

ORDINANCE 20-01-01-01 FOR
WOODLAND AND TREE PROTECTION.

Whereas, trees are an integral part of the bucolic character of the City of Oak Hill (“the City”); and

Whereas, trees increase real estate values, filter air pollution, moderate stormwater flow and reduce flooding, increase home energy efficiency through shading and cooling, reduce noise, reduce global warming, and provide wildlife habitat; and,

Whereas, stewardship of trees is an environmentally sensitive approach to growth and development; and,

Whereas, it is the goal of the City to minimize, if not eliminate, the loss of tree canopy while preserving some flexibility and reasonableness for all property owners in the City; and

Whereas, it is in the interest of the public health, safety, and general welfare to do so,

Be it ordained by the City of Oak Hill as follows:

Sections 901-908 of Title 14 of the Municipal Code of the City are repealed in their entirety and the following is substituted in lieu thereof:

SECTION 901 DEFINITIONS

As used in this Ordinance, which shall be codified as Sections 901-909 of Title 14 of the Municipal Code of the City, certain terms shall have the following meanings:

(A) “Tree Protection Standards” shall mean and refer collectively to provisions of this Ordinance which shall be codified as Sections 901-909 of Title 14 of the Municipal Code of the City.

(B) “Drip Zone” is the area encompassed by a line drawn directly underneath the tips of a tree’s outermost branches

(C) “DBH” (diameter at breast height) is 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 diameters of the individual trunks measured for and one-half feet above ground level. This point of measurement is used for established and mature trees.

(D) “Calliper” is the diameter of the trunk of a tree at a height six inches above the ground for trees up to an including four inches in diameter, and at a height twelve inches above ground for trees exceeding four inches in diameter, but no greater than eight inches in diameter. This measure is used for new tree plantings.

(E) “Structure(s)” are and include anything constructed or erected, the use of which requires more or less permanent location on the ground or attached to something having a permanent location on the ground. Structures include, but are not limited to, retaining walls, athletic courts, tennis courts, swimming pools, pool houses, and stables.

(F) Dwelling is any Building that may be occupied in whole or in part as a home or residence for habitation by one or more persons, including any Guest House, Caretaker Cottage, Accessory Apartment, or other accessory Structures appurtenant thereto,

Section 902 **APPLICABILITY.**

The Tree Protection Standards shall apply to each of the following:

- (A) the approval of any newly platted Lot,
- (B) the construction or erection of any new residential Dwelling or any other Structure that requires a building permit,
- (C) the construction or erection of any addition or modification to any existing Dwelling or other Structure that requires a building permit,
- (D) any land disturbance activity requiring a permit,
- (E) each and every person or entity to whom the City issues a building permit or a permit for any land disturbance activity,
- (F) each and every person or entity holding a legal interest in any lot for which the City issues a building permit or a permit for any land disturbance activity,
- (G) each and every person or entity acting as a contractor for any person or entity to whom the Tree Protection Standards apply,
- (H) each and every person or entity acting as a subcontractor to a contractor within the scope of either of subsections (F) or (G),
- (I) any Lot in which the legal title to that Lot has been held by the same person, persons, entity or entities for less than two years and any person or entity owning a legal interest in any such Lot.

Any person or entity holding legal interest in any Lot to which the Tree Protection Standards apply is responsible for the actions of any person acting as a contractor or subcontractor on that Lot.

Section 903 **EXEMPTIONS.**

The following development and construction activities and types of vegetation are exempt from the Tree Protection Standards:

- (A) The removal of dead or naturally fallen trees or vegetation
- (B) The removal of severely damaged or diseased trees that have been diagnosed by a certified arborist or the City Manager or his designee to be beyond treatment or recovery, provided that the burden of proof shall be on the person or entity who has removed or seeks to remove a tree pursuant to this exemption

(C) The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways or intersections, or for the purpose of performing necessary field survey work

(D) The actions of public and private utility companies within their utility easements

(E) Removal of trees or plants listed in the current edition of Invasive Plants, published by the Tennessee Invasive Plant Council

