

AN ORDINANCE AMENDING SECTION 5.7 OF THE CHAPEL HILL LAND USE AMANAGEMENT ORDINANCE REGARDING TREE PROTECTION

WHEREAS, the Council of the Town of Chapel Hill as considered the proposed text amendments to the Land Use Management Ordinance regarding tree protection and finds that the amendments are warranted in order to achieve the purposes of the Comprehensive Plan;

NOW, THEREFORE, BE IT ORDAINED by the Council of Chapel Hill as follows:

Section 1. Article 5, Section 7 of the Chapel Hill Land Use Management Ordinance, Design and Development Standards, is hereby revised to read as follows:

5.7.1 General Provisions

(a) Short Title

This Section shall be known and may be cited as the Chapel Hill Tree Protection Ordinance.

(b) Purpose

The intent of this Section is to preserve, maintain, and increase tree canopy to protect the public health, safety, and welfare and enhance the quality of life in Chapel Hill.

(c) Applicability

The provisions of this Article apply to all land in the Town's zoning jurisdiction including private work in public rights-of-way except:

- 1) Land in the Town's Office/Institutional-4 zoning district, provided, however, that Section 5.7.5 of this Article shall apply;
- 2) Routine maintenance of existing trees outside the public right-of-way, including pruning done in a manner consistent with established arboricultural standards;
- 3) The removal of dead trees or trees that have been diagnosed and, if applicable, determined by a Certified Arborist to be diseased or damaged beyond treatment, the burden of proof being placed on the remover;
- 4) Land surveying provided no trees greater than six (6) inches dbh are damaged or removed; and
- 5) The removal of trees less than thirty-six (36) inches in diameter at breast height (DBH) on single and two-family residential lots less than 20,000 square feet in gross land area.

5.7.2 Tree Removal Permit Applicability and Canopy Preservation Standards

Table 1

		Type of Permit Required		See for additional information
		ZCP	TWP	
All properties	Routine pruning or maintenance done to arboricultural standards (private or public property and right-of-ways)	Permit May Not Be Required (see additional information)		5.7.1(c)2 and 5.7.5
	Tree is dead or diseased (burden of proof on remover)			5.7.1 (c) 3
	Surveying activity that will not remove trees greater than 6" dbh			5.7.1 (c) 3
	Tree is an exotic, non-native or invasive (see list)			5.7.7
	Removal in conjunction with solar access, part of LEED or "green" development otherwise permitted by Town			5.7.3 (b)
	Removal for demonstrated horticultural/agricultural purposes as determined by the Town			5.7.3 (b)
Single Family or 2 Family Uses	All lots with proposed land disturbance greater than 5,000 SF	X		5.7.3
	Lot Size is less than 20,000 SF and tree is greater than 36" dbh		X	5.7.1 (c) 5, 5.7.7.(a) 1
	Lot Size is 20,000 – 39,999 SF and proposed tree canopy will cover less than 40% of lot		X	5.7.3
	Lot Size is 40,000 – 79,999 SF and proposed tree canopy will cover less than 50% of lot		X	5.7.3
	Tree is less than 6" dbh and is not part of a required planting plan	Permit May Not Be Required (see additional information)		5.7.1
	Single-Family or 2-family residential lot Size is less than 20,000 SF and tree is less than 36" dbh			5.7.3
	Lot Size is greater than 80,000 SF and proposed tree canopy will cover less than 60% of lot		X	5.7.3
All other Uses (not SF or 2 Family)	All tree removal not specifically exempt meets requirements for a ZCP and must include a Landscape Protection Plan	X		5.7.4
Trees in a public right-of-way	Removal or substantial pruning of tree in public right-of-way by private party	X		5.7.5
Forestry	Forestry activities require a ZCP	X		5.7.2 (a) 5

Note: if you are uncertain whether a permit is required, contact Town Staff.

(a) Tree Canopy Coverage

The tree canopy in Chapel Hill is defined generally as the layer of leaves, branches, and stems comprising the crown of the tallest trees present when viewed from above.

The Town desires to maintain the maximum practical tree canopy cover across all land uses within the Town's jurisdiction.

