway System route:

Dates: Thursday, December 5
Friday, December 6
Saturday, December 7

Time: 5:00 P.M. – 10:00 P.M.

Route Description: US Highway 115, between the intersection of Davidson-Concord Road and Highway 115 to the intersection of Jackson Street

This ordinance to become effective when signs are erected giving notice of the limits and times of the festival, and implementation of adequate traffic control to guide through vehicles around festival route.

Adopted this 24th day of September, 2019.

ATTEST:

Rusty Knox, Mayor

Elizabeth K. Shores, Town Clerk



ORDINANCE 2019-05
REQUEST FOR STREET CLOSURE
FOR THE NORTH MECKLENBURG CHRISTMAS PARADE IN THE TOWN
DAVIDSON, NORTH CAROLINA

WHEREAS, the Town of Davidson Board of Commissioners requests that North Carolina Department of Transportation undertake the formal steps necessary for Town of Davidson, North Carolina to conduct a Christmas Parade US Highway 115, between the intersection of Griffith Street and Highway 115 to the Town of Cornelius corporate bounty on US Highway 115, on Saturday, December 7, 2019 from approximately 1:00 P.M. – 3:00 P.M; and

WHEREAS, the Town of Davidson Board of Commissioners believes that it is in the best interest of the citizens of Town of Davidson that NC Department of Transportation act favorably on said request.

NOW THEREFORE BE IT ORDAINED by the Town of Davidson Board of Commissioners pursuant to the authority granted by G.S. 20-169 that they do hereby declare a temporary road closure during the day(s) and times set forth below on the following described portion of a State Highway System route:

Dates: Saturday, December 7
Time: 1:00 P.M. – 3:00 P.M.
Route Description: US Highway 115, between the intersection of Griffith Street and Highway 115 to the Town of Cornelius corporate bounty on US Highway 115

This ordinance to become effective when signs are erected giving notice of the limits and times of the festival, and implementation of adequate traffic control to guide through vehicles around festival route.

Adopted this 24th day of September, 2019.

ATTEST:

Rusty Knox, Mayor

Elizabeth K. Shores, Town Clerk



Agenda Title: Consider Approval of Budget Amendment 2020-08 for Bradford Neighborhood Park Improvements

Summary: This budget amendment re-appropriates funding for the Bradford Neighborhood Park Playground that was approved by the board in FY2019 so the funds are available in the current fiscal year (FY2020). The Town of Davidson was awarded a Playcore/Landscape Structures matching grant for \$50,000 from the town and \$20,000 from the Bradford Homeowners Association.

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
▣	DRAFT - Budget Amendment 2020-08 for Bradford Neighborhood Park Improvements	9/19/2019	Cover Memo

AMENDMENT TO THE BUDGET ORDINANCE

BE IT ORDAINED by the Governing Board of the Town of Davidson, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2020:

Section 1: To amend the General Fund, the appropriations are to be changed as follows:

<u>Acct. No.</u>	<u>Account</u>	<u>Decrease</u>	<u>Increase</u>
10-80-6140-500	Equipment		\$ 70,000.00

Expenditures related to playground improvements to the Bradford Neighborhood park.

Section 2: To amend the General Fund, the estimated revenues are to be changed as follows:

<u>Acct. No.</u>	<u>Account</u>	<u>Decrease</u>	<u>Increase</u>
10-00-3990-980	Fund Balance Appropriated		\$ 50,000.00
10-80-3833-830	Contributions, P&R		\$ 20,000.00

Allocates fund balance and a contribution from Bradford HOA for playground improvements to the Bradford Neighborhood park.

Section 3: Copies of this budget amendment shall be furnished to the Clerk of the Governing Board, and to the Budget Officer and the Finance Officer for their direction.

Adopted this 24th day of September, 2019



Agenda Title: Consider Approval of Budget Amendment 2020-11 for FEMA Grant for Fire Department

Summary: The town was awarded a Federal Emergency Management Administration (FEMA) Assistance to Firefighters Grant (AFG) to purchase vehicle extrication equipment for \$40,000 which includes \$38,095.23 grant and \$1,904.77 town's match. The budget amendment recognizes the grant revenue from FEMA and allows for the capital equipment expenditures.

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▣	Draft - Budget Amendment 2020-11 for FEMA Grant for Fire Department	9/19/2019	Budget Amendment

AMENDMENT TO THE BUDGET ORDINANCE

BE IT ORDAINED by the Governing Board of the Town of Davidson, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2020:

Section 1: To amend the General Fund, the appropriations are to be changed as follows:

<u>Acct. No.</u>	<u>Account</u>	<u>Decrease</u>	<u>Increase</u>
10-10-4340-510	Equipment-Fire		\$ 38,095.23

The Town will purchase rescue equipment for the Fire Department, funded by a grant from FEMA.

Section 2: To amend the General Fund, the estimated revenues are to be changed as follows:

<u>Acct. No.</u>	<u>Account</u>	<u>Decrease</u>	<u>Increase</u>
10-10-3431-315	Grants		\$ 38,095.23

The Town will receive a grant from FEMA to purchase rescue equipment for the Fire Department

Section 3: Copies of this budget amendment shall be furnished to the Clerk of the Governing Board, and to the Budget Officer and the Finance Officer for their direction.

Adopted this 24th day of September, 2019



Agenda Consider Approval of Tax Levy Adjustment

Title: **Summary:** The town received a tax levy adjustment refund check request from Mecklenburg County Assessor's Office (As approved by the Board of Equalization and Review (BER) and the Mecklenburg Board of County Commissioners (BOCC)) for \$217.31, on 1 parcel. These refund will be issued directly by the Town of Davidson. Details regarding this refund request are available in the Finance Office.

