

TREE PRESERVATION

Chapter 105**TREE PRESERVATION**

[HISTORY: Adopted by the Council of the Town of Middleburg on 12/9/2010; amended 2/10/2011.]

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§105-1 Purpose

The purpose of this chapter is to encourage the planting and proper care of trees throughout the Town of Middleburg, to promote the preservation of existing trees and the replenishment of the tree stock to the maximum extent possible. These actions are intended to promote and contribute to the health, safety and general welfare of the Town and its inhabitants by decreasing flooding, soil erosion, air pollution and noise, by removing unsafe and hazardous conditions and by improving aesthetic and quality of life.

§105-2 Definitions (amended 2/10/2011)

The words and phrases defined in this section shall have the meaning indicated when used in the ordinance, unless otherwise specifically provided, or unless clearly required by the context.

Street trees: Trees, shrubs, and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the Town.

Park trees: Trees, shrubs, and all other woody vegetation in public parks having individual names, and all areas owned by the Town, or to which the public has free access as a park.

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§105-3 Creation and Establishment of Middleburg Streetscape Committee

There is hereby created and established a Middleburg Streetscape Committee (hereinafter referred to as Streetscape Committee) for the Town of Middleburg, Virginia which shall consist of a minimum of three members, who shall be appointed by the Town Council.

§105-4 Duties and Responsibilities

It shall be the responsibility of the Streetscape Committee to develop and update annually a management plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. The plan shall be presented annually to the Town Council. The standards and specifications contained in the plan shall apply not only to work performed by the Town, but to private individuals and contractors as well.

§105-5 Operation

The Streetscape Committee shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business.

§105-6 Street Tree Species to be Planted (See Middleburg Zoning Ordinance) (amended 2/10/2011)

The Streetscape Committee shall develop, maintain and update a listing of trees considered most desirable for planting along streets in the following three size classes based on mature height:

- Small Trees (under 15 feet)
- Medium Trees (15 to 30 feet)
- Large Trees (over 30 feet)

The Streetscape Committee shall also develop and regularly review and update a list of trees that are prohibited for planting. This list will include, among others, trees considered to be invasive, those that are considered to be water-seeking trees and other species known to have insect and/or disease problems.

§105-7 Spacing

The spacing of street trees will be in accordance with the three species size classes as approved in Section 105-6 of this ordinance. No trees may be planted closer together than the following:

- Small Trees: 25 feet
- Medium Trees: 40 feet
- Large Trees: 50 feet

An exception may be made to the above spacing for special plantings depending upon the species, setting or purpose by the Streetscape Committee and as described in the Town of Middleburg Zoning Ordinance.

§105-8 Distance from Curb and Sidewalk (See Middleburg Zoning Ordinance)

Street trees may be planted no closer than four feet from any curb or sidewalk. An exception may be made for special plantings if authorized by the Streetscape Committee.

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§105-9 Plantings near Street Corners and Fire Hydrants

No street tree shall be planted near street corners or curbs in such a way as to obstruct visual clearance in conformance with VDOT site clearance standards. No tree shall be planted within ten feet of any fire hydrant.

§105-10 Plantings Near Overhead Utilities

No street trees shall be planted near overhead utilities other than those species included in the Virginia Cooperative Extension publication 430-029. An exception may be made for special plantings if authorized by the Streetscape Committee.

§105-11 Pruning Street Trees by Utility Companies (amended 2/10/2011)

Except in an emergency situation as determined by the Town Administrator, public utility companies shall notify the Town Administrator or designee in writing prior to any pruning of any tree located on Town owned property or within a Town easement for the purpose of maintaining safe line clearance. Such work shall be performed in accordance with accepted arboricultural standards set forth by the International Society of Arboriculture.

§105-12 Planting, Maintenance and Removal (amended 2/10/2011)

The Town shall have the right to plant, maintain and remove trees, plants and other woody ornamental or parts thereof on public property or within Town easements. The Town Administrator or designee, upon the recommendation of the Streetscape Committee, may remove or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or limits access to sewers, fire hydrants, electric lines or other utility lines or pipes or any other public improvements, or is affected with any injurious fungus, insect or other pest. A second opinion by an ISA certified arborist is recommended for the removal of any tree on public property or within Town easements that has a fifteen-inch (15") or greater diameter at breast height (dbh). In the event that any tree is pruned by the Town or its contractor, a certified arborist shall be required to be on site during such pruning. Trimming, pruning, removal or treatment of any tree on public property or within Town easements shall be consistent with the International Society of Arboriculture as outlined in the American National Standards Institute A300 and Z133.1 Standards. In the event a tree is severely damaged by storms or other causes and must be removed on an emergency basis, the Streetscape Committee will be notified so proper tree replacements can be recommended where appropriate.