As a condition of permit approval, the property owner is responsible for demonstrating that the lot in its entirety will continue to meet minimum tree canopy coverage per lot size after trees are removed and replacement trees are planted. Validation of compliance by a Certified Arborist or Landscape Architect may be required by the Town. Through the provisions of this Article, the following minimum tree canopy coverage percentage are recommended or required:

Table 2: Minimum Canopy Coverage Standards

Lot size	Minimum canopy coverage for single family or two family uses	Proposed status for single family or two family uses	Minimum canopy coverage for all other uses	Proposed status for all other uses
< 10,000 SF	20%	Recommended	20%	Required
10,000 - 20,000 SF	30%	Recommended	30%	Required
20,000 – 40,000 SF	40%	Required	40%	Required
40,000 – 80,000 SF	50%	Required	50%	Required
> 80,000 SF	60%	Required	50%	Required

(b) Activities Requiring a Permit

Except as otherwise specifically exempted herein, the following activities on public or private properties require a Zoning Compliance or Tree Work permit certifying that such activity complies with the applicable provisions of this Article:

- 1) Clearing trees greater than 6” in diameter at breast height (dbh) from a site
- 2) Any excavation, removal soil, or placement of fill on a site within Chapel Hill and its extraterritorial jurisdiction
- 3) Removal or disturbance of the soil within the critical root zone of any rare or specimen tree, as specified in Section 5.7.4
- 4) Damage, destruction, or mutilation of any tree on public property except to abate a hazard as defined in Section 5.7.4(h)
- 5) The practice of forestry as defined by North Carolina General Statute 105-277.2-.7 which is permitted only after an applicant submits a plan for harvesting and replanting consistent with the most current Forest Practices Guidelines Related to Water Quality published by the N.C. Department of Natural Resources and Community Development, or its successor agency.

A property owner may request relief from the canopy coverage standards where demonstrated Town goals would be achieved with less coverage. This request may include but not be limited to conditions such as underlying zoning, stormwater management requirements, and goals of the Comprehensive Plan. Such a request should be included with a Concept Plan application when applicable and will be considered during the development review process. Requests should be made in writing as part of a development application. These requests shall be considered by the approving body (Council, Planning Board or Town Manager) as part of the development review process.

(c) Permit Types and Applicability

- 1) The Tree Work Permit is intended only for single-family and two-family residential uses.
- 2) Work on any single- and two-family residential lot larger than 20,000 net square feet where the removal of trees will result in noncompliance with the Town's tree canopy requirements will require a Tree Work Permit. (see section 5.7.3)
- 3) The removal of any tree greater than 36" in diameter at breast height (dbh) on all single- and two-family residential lots regardless of lot size requires a Tree Work Permit. (see Section 5.7.6)
- 4) All work impacting trees on lots not designated for single- and two-family residential use requires a Zoning Compliance Permit. (see section 5.7.4)
- 5) All work impacting trees on lots designated for single- and two-family residential use where more than a cumulative total of 5,000 square feet of land disturbance is proposed requires a Zoning Compliance Permit. (see section 5.7.4 and Article 4.9) (supersedes 5.7.2.b.4)
- 6) Removal or substantive pruning of trees on public rights-of-way and other public property requires a Tree Work Permit.

(d) Tree Mitigation Fund

The Town shall use all such payments for the cost associated with implementation of this ordinance, for Town sponsored tree planting and management programs, and for the maintenance or treatment of public trees requiring the services of a Certified Arborist or other qualified consultant. Mitigation funds will not be used in lieu of general fund support for the existing urban forest management program.

(e) Emergency Waiver

The provisions of this Section are waived if compliance would hamper the rescue of life or property from immediate danger or the repair of utilities in the event of emergencies such as wind storms, ice storms, or other disasters. Any emergency work shall follow as closely as possible the standards outlined in the Town's Landscape Standards and Specifications.

5.7.3 Tree Protection Standards for Activities Requiring Tree Work Permits

(a) Area Protected

Except as herein exempted, all single-family and two-family residential lots within the Town's planning jurisdiction are hereby protected.