SECTION 904 TREE REMOVAL PERMIT AND REQUIRED INSPECTIONS

(A) *Tree Inventory Required.* Prior to beginning any construction, demolition, tree clearing, tree removal, tree cutting, development work, or land disturbance activity which requires a permit from the City or to which the Tree Protection Standards otherwise apply, the applicant shall prepare and submit an inventory of all trees on the Lot having a DBH equal to or greater than three inches (3"), subject to the following requirements:

(1) *Generally.* The Tree Inventory (1) shall be drawn to a scale of not less than 1" = 20 feet and shall include contours at vertical intervals of no more than five feet (5') taken from aerial photography or field; (2) shall accurately depict the exact size, shape, and location of the lot; (3) shall identify all trees on the Lot and their approximate lot coverage; and (4) shall identify all trees which the applicant will retain and each tree which the applicant proposes to remove. If there is an area with numerous small trees having a DBH less than 3", then those trees need not be separately identified so long as the perimeter of their drip zone is shown on the tree inventory.

(2) *Professionally Prepared; Aerial Photography.* Tree inventories may be prepared by a licensed landscape architect, surveyor, arborist, forester, or engineer registered with the State of Tennessee. Alternatively, aerial photographs, coupled with site photography, may be substituted for the inventory if the photography provides adequate detail in the discretion of the City Manager to assess compliance with this Section. Said aerial photography shall be no older than the most recent aerial photography which is available through the Government of Davidson County Tennessee or is otherwise publicly available.

(B) *Only Trees Necessary for Proposed Construction May be Removed.* No Tree Removal Permit shall issue unless it allows removal of only those trees which are necessary for the construction or land disturbance activity allowed by a building permit or other permit. The Tree Removal Permit shall not allow removal of a tree unless it is within the envelope of the permitted construction or land disturbance. Trees may not be removed to create space for storage of building materials, topsoil, excavated rock, excavated soil, construction debris and the like. The Tree Removal Permit shall expressly provide that it allows for removal of only those trees which have been marked for removal on the Tree Inventory.

(C) *Tree Retention Requirements.* No Tree Removal Permit shall issue unless (1) the applicant's Tree Inventory satisfies and complies with the Tree Retention Standards of Section 905.

(D) *Required Preservation of Certain Trees.* No Tree Removal Permit shall issue unless it requires that existing trees located between a proposed or existing Building or Structure and the adjacent public right of way of a primary or secondary street with a DBH of 8 inches or greater be preserved. This preservation requirement related to existing trees with 8 inch DBH or greater may be appealed to the Board of Zoning Appeals. Before the Board of Zoning Appeals, the burden of proof shall be on the Applicant to demonstrate that it is clearly impractical to retain the tree, as well as all other requirements for a variance. If a tree is

removed pursuant to such a variance, the loss of that tree shall be included in calculating the tree retention standards under Section 905.

(E) *Review by City and Issuance of Permit.* The City Manager and the City Codes Compliance Officer shall review the Tree Inventory to determine if it complies with all of the Tree Protection Standards. If the Tree Inventory fails to comply with any of the Tree Protection Standards, no permit shall issue. If the Tree Inventory complies fully and completely with all of the Tree Protection Standards, then the Tree Removal Permit shall issue upon payment by the applicant of a One Hundred Dollar (\$100) fee; provided however, the Tree Removal Permit shall comply and be consistent with all of Tree Protection Standards and expressly require that person or entity to whom the permit issues comply strictly with the terms of the Tree Removal Permit.

(F) *Strict Compliance.* If a Tree Removal Permit is issued, the Applicant and any person acting for or on behalf of Applicant (such as a contractor or subcontractor) shall comply strictly with the terms and conditions of the Tree Removal Permit and all other requirements of Sections 901-908. The Tree Removal Permit shall expressly so provide.

(G) *Removal of Trees from Steep Slopes.* No Tree Removal Permit for removal of tree(s) or other vegetation from steep slopes may be issued unless the Regulations for Steep Slope areas in Section 14-138 of the Municipal Code of the City have first been satisfied. Steep Slopes are any area of 1,000 or more square feet and having a slope of fifteen percent or more.