Summary:

ATTACHMENTS:

Description	Upload Date	Type
No Attachments Available		



Agenda Title: Consider Approval of Tree Ordinance Changes, Consistency Statement, and Tree Fund Resolution 2019-40
Senior Planner Trey Akers

Summary: In 2018 the board of commissioners directed staff to draft revisions to Section 9 of the Davidson Planning Ordinance, which covers tree canopy, landscaping, and screening standards. Staff built on the initial recommendations provided by the Livability Board in 2016, working with the board of commissioners and Planning Board members to produce a set of text amendments to update the Section 9 and Section 15 standards (which deal with landscaping violations).

Adoption of a consistency statement is required by statute whenever the governing board adopts a text amendment. Additionally, the recommendations include Resolution 2019-40 establishment of a Tree Fund to further the ordinance's aims of preserving, establishing, and maintaining the town's tree canopy.

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
▣	Agenda Memo - DPO Section 9 Tree Ordinance	9/20/2019	Cover Memo
▣	DPO 9 Proposed Text Amendments - Tree Regulations	9/20/2019	Exhibit
▣	DPO 15 Proposed Text Amendments - Landscaping Violations	9/20/2019	Exhibit
▣	DPO 9 & 15 Proposed Text Amendments - Ordinance	9/20/2019	Exhibit
▣	DPO 9 Text Amendments - Presentation	9/20/2019	Presentation
▣	DPO 9 Text Amendments - Consistency Statement	9/20/2019	Exhibit
▣	DPO 9 Text Amendments - Tree Fund DRAFT Resolution 2019-40	9/20/2019	Exhibit



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

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

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
- Balance preservation of tree canopy with recognition of private property rights.

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. For tree removal on individual lots, see 9.3.3.

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

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.

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

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 may 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.
- 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 materials, as determined in the discretion of the Planning Director

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]: 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 [TA6]: This clarifies what documentation standards must be met and where those requirements are located.

Commented [TA7]: This introduces enhanced requirements for specimen trees based on professional insight and a third-party standard.

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 Planning Director.
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).

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.

E. **Landscape Maintenance Bond:**

1. **Bond:** Prior to the approval of Final Plat documents or 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. The following projects and/or permits require bonds: All Conditional Planning Area, Master Plan, or Individual Building projects; site plan approvals; or, as determined by the Planning Director in consultation with the Arborist, building permits involving site work and/or features that must meet the requirements of this ordinance. Note: Per DPO 14.3.D, single-family houses are not considered Individual Building projects.
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 an AA-rated 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.

F. **Inspections:**

Commented [TA8]: This clarifies what constitutes a major revision and the process for approval. The current ordinance references minor revisions but not major revisions.

Commented [TA9]: This section ensures that all documentation – including plats reviewed when buyers purchase homes – reflect all pertinent information related to required trees and preservation areas.

Commented [TA10]: • 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.

Commented [TA11]: 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.

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.
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.E, above.
3. **Warranty Period:** After initial 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 initial installation of all required plantings is complete. Required replantings will not trigger the commencement of a new warranty period, but remain subject to the original warranty.
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 shall 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

Commented [TA12]: 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 [TA13]: 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.

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.

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, required plantings (e.g., street trees, etc.), and other plantings. 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.

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%

B. Requirements:

Commented [TA14]: • This table and the following standards have been revised 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 [TA15]: 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 [TA16]: • 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.

1. **Applicability:** The tree coverage standards listed in Table 9-1 apply to all Conditional Planning Area, Master Plan, and Individual Building development proposals. The following are exempt from the tree coverage standards: Permitted work related to single-family detached and duplex houses outside of the aforementioned processes; Recreation Facility - Outdoor; Stable/Riding Academy, Horse Farm, Agriculture, Farm and substantially similar uses as determined by the Planning Director. For these uses, the tree coverage standards shall serve as a guide for each Planning Area.
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 the Arborist approves alternative values. 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: LK/VC/VE/VCOM/NC1/NC2/CBD/NS.
 - b. **Payment-in-Lieu:** For projects located in the 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. Note: In calculating the payment-in-lieu value a 1:1 credit per square foot shall be given for the following: Areas eradicated of invasive species (as determined by the Arborist) and replanted; or areas eradicated of invasive species and preserved for viewsheds as part of an approved plan. The decision to award credit shall be made by the Planning Director in consultation with the Arborist.

Commented [TA17]: The list identifies uses wherein coverage may conflict with the intended land use.

Commented [TA18]: 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 [TA19]: 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 [TA20]: 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 [TA21]: 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).

C. Credit Toward Coverage Requirement:

1. **Preserved/Planted Species:** All trees preserved or planted to satisfy the requirements of this ordinance, as well as other tree plantings included as

part of an approved plan, 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.

2. **Viewshed Preservation:** In calculating the canopy coverage requirement, areas maintained or restored to preserve a publicly-accessible viewshed documented as part of an approved plan may receive a 1:1 credit per square foot, not to exceed 10 percent of the total project area.

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.
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.

Commented [TA22]: 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 [TA23]: 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.

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%*

Commented [TA24]: 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.

***Payment-in-Lieu:** For projects located in the 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 [TA25]: 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 [TA26]: For more information, see the comment for 9.3.1.B.B above.