(b) Activities that do not require a Tree Work Permit

Property owners are responsible for obtaining documentation to confirm a tree on their property meets the following conditions of exemption. Documentation may be provided by a Certified Arborist and/or confirmed by Town Staff. The following activities are exempt from the Tree Work Permit requirement::

- 1) Tree is diagnosed to be diseased or infested by pests beyond reasonable treatment.

- 2) All or part of the tree is determined to be a safety risk that no reasonable action can correct, such as extensively decayed and hollow trunks and scaffold branches; large codominant leaders; extensive root decay/damage.
- 3) Tree with more than 50% of the living crown that has been destroyed or damaged by severe weather, fire, or other extreme event.
- 4) Significant solar access and power generation will be achieved by tree removal.
- 5) Removal is in conjunction with significant LEED or “green” building/low impact development designed projects that have been approved by the Town.
- 6) Removal supports achievement of environmentally responsible building and improved stormwater management.
- 7) Tree is an exotic, non-native, and invasive or otherwise undesirable species.
- 8) Removal is related to the implementation of traditional forest management activities and techniques, such as timber harvesting and timber stand improvement.
- 9) Removal is part of an approved plan to improve forest health and increase woodland diversity.
- 10) Removal is required for use of the property for demonstrated horticultural and/or agricultural purposes.

If these conditions are not met, the applicant shall apply for a Tree Work Permit and provide a Tree Replacement Plan with that application unless a Zoning Compliance Permit is otherwise required (see Section 5.7.4 and Article 4.9)

(c) Tree Replacement Plan

1) Tree Replacement Calculation

Existing trees must be replaced when a regulated activity results in total canopy coverage less than the minimum coverage required in Section 5.7.2.a.

For every 1,000 square feet of canopy in deficit from the required minimum canopy coverage, two trees of a species approved by the Town must be planted. For single- and two-family properties, the minimum replacement tree caliper shall be one inch (1”).

These trees shall be shown on a tree replacement plan to be reviewed and approved by the Town prior to installation.

2) Installation and Maintenance

All new and required landscaping shall be installed and maintained in accordance with the Town's Landscaping Standards and Specifications. All plantings in an approved Tree Replacement Plan shall be planted or an accepted performance guarantee placed with the Town to satisfy compliance with the requirements of this section.

(d) Tree Work Permit Fees

1) Base Permit Fee

- i. A base permit fee is not required for any regulated activity on private or public property if the activity has been applied for and approved prior to work commencing and it does not require a mitigation payment.
- ii. An after-the-fact permit fee included in the Town general schedule of fees applies if regulated tree work or land disturbance work commenced without an approved permit.

(e) Replacement planting and mitigation payments for single-family and two-family residential properties

Payments to the Town of Chapel Hill Tree Mitigation Fund shall be calculated as follows:

- iii. \$200 per tree where there is not sufficient space on site for required replanting.
- iv. \$400 per tree if the permit is applied for after work has begun or if a property owner chooses to provide payment in lieu of tree planting where there is otherwise sufficient space on the subject property to accommodate tree planting.
- v. \$800 per tree if an after-the-fact permit is issued and the property owner chooses to provide payment in lieu of tree-planting.

5.7.4 Tree Protection and Canopy Preservation Standards for Development requiring a Zoning Compliance Permit

(a) Activities requiring a Landscape Protection Plan

- 1) Zoning Compliance Permit applications shall include a Landscape Protection Plan unless otherwise exempted.
- 2) Work restricted to the removal of trees shall conform to the required tree replacement and mitigation standards as described in 5.7.4(f).
- 3) For the activities listed in Section 5.7.3(c) of this Article, when occurring in conjunction with development requiring a Zoning Compliance Permit, replacement trees may not be required upon confirmation by Town staff.

(b) Landscape Protection Plan

- 1) The Town Manager shall prescribe the contents of Landscape Protection Plans and the information that may be reasonably required to determine compliance with this Article, with sufficient copies for necessary referrals and records. Requirements for the Landscape Protection Plan may include the following information:
 - i. The size and type of all existing rare and specimen trees as defined in Section 5.7.7 within 50 feet of disturbance.
 - ii. All significant trees stands, as defined in Section 5.7.5.
 - iii. Areas where trees, vegetation, and soils are to be protected and preserved and areas where trees, vegetation, and soils are to be removed or modified. This includes indicating proposed grading, utilities, and improvements as well as access, staging, and storage areas. The plan shall graphically identify each tree to be saved or removed.
 - iv. All Critical Root Zones (CRZ) within or overlapping the disturbed area, and the measures of tree, vegetation, and soil protection and management that will be used before, during, and after all construction activities to promote the survival or retention of such elements. The CRZ is defined as a circular area surrounding a tree, of which the center is the center of the tree trunk and which has a radius of at least one (1) foot for every inch of trunk diameter (dbh) taken at 4.5 feet above grade.