This Section does not prohibit the planting of street trees within the road right-of-way by abutting property owners as a donation or contribution, provided the Town Administrator grants prior written approval, after a recommendation from the Streetscape Committee. The selection and location of said trees shall be in accordance with provisions of this ordinance, the Middleburg Zoning Ordinance and any other applicable Town regulation.

The Town may also allow right-of-way plantings, other than trees, provided the Town Administrator, upon recommendation of the Streetscape Committee, gives prior written permission. A written request to install right-of-way plantings shall be addressed to the Town Administrator.

§105-13 Tree Management Plan (amended 2/10/2011)

A tree management plan is required within site development plans and subdivision applications as noted in the Middleburg Zoning Ordinance. The Streetscape Committee shall serve in an advisory capacity to the Town in the administration of the Town's landscaping, screening and open space regulations.

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§105-14 Pruning of Privately Owned Trees (amended 2/10/2011)

Every owner of any tree overhanging any public street or public right-of-way within the Town shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of fourteen feet (14') above the street surface or eight feet (8') above the sidewalk surface. Said owners shall remove all dead or diseased limbs which constitute a risk to public safety.

In the event any such tree is not pruned or removed as required in this section, a notice of intent to prune shall be sent by the Town Administrator or designee to the property owner by certified mail. The property owner will have sixty days from the date of the notice to comply. If compliance is not met within this time frame, the Town Administrator or designee may perform the pruning and charge the costs to the property owner by presenting evidence of the costs incurred to the property owner. The property owner shall then pay such costs within sixty days after the receipt of evidence of such costs.

§105-15 Removal of Tree Stumps

Tree stumps located on public property shall be removed below the surface of the ground so that the top of the stump shall not project above the existing grade.

§105-16 Acts Harmful to Trees on Public Property

- (A) No person shall abuse, mutilate or otherwise damage any tree located on public property or any tree protected by this ordinance, including those street trees located along street frontages within a subdivision. However, nothing in this section shall be construed to prevent reasonable and proper trimming of trees located on public property by authorized persons in accordance with the accepted arboricultural standards set forth by the International Society of Arboriculture.
- (B) No person shall attach any sign, notice, placard, electrical wire or other injurious device to any tree, nor shall any person cause any substance harmful to trees to come in contact with them, or prevent water or oxygen from reaching their roots. The use of tree-climbing spikes is prohibited except for removals or in emergencies.
- (C) No person shall cover the ground with impervious material any closer to the trunk of a tree than its drip line. This provision may be waived by the Town Administrator or designee if it is determined that the proposed action will not harm the tree.
- (D) Unless otherwise authorized in writing by the Streetscape Committee, it shall be unlawful as a normal practice for any person or firm to top any tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Streetscape Committee.

§105-17 Dead or Diseased Tree Removal on Private Property

When the Streetscape Committee finds that a tree growing on private property creates an elevated risk to the public safety or welfare, they shall recommend to the Town Administrator that the owner be required to remove the tree or otherwise eliminate the hazardous condition. If the property owner fails to comply with such order within thirty days of notification from the Town Administrator by certified mail, or sooner if necessary to protect the public safety, the Town Administrator or designee may enter the property, remove the tree or otherwise mitigate the hazardous condition, and assess the cost thereof against the property owner.

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§105-18 Violations

Violations of this ordinance shall constitute a civil offense and be subject to fines up to \$2,500 for each violation. For purposes of this ordinance, each tree removed or harmed without meeting the provisions of the ordinance shall constitute a separate offense.

§105-19 Enforcement

The Town Administrator or his designee is hereby charged with the responsibility to enforce this ordinance.

§105-20 Liability

Nothing in this ordinance shall be deemed to impose any liability upon the Town, its officers or employees, or the Streetscape Committee or its members, nor to relieve the property owner of any private property from the duty to keep any tree or shrub on his property or under his control in such condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park or other public place within the Town.

§105-21 Appeals (amended 2/10/2011)

- A. Decisions of the Town Administrator made with regard to Sections 105-14 and 105-17 may be appealed to the Town Council by filing a petition with the Clerk of Council, setting forth the basis for the appeal, within one week of the date of the decision. The appeal shall be placed on the next regularly scheduled Council meeting following receipt of the appeal. The filing of the appeal shall stay the decision of the Town Administrator pending the outcome of the appeal to the Council. The Council may reverse, modify or affirm the Town Administrator's decision.
- B. The owner of the land that is the subject of a final decision of the Council may appeal such decision within thirty (30) days of the date of the final decision rendered by the Council by filing a petition at law with the Circuit Court of Loudoun County setting forth the alleged illegality of the action of the Council. The filing of the petition for review shall stay the decision of the Council pending the outcome of the appeal to the Circuit Court of Loudoun County.

§105-22 Severability (amended 2/10/2011)

Should any subsection, sentence, clause, provision or part of this ordinance be held invalid for any reason, the remainder of this ordinance shall not be affected thereby, but shall remain in full force and effect.