- 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 and vegetation 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 and vegetation to preserve, the following shall be considered: Existing grading; age, condition and type of tree; whether the tree is invasive; proximity to water bodies and similar features; 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.
- 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. Additionally, preservation areas may not be located on portions of private lots unless: 1. Approved by the Planning Director based on site conditions; and, 2. Protected by a permanent easement.
- 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

Commented [TA27]: This section has been reorganized for clarity of presentation.

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.
- 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 \$50.00 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 [TA28]: This clarifies that trees required to be planted as part of this ordinance must be maintained in good condition.

Commented [TA29]: 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 (i.e., excluding the extraterritorial jurisdiction) that are not subject to an approved Conditional Planning Area, Master Plan, or Individual Building development proposal. Notwithstanding the foregoing, lots located on Catawba Ave. but outside the town's incorporated limits are subject to these standards, and all lots are subject to the prohibitions listed in 9.3.3.B.7.

- 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 shall 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. Local Historic District:** Removal of a mature tree(s) within in a locally designated historic district requires a tree permit in accordance with this ordinance. Additionally, a Certificate of Appropriateness shall be required for removal of a mature tree within a locally designated historic district wherein the subject tree is specifically identified as significant in a historic district report or in the landmark designation ordinance (see Section 22). Mature trees shall be replaced by a tree of similar species, type, and must meet the requirements of Section 9.8.

B. Approval Process:

- 1. Permit Required:** An approved permit, including fee payment (if applicable), 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:** Development and permitting fees are as set forth in the Town of Davidson Fee Schedule. Note: A fee is not required for a tree removal permit unrelated to any other building activity on a site.
- 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.

Commented [TA30]: 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 [TA31]: 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.

Commented [TA32]: There is currently no fee for a tree removal permit that does not involve any other site work; the proposed amendments do not change this. A fee would be required only as part of a building permit or master plan approval (in these cases, too, the fee is not a separate fee but is part of the overall application fee).

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. The site visit should occur within 14 days of the receipt of a complete application (including fee, if applicable).

5. **Arborist Findings:** Within 14 days of the site visit the Arborist shall prepare and issue 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). Emergency situations may warrant expedited review or, in select cases, removal prior to permit approval. The Planning Director, in consultation with the Arborist, shall determine whether a civil penalty is assessed in those situations.

Commented [TA33]: 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.

Factors that may be considered in the Arborist’s findings include but are not limited to whether the tree(s):

Commented [TA34]: This list provides applicants a sense of topics that may be addressed in the report.

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.

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 [TA35]: 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 in areas regulated by approved plans; outside of site areas approved for pre-application clearing; in designated tree save or preservation areas or, within the public right-of-way. 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. This includes clear-cutting or selective tree removal without an approved plan or permit. Tree removal related to site survey or development work must be approved by the Planning Director in consultation with the Arborist prior to the work beginning, and the removal of trees to avoid ordinance requirements is prohibited. See Section 15 Violations for further information.

Commented [TA36]: This is the work that often takes place prior to a development application being submitted. It makes it clear that a landowner can't pre-emptively cut trees in anticipation of development in order to avoid the ordinance requirements. Other jurisdictions take this approach.

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 [TA37]: 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. Local Historic District: Lots within a local 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.

2. Prohibitions:

- a. **Tree-Topping:** The topping of trees and similar practices is strictly prohibited in areas regulated by approved plans; outside of site areas approved for pre-application clearing; in designated tree save or preservation areas or, within the public right-of-way. 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. This includes clear-cutting or selective tree removal without an approved plan or permit. Tree removal related to site survey or development work must be approved by the Planning Director in consultation with the Arborist prior to the work beginning, and the removal of trees to avoid ordinance requirements is prohibited. See Section 15 Violations for further information.

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

Commented [TA38]: This is the same language as in 9.3.3 but has been duplicated here for clarity that these standards apply to master plans, etc.

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, the Planning Director in consultation with the Arborist may require a minimum planting strip width of eight feet to accommodate large canopy trees, including but not limited to willow oaks and red maples.

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.

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

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

- 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.
- 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

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.

2. Evergreen shrubs planted at no more than of 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.
- 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 [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.

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.

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.

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.

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.

- B. Contractor Warranty:** The contractor shall warrant all new plant material as follows: Twenty-four (24) month warranty period for trees and eighteen (18) month warranty period for all other plantings.
- 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.

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.

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.

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 ordinance shall be met through the approval process for projects pursuing an alternate method of compliance, unless otherwise approved 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.

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 [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 are 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.
 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 inches and a cumulative caliper equal to or greater than the

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.

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.

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.

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.

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

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 [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.

- 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. 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. In the event of a failure to comply with the Replacement provisions, the failure to plant each individual tree

and/or shrub/vegetation shall 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**; outside of site areas approved for **pre-application clearing**; or, **within the public right-of-way**:

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.

- 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**.

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.

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.

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

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

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.

- Tree:
 - 1st Citation: Warning + \$50
 - 2nd & Subsequent Citation for Same Offense: \$500 per Tree
- Specimen Tree:
 - 1st Citation: Warning + \$100
 - 2nd & Subsequent Citation for Same Offense: \$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:

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.

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. Note: Partial Damage shall not include general maintenance activities performed in accordance with ANSI A300 Part 1 Pruning, Tree Care Industry Association.

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 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 15. 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. 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.
 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

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

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.

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 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.

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. The right to a hearing shall be communicated by the Town as part of its decision, notice of violation, or assessment.
- 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.



**Ordinance 2019-06
DPO 9 Trees + Miscellaneous Text Amendments**

TOWN OF DAVIDSON BOARD OF COMMISSIONERS (the “Town Board”) adopts the following text amendments to the **Davidson Planning Ordinance (DPO)**. The listed changes below are being undertaken to provide necessary clarifications and update standards related to the administration of the town’s tree canopy, landscaping, and screening requirements. Proposals are organized by page number.