CRZ radius = dbh (inches) X 1 foot

- v. The percentage of the property with existing tree canopy and the percentage of the property with tree canopy after the proposed removal of existing trees along with the information used to calculate the tree canopy coverage percentage anticipated to be provided by proposed replacement canopy plantings. For these calculations, the future canopy provided by any individual canopy tree shall not exceed an area extending twenty (20) feet from the trunk of the tree. The Town Manager may require that a Certified Arborist and/or a Licensed Landscape Architect confirm the accuracy of this information.
- vi. The location of tree protection fencing along the limits of construction with a detail of the tree protection fence and a note indicating that a pre-construction meeting with the Town's Urban Forester will be scheduled for the project.

(c) Protective Fencing

- 1) Fences, or other equally effective measures as determined by the Town Manager, shall be used to protect areas identified on an approved Landscape Protection Plan during demolition and construction activity. Protective fencing shall be installed according to Town Standards. Field adjustments may be allowed subject to prior approval by the Town Manager. All land disturbing activity, storage of equipment, building material, soil, and other debris shall be kept outside the protected areas.
- 2) Landscaping activities taking place after the removal of protective fencing shall be accomplished with light machinery or hand labor and in accordance with the Town's Landscaping Standards and Specifications. This requirement should be noted on the plans.

(d) Pre-Construction Conference

Prior to the commencement of any activities requiring a permit (see Section 5.7.2), a pre-construction conference with the Town's Urban Forester or Landscape Architect shall take place to review procedures for protection and management of all protected landscape elements identified on the Landscape Protection Plan.

(e) On-site Supervision

For all development other than that related to single-family and two-family dwellings on individual zoning lots, the following on-site supervision is required:

- 1) The applicant shall designate as Landscape Protection Supervisors one or more persons who have completed instruction in landscape protection procedures with the Town.
- 2) It shall be the duty of the Landscape Protection Supervisor to ensure the protection of new or existing landscape elements, as defined in the Landscape Protection Plan. The approved Landscape Protection Supervisor shall supervise all site work to assure that development activity conforms to provisions of the approved Landscape Protection Plan. At least one identified Landscape Protection Supervisor shall be present on the development site at all times when activity that could damage or disturb such landscape elements occurs such as:

- i. clearing and grubbing;
- ii. any excavation, grading, trenching or moving of soil;
- iii. removal, installation, or maintenance of all landscape elements and landscape protection devices; or
- iv. the delivery, transporting, and placement of construction materials and equipment on site.

(f) Required Tree Replacement or Mitigation

- 1) Development activities requiring a Zoning Compliance Permit remain subject to the canopy cover requirements referenced in section 5.7.2.a, unless specifically modified or exempted by the Town Council and/or Planning Board in accordance with development plan approval.
- 2) If the existing protected tree canopy and the proposed tree canopy provided by replacement trees taken together do not meet or exceed canopy cover requirements, the application shall show the anticipated tree canopy deficit. The final tree canopy deficit determination is subject to approval of the Town Manager. Required active recreation areas and utility easements shall not be included in the canopy coverage calculation. Trees installed in a Town right-of-way as part of an approved street tree planting plan may count toward total tree canopy coverage. The number of trees required shall be calculated using two (2) replacement trees per 1,000 square feet of tree canopy coverage deficit.

3) Size of Replacement Trees

For all development subject to the provisions of this section, the minimum replacement tree caliper shall be two and one-half (2.5) inches. Upon approval by the Town Manager, if replacement trees have a caliper of four (4) inches or greater, the total required number of trees may be reduced by half.

