

Chapter 99. Tree Ordinance

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GENERAL PROVISIONS

§ 99.01 PURPOSE AND INTENT

(A) The Town of Matthews holds that trees are an integral part of the community's infrastructure. As such, they are a reflection of the quality of life in the community, contributing to the health, safety, and well-being of its citizens.

(B) This Chapter regulates trees on public and private property while balancing the need for the reasonable use and enjoyment of real property by its citizens. Specific purposes of the chapter include: to provide parameters for the planting, maintenance, and removal of trees; to encourage and require the protection of existing trees on the streets, on public spaces, and on private grounds; to establish a standard for sound arboricultural practices within the Town; to assign responsibility for conduct of its requirements; and to establish the education, informational, and regulatory procedures for fulfilling these purposes.

§ 99.02 APPLICABILITY

(A) The terms and provisions of this Chapter shall apply to all Town property and to private property as specified herein. Specifically, this code regulates:

- (1) Streetscape trees along public or private streets within or near those streets.
- (2) Trees on other public properties.
- (3) Trees on private property which constitute a safety hazard or nuisance to the public or to public property.
- (4) Trees designated as having special significance to the public in the manner of a Regulated or Protected tree.

§ 99.03 BENEFITS OF TREES

(A) The benefits that trees provide our Town include:

- (1) Improved control of soil erosion.
- (2) Moderation of storm water runoff and improved water quality.
- (3) Interception of airborne particulate matter, and the reduction of air pollutants.
- (4) Enhanced habitat for wildlife.
- (5) Reduction of noise and glare.
- (6) Climate moderation.
- (7) Definition of exterior spaces.
- (8) Increased property value.
- (9) Promotion of energy conservation through shading and cooling effects.
- (10) Reduction in the need for watering of vegetation.
- (11) Maintenance of the visual character of the community.
- (12) Psychological health benefits derived from natural vegetation and open spaces.

§ 99.04 DEFINITIONS

(A) When used in this Chapter, the following terminology shall have the definitions ascribed to them in this section. Those words and phrases used in this document that are not defined shall be interpreted so as to give them meaning they have in common usage.

Applicant. Any person, party, partnership, corporation or other business entity seeking the Town's approval of a proposed plan, or permit, or variance to this Chapter.

Approved Forestry Plan. A plan for the harvesting of timber from a specific parcel of land prepared by a N.C. Registered Forester under generally accepted practices.

Buffer. Trees or other woody shrubs that serve to screen incompatible land uses, unwanted light, or noise.

Caliper. Diameter measurement of tree-trunk taken at six inches above ground level for trees up to and including four inches in caliper. For larger trees, measurement of caliper shall be taken at twelve (12) inches above ground level.

Casualty Loss of Nature. A loss of value or property resulting from an act of nature – fire, winds, ice storms, etc. – that is sudden, unexpected, and beyond normal human control.

Clear-Cutting. A management technique in which all of the trees in an area are cut at the same time.

Committee. The Appearance and Tree Committee of the Town of Matthews.

Construction Site. A site where any land disturbing activity is to occur.

Construction Period. The time period on a development site from the granting of a construction permit until the issuance of a final certificate of compliance.

DBH. (Diameter Breast Height). The diameter of a tree four and one-half (4 ½) feet above the average ground level.

Deciduous. Plant materials that drop all of their foliage preceding their dormant season (usually the winter).

Drip line. An imaginary vertical line extending from the outermost portion of the tree canopy to the ground.

Existing Tree Canopy. The tree canopy that has existed for at least 3 years on a site as verified by aerial photographs.

Evergreen. Plant materials that retain foliage throughout the year.

Impervious cover. Buildings, structures and other paved, compacted gravel, or compacted areas, which by their dense nature do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.

Landscaping. The preservation and/or modification of an existing landscape for an aesthetic or functional purpose. Live vegetation materials required for development.

Landscape Establishment Guarantee. A bond, irrevocable letter of credit, or other surety held by the Town until the satisfactory conclusion of the three-year landscape establishment period.

