

Ordinance No. 21-09 ORDINANCE:

To amend Chapter 10.5 of the Rockville City Code, entitled "Forest and Tree Preservation" by amending Article II, entitled, "Forest Stand Delineation and Forest Conservation Plans," Section 10.5-11 entitled, "General Requirements," to reduce the maximum square footage of forest disturbance permitted for a single dwelling unit to be exempt from filing a Forest Stand Delineation and a Forest Conservation Plan; and by amending Article III, entitled, "Retention, Tree Replacement, Afforestation and Reforestation Requirements," Section 10.5-21 entitled, "Retention," to clarify the requirements for priority retention areas and the removal of priority trees, and Section 10.5-22 entitled "Tree Replacement, Reforestation and Afforestation," to reduce the maximum square footage permitted for an existing single recorded residential lot or linear project to be exempt from the afforestation requirements, and to delete reference to the RPR and RPC zones, and Section 10.5-24 entitled "Payment in Lieu of Tree Replacement, Reforestation and Afforestation." to reference the Code of Maryland Regulations in lieu of the State Forest Conservation Technical Manual and the DNR; and by amending Article IV entitled, "Forest Conservation, Maintenance and Management Agreements," Section 10.5-25 entitled, "Short-term maintenance agreements," to reference the City's list of non-native/invasive plants in lieu of the list of such plants no longer maintained by the Maryland Department of Natural Resources; and to make certain other clarifying modifications and amendments to Chapter 10.5 of the Rockville City Code.

WHEREAS, in 1992 the Mayor and Council of Rockville first adopted Chapter 10.5 of the Rockville City Code, entitled "Forest and Tree Preservation in accordance with the State of Maryland Forest Conservation Act;" and

WHEREAS, the State of Maryland has revised the Forest Conservation Act as provided in § 5-1601 et. seq of the Natural Resources Article of the Annotated Code of Maryland, effective October 1, 2009; and

WHEREAS, the Mayor and Council desire to amend and clarify Chapter 10.5 consistent with the revised State Forest Conservation Act.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND that Chapter 10.5 of the Rockville City Code, entitled "Forest and Tree Preservation" be amended to read as follows:

## **CHAPTER 10.5. FOREST AND TREE PRESERVATION**

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### **ARTICLE II. FOREST STAND DELINEATION AND FOREST CONSERVATION PLANS**

#### **Sec. 10.5-11. General requirements.**

(a) Except as otherwise provided this chapter or in the Conservation Manual, a person filing an application for a covered permit or approval shall submit a Forest Stand Delineation and a Forest Conservation Plan as part of, or in connection with, the application.

(b) Exceptions. The submissions referenced in subsection (a) are not required:

(1) Where an application for permit or approval is filed by the owner of a single dwelling unit residential lot in connection with construction or land disturbing activity not involving subdivision of the lot and where less than [forty] twenty thousand ([40,000]20,000) square feet of forest is disturbed.

(2) Where a Final Forest Conservation Plan has been approved within the preceding five (5) years in connection with the same development activity, unless the City Forester determines that there has been a significant alteration in the environment of the site or change in applicable law, policy, or regulation since the approval of the plan.

(3) For a site plan, project plan or site plan or project plan amendment, where a sediment control permit is not required for the development activity, unless the proposed development activity shows disturbance within or adjacent to the critical root zone of significant trees or trees protected by an existing Forest Conservation Easement. This exception applies only to the submission of a Forest Conservation Plan. A Forest Stand Delineation must accompany all applications for site plans, project plans, or amendments thereto, unless exempted by subsections (b)(1), (2), or (4) of this section.

(4) Where an application for subdivision of a tract is filed for the purpose of facilitating the financing or transfer of the tract or portion thereof, and where no additional

development on the tract occurs, provided that the property owner executes and records among the Land Records a Declaration of Intent and/or such other documents, acceptable in form and content to the City Forester and the City Attorney setting forth the obligation for compliance with this chapter in connection with future development of the tract.

(c) ~~The Forest Stand Delineation and Forest Conservation Plans~~ required by this section shall be prepared by, and exhibit the stamp/certification and signature of, a Qualified Preparer as defined in section 10.5-5 of this chapter.

(d) No application for a covered permit or approval is complete until the submissions required by this chapter are accepted as complete by the City Forester. The City Forester may accept submissions substantially consistent with the purpose of this chapter and the Natural Resources Article, Sections 5-1602 through 1612 of the Annotated Code of Maryland.