4) Installation and Maintenance

All required landscaping shall be prepared, installed and maintained according to the Town's Landscaping Standards and Specifications. All required plantings on an approved Tree Replacement Plan, must be planted or an accepted performance guarantee placed with the Town in order to satisfy compliance with the requirements of this section.

Replacement trees that are planted in a Town right-of-way may count toward total tree canopy coverage if there is insufficient space for replanting on the lot.

Trees that are damaged during construction but determined not to be a total loss or safety risk, shall be treated to promote their continued health and safety.

If the Town Manager determines protected vegetation is dead or dying at the time of the issuance of a certificate of occupancy and it is part of a required buffer or other required planting, replacement of the vegetation may be required.

5) Mitigation

If sufficient space on-site is not available for replanting the required number of trees, payments to the Town of Chapel Hill Tree Mitigation Fund shall be calculated as follows:

- i. \$1,000 per tree (plus application fees) for all development subject to the provisions of this section.
- ii. \$2,000 per tree (plus application fees) if the permit is applied for after work has begun **or** if a property owner chooses to provide payment in lieu of tree planting

where there is otherwise sufficient space on the subject property to accommodate tree planting.

- iii. \$4,000 per tree (plus application fees) if an after-the-fact permit is issued **and** the property owner chooses to provide payment in lieu of tree planting.

(g) Public Hazard

- 1) A Certificate of Occupancy may be denied for any development if the Town Manager determines that a public hazard as defined in this Article exists on said lot, until that public hazard is abated.
- 2) A street dedicated to the Town may not be accepted for maintenance at the end of the warranty period until any public hazard related to a tree in the right-of-way is abated.

(h) Enforcement

- 1) The Town Manager shall have development sites inspected frequently to assure that work is conforming to the approved Landscape Protection Plan and the applicable sections of this Article.
- 2) Absence of a Landscape Protection Supervisor(s) from the site at times when development activity is taking place that has the potential to adversely affect trees to be preserved may result in the issuance of a Stop-Work Order until a Landscape Protection Supervisor is present.

5.7.5. Trees in Public Rights-of-Way

(a) Tree Planting

- 1) Trees may be planted on any public street right-of-way provided they are consistent with plans for public landscaping that have been approved by the State of North Carolina or the Town of Chapel Hill, they will not hinder the repair or construction of public utilities and a permit has been issued by the Town Manager when required.
- 2) Trees planted on any public street right-of-way may be of a variety and in a location desired by the abutting property owner except that no trees or shrubs shall be planted close enough to any public street intersection to interfere with the sight distance at the intersection or with streets, sidewalks, signs, street lights, or above- and below-ground utility lines as specified in the Town's Landscaping Standards and Specifications.
- 3) All planting of trees and shrubs on public property shall be subject to general considerations of public health, safety and convenience, and the material and aesthetic value accruing to the whole community. Planting shall be restricted to the varieties known to be suited to the local climate and environment and shall be intended to preserve and enhance the beauty and variety of the public landscape as recommended in the Town's Landscaping Standards and Specifications.

(b) Prohibited Trees

Notwithstanding section 5.7.5.a, it shall be unlawful to plant in any public right-of-way any of the following:

- 1) any trees which by the nature of their fruit, root system, brittleness of wood, or susceptibility to disease are deemed undesirable as specified in the Town's Landscaping Standards and Specifications;
- 2) Any invasive exotic plant materials as identified in the Design Manual and in Section 5.7.7(d).

(c) Public Hazards

- 1) It shall be the duty of the owner of the property wherein or whereupon a public hazard exists, to abate the hazard by removing or trimming the growth.
- 2) Where the roots of a public tree constitute a hazard to private property, or where trees on private property may damage sidewalks, curbs, or public streets or whose roots may enter public sewers or water mains shall be considered a public hazard and shall be pruned or removed by the Town's Public Works Department, as deemed necessary by the Town Manager.
- 3) If the owner of property, after being notified of the existence of a public hazard on their property, fails to abate the hazard within thirty (30) days, the Town Manager shall have the hazard abated and assess the exact cost to the owner as provided by law in the case of special assessments or liens.