Landscape Establishment Period. A period of three years commencing with the approval by the Town of an executed landscape plan.

Landscape Manager. The Town of Matthews employee responsible for the management of landscape issues.

Large Maturing Tree. A tree whose height is greater than 35 feet at maturity.

Matthews Urban Forestry Master Plan. A plan adopted by the Town Board that directs the short and long-term actions of the Town's Urban Tree Management Program.

North Carolina Champion Tree. A North Carolina Heritage Tree is any tree that is listed in the North Carolina Big Tree List.

Planting Area. Landscape area reserved for the purpose of providing growth area for required plant material.

Planting Season. The recommended time of the year for planting, normally September thru May, that is timed to avoid the summer heat.

Planting Strip. A strip of land, adjacent to a public right-of-way, that is reserved for landscaping purposes.

Protected Tree(s). An individual tree having special regulatory procedures for removal on public and private property. Protected tree includes all trees on public property, North Carolina Champion Trees, and Matthews Specimen Trees as designated by the Matthews Board of Commissioners. Protected trees can include individuals or all individuals in a stand on a construction site designated to be preserved on a required landscape plan.

Regulated Tree. A tree located on private or public property that has been classified according to national, state, county, or Town standards as being a tree that has special maintenance and removal restrictions.

Root Protection Zone. An area measuring approximately eighteen (18) to twenty four (24) inches deep and at a horizontal distance from the trunk in all directions equal to one foot for each inch of DBH.

Screen. A structure providing enclosure and a visual barrier between the area enclosed and the adjacent property.

Selecting Cutting. The periodic removal of individual trees or groups of trees to improve or regenerate a stand.

Selective Grading. Clearing and/or grading a development site such that selected, existing vegetation is preserved.

Shrub. A woody plant normally containing multiple stems and a mature height of less than twelve (12) feet.

Small Maturing Tree. A tree whose mature height is generally more than fifteen (15) feet but usually less than thirty five (35) feet.

Specimen Tree. A Specimen Tree is any tree designated by the Town as having unique value, historical interest, or other noteworthy characteristics. A tree may be considered a specimen based on its size, age, rarity, history, or ecological significance as determined by the Town's Landscape Manager.

Streetscape Plan. A plan that specifies planting strips, tree species, sidewalk locations, and other design aspects along public and/or private streets within Matthews. Such plans are effective following approval by the Board of Commissioners.

Streetscape Tree. Any tree planted within or adjacent to a public right-of-way.

Timber Harvesting. The removal of trees, through approved techniques, from a parcel of land for commercial forestry purposes, or possible future development. Future development may be restricted by other sections of the General Statutes or this code.

Topping. Any pruning practice that generally employed on the top of a tree that in discriminately makes cuts without regard to the proximity of a side branch. The practice is very detrimental to tree health.

Tree Canopy. The combined crown areas of all trees on a tract of land.

Tree Evaluation Formula. A formula for determining the value of trees and shrubs as published by the International Society of Arboriculture.

Tree Hazard. The degree to which a tree poses an imminent threat to persons or property. A tree with a high hazard rating is unsafe.

Tree Protection Area. Those areas designated for the protection of both preserved and planted trees depicted on the Tree Protection and Landscape Plans.

Tree Stand. A group of trees in close spatial proximity that can be treated as a unit for the implementation of a tree protection area.

Woodland. Land covered with wood or trees; forest land on which trees are allowed to grow, either for fuel or timber.

§99.05 ADMINISTRATION RESPONSIBILITIES

(A) *Town Manager.* The Town Manager or his/her designee shall direct, regulate, and control the planting, maintenance, and removal of all trees growing in public property and on all private property as they relate to regulated trees. No person shall hinder, delay, or interfere with the Town Manager in the execution of duties under this Chapter.

The Town Manager or his/her designee shall be responsible for implementing the following specific provisions of this Chapter:

- (1) *The Matthews Urban Forestry Management Plan* directs day-to-day urban forestry activities within the Town.
- (2) The conduct of the streetscape plan for trees on the public-right-of-ways
- (3) The planting, maintenance, and removal of trees on all public properties
- (4) Conduct of the regulated trees on private property not subject to development provisions.

