

**ORDINANCE NO. 254-12**

**AN ORDINANCE OF THE CITY OF DURHAM AMENDING CHAPTER 5 OF  
THE CITY OF DURHAM DEVELOPMENT CODE**

**The Durham City Council hereby ordains as follows:**

**5.1 Scope** Every tree within the City with a diameter of 5 inches or greater shall be preserved and protected as required by this Chapter. A tree with a single trunk shall be measured at 4.5' above grade, otherwise known as "diameter at breast height" and designated hereafter as DBH. For a tree with multiple main stems digressing at less than 24 inches above grade the measurement will be determined by the greater of the measurement of the trunk at the point of digression or the sum of the diameter of all stems measured 6 inches above the point of digression. A tree that has been reduced to a stump shall be measured across the top of the trunk. For purposes of this Chapter 5, to "Cut" a tree means to fell or remove a tree or to do anything that has the natural result of causing the death or substantial destruction of a tree.

**5.2 Tree Care Standards.** No person other than the property's owner or a tree care provider licensed and bonded as such shall perform tree preservation, tree protection, tree maintenance or tree removal. All such work shall be done in accordance with ANSI A-300.

**5.3. Application Required.** No person shall Cut a tree without first submitting an application, paying the applicable fees, obtaining a City permit and complying with all terms and conditions of the City permit. The provisions of this Chapter including the requirement for a City Permit shall control over any authority to Cut a tree purportedly granted by any other federal, state or local authority.

**5.3.1** In an emergency wherein a tree presents imminent danger to person or property the property owner shall report the action to the City within 48 hours or the first work day following a weekend or holiday. The property owner shall also submit the required application without charge and provide documentation supporting the imminent danger presented by the tree sufficient to satisfy exemption from the standard permit requirements of this Chapter.

**5.3.1.1** If it should be found by the Planning Commission that the supporting documentation does not support a finding that the tree presented an imminent danger, it shall be deemed a violation of this Chapter.

**5.3.2** Every application to remove a tree(s) shall provide:

**5.3.2.1** A diagram of the lot drawn to approximate scale showing the number, size, species and location of all trees on the property and the tree(s) proposed to be Cut.

**5.3.2.2** Proof that the topography of the property is such that to cut the tree will not adversely affect, soil retention, stability of earth, flow of surface water, protection of nearby trees, windbreaks and a desirable balance between shade and open space.

**5.3.2.3** Evidence that to Cut the tree will not materially affect the preservation of an upland wooded corridor or stream side vegetated corridor as identified in the City's Comprehensive Land Use Plan.

**5.3.2.4** When mitigation is anticipated, a mitigation plan showing location and species of tree or trees to be planted subject to the standards set forth in the section applicable to the permit type, or tender of payment of the in lieu fee to the mitigation fund.

**5.4 Application Types on Developed Residential Lots.** An applicant seeking to Cut a tree or trees on a developed lot shall apply separately for each tree to be Cut under one of the following applications types:

**5.4.1** Type “A” Permit. Trees that are dead or diseased shall be reviewed and approved under a Type 1 process. In instances when it cannot be determined readily that a tree is diseased beyond recovery, or that measures cannot be taken to restore the tree’s health, approval may be conditioned on an evaluation by a certified arborist or appealed to the Planning Commission upon payment of the appeal fee. For an approved Type “A” permit no mitigation is required.

**5.4.2** Type “B” Permit. Trees that are dangerous or potentially destructive to public or private property may be approved by a Type 1 process. When it cannot be determined readily that a tree poses a potential for being dangerous or destructive, approval may be conditioned upon evaluation by a certified arborist or appealed to the Planning Commission upon payment of the appeal fee. For an approved Type “B” permit no mitigation is required. / Feb. Jan 2012

**5.4.3** Type “C” Permit. Trees required to be removed for the purpose of enlarging the footprint of a structure, adding a deck, patio, or other building structure on an already improved lot may be approved by a Type 1 process. For removal of any tree over 10” DBH, not otherwise exempted in this Chapter, mitigation shall be provided as set forth in Section 5.8. A Type “C” permit will only be issued subsequent to the approved building permit.

**5.4.4** Type “D” Permit. A tree less than 5” DBH does not require a permit for removal. A tree between 5” and 10” DBH not permitted for removal under any other permit type may be removed at the discretion of a property owner under a Type 1 process. Approval shall be conditioned upon confirmation that the tree to be removed does not exceed the maximum DBH.