- 4) Where the growth and limbs of public trees constitute a hazard to private property, the Town, upon notice, shall correct the condition or permit affected property owners to correct the condition using established arboricultural standards.
- 5) Where the growth of trees interferes with public utilities, such conditions shall be corrected by proper pruning, removal, or replacement of the tree causing the interference. Corrective measures shall be carried out in accordance with the provisions of this Article and the Town's Landscaping Standards and Specifications.

(d) Removal of Trees

- 1) Private parties shall not remove trees from public property or public street rights-of-way without a Tree Work Permit issued by the Town Manager.
- 2) The Town may remove dead or diseased trees or trees that interfere with the proper maintenance or improvement of a public street right-of-way, easement owned or maintained by the Town or any public street or highway. A tree on the right-of-way line that is half or more than halfway on the right-of-way at its base will be considered to be on the right-of-way and, therefore, a public tree.
- 3) The Town retains the right to remove any tree except that no rare tree shall be removed from land or easements owned by the Town unless the Town Manager determines there is no reasonable way the tree can be saved.

5.7.6 Significant Tree Stands

(a) Significant Tree Stand Defined

For purposes of this Section, a “Significant Tree Stand” means an area of contiguous wooded area greater than 1,000 square feet with a continuous canopy exceeding thirty (30) feet in height and where:

- 1) Over fifty (50) percent of the trees with a DBH over six (6) inches are hardwoods; or
- 2) The understory includes a diversity of beeches, hickories, hollies, or other native tree species as determined by the Town Manager that are indicative of a significant evolving Piedmont forest.

(b) Applicability

The provisions of this Section apply to any application requiring a Landscape Protection Plan.

(c) Submittal Requirements

A Landscape Protection Plan shall delineate the boundaries of all significant tree stands and describe their dominant plant species. All plans shall also show the proposed clearing limit lines and calculate the percentage of significant tree stand areas that are proposed to be cleared.

(d) Preservation of Significant Tree Stands

The Significant Tree Stand delineation shall be used during the design review process to determine the most suitable and practical areas for woodland conservation. To the extent practicable, Significant Tree

Stands shall be preserved and incorporated into site design. Areas designated for preservation on approved plans shall be protected during construction.

5.7.7 Rare and Specimen Trees

(a) Rare and Specimen Tree Defined

With the exception of invasive exotic species listed in 5.7.7.d,

- 1) A Rare Tree is
 - i. any healthy living pine tree that has a trunk diameter of thirty-six (36) inches or more, or
 - ii. any other species that:
 - (a) has a trunk diameter at breast height (dbh) of twenty-four (24) inches or more; or
 - (b) has a trunk dbh of twelve (12) inches or more in the case of North Carolina native species from the list of genera in this section; or
 - (c) is listed as a State or National Champion by the North Carolina Forest Service or the American Forestry Association; or
 - (d) provides unique habitat for any endangered or threatened wildlife species protected by Federal law; or
 - (e) has been cited by the Town Council as being historically significant; or
 - (f) Represents an uncommon species, such as Long Leaf Pine, Live Oak, or Sequoia Redwood, that the Town Manager considers to be desirable and not to pose a threat to the local ecological balance.

- 2) A Specimen Tree is
 - i. any healthy living pine tree that has a trunk diameter of eighteen (18) inches or more, or
 - ii. any other species that:
 - (a) has a trunk diameter at breast height (dbh) of twelve (12) inches or more; or
 - (b) a trunk dbh of six (6) inches or more in the case of the North Carolina native species from the following list of genera:

North Carolina Native Genera:

<i>Aesculus</i> (Buckeye)	<i>Fagus</i> (Beech)
<i>Amelanchier</i> (Serviceberry)	<i>Halesia</i> (Silverbell)
<i>Asimina</i> (Pawpaw)	<i>Hamamelis</i> (Witch-hazel)
<i>Carpinus</i> (Hornbeam)	<i>Ilex</i> (Holly)
<i>Cercis</i> (Redbud)	<i>Juniperus</i> (Cedar)
<i>Chionanthus</i> (Fringetree)	<i>Ostrya</i> (Hophornbeam)
<i>Cornus</i> (Dogwood)	<i>Oxydendrum</i> (Sourwood)
<i>Crataegus</i> (Hawthorn)	<i>Sassafras</i> (Sassafras)
<i>Diospyros</i> (Persimmon)	<i>Tsuga</i> (Hemlock)