(H) *Inspection for Installation of Protective Fencing.* Section 907 requires that protective fencing be installed around all trees to be retained. After that protective fencing has been installed, the person to whom the permit has issued shall notify the City Manager and the Codes Compliance Officer. The City Manager or his designee shall then, within three business days of receiving that notice, inspect the property to determine if all protective fencing has been installed as required by Section 907. If and only if the City Manager or his designee finds that all such protective fencing has been properly installed, the City Manager shall issue a written notice stating that the holder of the Tree Removal Permit may proceed with construction. Until and unless the City Manager or his designee issues that written notice, there shall be no construction, tree clearing, tree removal, tree cutting, development work, grading or other land disturbance on or about the property and the Tree Removal Permit shall expressly so provide.

(I) *Inspection for Installation of Replacement Trees.* Before a certificate of occupancy is issued, the holder of the Tree Removal Permit shall notify the City Manager and the Codes Compliance Officer that all replacement trees required by Section 908 have been planted. The City Manager or his designee shall then, within three business days of receiving that notice, inspect the property to determine if there has been compliance with Section 908 which provides for replacement trees. If and only if the City Manager or his designee determines that the requirements of Section 908 have been satisfied, he shall issue a written notice to that effect. Until and unless that written notice is issued, no certificate of occupancy may issue for the property and the Tree Removal Permit shall expressly so provide.

If the inspection occurs at a time of the year (*e.g.*, summer) when it is impractical to plant replacement trees as required by Section 908, then a certificate of occupancy may issue upon posting of a bond by the holder of the tree permit or the owner of the property. The amount of the bond the amount which the City Manager or his designee in good faith determines to be 200% of the cost of the replacement trees and the planting of those trees.

(J) *Exemption from Tree Inventory Requirement.* In the event that proposed construction or land disturbance will not disturb the earth within the drip zone of any tree or otherwise harm a tree (such as remodeling of a kitchen or replacing shingles on a roof), then a building permit may be issued and no Tree Inventory shall be required. However, the application for a permit allowing any such proposed construction or land disturbance shall include a certification from the property owner and the contractor that the proposed construction or land disturbance will not disturb the earth within the drip zone of any tree or otherwise harm a tree. Further, the permit will provide that (1) the property owner and the contractor are subject to the provisions of SECTION 908 (DAMAGE TO PROTECTED TREES, REPLACEMENT AND RE-VEGETATION) and (2) during construction, including but not limited to preparation of the construction site, no excess soil, sediment, fill, vehicles, equipment, liquid, waste, solid waste, special waste, debris, solvents, vehicles, portable toilets, machinery, equipment, or building materials shall be stored or parked within six feet of the drip line of any tree. This exemption from the Tree Inventory Requirement does not allow for exemption from any of the other requirements of Sections 901-909, including but not limited to the Inspection for Installation of Replacement Trees as required by Section 904(I).

SECTION 905 TREE RETENTION STANDARDS

No Tree Removal Permit shall be issued unless that permit requires the applicant or permitted party to retain and protect existing trees on a lot so that the following Tree Retention Standards are satisfied:

Tree Retention Standards

Existing Trees (tree canopy cover as a percent of the Lot size)	Minimum Percentage of Existing Trees that Shall be Retained and Protected (as a percent of the total predevelopment tree canopy cover)
91-100%	48%
81-90%	51%
71-80%	54%
61-70%	57%
51-60%	60%
41-50%	63%
31-40%	66%
21-30%	69%
11-20%	72%
10% or less	75%

If it is clearly impractical for an applicant to satisfy these Tree Retention Standards, the applicant may appeal to the Board of Zoning Appeals (“BZA”) for a variance. However, the burden shall be on the applicant to demonstrate to the BZA that it is clearly impractical to satisfy these Tree Retention Standards, as well all other requirements for granting of a variance. Any variance granted by the BZA shall be subject to the following conditions:

(1) The applicant shall replace removed trees in a manner so that the Tree Retention Standards will be satisfied when the replacement trees reach full maturity; and,

(2) The applicant is required to comply with the replacement and re-vegetation requirements of Section 908.