(e) All covered permits and approvals shall be issued conditioned on approval of, and compliance with a Forest Conservation Plan.

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### **ARTICLE III. RETENTION, TREE REPLACEMENT, AFFORESTATION AND REFORESTATION REQUIREMENTS**

#### **Sec. 10.5-21 Retention.**

(a) The Forest Conservation Plan shall give priority consideration to the retention of existing forest cover and individual significant trees and to minimizing the need for reforestation and tree replacement. Except as otherwise provided herein, existing forest cover and individual trees shall be retained to the break-even point.

(b) Priority Retention Areas. Except as provided in subsection (c) below, the following trees, shrubs, plants, and specific areas are considered priority for retention and protection and must be retained, protected, and left in an undisturbed condition.

(1) Trees, shrubs and plants located in certain sensitive areas, such as the one hundred (100) year floodplain, streams and stream-buffer areas, steep slopes, nontidal wetlands, and critical habitats;

(2) Contiguous forests;

(3) Priority forests as described in the State Forest Conservation Technical Manual;

(4) Rare, threatened, or endangered species as referred to in [[the State Forest Conservation Technical Manual]]COMAR 08.19.03.01 Article VII 7.2C;

(5) Trees associated with a historic site [or designated as a champion tree] or structure;

(6) Trees designated as a champion tree;

[(6)](7) Certain [champion trees] specimen trees or significant trees that are deemed rare, or of exceptional quality or size within the City of Rockville;

[(7)](8) Forested stream buffers; and

[(8)](9) Forested park buffers.

(c) The City Forester may approve clearing within priority retention areas if all of the following conditions have been met to the satisfaction of the City Forester:

(1) Priority forest has been retained to the break-even point for forest conservation or it has been demonstrated to the satisfaction of the City Forester in accordance with subsection (c)(4) of this section that clearing below the break-even point is warranted. The break-even point shall be calculated using the entire tract area and all existing forest within the tract;

(2) On sites that do not contain priority forest equal to the break-even point, priority trees, as described in subsection (b)(4), (5), (6) and [(6)](7) above, have been retained to the afforestation level;

(3) All afforestation, reforestation and tree replacement requirements are being met on-site; and

(4) Written justification signed by the applicant has been provided for clearing within priority retention areas or below the break-even point. Said justification must contain the following information:

a. How clearing within priority retention areas or below the break-even point is required to accommodate one or more of the following:

- i. Right-of-way dedications
- ii. Site access
- iii. Utility connections
- iv. Other City development standards
- v. Site conditions and best design practices

b. Why the development cannot be altered to preserve priority retention areas. Cost, alone, or the desire not to alter preferred site design shall not be sufficient justification for not altering the development to preserve priority retention areas.

c. How all techniques for retention have been exhausted.

(d) Non-priority retention areas. On sites where there is insufficient priority retention area to satisfy the forest retention requirements, these requirements shall be satisfied through the retention of non priority areas provided that:

- (1) Priority areas are protected in retention areas;
- (2) A minimum five thousand (5,000) square foot protection zone is specified;
- (3) All critical root zone areas are included in the protection area; and
- (4) The non priority areas provide one or more of the following benefits:
  - a. A vegetative buffer between two different land uses.
  - b. Wildlife habitat.
  - c. Water quality.
  - d. Reduces runoff from erosion.
  - e. Reduces flooding.
  - f. Protects steep slopes.
  - g. Provides areas for recreation and outdoor education activities.
- (5) Clearing below the break-even point must be justified in accordance with the requirements of subsection (c)[.](4) of this section.

(e) Priority Trees. Written justification signed by the applicant and approved by the City Forester must be provided for removal of all trees listed in subsection (b)(4), (5), (6) and (7) above. Said justification must contain the following information:

(1) How removal of the priority tree(s) is required to accommodate one of the following:

- a. Right-of-way
- b. Site access
- c. Utility connections
- d. Other City developmental standards.
- e. Site conditions and best design practices

(2) Why the development cannot be altered to preserve priority trees. Cost alone, or the desire not to alter the preferred site design shall not be sufficient justification for not altering the development to preserve priority trees.

(3) How all techniques for retention have been exhausted.