(5) Reviewing all development plans for compliance with provisions of this ordinance.

(B) *The Matthews Appearance and Tree Committee (MATC)*. The MATC is responsible for:

(1) An annual review of this ordinance.

(2) An annual review of the Matthews Urban Forestry Plan.

§ 99.06 PERMITS

(A) Permits for work affecting regulated trees on private property as outlined herein shall be obtained from the Town.

(B) A permit shall be issued if the work complies with the guidelines in Matthews Urban Forest Management Plan or this Chapter. The Town may attach reasonable conditions to the permit. The Town can rescind the permit for noncompliance.

(C) A Landscape Plan that has been approved by the Town shall constitute a permit.

(D) Individual permits will not be required for state transportation projects; however, the Town should review the project plans for tree preservation and replacement requirements.

TREE PROTECTION AND MANAGEMENT REQUIREMENTS

§ 99.07 TREE PRESERVATION

(A) *Intent*. Preservation of all existing trees is a value expressed by the Town. Preservation of specific trees that have been identified as being historically important or physically unique or important is outlined in this section.

(B) *Regulated Trees*. For the purposes of this Chapter, regulated trees comprise all trees identified and classified by special government programs. Regulated trees can be located on public or private property.

(1) Regulated tree programs include:

(a) National: National Registry of Big Trees as compiled by American Forests.

(b) State: Champion Trees of North Carolina as identified by the North Carolina Department of Forest Resources.

(c) Town: *Specimen Tree Designation*. All trees of significant historical, physical, or unique interest to be classified as Matthews Specimen Trees. The criteria for awarding this designation are outlined in the *Guide*. Town Board, on a case-by-case, basis shall award the designation.

(2) The Town Board shall designate all qualifying trees as meeting a regulated tree status. All regulated trees within the Town limits shall be identified on the Town's Urban Forestry Master Plan.

(C) *Protection*. No person shall willfully destroy or cause to destroy a regulated tree.

(D) *Removal*. A permit is required from the Town to remove any regulated tree on private or public property.

(E) *Mitigation of Loss*. If a regulated tree is removed for any reason other than structural problems resulting from decay or normal old age processes, or from a casualty loss of nature, it shall normally be replaced by planting new trees somewhere on the property. A mitigation schedule is provided in figure 1. If the trees cannot be planted on the property, then the replacement trees will be planted on public property as prescribed by the Town Landscape Manager.

- (1) Planted trees shall be a minimum of two (2) inch caliper in size and the quantity determined by the value of the loss.
- (2) Planted trees shall be of the same species or a species of equal mitigated value as determined by the Tree Evaluation Formula in the *Guide*.
- (3) All replacement trees must receive the same measures for protection as cited in § 99.10 for a minimum of one year.

Designation Requirement	Replacement Criteria
National and State Champions	Replace with trees of equal value to the loss
Town Specimen Trees	Replace with trees equal to 50% value of the loss

Figure 1 Mitigation for the Removal of Regulated Trees

(F) *Town Assistance for Regulated Trees on Private Property.* In order to promote the preservation of Regulated Trees and to participate in their survival, the Town may assist the property owner in the care and maintenance as prescribed by the Town Landscape Manager of all Regulated Trees so identified and classified within the Town. The Town will perform semi-annual inspection of the trees in cooperation with the property owners.

(G) *Protected Trees Designated.* A tree having the classification of a protected tree has special maintenance and removal requirements. Designated Protected Trees include all regulated trees, all trees on public property, and any trees designated on an approved landscape plan to be preserved during any land disturbing activity. § 99.10 of this Chapter provides details on protection requirements during development activities.

§ 99.08 TREES ON PUBLIC PROPERTY

(A) *Staff Requirements.* The Matthews Urban Forestry Master Plan sets the performance standards and guidelines on how trees shall be planted, maintained, and removed by Town staff on all public properties. The MUFMP shall guide Town staff in their day-to-day activities, and shall provide both short-term and long-term planning for overall tree management in the Town. Tree management activities by staff on public properties should closely follow those required on private properties.

