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CHAPTER 12B URBAN FOREST

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Section 12 B-1. PURPOSE

The purpose of this chapter is to protect, preserve, and promote Mount Rainier’s urban forest, which is part of a larger ecosystem that contributes significantly to the control of air, noise, and visual pollution; moderates climate extremes; promotes sound energy conservation; and has significant aesthetic value affecting property values and the community’s quality of life. Because the City’s urban forest is located in the Anacostia River and Chesapeake Bay watersheds, its absorption of stormwater supports the biological and hydrological integrity of these watersheds. Regulation of actions affecting the urban forest provides mutual benefits to City residents and property owners.

Section 12B-2. DEFINITIONS

“Certified Arborist” means an International Society of Arboriculture certified arborist.

“City” means the City of Mount Rainier and its officers, employees, and agents.

“City Manager” means the City Manager or his or her designee.

“City property” means City rights-of-way and City-owned property.

“City rights of way” are properties over which the City has an easement.

“Crown” means the limbs, branches, twigs, leaves, and buds of a tree.

“Department” means the City of Mount Rainier Department of Public Works.

“Diameter at breast height” or “DBH” of a tree means the diameter in inches of the tree taken at 4.5 feet above the ground in accordance with the measurement instructions set forth in the most recent version of the United States Forest Service’s Forest Inventory and Analysis National Core Field Guide. When a tree forks below 4.5 feet, it is considered two trees and DBH is measured on each stem at 4.5 feet above the ground on the high side.

“DNR Forest Service” means the Maryland Department of Natural Resources Forest Service.

“Exceptional tree” means a tree designated as such by the Mayor and City Council (see 12B-4).

“Hazardous tree” means a defective, diseased, dying or dead tree that also poses a high risk of failure or fracture with the potential to cause injury to people or damage to property. A tree may be diseased but not pose a high risk of failure or fracture.

“Licensed tree expert” means a person licensed as a tree expert under Maryland law.

“Nursery stock tree” means a tree that meets the standards established by the American Standard for Nursery Stock published by the American Association of Nurserymen (Publication No. ANSI Z60.1-1990) as revised and amended from time to time.

“Park tree” means a tree located on City property that is not a street tree.

“Protected private tree” means a tree located on private property that at 4.5 feet above the ground measures 56.55 inches or more in circumference, or has a DBH of 18 inches or more.

“Public property” means all government easements, public rights-of-way, and all property owned by the City, county, state, or federal governments, or the Maryland-National Capital Park and Planning Commission.

“Public right-of-way” means that land the title to which, or an easement for which, is held by the State, county, or a municipality for use as a public right of way. Public right-of-way includes any road, street, alley, or other easement or right-of-way area benefitting more than one parcel of land.

“Public utility” means a public utility company and a public utility company’s officers, employees, and agents.

“Roadside tree care expert” means an individual who:

- A. Is designated to supervise the City’s street tree planting and maintenance operations;
- B. Has passed the Maryland DNR Forest Service's examination for Roadside Tree Care Experts; and
- C. Has been approved by the DNR Forest Service as qualified to supervise a government's tree care program.

“Roadside Tree Law” means the State statute at Natural Resources Article Section 5-401 et seq., and Code of Maryland Administrative Regulations 08.07.02.01 et seq.

“Street tree” means a tree the trunk of which grows all, or in part, within the public right of way and is protected by the State’s Roadside Tree Law.

“Tree Inventory” is a list of all trees on City property, including their species, location, and condition, and all available planting sites for trees.

“Tree permit” means a tree permit issued by the City pursuant to this chapter, unless specific reference is made to a Maryland Department of Natural Resources Roadside Tree Permits.

“Tree Plan” is the document approved by the Mayor and City Council for the planting of trees and the maintenance of the urban forest within the City of Mount Rainier. The Tree Plan shall include suggestions for the spacing of trees, biodiversity, and curb and sidewalk treatments.

“Tree Replacement Fund” is a dedicated City fund used to purchase, plant and maintain public trees.

“Urban forest tree” for purposes of this chapter means the following trees:

- A. trees located on City property, including public rights-of-way, within the City of Mount Rainier;
- B. protected private trees (56.55” in circumference or more at 4.5 feet, or DBH of 18” or more at 4.5 feet);
- C. exceptional trees designated by the City Council; and
- D. trees that are required to be planted or maintained as a condition of issuance of a tree permit.

SECTION 12B-3. TREE COMMISSION

A. This Chapter hereby establishes a Tree Commission for the City of Mount Rainier.

B. The Tree Commission shall consist of at least five (5) but no more than seven (7) members, all of whom reside or own residential property in the City of Mount Rainier, who shall be appointed by the Mayor and City Council. No individual may serve as a Tree Commissioner while serving as the City Arborist or Roadside Tree Care Expert.

C. Terms of office. Members are appointed for a term of two (2) years. Members may serve more than one (1) term consecutively. In the event that a vacancy occurs during the term of a member, a successor shall be appointed by the Mayor and City Council. Commission members shall serve without pay or compensation.

D. Duties and responsibilities. The Tree Commission shall have the following duties and responsibilities:

1. In cooperation with the City Manager, the City Arborist, the Roadside Tree Care Expert, and State foresters, develop, maintain, and revise the City's Tree Plan.

2. Educate City staff, residents, property owners, and business owners about the benefits of the urban forest and methods and practices for the preservation and promotion of the urban forest.