No more than one tree shall be permitted for removal under a type “D” permit in any 24 month period. No mitigation shall be required.

**5.4.5** Type “E” Permit. Trees measuring 10” DBH or greater and not eligible for any other permit type, including Type “D,” shall be subject to permitting with Planning Commission approval under a Type 2 process. For an approved Type “E” Permit mitigation shall be provided as set forth in Section 5.5. Under certain circumstances, the Planning Commission may require mitigation exceeding that required in Section 5.5, but not less.

**5.5 Mitigation Standards on Developed Residential Lots.** At such time as mitigation is required for any permit designated as a Type “A” through Type “E” the standards shall be as follows:

**5.5.1** The minimum size for a tree planted as mitigation shall be 2” diameter when measured from the top of the root ball for deciduous trees. Evergreen trees shall be a minimum of 6’ tall measured from the top of the root ball, excluding the leader.

**5.5.2** The specific species of a tree planted for mitigation shall be at the owner’s discretion, but must be such that it contributes significantly to the future maintenance of the canopy in Durham. The permit decision making authority shall have the right to reject as mitigation any proposed tree that does not meet the general intent of Chapter 5 of the Development Code.

**5.5.3** Mitigation trees shall be planted within 6 months of that date of permit approval. The City Administrator may approve a one-time extension of 60 days.

**5.5.4** A mitigation tree shall be planted so as to insure that the tree grows to maturity.

**5.5.5** The recipient of a tree removal permit shall request an inspection of the completed mitigation plan upon completion, but no later than 6 months following permit issuance or a subsequent 60 day extension thereof.

**5.5.6** Any mitigation planting failing within 2 years of the time of the first inspection by the City shall be replaced at the owner's expense and the City shall be notified of such replacement at the time of planting.

**5.5.7** A final inspection shall be requested within 60 days of the second anniversary of the date of the last planting and the permit shall not be considered finalized until such time as a final inspection is conducted and found to be in conformity with the mitigation standards.

**5.5.8** The City shall make every reasonable effort to notify the property owner when the final inspection is due, but it shall be the responsibility of the property owner to contact the City.

**5.6** **Type "F" Permit.** A permit issued for removal of a tree(s) 5" DBH or greater in developed commercial and industrial zones shall be designated a Type "F" Permit and be subject to review and approval by the Planning Commission under a Type 2 process. Mitigation shall be required per the conditions set forth in section 5.8.

**5.6.1** Removal of a tree in the commercial and industrial zones shall not qualify for any other permit type.

**5.7** **Type "G" Permit. For Previously Undeveloped Property.**

**5.7.1** Tree Preservation Plan. The City's approval of a land division-, land use- or building permit issued for vacant property shall be deemed to obligate the property owner to use best efforts to preserve all existing trees on the site to be divided or developed. Separate Type

“G” permit applications shall be submitted for a land division and installation of required infrastructure as well as for installation of utilities and structural building permits on each lot at the time the lot applies for a building permit. The applicant shall submit with the initial application a tree preservation plan prepared by a certified arborist with a narrative as to how the plan will effect tree preservation.

**5.7.2** An applicant shall attempt to preserve existing trees on a site by varying the site design, as provided for elsewhere in this Code, and by the following means, whichever are applicable:

**5.7.2.1** Specific measures for tree preservation and protection during all phases of construction, including excavation, grading and filling, repair and removal of trees, pruning and structural support, fertilization and aeration;

**5.7.2.2** Use of tree protection zone or construction zone tape with tree fencing;

**5.7.2.3** All tree related decisions and activity to be approved by the City’s arborist;

**5.7.2.4** All preserved tree health determinations, other than construction damage, to require core samples or other non-harmful procedures;

**5.7.2.5** Authorize the City to stop work for any violation of the approved plan;

**5.7.2.6** Require the contractor to acknowledge the approved tree protection plan in writing prior to any on-site tree removal, with a copy of same provided to the City.