(B) *Tree Planting by Private Parties.* The Town of Matthews encourages tree planting on public property. The Town shall assist any individual or group in evaluating this potential; however, the following parameters shall apply;

- (1) Any person or organization wishing to planta tree on public property or on a public right-of-way in accordance with the approved Urban Forestry Management Plan shall obtain a permit. There is no fee for this permit.
- (2) Any person or organization wishing to plant more than one (1) tree on public property or on a public right-of-way shall also submit a planting plan to the Town Landscape Manager. One copy of the approved plan will be returned to the applicant. The plan must include show the following:
 - (a) A scaled drawing of the location or street to be planted and the distance from adjacent curbs, sidewalks, buildings, or any other hard surface structure.
 - (b) The location of underground and overhead utilities.
 - (c) The location of each tree to be planted.
 - (d) The species, variety, and size of each tree to be planted.
 - (e) Any surface or subsurface drainage that will be installed.

(3) For developed properties, an approved landscape plan on file with the Town Planning Department shall serve in lieu of a permit.

(C) *Construction Work by Private Contractors.* Construction or any land disturbance work performed by private parties on public property, or within the dripline of a tree whose trunk is located on public property, is subject to conditions. Within the right-of way of any public street or within any public area of the Town no person shall take any of the following actions without first obtaining a written permit from the Town:

- (1) Remove, spray, fertilize, cut below or above ground, or otherwise disturb any tree that has its trunk on any public property, or cause such acts to be done by others.
- (2) Deposit, place, store or maintain materials that will compact the soil or impede the free passage of water and air to the roots of any tree.
- (3) Park vehicles or construction equipment within the dripline of a tree having its trunk on public property.
- (4) Excavate any ditches, tunnels, or trenches, grade changes, or lay out any private driveway within twenty (20) feet from an existing tree.
- (5) Permit any toxic chemical, either liquid or solid, to seep, drain or to be emptied on or about any tree.
- (6) Break, injure, mutilate, or destroy any tree, or set fire within the dripline area of a tree.
- (7) Fasten any sign, wire, rope, or other material to any tree or to the guard or stake intended for the protection of such tree.
- (8) Attach any electric wires or electrical insulation devices to any tree.

(D) *Requirements Regulating the Work of Public and Private Utilities.* Public and private utilities that install overhead and underground utilities, including CATV installations, are required to accomplish all work affecting trees according to the provisions of this section.

- (1) A permit for each project is required.
- (2) A permit for each project is not necessary if the utility has standard operational procedures for working around trees, and has these procedures prior approved by the Town. A copy of these utility standards concerning trees shall be on file with the Town.
- (3) When a permit or prior approval is given by the Town, the amount of such trimming or extent of other operations shall be limited by the actual necessities of the service, such work shall be done in a neat and workmanlike manner according to applicable ANSI standards for tree work, and shall be performed according to specifications outlined by the permit.
- (4) The Town shall review these written specifications or procedures regularly. All utility work is subject to inspection by the Town for compliance with this Chapter.
- (5) The removal of specific trees is not subject to prior approved guidelines and shall be handled on an individual permit basis.

(E) *Vegetation Control*

- (1) No trees on public property shall be pruned by topping.
- (2) The Town will keep trees located on the public right-of-ways pruned to maintain prescribed sight distances for vehicular traffic. In general, the pruning or removal of right-of-way trees simply to afford a better view of private signs is not permitted.

§ 99.09 TREES ON PRIVATE PROPERTY

(A) *Trees Endangering the Public Safety.*

(1) The Town Board hereby declares it a public nuisance for any tree or part thereof on public or private property to be in an unsafe condition, hazardous, damaging to sewers or other public improvement facilities, or infested by an injurious disease, insects, or other pests.

(a) The Town may order the removal of any tree hereby declared to be a public nuisance.

(b) The Town, alternatively, may cause or order necessary treatment for any tree on private property which is infested by any injurious disease, insect, or other pests when it determines such action is necessary to abate the nuisance.