(b) Rare and Specimen Trees on Developing Land

- 1) Rare and specimen trees shall be shown on all Landscape Protection Plans if such trees are within fifty (50) feet of areas of proposed soil disturbance or construction activity. These trees shall be identified and located by survey on the approved Landscape Protection Plan if such trees are located on the development site or adjacent public property. The Town Manager may visit the site to determine the accuracy of identification.
- 2) Proposed development should maximize the preservation of rare and specimen trees. Flexible approaches such as adjustments to lot layout, placement of buildings and paved surfaces and location of utilities should be pursued in order to save rare and specimen trees.
- 3) Notwithstanding any provision of the Land Use Management Ordinance to the contrary, saving of a rare or specimen tree shall constitute sufficient evidence that Sections 4.12.2(a)–(e) have been met in any variance application.
- 4) No rare tree shall be removed unless the Town Manager determines there is no reasonable way the property can be otherwise developed, improved or properly maintained, and the tree saved.

(c) Voluntary Protection of Rare Trees on Private Land

- 1) Rare trees shall be protected if voluntarily registered by the property owner.
- 2) Registration of such trees shall survive transfer of ownership if language is contained in the document transferring ownership and shall extend the coverage hereof and render the owner of the lot subject to the following privileges:
 - i. The owner shall be entitled to consultation with the Town Forester concerning proper care of the tree at no charge.
 - ii. If a permitted auxiliary structure or addition to a house is being planned, notwithstanding any provision of the Land Use Management Ordinance to the contrary, saving of a rare or specimen tree shall constitute sufficient evidence that Section 4.12.2 of the Land Use Management Ordinance has been met in any variance application.
 - iii. Subject to approval by the Town Manager, the voluntary listing and protection of rare trees on a site may be considered in lieu of all or a portion of the tree canopy mitigation requirements included in this section of the Ordinance that may otherwise be required on that site.
- 3) Once so registered, trees may be removed from the register at a later date at the request of the property owner.

(d) Invasive Exotic Species

The Southeast Exotic Pest Plan Council maintains a list of invasive exotic species. <http://www.se-eppc.org/weeds.cfm> Tree species on this list are not required to be shown on proposed landscape protection plans, regardless of size. These tree species, as identified in the current and future updated lists, cannot be planted in a public right-of-way or to satisfy any Town landscaping requirements and are recommended for removal and replacement, should they be identified on developing property. Town Staff may direct the public to a comparable resource should the current one be unavailable in the future.

5.7.8 Administrative Mechanisms

(a) Application Requirements

- 1) The Town Manager shall prescribe:
 - i. the form(s) for all applications called for in this Article; and
 - ii. Any information that may reasonably be required to determine compliance with this Article and with the Town's Landscaping Standards and Specifications.
- 2) Permit applications shall be accompanied by a statement of measures that will be taken to protect and preserve trees and landscaping.

(b) Permits

- 1) A permit may be issued by the Town Manager for all activities requiring a permit as defined in Section 5.7.2. Permits will be issued only after a finding has been made by the Town Manager that all applicable provisions of this Section and the Landscaping Standards have been met.
- 2) Permits may authorize work for up to two years for ongoing utility maintenance and the work shall be completed in the time allowed by the permit and in the manner as therein described installation activities. A property owner may request extension of a permit from the Town Manager, subject to continued compliance with conditions of the original permit.
- 3) Permits for all other activities shall be issued by the Town Manager before the work is to be done, except in the case of an emergency where action is required to protect the safety, health and welfare of the public, or the repair of utilities. Notice of completion of work shall be given within five (5) days of completion to the Town Manager for her/his inspection.
- 4) Exclusions listed in and requirements of this Section for permit approval may be changed in part or in whole by the Town Manager.
- 5) Any permit granted shall contain a date of expiration and the work shall be completed in the time allowed by the permit and in the manner as therein described. Any permit shall be void if its terms are violated.