3. Assist in maintaining a Tree Inventory for the City;

4. Suggest updates for the City's Tree Plan to the Mayor and City Council as needed.

5. Present an annual report and budget request to the Mayor and City Council by March 1 each year;

6. Review preliminary tree permit application decisions for exceptional trees and take appeals of initial tree assessments and tree permit decisions for private property trees.

7. Review tree removal permits issued for City property trees, hold public hearings if objection is filed for the proposed removal of a City property tree, and advise the City Manager and City Council.

E. Operations. The Tree Commission shall choose officers, adopt rules of procedure and keep public records of its proceedings. A majority of the members shall constitute a quorum for the transaction of business. A majority of the Tree Commission members is required to amend the rules of procedure. The Tree Commission shall comply with the Maryland Open Meetings Act.

SECTION 12B-4. EXCEPTIONAL TREES

A. Any person, the Tree Commission, or City Council may nominate any public or private property tree as "exceptional" under this Chapter.

- B. Designation. The Mayor and City Council, by resolution, may designate as an exceptional tree any private or public property tree that it determines to be of unique and intrinsic value to the general public because of its size, age, historic association or ecological value or any tree designated a Prince George’s County Champion, Maryland State Champion, United States Champion or World Champion by American Forests.
- C. The City Manager shall keep a record of all exceptional trees and their locations, and shall provide written notice to the residents and owners of the property upon which an exceptional tree is located and the adjoining properties at the following times: 1) at the time of designation, and 2) upon transfer of ownership of the property. A list of exceptional trees shall be maintained on the City’s website and annually published in the City newsletter. Exceptional trees shall be recorded in the City’s Tree Inventory.
- D. The City shall install a commemorative metal plaque on each exceptional tree.

SECTION 12B-5. ROADSIDE TREE CARE EXPERT

- A. The City Manager may designate or contract with a Roadside Tree Care Expert. The Roadside Tree Care Expert must be certified as a Roadside Tree Care Expert by the Maryland DNR Forest Service.
- B. The City Manager shall apply for a Maryland DNR Roadside Tree Blanket Permit and designate the City Roadside Tree Care Expert as the person supervising the City’s roadside tree work.
- C. If the City does not hold a Roadside Tree Blanket Permit, the City Manager shall apply for Maryland Department of Natural Resources Roadside Tree Permits as necessary for the City to maintain or remove street trees.
- D. Duties. The Roadside Tree Care Expert shall:
 - 1. Supervise all work performed by the City under a Maryland Department of Natural Resources Roadside Tree Permit;
 - 2. Assist in maintaining the City’s Tree Inventory; and
 - 3. Perform tree assessments and issue decisions regarding tree permit applications that impact street trees.
- E. If the Roadside Tree Care Expert is a Certified Arborist, the Roadside Tree Expert may also serve as the City Arborist.
- F. The Roadside Tree Care Expert shall not have any conflicts of interest, financial or otherwise, in regards to contractors hired to perform tree maintenance on City street trees.

SECTION 12B-6. CITY ARBORIST

A. The City Manager shall appoint or contract with a person who shall serve as the City Arborist. Such person must be a Certified Arborist and be a Licensed Tree Expert in Maryland.

B. The City Arborist shall:

1. advise the City Manager, Department, Tree Commission and Roadside Tree Care Expert upon request;
2. perform initial tree assessments and issue opinions regarding tree permit applications and tree permit waivers;
3. supervise all tree work performed on City property other than street trees (street tree work is supervised by the Roadside Tree Care Expert); and
4. perform such other duties as the City Manager may direct.

C. The City Arborist shall not have any conflicts of interest, financial or otherwise, in regards to contractors hired to perform tree maintenance on City and private property in the City. The City Arborist may not perform paid removal or maintenance work on trees for which he or she has performed a tree assessment.

D. The City Arborist also may be designated the City's Roadside Tree Care Expert if so certified.

SECTION 12B-7. PRIVATE PROPERTY—TREE WORK FOR HIRE IN THE CITY

A. No person shall perform tree pruning, tree removal or other tree work for hire, including consulting, insect and disease mitigation, abiotic mitigation, and tree preservation, without supervision, involving a site visit, by a Licensed Tree Expert (LTE) in good standing with the Maryland Department of Natural Resources.

B. No person shall perform tree care consulting for hire without being a Licensed Tree Expert (LTE) in good standing with the Maryland Department of Natural Resources.

C. All tree work and consulting will be done according to arboriculture industry guidelines: ANSI A300 (Parts 1 and 2) and ANSI Z133.1 (as amended).

D. Contractors performing tree work for hire must be licensed, bonded, and insured.

E. A property owner who hires a person who is not in compliance with the requirements of this Section is subject to a municipal infraction per Section 12B-24.

SECTION 12B-8. PRIVATE PROPERTY—TREES PROTECTED

A. This Section applies to urban forest trees located on private property, which are defined as follows:

1. Protected private trees (measuring 56.55 inches or more in circumference at 4.5 feet above ground or 18 inches or more DBH);
2. Trees that were required to be planted as a condition of issuance of a tree permit;

3. Exceptional trees on private property (see Section 12B-4).

B. Trees on private property within a public right of way or easement (e.g., street trees) are protected as City Property trees (see Section 12B-17).