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</p>	

			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 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 14 – ADMINISTRATION PROCEDURES			
14-28	14.13.9	FINAL PLAT	Section 9 requires display of designated tree save areas on plats.
			Modify documentation requirements section to include reference to tree save area requirement.
TEXT CHANGES			Old Text: Site Details: The lines and names of all streets...easements, reservations... New Text: See attachment. Site Details: The lines and names of all streets...easements, designated tree save areas, reservations...
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.
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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.”

Adopted on the 24th of September 2019.

Attest:

Elizabeth K. Shores
Town Clerk

Rusty Knox
Mayor



DPO 9 TEXT AMENDMENTS

TREE CANOPY, LANDSCAPING, & SCREENING

September 24, 2019

PURPOSE

Healthy, Mature Canopy

Preserve, Protect, Enhance

Improve/Calibrate Standards

Enduring Compliance

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

IMPORTANT CHANGES

- **9.2 Applicability & Administration:**
 - » Arborist: Integrated, Collaborative Role
 - » Bonds: Right-Sized (125% of *Landscape* Costs), Feature Warranty
- **9.3 Tree Coverage & Preservation:**
 - » Coverage: Calibrated Using Local Data (STI, TCS, What's Next)
 - » Results = Increased Canopy: Canopy (+18%), Preservation (+10%)
 - » Permitting: Individual Lots (Arborist Consultation, No Fee)
- **15.3.1 Landscaping Violations & Civil Penalties**
 - » Reorganized/Updated: Process, Replacement Criteria
 - » Violations: Calibrated Penalties, Appeals, Non-Monetary Alts.

PRACTICAL IMPLICATIONS

- **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***

ADVISORY BOARDS' REVIEW

- **Livability Board:** Unanimous Positive Recommendation
- **Planning Board:** Unanimous Positive Recommendation
 - » Ordinance Comments Addressed:
 - ✓ Recognize Property Rights
 - ✓ Clarify Bond Applicability + Warranty Period
 - ✓ Highlight Agricultural Exemptions/ETJ Status
 - ✓ Reward Invasive Planting Clearing + Viewshed Preservation
 - ✓ Penalize Pre-Application Clearing
 - ✓ Refine PIL (Softwoods/Hardwoods Distinction)
 - ✓ Reduce Initial Removal Penalty (Individual Lots)
 - ✓ Clarify Partial Damage (Ref. ANSI Pruning Standard)

NEXT STEPS

- Decide Ordinance Effective Date
- Finalize/Implement Communication Plan
- Hire Arborist (Jan. 1, 2020)
- Build on Comp. Plan Recommendations

GOING FORWARD

- **Communications Plan:**
 - » Town Newsletter (Fall 2019, Education; Winter 2020 Arborist Hire)
 - » Digital Outreach:
 - E-Crier Notifications; Website Updates; FAQs; Social Media
 - » Stakeholder Outreach:
 - Davidson Connections (Business Community)
 - Trees Davidson/Davidson Lands Conservancy
 - Commercial Tree Contractors
 - Real Estate Agents
 - HOA/Neighborhood Notification

QUESTIONS

TOWN OF DAVIDSON BOARD OF COMMISSIONERS
CONSISTENCY STATEMENT
(DPO TEXT AMENDMENTS – TREE CANOPY & LANDSCAPING VIOLATIONS)

PROPOSAL / REQUEST

The proposed amendments are being undertaken to promote the creation of a healthy tree canopy and landscape by establishing or revising rules to regulate the creation, preservation, and maintenance of these natural features. Additional changes that occur outside of Section 9 are necessary to ensure that cross-references related to the proposed changes are consistent across the Davidson Planning Ordinance.

SUMMARY OF PETITION / PROPOSAL

The amendments propose to:

1. Update the standards regarding tree canopy and landscaping planting, preservation, and maintenance;
2. Integrate an arborist in the plan and permit approval processes;
3. Revise the landscaping violations processes for clarity and penalties for value based on local data; and,
4. Ensure related parts of the Davidson Planning Ordinance are adjusted in response to these proposed changes.

CONSISTENCY STATEMENT

In the opinion of the Board of Commissioners the proposed text amendments are consistent with Davidson Planning Ordinance and Comprehensive Plan, as adopted by the Board of Commissioners and amended from time to time. The areas in which the amendments are consistent with these documents are as follows:

▪ **Consistency with the Davidson Planning Ordinance:**

1. The amendments seek to establish, protect, and enhance Davidson’s natural environment:
 - *The natural environment enhances our quality of life, both physically and socially. We will preserve this irreplaceable asset for future generations by: Preserving rural views, significant hardwood forests, farmland, wildlife habitats, rock outcroppings, parkland, and watersheds in their pristine form (Preface, General Planning Principle 4, Pg. 2).*

▪ **Consistency with the Davidson Comprehensive Plan (2010):**

1. The amendments fulfill recommendations provided in the town’s comprehensive plan:
 - *Set measurable goals to increase and sustain the urban forest*
 - *Consider using only native, drought-tolerant species in town landscaping projects*
 - *Revise open space or tree preservation requirements to better preserve existing tree canopy in all planning areas (Enable Faithful Stewardship of Natural & Historic Assets, Goal 2).*

Adopted this 24th day of September, 2019.

