

APPENDIX "B"
Model Tree Protection Ordinance*

KEY ELEMENTS

NOTE: *Most of the following guidelines are taken from Tree Conservation Ordinances, by Christopher Duerkesen with Suzanne Richman, a publication of Scenic America and the American Planning Association.*

Since every community is different, every ordinance will be different as well. Communities and activists should treat these elements as a guide. Furthermore, every community should seek the advice of its legal advisors to ensure that the ordinance is within the powers granted to communities under state law.

1. Purpose: This section should reflect the community's priorities in tree conservation. Does the community want to protect trees in order to protect its watershed, as Fairfax County, Virginia, did in stating that it adopted its ordinance ". . . to alleviate erosion, siltation, and other harmful effects of land-disturbing activities . . ." ¹ Or is it to protect historic trees? From a legal standpoint, it is most important that communities clearly state what they want the ordinance to accomplish. Scenic America strongly urges towns to prominently state the aesthetic benefits they hope to realize with their ordinance. If someone challenges the ordinance in court, the courts will look very closely at this section to determine whether or not subsequent sections serve this purpose.

2. Authority: It is also useful to cite the state enabling legislation that allows communities to protect trees. In doing so, the community acknowledges that they have the authority to do so and that they have verified that their ordinance does not exceed that authority.

3. Definitions: Depending on the scope of the ordinance, these can range from defining a "tree," which every ordinance should do (for example, does it cover large, woody plants with a height that will exceed ten feet or does it cover understory vegetation?), to defining "a heritage tree" (i.e. trees with some combination of age, historical connotations, etc., that the community finds particularly valuable), to defining more technical terms such as "mitigation," "dripline," and "afforestation." Outstanding sources of definitions include the aforementioned *Tree Conservation Ordinances* and *U.S. Landscape Ordinances: An Annotated Reference Handbook*, by Buck Abbey.

** This article, in its entirety, is from the website http://www.scenic.org/tree/model_ordinance by Scenic America. Additional articles on this subject are available at the same site.*

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4. Inventory/Information Requirements: There are two elements to this section. First, communities can and should, regardless of whether they are developing their first ordinance or refining an existing one, conduct their own inventories of trees, including assessing species, the health of trees, and information about where the trees are in relation to other resources, such as watersheds. Second, where the ordinance protects trees on private property, the ordinance should require developers to perform an on-site tree inventory. Outstanding examples of provisions doing this are found in the ordinances of Austin, Texas² and Prince Georges County, Maryland.³

5. Identification of Protected Trees: This section clearly delineates the characteristics of trees the community wants to protect. Some communities use a simple size measure, protecting only trees, for example, with a diameter at breast height of 30 inches. Others, recognizing that an oak of that size is common while a dogwood that large would be extremely rare, set different size limits for different species. Still others use factors such as age, location and general condition. Some communities also promote the protection of durable or aesthetically pleasing trees while offering less protection to trees unusually prone to breakage during wind or ice storms or trees that drop messy fruit (such as Bradford Pears).

6. Identification of Who Must Comply with the Ordinance: This section identifies the activities that trigger the ordinance and who must and must not comply with it. Some communities do not require tree preservation measures if only small parcels are affected or if small numbers of trees are involved. Tampa, Florida, for example, exempts expansion of single and two family dwellings that do not increase the total floor area on a parcel by more than 15 percent or exceed a cost of \$15,000. Gibbsboro, New Jersey, allows individual lot owners to remove fewer than two trees at any one time or six in any one year.

In addition to protecting trees from disturbance during the development process, many communities also protect trees from excessive or improper pruning. Chesapeake, Virginia⁴ contains an extensive section on tree preservation and implementation in its ordinance. At the same time, San Juan Capistrano, California targets the practice of "topping," in which tree owners reduce major branches to stubs. Specifically, no property owner in certain zones may have his trees "severely trimmed," which the ordinance defines as "the cutting of the branches and/or trunk of a tree in a manner which will substantially reduce the overall size of the tree area so as to destroy

the existing symmetrical appearance or natural shape of the tree in a manner which results in the removal of main lateral branches, leaving the trunk of the tree in a stub appearance." ⁵

7. Administration: This section identifies the agency or individual responsible for ensuring compliance with the tree ordinance. Most communities assign the job to one of four types of agencies: planning and zoning; parks and recreation; public works; or environmental resources. Many communities also have shade tree commissions that, in addition to reviewing and updating the ordinance and related guidelines, may also review applications for permits.

At some point or at some level of discussion, communities will need a professional arborist or forester to assess compliance and provide technical expertise. While only the larger and wealthier cities tend to have such a professional on staff, most communities can retain one in their area.

8. Standards: Somewhere, either in the ordinance or in related regulations, the community should make some reference to the standards to which they intend to hold developers and property owners. Communities may either adopt comprehensive standards on their own or refer to accepted professional standards. For example, Alachua County, Florida, requires compliance with the National Arborist Association Standards for Pruning of Shade Trees when trimming trees on public or private property except in cases of emergency. [6]

9. Enforcement: Ultimately, after all the decisions of what to protect and how to protect it have been made, to be of any value the ordinance must contain some provisions for penalizing violators. Small fines might just be seen as a cost of doing business. However, such measures as linking fines and penalties to the actual value of trees destroyed, considering each tree damaged or removed a separate violation, and invoking penalties for each day the violations persist can have a significant impact on the attitudes of potential violators. [7]

With careful planning, with an ordinance containing all of the above ordinances, and most important of all, with vigorous enforcement and implementation, every community can protect its trees and enjoy the environmental, economic, and aesthetic benefits of tree conservation.

More information: <http://www.scenic.org/tree>

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REFERENCES

The best source of information on how to draft a successful tree conservation ordinance remains Tree Conservation Ordinances, by Christopher J. Duerksen with Suzanne Richman, published in 1993 by the American Planning Association and Scenic America. This book can be ordered online.

The most comprehensive review of individual landscaping ordinances is *U.S. Landscape Ordinances: An Annotated Reference Handbook*, by Buck Abbey. This book can be ordered directly from the publisher, John Wiley & Sons, www.wiley.com.

Several organizations also concern themselves with community tree preservation and landscaping. National organizations include the American Society of Landscape Architects, the National Arbor Day Foundation, the National Tree Trust, and the Society of Municipal Arborists.

1 Fairfax County, Virginia, Erosion and Sedimentation Control and Conservation Ordinance, Pt. 3, Ch. 104-1-1.

2 Austin, Texas, City Code, Chapter 13-2A (Zoning) Section 5187.

3 Prince George's County, Series No 9058201522, A Manual for Tree Preservation in Development Areas, c. 1982.

4 Chesapeake, Virginia, Land Use Code, Section 22.20-520.

5 San Juan Capistrano, California, City Code, Section 9-3.625.

6 Alachua County, Florida, Ordinance, 91-14, Section 4 (1991).

7 Duerksen, Christopher J. and Richman, Suzanne, *Tree Conservation Ordinances*, American Planning Association and Scenic America, Washington, DC 1993.