C. Actions by public utilities. State law encourages public utilities to remove obstacles to reliable service. The City shall not deny a public utility the right to trim or remove a private property tree; however, the property owner is responsible for requesting an initial tree assessment by the City Arborist, applying for any applicable tree permit or waiver, paying the fees, and mitigating any tree removal as required in this chapter.

SECTION 12B-9. PRIVATE PROPERTY—INITIAL TREE ASSESSMENTS.

A. Except as provided in subsection (B) of this Section, an initial tree assessment is required prior to taking the following actions on a protected private tree or exceptional tree:

1. Removing, relocating, destroying, or topping;
2. Pruning more than 25% of the live crown within a one-year period;
3. Pruning live limbs with a diameter equal to or greater than 30% of the DBH of the tree;
4. Cutting a root with a diameter of greater than one inch;
5. Taking any other action that would significantly and permanently detract from a tree's health or growth;
6. Conducting any of the following activities within 50 feet of an exceptional tree or within 30 feet of any other urban forest tree:
 - a. land disturbing activities, such as raising or lowering existing grade, or excavating more than three inches in depth over an area in excess of 25 square feet;
 - b. parking or operating vehicles or heavy equipment or storing construction materials on an unpaved surface;
 - c. constructing or placing a structure other than a fence; or
 - d. paving in excess of 25 square feet with an impervious surface.

B. A tree assessment shall not be required for action required:

1. On an emergency basis (with no time to obtain an assessment) to prevent harm to life or property. The City Manager in consultation with the City Arborist shall determine when an emergency exists or existed;
2. If Prince George's County has approved a landscape plan for the property in conjunction with approval of a development site plan.

C. Initial tree assessments.

1. Any person intending to conduct an activity described in subsection (A) of this Section must submit a written request by letter or email for an initial tree assessment to the City Manager. The City Manager will secure written permission from the

- property owner to allow necessary City staff and the City Arborist to access the property to make the tree assessment.
2. Prior to sending the City Arborist to the property for an initial assessment, the City Manager may have a code enforcement officer or other qualified staff member evaluate whether the tree is large enough to be a protected private tree, is protected as a replacement tree required by a prior tree permit, or is on the list of City-designated exceptional trees.
 3. The City Arborist under the direction of the City Manager shall conduct a tree assessment and advise the property owner whether a tree permit is required to proceed with the proposed activity, if the proposed activity is not covered by the ordinance, or if a waiver of the permit requirements can be issued.
 4. There is no charge to the property owner for the tree assessment.
 5. The City Arborist shall take photos of the tree and potential area of disturbance during the tree assessment as a record.
 6. Initial tree assessment reports shall be submitted to the City Manager and property owner in writing on a form approved by the City Manager that includes the following information: tree species; DBH and circumference; approximate age; approximate height; overall condition; description of the proposed action that would affect the tree; the likelihood of harm to the tree or surrounding trees; and determination as to whether the tree is dead, dying or hazardous. If the proposed activity would impact a street tree, the City Arborist shall describe the potential impact in the assessment and provide a copy to the Roadside Tree Care Expert. The City Arborist or City Manager shall check the list of City-designated exceptional trees and indicate if the tree itself is exceptional or if a nearby tree is listed as exceptional.
 7. If the City Arborist determines the tree is dead, dying, or hazardous (see definition at Section 12B-2), the City Arborist shall inform the property owner that a tree permit waiver can be issued per Section 12B-10 to remove the tree. The property owner is responsible to apply in writing for the waiver from the City Manager.
 8. If the City Arborist determines during the initial assessment that the proposed activity is not covered under subsection (A) or the activity is in compliance with subsection (A) (e.g., less than 25 % of the live crown will be removed within a one-year period), then the City Arborist will state that conclusion in the initial tree assessment report.

D. Failure to obtain an initial tree assessment before conducting any of the activities described in subsection (A) of this Section shall be a municipal infraction.

E. If the activity on private property will impact the health of a street tree protected under State law, the Roadside Tree Care Expert or Maryland DNR Forest Service shall review the proposed activity.

F. Any owner of property on which an exceptional or protected private tree grows and that may be impacted by nearby proposed tree work, construction or grading may request a tree assessment to determine whether the tree or proposed activity is regulated under this Chapter.

G. Appeals of initial assessments. The requestor of the initial assessment may appeal the opinion of the City Arborist to the Tree Commission. The appeal must be in writing and directed to the City Manager, who will inform the Tree Commission of the appeal. The Tree Commission has

15 business days from notice provided by the City Manager to consider the appeal. The Tree Commission, after holding a public hearing and evaluating presented evidence, and in compliance with the Maryland Open Meetings Act, may uphold the opinion of the City Arborist that a tree permit is required, determine that a tree permit waiver should be issued, or modify the City Arborist's assessment. The Tree Commission's decision is final. The applicant may challenge whether the arborist's initial assessment accurately determined that any of the following are proposed and therefore a tree permit is required:

1. Removing, relocating, destroying, or topping;
2. Pruning more than 25% of the live crown within a one-year period;
3. Pruning live limbs with a diameter equal to or greater than 30% of the DBH of the tree;
4. Cutting a root with a diameter of greater than one inch;
5. Taking any other action that would significantly and permanently detract from a tree's health or growth;
6. Conducting any of the following activities within 50 feet of an exceptional tree or within 30 feet of any other urban forest tree:
 - a. land disturbing activities, such as raising or lowering existing grade, or excavating more than three inches in depth over an area in excess of 25 square feet;
 - b. parking or operating vehicles or heavy equipment or storing construction materials on an unpaved surface;
 - c. constructing or placing a structure other than a fence; or
 - d. paving in excess of 25 square feet with an impervious surface.