Signature/Date
Rusty Knox
Mayor



RESOLUTION 2019-40

APPROVING THE USE OF PAYMENTS THAT ARE MADE IN LIEU OF PRESERVING OR ESTABLISHING PORTIONS OF TREE CANOPY IN SELECT PLANNING AREAS, OR RESULTING FROM LANDSCAPING-RELATED VIOLATIONS

WHEREAS, the Town's Core Values state that "Citizens must live in a healthy environment, so town government will protect watersheds, trees, air quality, and other elements of the town's ecology;"

WHEREAS, in 2018, the Town Board of Commissioners commissioned two studies of the Town of Davidson's tree canopy – the Street Tree Inventory and the Tree Canopy Study;

WHEREAS, in September 2019, the Town Board of Commissioners approved text amendments, effective _____, 20__, to the Planning Ordinance that adjusted the tree canopy coverage and preservation requirements and provided a payment-in-lieu option of the required tree canopy under certain circumstances;

WHEREAS, payments-in-lieu of providing tree canopy as permitted by Section 9 of the Planning Ordinance, shall be in accordance with the fee schedule adopted by the Board of Commissioners;

WHEREAS, civil penalties for landscaping violations as permitted by Section 15 of the Planning Ordinance, shall be in accordance with the regulations adopted by the Board of Commissioners;

WHEREAS, the Board of Commissioners desires to approve the uses of the tree canopy payment in lieu and landscaping violations fees made pursuant to the ordinance requirements.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Board of Commissioners, do hereby declare that:

1. Tree canopy payments-in-lieu and landscaping civil penalties shall be in accordance with the fee schedule and regulations adopted by the Board of Commissioners and paid in full prior to the issuance of a final plat or certificate of occupancy.
2. Tree canopy payments-in-lieu and landscaping civil penalties shall be placed in a Tree Fund and be used by the Town for any of the following activities:
 - a. Town's purchase and establishment of trees or vegetation to enhance the tree canopy.

- b. Costs associated with the Town's purchase or establishment of trees or vegetation including, but not limited to, tree and vegetation establishment, maintenance, and assessment; mitigation of landscaping violations; public education activities related to Davidson's tree canopy; fulfillment of approved plans (e.g. land development); and, implementation of approved or adopted plans.
- c. Other activities that are directly related to the assessment, purchase, or maintenance of tree canopy.

3. This Resolution shall become effective immediately upon adoption.

Adopted on the 24th of September 2019.

Attest:

Elizabeth K. Shores
Town Clerk

Rusty Knox
Mayor



**Agenda Title: Consider Approval of Villages at South Main Affordable Housing Plan
Town Attorney/Affordable Housing Manager Cindy Reid**

Summary: The Village at South Main developer has proposed the construction of three affordable homes. The three homes would be deed restricted and available to households earning up to 80% of the AMI. At the September 10 work session, the board discussed the project with the developer and reviewed public input.

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
▣	Agenda Memo - Villages at South Main Affordable Housing Plan	9/20/2019	Cover Memo
▣	Attachment - Village at South Main Affordable Housing Proposal 09.24.19	9/24/2019	Backup Material



Affordable Housing Plan – The Village at South Main

To: Davidson Board of Commissioners
From: Cindy Reid
Date: September 24, 2019
Re: Affordable Housing Plan – The Village at South Main

1. OVERVIEW

The Village at South Main developer has proposed the construction of three affordable homes. The three homes would be deed restricted and available to households earning up to 80% of the AMI.

As part of an affordable housing strategy, the Affordable Housing Steering Committee recommended creating new and maintaining existing affordable homes.

The Steering Committee also indicated a strong preference for homes being built rather than a payment in lieu. Attempts to get developers to build homes have been unsuccessful because building “affordable” homes is not what market rate builders do, and the numbers did not work.

At the September 10 work session, the board discussed the project with the developer and reviewed public input.

2. RELATED TOWN GOALS

- Davidson’s historic mix of people in all income levels and ages is fundamental to our community, so town government will encourage opportunities, services, and infrastructure that allow people of all means to live
- The Town of Davidson will preserve our historically significant structures to retain our authenticity as a historic, small college town.
- The Town of Davidson will preserve existing affordable housing,* and other indicia of inclusion, and work with a variety of partners to create new available, affordable workforce and elderly housing.

*Affordable housing for the Town of Davidson is defined as incomes between 50% and 120% AMI

- The Town of Davidson will build on existing relationships to strengthen partnerships with strategic organizations and institutions.

3. OPTIONS/PROS & CONS

N/A

4. FYI or RECOMMENDED ACTION

Recommended action: approve the affordable housing plan for the Village at South Main.

5. NEXT STEPS

FUND 24-Davidson, LLC

*19701 Bethel Church Road Suite 202, Cornelius, NC 28031
704-987-0000 FAX 704-987-8010*

September 24, 2019

Town of Davidson

Re: Village at South Main, Davidson, Affordable Housing Proposal and Plan

Commissioners and Mayor:

Fund 24-Davidson, LLC, the developer of the Village at South Main project, is required to either 1) provide three affordable units or 2) pay PIL fees of \$26,550 per unit (\$79,650 total for all three units).

We offer a plan, described below, at the Village at South Main which will produce three affordable townhomes with the use of payment in lieu fees (PIL fees).

An independent appraisal conducted by Farrington Appraisals, attached hereto, valued the townhomes at \$230,000. The appraisal also contains the floor plan, square footage, and number of bedrooms and bathrooms.

The principals of Fund 24 believe that providing affordable housing rather than paying PIL fees is an important priority and meets the town's strategic plan goal of creating new, available, affordable workhouse housing.