(2) Trees standing in or upon land abutting Town property and having branches, limbs, trunks, or other parts projecting onto Town property shall be maintained by the owner of the property so that no foliage shall extend from private property onto any portion of public property below a height of eight (8) feet above the grade of the property. The Town may cause or order corrective action to prevent any such condition.

(3) Before exercising the authority conferred by this Section, the Town shall advise the owner or occupant of the property by first class mail, overnight shipping delivery, or by telephone, to take corrective action. This order shall be in writing and shall state that the action specified must be taken within ten (10) consecutive calendar days after the order is delivered. If the condition has not be corrected within the time specified above, the Town may enter upon the property, perform the work necessary to correct the conditions and assess the owner or occupant for the actual costs incurred by the Town. In situations involving an imminent threat to the public health, safety or welfare, the Town shall make reasonable attempts to contact the property owner, but may proceed expeditiously without prior notice.

(4) The costs of such work, if not paid within fifteen (15) calendar days shall constitute a lien against the property. An aggrieved property owner may appeal such orders in this section pursuant to §99.15(D).

(B) *Removal of Regulated Trees*

(1) Trees located within the Town that have been designated as Regulated Trees by the Town Board of Commissioners have been identified and classified as unique to the Town.

(2) The removal of a Matthews Specimen Tree or other regulated trees requires a permit. The Town may deny a permit and prohibit the removal of a regulated tree. The following factors may be the basis for a denial:

(a) There is no current plan to develop the property.

(b) A planned development can be designed and constructed without removing the Regulated Tree.

(c) The purpose of the removal can be accomplished by an alternative design.

(d) The overall good health of the tree.

(e) An unsatisfactory proposal for replacement of the Regulated Tree.

(f) A significant, adverse effect on adjacent property values.

(g) Any other factors reasonably related to the tree.

(3) No individual shall willfully cause the death of a tree that has been classified as a Regulated Tree.

(4) The Town may attach reasonable conditions to the removal. The owner may appeal the decision in accordance with § 99.15(D).

(C) *Utility Work on Private Property.* Public and private utility companies which install overhead and underground utilities (including CATV) are encouraged to accomplish all work affecting trees located on private property with as little damage to the canopy, trunk, and root zone as possible.

§ 99.10 TREE HARVESTING AND FORESTRY OPERATIONS

(A) *Purpose.* The Town seeks to monitor timber harvesting activities within the Town limits. The Town shall review all timber harvesting operations that occur on any parcel of two (2) or more acres. It is the intent of the town not to discourage legitimate forestry operators, but to monitor and control clearing activities unrelated to forestry, for example general land clearing or land clearing for future development.

In the conduct of this review the Town will not only consider the fundamental rights of property owners, but shall also weigh the intended long-term use of land and the overall safety, health and welfare of the community.

(B) *Permits and Standards.*

(1) The harvesting of timber may take place only after a permit has been issued by the Matthews Public Works Department. The application shall at a minimum include a plan drawing of the site, the areas to be harvested, and a full description of the forestry operations to be conducted during the harvest and the planned use for the property after harvest. Application for a permit must be submitted at least fourteen (14) calendar days prior to the desired start date.

(2) For woodlands being harvested under an “Approved Forestry Plan”, this plan may be submitted in lieu of the required application in (1) above. Any existing plan of operation on the adoption date of this ordinance shall also be submitted.

(3) The Town, at its discretion and expense, may ask a Registered Forest to review submitted applications or plans and comment on the same.

(4) A permit shall not be withheld if a permit application or plan is submitted and there is general compliance with the standards of this section.

(5) While selective cutting shall generally be the preferred harvesting technique, clear cutting is permitted where the intent of the landowner is to restore the land to forestry use. In the case of land intended for development, landowners may clear-cut, but should refer to the Matthews “Post Construction ordinance”, “Zoning Ordinance” and/or “Unified Development Ordinance” so as to retain in an undisturbed state the minimum areas required by those ordinances.