H. If a public utility will perform the proposed work, compliance with Section 12B-8(C) is required. The initial tree assessment report shall state which utility is performing the work and why.

SECTION 12B-10. PRIVATE PROPERTY—WAIVER OF TREE PERMIT REQUIREMENTS

A. The City Arborist during the initial tree assessment may determine that the tree is dead, dying, or hazardous (see definition at Section 12B-2). In such a case, the City Arborist's written assessment shall advise the City Manager and property owner that the requirement to obtain a tree permit for the removal of the tree should be waived because of the tree's condition.

1. The property owner is responsible for applying in writing for a waiver from the City Manager. The initial tree assessment report shall be attached to the permit application.

2. The applicant shall pay a \$25 fee for each waiver. The fee shall be deposited into the Tree Replacement Fund prior to issuance of a tree permit waiver. In cases of financial hardship, the City Manager may reduce or waive the fee.

3. The City Manager shall issue a tree permit waiver to the property owner and inform him or her that the City encourages the planting of replacement trees on a voluntary basis.

4. The City Manager shall keep a record of each waiver for a minimum of 5 years.

B. The City Manager will provide the property owner (applicant) with a notice of the waiver which must be posted on the property beginning upon receipt of the waiver and continuing until seven calendar days after the completion of the tree removal. The notice shall state that the tree is being removed because it is dead, dying, or hazardous. The waiver notice must be visible from the public street. The notice shall include language regarding the requirements for persons who conduct tree work for hire in the City (see Section 12B-7).

C. The City Manager shall notify the Tree Commission and the Mayor and Council of the issuance of a waiver.

D. The City Manager may waive the requirements for a tree permit if Prince George's County has approved a landscape plan for the property in conjunction with a development site plan approval. A copy of the approved county plan must be provided to the City Manager. The City Manager shall provide a copy of the approved county or state plan to the Tree Commission and City Council. In this situation, an assessment by the City Arborist is not necessary.

E. If the City Arborist determines that the tree's poor condition was caused by purposeful actions to harm the tree (e.g., poisoning, girdling, excessive pruning, root injury, etc.), the property owner is not eligible for a tree permit waiver and must apply for a tree permit before action is taken to remove the tree. The property owner may be in violation of Section 12B-8 for actions that harmed a protected tree.

SECTION 12B-11. PRIVATE PROPERTY—TREE PERMIT APPLICATIONS

A. If the City Arborist during the initial assessment determines that a tree permit or permits will be required for the proposed activity and the property owner wishes to proceed, the property owner may appeal the assessment per Section 12B-9(G), or accept the arborist's assessment and apply for a tree permit for the proposed activity. A separate permit application is required for each tree.

B. A \$50 fee for each permit application is required. The fee shall be deposited into the Tree Replacement Fund.

C. The City Manager will create a tree permit application form that will include space for a rough diagram of the location of each tree and call for the property owner to explain the proposed action on an urban forest tree, the reasons for the proposed action, and provide permission for City staff and the City Arborist to access the property to evaluate the tree or trees. The tree permit application shall notify the applicant that permit approval is conditioned on the requirements of Section 12B-13, including tree replacement and a tree protection plan.

D. The initial tree assessment report from the City Arborist (see 12B-9) shall be attached to the completed tree permit application.

E. Public Utilities. If a public utility will perform the proposed action on the urban forest tree, the property owner shall apply for the tree permit, pay the application fee, and provide written confirmation from the public utility that it will be performing the work on the tree. The confirmation must include an estimate of the percentage of the tree's canopy that will be removed or a statement that the tree is being removed. If the tree will be removed, the property owner shall mitigate the loss as specified in Section 12B-15. The initial tree assessment report from the City Arborist (see 12B-9) shall be attached to the completed tree permit application.

SECTION 12B-12. PRIVATE PROPERTY—TREE PERMIT APPLICATION EVALUATION

A. The City Arborist is responsible for evaluating tree permit applications. Evaluation of a permit application augments the initial tree assessment. When evaluating a tree permit application, the City Arborist shall consider the factors set forth in subsection (B) of this Section. The Tree Commission shall consider the factors set forth in subsection (B) of this Section when reviewing permit appeals.

B. The following factors shall be considered in evaluating a tree permit application and addressed in a written report to the City Manager:

1. The extent to which the tree clearing, pruning, or activity that might harm the tree is necessary to achieve proposed development or land use, and the potential mitigating effects of imposing tree protection measures as a condition of the permit.
2. Any hardship that the applicant will suffer from a modification or rejection of the permit application or the imposition of tree protection requirements or other conditions.
3. Hazards that the tree poses to persons or property.
4. The desirability of preserving any tree because of its age, size, historic significance, or outstanding quality.
5. The extent of tree canopy cover that will remain near the tree to be removed or that will be placed at risk by the proposed activity.
6. The general health and condition of the tree.
7. The desirability of the tree species as a part of the City's urban forest.
8. The location of the tree in relation to utilities, structures and the use of the property.
9. Potential harm to urban forest trees on adjacent private and public property.

C. The City will permit no more than two living trees larger than 24 inches DBH (75.39 inches in circumference) to be removed from a given residential property within a period of five years unless necessary to protect persons or property from a hazardous tree. In the case of apartment complexes with multiple residential buildings, the restriction applies for each building address in the complex.