The structure of the plan is:

- The fair market value of the townhomes, if sold on the open market, is \$230,000. This includes the lot and building.
- The sales price of the townhomes will be discounted from \$230,000 to \$160,000 (\$70,000 discount per townhome).
- The townhomes will be built, including interior finishes and appliances, as if they are to be sold at market rate.
- At closing of the sales, Fund 24 will execute 30- year affordability restrictions that provide for a 2% increase per year. The restrictions will require owner occupancy except provide for short term rental (6 months) in the event of necessity such as a sabbatical or a medical problem. The initial buyer, as well as future buyers, must earn less than 80% of the then area medium income as published by HUD (AMI) unless the town, through the Town Manager, approves an exception to include incomes up to 120% of the AMI. The Town Manager will only approve an exception if Fund 24, or a future owner, can demonstrate that reasonable efforts have been made to sell to an 80% household.
- The restrictions will also include a provision that the town has the first right to purchase the home at each sale. The town must notify the owner that it wishes to exercise the right to purchase within 20 days of receiving a notice of intent to sell. If the town purchases the home, the town will have the option of extending the affordability period and renting the home until it can be sold to an income qualified purchaser.

- If necessary, Fund 24 will fund real estate commissions, and soft costs such as buyer closing costs. No principal of Fund 24 will claim a real estate commission.
- The reduction in price (\$70,000) and soft costs paid by Fund 24 (not to exceed \$75,000 per unit) will be applied toward Fund 24's PIL requirement. Additional funds would be provided by the Town's affordable housing fund (which comprises payments in lieu from other developers and projects).
- In the event a townhome does not sell, or an excess of \$75,000 in PIL fees is needed to subsidize the sale, the developer will sell the home at market rate and make a \$26,550 PIL per unit fee to the town. The fee will be due at the closing of the sale of the townhome.

An example of how this works is:

- A Buyer purchases a townhome for \$160,000, which is a reduction of \$70,000.
- The Buyer requires \$5,000 in closing costs (soft costs).
- The total reduction in price plus soft costs is \$75,000 per townhome (\$225,000 for all three townhomes).
- Fund 24's PIL responsibility totals \$79,650 (\$26,550 per unit times three units)
- The \$145,000 remaining amount (the total of \$225,000 less Fund 24's responsibility of \$79,650) would be provided by the Town's affordable housing fund.
- The Town's share of the remaining amount will be paid 50% upon issuance of a Certificate of Occupancy to the unit with the balance at closing of the sale to an affordable buyer. If the unit does not sell to an affordable buyer, then Fund 24 will refund the initial payment to the Town.

The benefits to the Town and its dedication to providing homes that are affordable to lower wealth individuals and families are significant:

- The Town gets three, very nice, affordable homes in the prime downtown area.
- The cost of this program is estimated at \$225,000 total for three new townhomes.

Thank you for considering and approving this plan. We look forward to working with you on this exciting project.

FUND 24-DAVIDSON, LLC



Anthony B. Bowman, Manager

Approved:

Rusty Knox, Mayor



Agenda Affordable Housing Program Update and Summers Walk Unit

Title: Town Attorney/Affordable Housing Manager Cindy Reid

Summary: As part of an affordable housing strategy, the Affordable Housing Steering Committee recommended creating new and maintaining existing affordable homes.

1)Hope to Home Program Update:

The Ada Jenkins Center (AJC), Our Towns Habitat for Humanity, and the Hope House Foundation have formed a joint agency to collaboratively provide transitional housing together with services to help families learn how to acquire and maintain permanent housing. The program is called “Hope to Home”. The town is currently leasing a town owned property to AJC for this program. At the board meeting, Georgia Krueger, Executive Director of AJC, will present an update on the program.

2)Summers Walk Affordable Housing Unit:

Consider approval to release the Town Affordable Housing Deed Restrictions to allow substitution of those proposed by AJC and Habitat for the Hope to Home Program and authorize the Town Manager to sign any documents related to this request such as the Memorandum of Understanding (MOU) with the joint agency.

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
□	Agenda Memo - Affordable Housing Program Update and Summers Walk Unit 09.24.19	9/24/2019	Cover Memo



Affordable Housing Program Update and Summers Walk Unit

To: Davidson Board of Commissioners
From: Cindy Reid
Date: September 19, 2019
Re: Affordable Housing Program Update and Summers Walk Unit

1. OVERVIEW

The Ada Jenkins Center (AJC), Our Towns Habitat for Humanity, and the Hope House Foundation have formed a joint agency to collaboratively provide transitional housing together with services to help families learn how to acquire and maintain permanent housing. The program is called “Hope to Home”. The town is currently leasing a town owned property to AJC for this program.

AJC received a \$300,000 per year grant from Ingersoll Rand. Two hundred thousand can be used to acquire homes for the Hope to Home program. A home in Summers Walk, that needed extensive repairs, was for sale and vacant. Due to the extent of repairs, I approached Habitat about purchasing the house and, as a result of those conversations, this home is now positioned to become part of the Hope to Home program.

Because the affordable housing deed restrictions tied to this home require owner occupancy and are more suited to continual home ownership, AJC and Habitat have asked that they be allowed to substitute their affordability restrictions. The home will be owned by AJC, will stay affordable for 30 years, and when it is no longer part of the Hope to Home program, Habitat, the Hope House Foundation and the Town of Davidson will be given first right to purchase the home. If none of these organizations wishes to purchase, the home will be sold to a low- income person or family.