(6) When adjacent to residential property, timber harvesting should be conducted with a minimum twenty-five (25) foot undisturbed buffer. In no case shall any trees that exist within a public road right-of-way be removed without approval of the Town. One access point, not more than twenty-five (25) feet in width may penetrate an undisturbed buffer to facilitate equipment access, if needed. If additional buffers are allowed to remain on all sides of the parcel, the recapture time listed in Section C (1) below may be reduced to four (4) years.

(7) Reforestation shall be accomplished under the general guidelines established by the N.C. Forest Service and/or recommendations of the N.C. Forestry Association.

(8) No portion of this section shall modify or abrogate any requirements of the County, State or Federal governments that might apply. In the case of any conflict, the more restrictive requirement shall apply.

(C) *Recapture and Penalties*

(1) Recapture – The Town may deny a building permit or refuse to approve a site plan or subdivision plan for a period of up to seven (7) years if a tree harvest results in the removal of all or substantially all of the trees that were protected under Town “Post Construction Ordinance”, “Zoning Ordinance” and/or “Unified Development Ordinance” governing the development of the tract of land that the permit or approval is sought.

(2) Penalties - Failure to file an application or Forestry Plan, failure to obtain a permit, failure to follow the terms of a permit or a submitted Forestry Management Plan and/or violation of any other part of this section shall result in the assessment of a civil penalty in the amount of \$500 plus \$500 per acre of land actually affected.

(D) *Operation Enforcement* Operation and Enforcement of this section shall be the responsibility of the Public Works Director or his designee.

§ 99.11 STANDARDS FOR PRESERVATION, PLANTING AND MAINTENANCE

(A) Preservation Standards. Existing trees specified on an approved landscape plan to remain on site during any land disturbing activity are protected trees. Special criteria apply to protected trees either as individuals or in a stand.

(1) *Purpose.* The purpose of preservation standards is to ensure that preserved trees are protected from injury during the construction process. Special requirements apply.

(2) *Applicability.* Tree protection measures as outlined herein are required for any land disturbing activity in the following circumstances:

(a) For any tree scheduled to be preserved on an approved Landscape Plan for the site.

(b) For any land disturbing activity taking place within the drip line of a protected tree.

(c) For any existing tree with an eight (8) inch DBH or larger, or any tree planted within the last three (3) years with a two (2) inch caliper or larger, having all or a portion of its trunk in or upon any public property.

(3) *The Root Protection Zone.* Since a tree is unable to heal any sustained damage to its trunk or roots, protecting both of these parts of the tree are equally important. The area to be protected around the tree provides a rough approximation of the tree's root zone from the trunk outward. The root protection zone shall have the following characteristics:

(a) For each inch of DBH a minimum of one (1) foot of protected space from the trunk is measured in all directions. This area is designated as the Root Protection Zone. Unless physical obstructions are encountered within this area, the entire zone will receive protection. If physical obstructions such as building foundations or concrete curbing are encountered and will not be disturbed, then this protected space may be modified to follow the actual edge of such obstructions. The Root Protection Zone may be required to be increased in other directions to compensate for the loss of this root growth area if the impervious surface covers more than one-third (1/3) of the calculated zone.

(b) For tree stands the Root Protection Zone shall extend five (5) feet beyond the perimeter dripline of the entire stand.

(c) All grading plans shall show the vertical elevation of the trunk at the soil line, the existing topography, and proposed grade changes within and immediately surrounding the root protection zone.

(d) All construction plans of the project shall show the vertical and horizontal location of the preserved tree's trunk and the associated root protection zone surrounding it.

(4) *Protection Requirements of the Root Protection Zone.*

(a) A durable fence of plastic or wood with a minimum height of 4 feet shall protect the zone. No soil disturbance will occur in the zone. The fence will be maintained at all times during any land disturbing activity until construction is complete.

(b) No storage of materials, piling of soil, parking of equipment, or dumping of debris shall occur in the zone.

(c) The natural grade shall be maintained within the zone. Stripping topsoil from the zone is prohibited.

(d) Excavation for buried utilities is prohibited. Boring may be permitted in individual situations.

(e) No trenching for irrigation lines shall take place.