D. The City will permit no more than one living tree larger than 24 inches DBH (75.39 inches in circumference) to be removed from a non-residential private property within a period of five years unless necessary to protect persons or property from a hazardous tree.

E. The permit restrictions of Section 12B-12(C) and 12B-12(D) may be waived by the City Council after the Tree Commission is given the opportunity to provide written comment. The City Council will consider the factors in Section 12B-12(B) when deciding on a waiver request.

F. Public utility work. If a public utility will perform the proposed action on the urban forest tree, the application shall be approved without evaluation by the City Arborist after the applicant pays the application fee. If the tree is being removed, the applicant must comply with the mitigation requirements of Section 12B-15.

SECTION 12B-13. PRIVATE PROPERTY—TREE PERMIT APPROVAL

A. Urban forest trees on private property.

1. If after preparing the report required by Section 12B-12, and using the factors in Section 12B-12 to evaluate the proposed work in the tree permit application, the City Arborist determines that the factors weigh in favor of issuing a tree permit, then the City Arborist may put conditions on the permit in regards to protecting other trees during the tree work and inform the City Manager that the permit should be approved.

2. Except as provided in subsections B and C of this Section, for all urban forest trees located on private property the City Manager shall:

a. Secure a written agreement with the applicant if a tree is being removed to mitigate the loss of the tree or trees as specified in Section 12B-15 and comply with any conditions placed on the permit approval by the City Arborist;

b. Require submission to the City of all necessary County and other permits, licenses, and approvals that are required for the construction or development of the property;

c. Require a written agreement to a tree protection plan that allows inspection of the property by the City to verify that all required tree protection devices are in place;

d. If a contractor for hire will perform the tree work, require proof of compliance with Section 12B-7 (Tree Work for Hire in the City).

e. Maintain a record of each tree permit for a minimum of 5 years.

3. If the conditions have been met, the City Manager shall issue a permit to the applicant and notify the Tree Commission, the Mayor and City Council, of the issuance of the permit. The City Manager's decision is final.

B. Impact on public property trees:

1. If the activity on private property will impact a tree on public property (e.g., disturb of a public tree's canopy or roots), after the City Arborist determines that the tree permit application is complete, that the criteria set forth in Section 12B-12 indicate that the

applicant is entitled to a tree permit, that the applicant has executed an appropriate tree protection plan agreement and that any appropriate preconditions for issuance of a tree permit have been met, then the City Manager shall notify the applicant, the Tree Commission, the Roadside Tree Care Expert, the Mayor and City Council, and the adjoining property owners that the City has granted preliminary approval of the application. The preliminary approval of the application does not authorize the applicant to take any action regarding an urban forest tree.

2. If the proposed activity will damage a street tree's roots that exceed one inch in diameter or require the trimming of a street tree's branches, the Roadside Tree Care Expert or the Maryland DNR Forest Service shall review the proposed activity as required under State law.

3. If a public property tree would be impacted, within two business days of preliminary approval, the City Manager shall post notice of the preliminary approval of the application on the property in question in plain view from the public right of way. The notice must describe the procedure and time limit for filing objections to the preliminary approval of the application.

4. Before issuing the tree permit, the City Manager shall ensure compliance with the following conditions:

a. Secure a written agreement with the applicant if a tree is being removed to mitigate the loss of the tree or trees as specified in Section 12B-15 and comply with any conditions placed on the permit approval by the City Arborist;

b. Require submission to the City of all necessary County and other permits, licenses, and approvals which are required for the construction or development of the property;

c. Require a written agreement to a tree protection plan minimizes impact on public property trees and that allows inspection of the property by the City to verify that all required tree protection devices are in place;

d. If a contractor for hire will perform the tree work, require proof of compliance with Section 12B-7 (Tree Work for Hire in the City).

5. If an objection is filed with the City Manager, the City Manager shall notify the Tree Commission within 2 business days and the Tree Commission shall have 15 business days after the time for filing objections has passed to hold a public hearing and consider the preliminary decision which it may affirm, reverse, or modify. The Tree Commission decision is final. If the Tree Commission takes no action within the prescribed time, then the preliminary decision shall become final, and the applicant can proceed with the proposed activity subject to any conditions imposed upon the permit and subsections 12B-13(B)(4).

C. Exceptional trees.

1.If the activity on private property will impact an exceptional tree, the City Arborist determines that the tree permit application is complete, that the criteria set forth in Section 12B-12 indicate that the applicant is entitled to a tree permit, that the applicant has executed an appropriate tree protection plan agreement, and that any appropriate preconditions for issuance of a tree permit have been met, then the City Manager shall notify the applicant, the Tree Commission, the Mayor and City Council, and the adjoining property owners that the City has granted preliminary approval of the application. The preliminary approval of the application does not authorize the applicant to take any action regarding an exceptional tree.

2. Within two business days of this notification, the City Manager shall post notice of the preliminary approval of the application on the property in question in plain view from the public right of way. The notice must describe the procedure and time limit for filing objections to the preliminary approval of the application.

3. If an objection is filed with the City Manager, , the City Manager shall notify the Tree Commission within 2 business days and the Tree Commission shall have 15 business days after the time for filing objections has passed to hold a public hearing to consider the preliminary decision and affirm, reverse, or modify the preliminary decision. The Tree Commission decision is final. If the Tree Commission takes no action within the prescribed time, then the preliminary decision shall become final, and the applicant can proceed with the proposed activity subject to any conditions imposed upon the permit.