2. RELATED TOWN GOALS

Strategic Plan:

1. The Town of Davidson will preserve existing affordable housing,* and other indicia of inclusion, and work with a variety of partners to create new available, affordable workforce and elderly housing.

*Affordable housing for the Town of Davidson is defined as incomes between 50% and 120% AMI

2. The Town of Davidson will build on existing relationships to strengthen partnerships with strategic organizations and institutions.

Core Value:

1. Davidson’s historic mix of people in all income levels and ages is fundamental to our community, so town government will encourage opportunities, services, and infrastructure that allow people of all means to live and work here.

2. Davidson must be a safe place to live, work, and raise a family, so the town will work in partnership with the community to prevent crime and protect lives, property, and the public realm. (this provides a safe place for a family to live and protects property values by fixing up a house in an existing neighborhood)

Constituents served: Households earning between 30% to 80% of the AMI

3. OPTIONS/PROS & CONS

Pros- Continues the partnership the Town has with Ada Jenkins and Habitat, costs the Town nothing, provides yet another affordable home in town, helps a lower AMI than the traditional program can, provides a rental in a part of town where there are very few.

Cons- AJC and Habitat deed restrictions are 30 not 99 years. However, we are trying to move to 30 years and this does not create a situation where similarly situated neighbors have different restrictions because this home will be owned by AJC and not be owner occupied.

4. FYI or RECOMMENDED ACTION

Approve release of Town Affordable Housing Deed Restrictions to allow substitution of those proposed by AJC and Habitat and for the Hope to Home Program authorize the Town Manager to sign any documents related to this request such as the Memorandum of Understanding (MOU) of with the joint agency.

5. NEXT STEPS

N/A



Agenda **Consider Approval of Amended Town Manager's Contract**

Title: **Town Manager Jamie Justice**

Summary: Each year the Board of Commissioners reviews the Town Manager's Employment Contract and considers amendments upon renewal. The only amendment to the agreement will be a salary increase of 4% to his base salary effective July 1, 2019 - June 30, 2020.

Summary:

ATTACHMENTS:

	Description	Upload Date	Type
▣	Employment Agreement for Town Manager July 1, 2019 - June 30, 2020	9/19/2019	Backup Material

Town of Davidson Employment Agreement

Introduction

This Agreement, made and entered into July 1, 2019 by and between the Town of Davidson, North Carolina, a municipal corporation, (hereinafter called "Employer") and James Justice (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

Section 1: Term

The term of this agreement shall be for one (1) year from July 1, 2019 – June 30, 2020. This Agreement shall automatically be renewed at the beginning of each fiscal year unless notice that the Agreement shall terminate is given at least one month before the expiration date. Notwithstanding the stated term of this agreement, Employee shall be an employee at will and the severance provisions contained herein shall be the Employee's sole remedy in the event that the Employer terminates this Agreement prior to the end of its current term.

Section 2: Duties, Role, and Authority

Employer agrees to employ Employee as Town Manager (a wage and hour exempt position) to perform the functions and duties specified in the Davidson Town Charter, the Davidson Town Code, and the NC General Statutes. Employer agrees that the town manager under § 160A-148 has the authority and statutory role to direct and supervise the administration of all departments, offices, and agencies of the town; and hire, direct, assign, reassign, evaluate, suspend, or remove all Town officers and employees not elected by the people or designated by statute as Town Board appointees. In addition, the Employee agrees to perform such other duties and responsibilities, not inconsistent with the above, as requested by the Town Board from time to time.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$144,129.96 payable in installments at the same time that the other management employees of the Employer are paid.

B. Residency Incentive: The Employer agrees to pay to the Employee a relocation bonus in the amount of \$ 5,000.00 if Employee moves his permanent residence into the corporate limits of the Town at any time within five (5) years after the Commencement Date. The relocation bonus shall be paid in one lump sum no later than ninety (90) days after Employee moves his residence into the corporate limits of the Town.

C. The Employer agrees to consider an annual increase to the Employees dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement. Increased compensation can be in the form of a salary increase and/or a bonus.

Section 4: Health, Disability and Life Insurance Benefits

The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental, comprehensive medical insurance, life and disability for the Employee and his/her dependents equal to that which is provided to all other employees of the Town of Davidson.

Section 5: Vacation, Sick, and Military Leave

Upon commencing employment, the Employee shall be credited with sick and vacation leave equal to that of a 17 year employee (at least 10 days vacation at commencement of employment). The Employee shall then accrue sick and vacation leave on an annual basis at the rate provided to other employees with consistent with years of service and Town policies.

Section 6: Automobile

The Employer shall pay to Employee an automobile expense allowance in the amount of Five Hundred Dollars (\$500.00) per month.

Section 7: Retirement

The Employer agrees to enroll the Employee into the applicable state or local retirement system and to make all the appropriate contributions on the Employee's behalf, for both the Employer and Employee share required. In addition, Employer agrees to contribution an amount equal to five percent (5%) of Employee's Annual Base salary to a 457 Plan.

Section 8: General Business Expenses

1. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

2. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the North Carolina League of Municipalities, North Carolina City County Managers Association, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

3. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

4. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses, including, but not limited to, Rotary Club and Davidson College activities. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

5. The Employer shall provide Employee with a computer, software, fax/modem, cell phone stipend and tablet required for the Employee to perform the job and to maintain communication.

Section 9: Termination

Notwithstanding the stated term of this agreement, Employee shall be an employee at will and the severance provisions contained herein shall be the Employee's sole remedy in the event that the Employer terminates this Agreement prior to the end of its current term.