**Sec. 10.5-22. Tree replacement, reforestation and afforestation.**

(a) Tree replacement and reforestation. After all efforts to maximize forest and tree preservation on-site, as required in Section 10.5-21, have been exhausted, the Forest Conservation Plan shall provide for tree replacement, afforestation and reforestation on-site as follows:

(1) Tree Replacement. Individual significant trees removed, whether within the forest or outside the forest, shall be replaced at the following rates with similar species:

Size of Significant Tree Removed (inches)	Minimum 2 1/2-Inch Caliper Tree Replacement (number of trees)
12-18 d.b.h.	1
greater than 18 -24 d.b.h.	2
greater than 24 d.b.h.	3

Replacement of a specimen or champion tree shall be at twice the above rate.

(2) Reforestation. For all existing forest cover measured to the nearest one hundred (100) square feet cleared on the tract area:

a. Reforestation shall be at the rate of one-quarter (1/4) of the forested area removed above the forest conservation threshold established in subsection (c) of this section for the zone in which the tract is located; and

b. Reforestation shall be at the rate of three times the forested area removed below the forest conservation threshold established in subsection (c) of this section for the zone in which the tract is located.

c. The Conservation Manual may provide for:

1. A credit against the area required to be reforested for:

i. Forested areas retained above the conservation threshold;

and

ii. Individual significant trees retained outside of the forest retention areas, where seventy-five (75) percent of the critical root zone is preserved; and

iii. Street trees planted, not to exceed twenty-five (25) percent of the total reforestation requirement.

(b) Afforestation.

(1) Afforestation is not required for covered activities conducted:

a. On a tract with an area of less than forty thousand (40,000) sq. ft; or

b. On an existing single recorded residential lot of any size, provided that the lot is not subdivided and the covered activity does not result in the cutting, clearing, or grading of more than [forty] ~~twenty~~ thousand ([40,000]~~20,000~~) square feet of forest.

c. On a linear project, as defined by the State Forest Conservation Technical Manual, provided that the activity does not result in forest clearing in excess of [forty] ~~twenty~~ thousand ([40,000]~~20,000~~) square feet.

(2) Where forest cover on a tract prior to development activity is less than the percentage of coverage established in subsection (c) of this section as the afforestation level for the zone in which the tract is located, the Conservation Plan shall provide for the afforestation of the tract to the applicable afforestation level.

(3) Forest cut or cleared below the required afforestation level, in accordance with Sec. 10.5-21, shall be replaced at a rate of three times the area removed and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

(4) The Conservation Manual may provide for

a. A credit against the area required to be afforested for:

(i) Individual significant trees retained outside of the forest retention areas, where seventy-five (75) percent of the critical root zone is preserved; and

(ii) Street trees planted, not to exceed twenty-five (25) percent of the total afforestation requirement

b. Calculation of afforestation requirements based on less than the tract area where seventy-five percent (75%) of a tract area has previously been developed and no more than twenty-five percent (25%) of the tract area will be disturbed.

(c) Conservation thresholds and afforestation levels.

Applicable Zones	Conservation Threshold (percent)	Afforestation Level (percent)
R-400, R-200	30	20
R-90, R-75, R-60, R-150	25	15
R-40, RMD10, RMD15, RMD25	15	15
I-L, I-H, [RPR, RPC,] MXT, MXC, MXNC, MXB, MXE, MXCD, MXTD	15	15

For planned developments the thresholds and levels are those applicable to the designated equivalent zone for each planned development, as set forth in Chapter 25 (Zoning Ordinance), Article 14.

(d) Minimum tree cover. The afforestation level shall be the minimum amount of tree cover to be provided on site, except in the [RPC, RPR,] MXCD, MXTD and MXNC zones, where the minimum tree cover shall be ten percent (10%) of the tract area. Replacement trees, reforestation, afforestation and existing trees can be used to satisfy tree cover requirements. Tree cover requirements shall be calculated and shown on the Forest Conservation Plan.

(e) The Conservation Manual may provide for implementation of tree replacement, reforestation, and afforestation requirements in stages tied to phased development activity. Tree replacement, reforestation, and afforestation shall be accomplished within one (1) year or two (2) growing seasons after completion of the development project, as specified on the approved Forest Conservation Plan.

**Sec. 10.5-24. Payment in lieu of tree replacement, reforestation and afforestation.**

(a) If an applicant provides written justification demonstrating that tree replacement, reforestation or afforestation cannot be accomplished on-site, the applicant may, with the approval of the City Forester, contribute to the City's Forest Conservation Fund and Park Maintenance Fund an amount in lieu of tree replacement, reforestation or afforestation as set forth in the Conservation Manual. Said justification must contain the following information:

(1) How planting space is limited to accommodate one or more of the following:

- i. Right-of-way dedications;
- ii. Site access;
- iii. Utility connections;
- iv. Other City development standards.