(f) Removal of understory vegetation within the zone shall be restricted to hand-pruning or to the use of hand-operated, power equipment.

(g) A minimum of one sign designating the Root Protection Zone shall be placed on the fence and should be visible for a minimum distance of thirty (30) feet.

(h) Minor pruning of branches to accommodate the construction of nearby buildings or planting of shrubs or ground covers within the zone can be allowed with the approval of the Town's Landscape Manager.

(i) The Town will evaluate any requests for utility encroachment into the zone. Review of the request shall consider the overall needs of the site development. Utility line encroachments will be considered if the encroachment is unavoidable and damage to existing root systems is kept to an accommodating level. In these cases, encroachment will only be allowed on one-side of the tree and no closer than two-thirds of the distance from the edge of the zone to the trunk.

(j) The requirements of this section shall remain in effect throughout the construction period or the duration of the land disturbing activity.

§ 99.12 PLANTING STANDARDS

(A) *Purpose.* Planting standards apply uniform and commonly acceptable guidelines to the installation of new trees into the landscape. Standards help ensure tree survivability and long-term health.

(B) *Requirements.* The following standards comprise a list of specifications for tree planting in fulfilling the requirements of this Chapter. The standards could equally apply in some cases to integrating existing trees into a new landscape.

(1) Except for Streetscape Trees, which can be variable, the minimum distance to the nearest property line or public right-of-way for planting shall be six (6) feet for large trees and three (3) feet for small trees.

(2) The minimum distance to a sidewalk, curb, or other impervious surface is four (4) feet for large trees and three (3) feet for small trees.

(3) For large maturing trees a minimum planting area of 256 square feet with a minimum dimension of eight (8) feet and a tree center no closer than four (4) feet to the edge of the planting area is required. For small maturing trees a minimum planting area of sixty-four (64) square feet with a minimum dimension of eight (8) feet and a tree center no closer than three (3) feet to the edge of the planting area is required.

(4) Trees shall normally not be guyed or staked, except in an extreme situation to salvage a damaged tree after planting. If guying is employed, it must be removed as soon as possible or within one year at the latest. Mulch shall be applied (two- to three-inch layer around the tree pit) in accordance with accepted practices in the landscape industry.

(5) Good drainage shall be provided for all planting areas and specific plant materials shall be chosen to adapt to the anticipated drainage conditions.

(6) No trees identified as large maturing trees shall be located within thirty-five (35) feet from the center line of a power distribution line.

(7) No trees identified as reaching a mature height of more than twenty (20) feet shall be placed within transmission power line right-of-way.

(8) Normally, trees should not be planted within a utility easement. When a tree is to be located within an easement, a written statement to the Town should indicate why this is necessary. When the planting is within a dedicated easement for underground utilities, trees planted shall be of the small maturing size to minimize future root conflict.

(9) At all points of egress from off-street parking areas to a road, and at corners of road intersections, unobstructed visibility for sight triangles shall be maintained as defined in the Matthews Zoning Ordinance § 153.007.

(10) Tree holes shall normally be back-filled with the native soil that was excavated. Amending the soil with organic additives shall only be employed when extremely poor site conditions are encountered.

(11) All trees and shrubs to be planted must comply with the American Standard for Nursery Stock, published by the American Association of Nurserymen (current edition).

(12) Trees to be planted shall generally be on the Town's approved tree list, as referenced by §99.13 of this Chapter. The Town must approve the use of trees not on the list.

§ 99.13 MAINTENANCE STANDARDS

(A) *General.* The maintenance of all public trees shall be performed as per the Matthews Urban Forestry Management Plan.

§ 99.14 APPROVED TREE LIST

(A) A list of approved trees for planting has been prepared to increase the likelihood of survival and to reduce future maintenance requirements. All trees utilized should be generally adapted to the normal climatic and environmental conditions expected for the Matthews area. The listed trees satisfy these general criteria. This list is not intended to be a comprehensive survey, but it will serve as a guide to plant selection. Plants on the approved plant list shall normally be used in a landscape plan. The Matthews Approved Tree List can be found in the Guide to the Town of Matthews Tree and Landscape Requirements.