For the purpose of this agreement, termination shall occur when:

1. The governing body votes to terminate the Employee.
2. The governing body votes not to renew the agreement as outlined in Section 1.
3. Expiration of the term of this agreement.
4. Mutual agreement of the Employer and Employee in writing and signed by them.
5. If the Employer, citizens or legislature acts to amend any provisions of the Davidson Town Charter or Town Code pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, such amendments shall constitute termination.
6. If the Employer reduces the base salary, compensation in an amount greater than the average across the board percent reduction of substantially all employees (unless Manager consents to such reduction), or any other material financial benefit of the Employee, such action shall constitute a breach of this agreement and will be regarded as a termination.
7. If the Employee resigns following a request for resignation and offer to accept resignation, whether formal or informal, by the Employer as representative of the governing body that the Employee resign.
8. Breach of contract declared by either party with a 30 day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 18.
9. Resignation. The Employee delivers to the Employer voluntary resignation. Employee agrees to give Employer at least 60 days notice before resignation.

In the event of Employee's termination under Section 9, Employer and Employee agree not to make disparaging comments or statements concerning either party (Board or

Town Manager), publicly or in private. Employer shall comply with applicable law with respect to any request for information or documentation contained in the employee's employment records.

In order to promote the smooth transition in the leadership and management of the Town's organization and to maintain the confidence of the public in their elected officials, Employer and Employee may agree to an additional separation agreement in the event of a termination as outlined in Section 9. The separation agreement may have additional terms not outlined in this agreement.

Section 10: Severance

Severance shall be paid to the Employee, as Employee's sole remedy for termination, if employment is terminated as defined in Section 9, except a termination for just cause, as defined below, or the resignation of Employee.

Beginning on the Commencement Date the Employer shall provide a minimum severance payment equal to (a) six (6) month' salary at the then current salary, plus an additional amount equal to one (1) month's salary for each year of service with a maximum severance payment equal to nine (9) months' salary, plus an amount equal to six (6) months of COBRA payments. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

The Employee shall also be compensated for all accrued annual leave, sick leave, vacation time, and all paid holidays.

As used throughout this Agreement, "just cause" is defined and limited to the following reasons:

(i) A determination by the Employer, in good faith, that Employee (A) has breached in any material respect any of the terms or conditions of this Agreement, or (B) is engaging or has engaged in willful conduct which is detrimental to the Employer or which has had or likely will have a material adverse effect on the Employer's reputation. Prior to any termination by the Employer of Employee's employment for a breach, failure to perform or conduct described in this subparagraph (i), the Employer shall give Employee written notice which describes such breach, failure to perform or conduct and if during a period of thirty (30) business days following such notice Employee cures or corrects the same to the reasonable satisfaction of the Employer, then this Agreement shall remain in full force and effect; however, notwithstanding the above, if the Employer has given written notice to Employee on a previous occasion of the same or a substantially similar breach, failure to perform or conduct, or of a breach, failure to perform or conduct which the Employer determines in good faith to be of substantially similar import, or if the Employer determines in good faith that the then current breach, failure to perform or conduct is not reasonably curable, then termination under this subparagraph (i) shall be effective immediately and Employee shall have no right to cure such breach, failure to perform or conduct.

(ii) The violation by Employee of any applicable federal or state law, or any applicable rule, regulation, order or statement of policy promulgated by any governmental agency or authority having jurisdiction over the Employer (a "Regulatory Authority"), which results from Employee's gross negligence, willful misconduct or intentional disregard of such law, rule, regulation, order or policy statement and results in any substantial damage, monetary or otherwise, to the Employer or to the Employer's reputation;

(iii) The commission in the course of Employee's employment with the Employer of an act of fraud, embezzlement, theft or proven personal dishonesty (whether or not resulting in criminal prosecution or conviction);

(iv) The conviction of Employee of any felony or any criminal offense involving dishonesty or breach of trust;

(v) The occurrence of any event believed by the Employer, in good faith, to have resulted in Employee being excluded from coverage, or having coverage limited as to Employee as compared to other covered officers or Employees, under the Employer's then current "blanket bond" or other fidelity bond or insurance policy covering its directors, officers or employees.

Section 11: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 60 days' notice unless the parties agree otherwise.

Section 12: Performance Evaluation

Each fiscal year, including the first year of employment, Employer shall review the performance of the Employee in a process which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting. At the initiation of this agreement the Employee shall provide the Employer with a series of annual goals to be met during the first year of employment as Town Manager.

The evaluation of the Employee shall at all times be conducted in closed session of the Board and shall be confidential to the maximum and full extent permitted by law. Nothing herein shall prohibit the Board or the Town Manager from sharing the content of the Town Manager's evaluation with their respective legal counsel.

Section 13: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the

understanding that such arrangements shall not constitute interference with, nor a conflict of interest with, his or her responsibilities under this Agreement.

Section 14: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Town Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, but only to the extent that Employer has insurance coverage in effect which covers such claim that and that includes coverage for Employee.

Employee recognizes that Employer or its insurer shall have the right to compromise in any claim or suit.

Section 15: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 16: Left blank intentionally.

Section 17: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER: The Honorable Rusty Knox, Mayor, Town of Davidson, 216 Main Street, Davidson, North Carolina
- (2) EMPLOYEE: Mr. James Justice

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 18: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on the date first above appearing.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

E. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

EMPLOYEE

Name: James Justice

EMPLOYER:

TOWN OF DAVIDSON, NORTH CAROLINA

A Municipal Corporation

By: _____

Mayor:

ATTEST: _____

Town Clerk

APPROVED AS TO FORM:

By: _____

Town Attorney