(2) Why the development cannot be altered to provide adequate planting space. Cost, alone, or the desire not to alter preferred site design shall not be sufficient justification for not altering the development to preserve priority retention areas.

(3) How the minimum tree cover requirement, as determined by the afforestation threshold, is being met on-site.

(b) The City may use funds from the City Forest Conservation Fund for those purposes authorized by [[the State Forest Conservation Technical Manual]]COMAR 08.19.02.02(I) [[or the DNR]]. Funds shall not be used to plant or maintain trees on single dwelling unit residential lots.

(c) The City may use the funds from the Park Maintenance Fund for the purposes of installing, maintaining, and replacing trees, shrubbery, and other landscaping on City-owned parkland. Maintenance may include control and eradication of invasive/exotic plants. Funds shall

not be used for the installation, maintenance, or replacement of any hardscape, except to the extent that such hardscape is deemed by the City to be necessary to protect and preserve plant material.

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#### ARTICLE IV. FOREST CONSERVATION, MAINTENANCE AND MANAGEMENT AGREEMENTS

##### Sec. 10:5-25. Short-term maintenance agreements.

(a) Where significant tree replacement, reforestation, or afforestation is required, the Final Forest Conservation Plan must include a binding five-year maintenance agreement as specified in COMAR 08.19.05.01 and the Forest Conservation Manual.

(b) The maintenance agreement shall provide for the maintenance of all trees planted in accordance with an approved Final Forest Conservation Plan to insure their protection and the satisfactory establishments of forests. The maintenance agreement shall require replacement plantings if survival rates fall below required standards as provided in the State's Conservation Manual and shall provide for access by representatives of the City to the afforested and reforested areas and other areas covered by the maintenance agreement. The maintenance agreement shall require eradication and control of [exotic] non-native and [ / ] invasive plants as [listed by] identified on the [Maryland Department of Natural Resources] City of Rockville's Non-Native and Invasive Plant List for the duration of the maintenance period.

(c) The applicant shall submit documentary evidence of the applicant's legal right to implement the proposed maintenance agreement.

(d) The maintenance period may be extended for additional growing seasons to ensure that:

- (1) supplemental planting needed to meet forest conservation requirement becomes established;
- (2) Effective exotic and invasive control is completed; and
- (3) All aspects of the Approved Forest Conservation Plan have been satisfactorily met.

(e) The maintenance agreement shall be accompanied by a bond issued by a surety company authorized to do business in the state, or an irrevocable letter of credit issued by a financial institution authorized to do business in the state, or such other security satisfactory to the City Manager and the City Attorney in an amount equal to the estimated cost of significant tree replacement, afforestation, and reforestation (or the amount of the contribution due the City Forest Conservation Fund) plus the estimated cost of forest and significant tree protection measures.

- (1) The bond or other security shall run to the Mayor and Council and shall secure that the retention, tree replacement afforestation, reforestation and maintenance agreement

are conducted and maintained in accordance with the approved Forest Conservation Plan or that the required contributions have been made to the City Forest Conservation Fund.

(2) The security shall be released upon the determination of the City Forester that all requirements of the Forest Conservation Plan and the short-term maintenance agreement have been fulfilled. The security may be partially released based on the successful implementation of phases of the Conservation Plan, if the maintenance agreement provides for said partial release.

(3) The security may be subject to forfeiture upon the failure of the applicant to comply with:

a. An administrative order pertaining to the approved Forest Conservation Plan;

b. Any element of the approved Forest Conservation Plan;

(4) The City Manager shall notify the obligee by certified mail, of the intention of the City to seek forfeiture of the security.

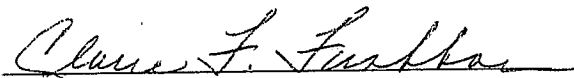
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NOTE:

[Brackets] indicate material deleted  
Underlining indicates material added  
Asterisks \*\*\* indicate material unchanged by this Ordinance  
[[Double Brackets]] indicate material deleted after introduction  
Double Underlining indicates material added after introduction

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I hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Mayor and Council at its meeting of October 12, 2009.

  
Claire F. Funkhouser, City Clerk