(B) Plant materials that are not on this list may be used if it can be shown that the selected species satisfies one or more of the following criteria:

- (1) A species native to the area that can be shown to be adapted to the proposed site conditions.
- (2) A non-native species that is well suited for use in this area.
- (3) A non-native species, meeting a specialized use that will not be adversely affected by normal climatic environmental conditions.
- (4) Any plant species that has been previously approved for use in a similar site situation.

(C) The use of any plant not on the list should be so noted on the Landscape Plan with a brief explanation of purpose. Final approval will be made by the Town Landscape Manager.

(D) Many of the tree species on the Approved Tree List are native to the Matthews area. Most of these species are well adapted to the soil and climate found here. Accordingly, the planting and preservation of native trees is encouraged whenever design and site characteristics permit their use.

ADMINISTRATIVE PROCEDURES

§ 99.15 MODIFICATIONS

In the event that strict compliance with the standards of this Chapter conflict with existing federal or state statutory or regulatory requirements, with unusual site characteristics, or undue health or safety consequences, then a modified plan can be made to the Town Landscape Manager. This plan must meet the purposes and standards of this Chapter. A written explanation of the problem and how the new plan satisfies both the problem and the intent of this Chapter must accompany the alternate plan. The Town shall review the alternate proposal and advise the applicant of the disposition of the request within 15 working days of receipt by the Town. Any appeals by the applicant shall be in accordance with §99.15.

§ 99.16 INSPECTIONS, ENFORCEMENT, PENALTIES, AND APPEALS

(A) *Inspections.* The Town may periodically inspect areas subject to the provisions of this Chapter.

(1) Inspections shall be made at a reasonable time and with reasonable notice made to the personnel present on the construction site. No person shall refuse entry or access to any authorized representative of the Town who requests entry for the purpose of inspection, and who presents appropriate credentials.

(2) No person shall obstruct or interfere with such inspection.

(B) *Enforcement.* Any person who violates any provision of this Chapter shall be notified by the Town of the specific violation. The notice shall set forth the nature of the violation, the measures required to comply with this Chapter, if compliance is at all practicable, and a reasonable time period within which compliance must be made.

(C) *Penalties.* In addition to mitigation of tree loss occurring on public or private properties, a civil penalty may be imposed by the Town for the purposeful destruction or removal of a Regulated Tree, a Specimen Tree, or a Protected Tree, in an amount equal to one and one-half (1 ½) times the value of the tree as established by appraisal procedures prepared by the Council of Tree and Landscape Appraisers.

(D) *Appeals.* Any person having been given notice of violation and/or the imposition of civil penalties may appeal the decision by giving written notice of appeal within ten (10) working days of the receipt of the notice or violation citation directed by the Town Manager. The Town Manager shall render a decision based on the facts as submitted by the appellant and by the Town staff. The Town Manager may seek the assistance of a certified arborist as an outside neutral consultant to provide expert opinion in tree loss diagnosis or mitigation concerns. All fees charged by said arborist shall be borne equally by the appellant and the Town.

§ 99.17 EMERGENCIES

In an emergency such as a windstorm, ice-storm, fire or other disaster, the requirements of this Chapter may be waived by the Town during the emergency period. In addition, a county wide ban on outdoor watering due to drought may be cause for a waiver by the Town. If a waiver in the context of an environmental emergency is granted by the Town, an amended landscape plan may still be required.

§ 99.18 EDUCATION AND GUIDELINES

In order to make the execution of this ordinance as simple and straightforward as possible, the following shall be available to aid in compliance:

(1) *The Guide for Matthews Tree and Vegetation Requirements* Written as a supplement to this Chapter, the Guide is available to clarify and amplify its specific requirements. In addition, it provides specific formats for many of the reports, surveys, and plans required.

(2) Special Educational Sessions to be made available to the public on an as-needed basis as determined by the Planning Department. The sessions will be sponsored by the Town and be furnished at no cost to participants.

(Ord. No. 1606, passed 12-10-07; Ord. No. 1803, passed 5-23-11)