D. Public utility work. If a public utility will perform the proposed action on the urban forest tree, the application shall be approved without evaluation after the applicant pays the application fee. If the tree is being removed, the applicant must comply with the mitigation requirements of Section 12B-15.

SECTION 12B-14. PRIVATE PROPERTY—TREE PERMIT DECISION APPEALS

A. If the City Arborist determines that the criteria set forth in Section 12B-12 require the complete or partial denial of a tree permit, or the placement of conditions on the proposed work, the City Arborist will provide the City Manager and the applicant with a written report of the findings and provide reasons for the recommendation. The City Manager shall notify the

Applicant in writing of the preliminary decision and the Applicant's right to appeal to the Tree Commission.

B. The Applicant shall have 10 business days to appeal the preliminary decision to the Tree Commission, or the preliminary decision shall become final. The Applicant shall state the objections to the City Arborist's decision.

C. If the Applicant timely files an appeal, then, within 2 business days of the appeal, the City Manager shall post a notice of the appeal of the preliminary decision on the property in question in plain view from the public right of way and on a bulletin board at the Municipal Building. The notice must describe the procedure and time limit for filing comments on the appeal. The time limit for filing comments shall be no less than 7 business days and no more than 10 business days from the filing of the appeal, except any time limit does not apply to comments submitted in person at the Tree Commission's public hearing described in paragraph D below. The City Manager shall notify the Tree Commission of the appeal within 2 business days of the appeal.

D. The Tree Commission shall have 15 business days following the posting of the appeal to hold a public hearing and decide whether to uphold the City Arborist's decision, alter the City Arborist's decision, or grant a tree permit with conditions. The Tree Commission shall consider the factors in Section 12B-12(B) when evaluating the appeal.

E. The decision of the Tree Commission shall be final.

F. The City will permit no more than two living trees larger than 24 inches DBH (75.39 inches in circumference) to be removed from a given residential property within a period of five years unless necessary to protect persons or property from a hazardous tree. In the case of apartment complexes with multiple residential buildings, the restriction applies for each building address in the complex.

G. The City will permit no more than one living tree larger than 24 inches DBH (75.39 inches in circumference) to be removed from a non-residential private property within a period of five years unless necessary to protect persons or property from a hazardous tree.

H. The permit restrictions of Section 12B-14(F) and 12B-14(G) may be waived by the City Council after the Tree Commission is given the opportunity to provide written comment. The following factors shall be considered in evaluating a waiver:

1. The extent to which the tree clearing, pruning, or activity is necessary to achieve proposed development or land use, and the potential mitigating effects of imposing tree protection measures as a condition of the permit.

2. Any hardship that the applicant will suffer from a modification or rejection of the permit application or the imposition of tree protection requirements or other conditions.

3. Hazards that the tree poses to persons or property.

4. The desirability of preserving any tree because of its age, size, historic significance, or outstanding quality.

5. The extent of tree canopy cover that will remain near the tree to be removed or that will be placed at risk by the proposed activity.

6. The general health and condition of the tree.

7. The desirability of the tree species as a part of the City’s urban forest.
8. The location of the tree in relation to utilities, structures and the use of the property.
9. Potential harm to urban forest trees on adjacent private and public property.

SECTION 12B-15. PRIVATE PROPERTY — TREE REPLACEMENTS

A. Issuance of a City tree permit for removal of an urban forest tree is predicated on the property owner’s compliance with one of the options dependent on the tree’s DBH, as listed in the table below.

For each tree removed of:	OPTION 1	OPTION 2	OPTION 3
18” DBH (56.55” circ.) to < 28” DBH (87.96” circ.)	2 replacement trees on applicant’s property	1 replacement tree on applicant’s property + \$100 to tree replacement fund	\$200 to tree replacement fund
28” DBH (87.96” circ.) to < 38” DBH (119.38 circ.)	2 replacement trees on applicant’s property	1 replacement tree on applicant’s property + \$150 to tree replacement fund	\$300 to tree replacement fund
38” DBH (119.38” circ.) or more	2 replacement trees on applicant’s property	1 replacement tree on applicant’s property + \$200 to tree replacement fund	\$400 to tree replacement fund

B. For purposes of this chapter, a “replacement tree” must be a species that can attain the size in maturity of the tree removed.

C. The options in subsection A of this Section are subject to the approval of the City Manager in consultation with the City Arborist. The City Arborist shall evaluate the property and determine if the conditions are conducive for replacement trees and advise the City Manager.