**5.7.2.7** Repair any damage to a preserved tree in a timely manner.

**5.7.2.8** Employ an Arborist to prevent harm from construction activity to a tree to be preserved on the site;

**5.7.2.9** Coordinate the project grading with the City's Arborist to identify possible preservation of additional trees not shown on the application;

**5.8** **Mitigation Required.** Removed trees shall be replaced with mitigation trees to the extent that at maturity they equal the canopy being removed or mature canopy coverage equivalent to 35% of the square footage of the lot, whichever is less. Mature canopy coverage shall be as set forth on the City's tree list based on the tree species, or as otherwise determined by the City Administrator.

**5.8.1** Preservation of existing trees in good condition, suitable for preservation and of appropriate species, shall receive a 200% credit based on their existing canopy area. Planting of native species shall receive a credit of 125% of mature canopy. (Example: A 10,000 s.f. lot would require 3,500 s.f. of canopy. An existing Black Hawthorne has 314 s.f. of existing canopy. This property would receive a credit of 628 s.f., leaving 2,872 s.f. that will need to be mitigated for with new plantings.)

**5.8.2** Mitigation trees shall be selected from any of the tree lists maintained by the City, excepting nuisance trees, unless otherwise approved by the City Administrator.

**5.8.3** The minimum size for a tree planted as mitigation shall be 2" diameter when measured from the top of the root ball for deciduous trees. Evergreen trees shall be a minimum of 6' tall measured from the top of the root ball, excluding the leader.

**5.8.4** Mitigation trees shall be located as follows

**5.8.4.1** Trees categorized as small on the City's tree list shall be spaced no closer than 15' on center from other trees and no closer than 10' from the face of any structure.

**5.8.4.2** Trees categorized as medium on the City's list shall be spaced no closer than 20' on center from other trees and no closer than 10' from the face of any structure.

**5.8.4.3** Trees categorized as large on the City's tree list shall be spaced no closer than 30' on center from other trees and no closer than 15' from the face of any structure.

**5.8.4.4** No tree shall be placed less than 3' from any hard surface.

**5.8.5** Replacement of one or more trees when required as a condition of a land division or land development approval shall be complete within 6 months after the approval is final. The City may grant a 60 day extension if the City finds abnormal weather conditions require delay. Additional time beyond the 60 day extension shall be subject to Planning Commission approval.

**5.8.6** Trees removed for the purpose of installation of infrastructure upon a division of land may be mitigated by the developer by planting the required mitigation trees upon any lot in the division. Such trees will be required to be planted outside the anticipated footprint of any future structure or within required structural setback areas. At such time as building occurs, the builder/owner of the lot shall receive a credit of 100% of mature canopy based on the species planted.

**5.8.7** When an improved site cannot accommodate the required number of replacement trees the City may require the applicant to pay to the City a fee in lieu of replacement. The fee in lieu shall be in amount set by resolution of the City Council and shall be based upon the percentage of mature canopy not recovered through mitigation planting.

**5.9 Type "H" Permit. Preserved Trees.** A tree initially designated to be preserved in the tree preservation plan that dies prior to 2 years after project completion shall be replaced by the property owner. The Planning Commission shall determine the minimum size, but in no

case shall the replacement tree be less than 2.5” DBH and of a variety expected to provide the canopy coverage at maturity of the tree being replaced.

**5.9.1** It shall be the responsibility of the property owner to notify the City at any time a preserved tree requires replanting within the 2 year period and to request a final inspection by the City at the end of the 2 year period.

**5.9.2** A tree removal permit issued pursuant to section 5.9 shall not be considered final until the expiration of the 2 year period in compliance with all conditions imposed thereon.

**5.10** **Tree Permit Process.** Permit types “A” through “D” shall be reviewed by a Type 1 process. All other permits for the removal of a tree or trees shall be by a Type 2 process.

**5.11** **Rights Reserved.** For all permit types, the decision making authority reserves the right to deny a permit, require mitigation or require mitigation beyond the minimum specified in this ordinance when it is considered in the best interest and welfare of the community as a whole. Administrative decisions are appealable to the Planning Commission and Planning Commission decisions may be appealed to the City Council.

**5.12** **Determination of Permit Type.** Certain trees on developed residential lots for which the City receives an application for removal may qualify for removal under more than one permit type. In such cases, the City shall determine the appropriate permit type.

**First Reading:** January 22, 2013

**Second Reading and Passage** February 26, 2013

**CITY OF DURHAM**

**By:** \_\_\_\_\_  
Gery Schirado, Mayor

**ATTEST:**

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Roland Signett, City Administrator/Recorder