SECTION 906 RESTRICTIONS ON REMOVAL OF TREES AND VEGETATION

(A) Until and unless a Tree Removal Permit is issued, there shall be no removal of trees from any lot to which the Tree Protection Standards apply. After the Tree Removal Permit is issued, there shall be no removal of any trees except as expressly allowed by the Tree Removal Permit.

(B) In the event trees requiring protection pursuant to this Section are removed from a site within two years prior to application for any construction, demolition, tree clearing, tree removal, tree cutting, development work, or land disturbance activity which requires a permit from the City, the tree removal permit shall require that the applicant to comply with the replacement and re-vegetation requirements of Section 908 before a building permit, land disturbance permit, or other permit is issued for the property.

(C) In the event trees are removed from any lot in violation of any of the provisions of Sections 901-909, the City may require the owner of the lot to comply with the requirements of Section 908 (Damage to Protected Trees, Replacement and Re-vegetation) regardless of whether the Property Owner has applied for a building permit, tree removal permit, land disturbance permit or any other permit.

SECTION 907 PROTECTION OF EXISTING TREES WHICH ARE TO BE RETAINED

No Tree Removal Permit shall be issued unless that permit expressly requires the applicant or permitted party to comply with the following:

(A) Prior to commencement of construction, grading or land disturbance activities, protective fencing shall be installed at the perimeter of the drip zone for any tree which will be retained. In the event of overlapping or adjacent drip zone, it is not necessary for protective fencing to be installed around individual trees, provided that the entire drip zone of each tree lies within protective fencing. The protective fencing shall be remain and be maintained until construction is completed and a certificate of occupancy is issued. The Code Compliance Officer may allow a minor and temporary modification to this requirement based upon specific site configuration or construction issues. However, such allowance may only be given in writing issued prior to implementation of the modification.

(B) During construction, including but not limited to preparation of the construction site, no excess soil, sediment, fill, vehicles, equipment, liquid, waste, solid waste, special waste, debris, solvents, vehicles, portable toilets, machinery, equipment, or building materials shall be stored or parked within six feet of the protective fencing surrounding a tree.

SECTION 908 DAMAGE TO PROTECTED TREES, REPLACEMENT AND RE-VEGETATION

When removal or damage to trees occurs in violation of the Tree Protection Standards, the following shall apply, regardless of whether the removal or damage is intentional, inadvertent, or accidental:

(A) Removed or damaged trees shall be replaced so that the total caliper of replacement trees equals 100% of the DBH for all trees removed

(B) Minimum calipers of replacement trees shall be as follows:

DBH Size of Removed or Damaged Tree	Minimum Caliper of Replacement Trees
3"-12"	3"
Greater than 12"	5"

By way of illustration, a 12" tree could be replaced by four trees, each having a 3" calliper, or by 3 trees, each having a 4" calliper.

(C) Replacement trees shall be maintained through an establishment period of at least three years. If the replacement trees do not survive the establishment period, replacement trees shall be installed, and the establishment period shall reset. The person to whom the Tree Removal Permit is issued and the owner of the subject property shall be jointly and severally obligated and responsible to satisfy these requirements.

(D) Replacement trees shall be balled and burlapped.

SECTION 909 MISCELLANEOUS

This Ordinance shall take effect upon final passage, the public welfare requiring it. If any section, clause, provision or portion of this Ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect and shall not be diminished or affected.

Nothing in this Ordinance shall be construed to permit planting of any the following in the Radnor Lake Impact Zone:


- Tree of Heaven (*Ailanthus altissima*)
- Winter Creeper (*Euonymus fortune*)
- Bush Honeysuckle (*Lonicera maackii*)
- Privet (*Ligustrum vulgare*)
- Mimosa (*Albizia julibrissin*)



ORDINANCE NO. O-21-01-01-01

Passed First Reading: November 24, 2020

Passed Second Reading: January 26, 2021


Mayor Dale Grimes

ATTEST:


City Recorder Victoria Talbott

Approved as to form and legality:


City Attorney Marshall Albritton