D. Replacement Plans.

1. If the City Arborist determines that replacement trees can be successfully planted on the applicant's property, then the applicant and City Arborist prior to issuance of the permit shall agree to a written tree replacement plan that includes the species, placement on the property, and replacement tree caliper size. A written agreement with the specifics shall be attached to the approved tree permit. A deadline for installation of the replacement trees shall be included. The applicant shall agree to notify the City Manager when the replacement trees have been planted and allow the City Arborist to inspect the planted replacements. A copy of the replacement plan shall be available to the Tree Commission on request. The City retains the right to inspect the replacement trees. The replacement trees are protected urban forest trees as defined in this chapter.
2. If the City Arborist determines that the applicant's property can support only one replacement tree, or the property owner decides to plant just one replacement tree, then the property owner shall comply with Option 2 in the table above and pay the appropriate fee into the tree replacement fund.
3. If the City Arborist determines the applicant's property can support replacement trees, the applicant may use the Prince George's County Rain Check Rebate Program, which reimburses homeowners for native trees planted on private property.
4. The replacement trees must have the potential in maturity to attain the size of the tree being removed (i.e., small understory trees are not appropriate to replace a mature shade tree).
5. The property owner must provide written documentation to the City Manager within 12 months of issuance of the City tree permit that the trees were planted in compliance with the county's Rain Check program guidelines. The documentation shall be available to the Tree Commission on request.
6. If the City Arborist determines that the applicant's property cannot support replacement trees, or if the applicant decides not to plant replacement trees, the applicant shall pay the appropriate fee listed in Option 3 above into the tree replacement fund as determined by the removed tree's DBH.

E. Failure of the property owner to comply with the conditions of this Section and provide the required documentation to the City Manager is a municipal infraction under Section 12B-24 and treated as if the property owner failed to acquire a tree permit. In addition, the property owner shall pay the full mitigation fee (Option 3) in the table above as determined by the tree's DBH.

SECTION 12B-16. PRIVATE PROPERTY — HAZARDOUS TREES AND WOODY VEGETATION

A. No person shall permit a hazardous tree or tree part, dead or alive to stand on private property. "Hazardous tree" means a defective, diseased, or dead tree that poses a high risk of failure or fracture with the potential to cause injury to people or damage to property.

B. The City Manager may request that the City Arborist inspect the tree and provide a written evaluation. When a violation of this Section is found on private property, the City Manager shall

give written notice to the owner, occupant, or person responsible for the property to abate the condition within such reasonable time as may be specified in the notice.

C. If any person, after receipt of notice fails or refuses to abate a violation, and the City finds that immediate action is necessary to protect the public health, safety or property, then the City may take any action reasonably necessary to abate the violation.

D. The City shall send the property owner or his or her agent a bill for the costs of the corrective action. If the bill is not paid within 30 calendar days, the cost shall be a lien against the real property, which may be collected and enforced in the same manner as are property taxes or by a suit against the owner.

E. Woody vegetation and vines that harbor a pathogen, insects, or other parasites that, due to such infection or infestation, may cause serious damage to other woody vegetation or may pose a threat to persons or the property of others, shall be removed and disposed of in accordance with the recommendations of the DNR Forest Service.

F. The City or its designee is authorized to inspect any woody vegetation that appears to be or is reported to be infected with a fungus, virus, bacterium, or other pathogen or infested with insects or other parasites that, due to such infection or infestation, may cause serious damage to other woody vegetation or other property, and may take specimens from the woody vegetation or vine if necessary to determine the existence of such infection or infestation. The City Manager may designate the City Arborist, or some other person with appropriate expertise to conduct such investigations and specimen collections.

G. If the City or its designated expert cannot determine with certainty the existence of infection or infestation in woody vegetation or vines, the City shall send any such specimens for examination, diagnosis and report to the Cooperative Extension Service, University of Maryland, or other appropriate laboratory, and shall base further action on such extension service or laboratory report.

SECTION 12B-17. CITY PROPERTY AND CITY RIGHTS OF WAY

A. Definitions.

“City property” means City rights-of-way and City-owned property.

“Street tree” means a tree the trunk of which grows all, or in part, within the public right-of-way and is protected by the Maryland Roadside Tree Law.

B. Street trees.

1. No person other than the City, the City’s designees including the Tree Commission, the State of Maryland, or a public utility company may prune a street tree.

2. In addition to any permit requirements under State law, a City tree permit is required before removing a street tree or engaging in activity that may harm a street tree.

C. City property other than street trees. No person other than the City of Mount Rainier or the City's designee may prune or remove a park tree or tree on other City property.

D. Public utilities may trim a tree on City property after acquiring the required City and State permits and performing professionally accepted tree maintenance as outlined in the ANSI Z Standards.

SECTION 12B-18. CITY PROPERTY — CITY MANAGER AUTHORITY

A. The City Manager has authority over the disposition of all trees located on City property and has the power to plant, maintain, or remove trees on City property. The City Manager shall give due consideration to the urban forest preservation principles embodied in this chapter when making decisions regarding trees on City property.

B. The City Manager may order the removal of any tree or part of a tree on City property that:

1. Poses a threat to safety;
2. May cause damage to sewers or other public improvements;
3. Is diseased or infested and poses a danger to other healthy trees, if removal is the only practical solution;
4. Interferes with the use of City property for public purposes; or
5. Interferes with the exercise of any power conveyed by the Charter of the City of Mount Rainier, including the construction and alteration of buildings and public ways and sidewalks.

C. If the City Manager orders the removal of a tree pursuant to subsection (B) of this Section, the City shall replace the tree with a new tree of at least a 2-inch caliper.

D. Street Trees. The City Manager shall comply with the State Roadside Tree Law and permitting process.

E. The City Manager shall report all proposed tree removals to the Tree Commission. If a tree is removed due to an emergency situation, the Tree Commission shall be informed as soon as practicable.

SECTION 12B-19. CITY PROPERTY—TREE PRUNING

A. The objective of pruning is to produce strong, healthy, attractive trees that do not pose a hazard and do not obstruct a public right-of-way.