(c) Penalties

- 1) In the event that other mitigation measures contained herein are determined by the Town Manager to be insufficient, any act constituting a violation of this Section resulting in the loss or destruction of trees may subject the landowner to a civil penalty up to 1.5 times the monetary value of the trees removed or destroyed up to a maximum of \$20,000. For purposes of such determination, the Town Manager shall apply the most current formula of the Council of Tree and Landscape Appraisers, or a similar method in common use and accepted by courts of law.
- 2) Development activity which has taken place in compliance with conditions of the Zoning Compliance Permit issued for that activity shall establish a presumption that the property owner has met the requirements of this Section. It shall be the duty of the permit holder to demonstrate that the activity was in compliance with the issued permit.
- 3) Unless otherwise specified in this Section, the Town of Chapel Hill shall enforce the provisions of this Section in accordance with procedures, penalties, and remedies described in Article 4 of the Land Use Management Ordinance.

(d) Appeals

Unless otherwise specified in this Section, interpretations, appeals, and variances of or from provisions of this Section shall be pursuant to the provisions of Article 4 of this Appendix.

(e) Fees

Reasonable fees sufficient to cover the costs of administration, inspection, appraisal, and publication of notice shall be charged to applicants for Zoning Compliance Permits and Tree Work Permits established by this Section. The amount of such fees shall be fixed by the Town Council.

Section 2.

Appendix A. Definitions of the Chapel Hill Land Use Management Ordinance is hereby revised to add or modify the definitions as follows:

***Arboricultural Standards:* Accepted professional practices and techniques for tree installation and maintenance established to keep trees in a safe and healthy condition.**

***Caliper:* The term "caliper" shall mean the measurement of a tree trunk's diameter in inches at a height six inches above the ground for trees up to and including four inches in caliper, and at a height 12 inches above the ground for trees exceeding four inches in caliper, but no greater than 8 inches in caliper. This measurement is used for new tree planting and young, recently established trees.**

***Certified Arborist:* A professional tree care specialist that currently retains the designation of Certified Arborist as defined and governed by the International Society of Arboriculture (ISA). All levels of ISA certification, except Certified Tree Worker, shall be acceptable to the Town.**

Critical root zone:* A circular area surrounding a tree, of which the center is the center of the tree trunk and the radius is the distance from the outside of the trunk to any point twelve (12) times the diameter at breast height (DBH), which points constitute the circumference of the critical root zone. The critical root zone shall extend to a depth of ~~five (5)~~ **two (2)** feet below surface ground level. **The Town Manager, or*

his/her designee, may expand or partially retract the critical root zone depending on the tree species and site specific situations so as to improve the chances that trees will not be damaged during construction and to permit construction to take place.

DBH--Diameter at breast height: The total cross-sectional diameter of the trunk(s) of a tree measured four and one-half (4.5) feet from the ground at the center of the tree. **For trees with less than four and one-half feet of clear trunk, diameter shall be of the largest leader measured four and one-half feet above ground level. For multi-trunk trees it shall be the sum of the individual trunks measured four and one-half feet above ground level. This point of measurement is used for established and mature trees.**

Public hazard:

- 1) Any tree, plant, shrub or vegetation which so overhangs any sidewalk or public street either dedicated or proposed to be dedicated, or which is growing thereon (or adjacent thereto), in such a manner as to obstruct or impair the free and full use of the sidewalk or public street by the public as determined by the Town Manager; or
- 2) Any tree, plant, shrub, or vegetation in the vicinity of utility lines which has the potential to interfere with the provisions of reliable utility service as determined by the Town Manager; or
- 3) **Any tree, plant, shrub, or vegetation which obstructs clear and reasonable view of traffic safety or other public safety lights, signals, and signs.**

Tree canopy: the layer of leaves, branches, and stems comprising the crown of the tallest trees or vegetation present, usually twenty (20) feet above ground, and when viewed from above.

Tree Work Permit (TWP): A staff-issued permit intended only for single-family and two-family properties as outlined in the Tree Protection Ordinance (section 5.7).

Section 3. If any one or more Sections or portions thereof of this Section are held to be invalid or unenforceable, all other Sections and portions thereof shall nevertheless continue in full force and effect.

Section 4. That this Ordinance shall become on the _____ day of _____, 20__.

This the _____ day of _____, 2010.