B. Street trees. The City Manager or Roadside Tree Care Expert may initiate the maintenance pruning of a street tree to selectively remove branches for maintenance of the tree. A permit from the DNR Forest Service or from the City under its blanket permit is required before a street

tree may be pruned, including for portions of a street tree (limbs and roots) that encroach onto private property.

C. The DNR Forest Service may issue a blanket tree care permit to a municipality that has a certified roadside tree care expert who is designated to supervise that government's street tree planting and maintenance operations. If a blanket permit exists, then the roadside tree care expert reviews requests for a permit and advises the City Manager as to whether to issue the permit.

D. Other trees on City property. The City Manager may initiate the maintenance pruning of a park tree to selectively remove branches for maintenance of the tree. Trees on City-owned property other than along streets may be pruned after the City Manager issues a pruning permit.

E. Criteria. In making decisions about proposed pruning of street and City property trees, the following factors shall be considered when making an assessment:

1. Hazards to property, public safety, or health;
2. Need to improve or prevent a deteriorated tree condition; and
3. Need to improve the general aesthetic appearance of the public right-of-way or City property.

F. Pruning of tree limbs on City property by the City or its agents does not require notification of the public or the Tree Commission.

G. Any contractor hired to perform tree pruning, tree root removal, or other tree work must be either a State-licensed tree expert, or supervised by a State-licensed tree expert. Work performed by City employees and Tree Commissioners must be supervised by the Roadside Tree Care Expert under a blanket permit, or by a DNR State Forester or licensed tree expert if a blanket permit is not in place.

H. Pepco has a blanket permit from the DNR State Forester that allows it to prune limbs interfering with its power lines. Pepco work must be supervised on site by a licensed tree expert. Public utilities may trim a tree on City property after acquiring the required City and State permits and performing professionally accepted tree maintenance as outlined in the ANSI Z Standards.

I. The months of April, May, June, and July are prime time for nesting birds. When scheduling tree pruning, those months should be avoided unless the tree is hazardous.

J. Tree Commission and designated volunteers may perform minor maintenance pruning of trees on City property and street trees under the supervision of the City's Roadside Tree Care Expert.

K. On an emergency basis to prevent harm to life or property, the City Manager may order the trimming of trees without following the procedure outlined in this Section.

SECTION 12B-20. CITY PROPERTY—TREE REMOVALS

A. Street trees. For proposed removal of street trees, the City's Roadside Tree Care Expert assesses the tree and advises the City Manager to issue a removal permit. If the City lacks a blanket permit from the Maryland DNR, a State forester must assess the tree and issue the permit.

1. The City Manager shall post a copy of the removal permit on the tree in question in plain view from the public right of way. The notice must describe the procedure and provide 10 business days from the posting for filing objections to removal.

2. If an objection is filed with the City Manager, the Tree Commission shall have 15 business days after the time for filing objections has passed to hold a public hearing to consider the decision and advise the City Manager and City Council.

3. The City Manager makes the final decision on whether to remove the street tree as allowed under the State Roadside Tree Law.

B. Other City property trees. The City Arborist assesses and provides advice to the City Manager for trees other than street trees.

1. If the City Manager decides to proceed with the proposed removal, the City Manager shall post a copy of the permit on the tree in question in plain view from the public right of way. The notice must provide 10 business days from the posting for filing objections to removal.

2. If an objection is filed with the City Manager, the Tree Commission shall have 15 business days after the time for filing objections has passed to hold a public hearing to consider the preliminary decision and advise the City Manager and City Council.

3. The City Manager makes the final decision on whether to remove the tree.

C. The following factors shall be considered in deciding upon a tree removal proposal:

1. The extent to which the tree removal is necessary to achieve proposed development or land use and the potential mitigating effects of imposing tree protection measures as a condition of the permit.

2. The City's liability for a hazardous tree.

3. Hazards that the tree poses to persons or property.

4. The desirability of preserving any tree because of its age, size, historic significance, or outstanding quality.

5. The extent of tree canopy cover that will remain near the tree to be removed or that will be placed at risk by the proposed activity.

6. The general health and condition of the tree.
7. The desirability of the tree species as a part of the City's urban forest.
8. The placement of the tree in relation to utilities and structures.

D. Public Utilities must obtain required City and State permits prior to removing a tree on City property. The City may require the utility to provide replacement trees, assist with a reforestation project within the City, or pay into the City's tree replacement fund.

E. On an emergency basis to prevent harm to life or property, the City Manager may order the immediate removal of trees without following the procedure outlined in this Section. The Tree Commission shall be informed as soon as practicable as to the nature of the emergency and the tree removal.

SECTION 12B-21. CITY PROPERTY—TREE PLANTINGS

A. Street tree planting.

1. The Roadside Tree Care Expert, in consultation with the Tree Commission, and in accordance with the City's Tree Plan and the Maryland Roadside Tree Law, shall supervise the planting of trees in the public right-of-way.

2. The Roadside Tree Care Expert or City Manager shall obtain approval of a planting plan from the Maryland DNR Forest Service before planting trees if the City does not hold a Roadside Tree Blanket Permit.

B. Other City property trees. For all City property other than public rights-of-way, the City Manager shall consult with the City Arborist, Roadside Tree Care Expert and Tree Commission before planting trees and shall plant trees in accordance with the City's Tree Plan.

C. Tree selection.

1. Except as provided in paragraph 2, below, when selecting trees for streets and City property, preference shall be given to species native to the Chesapeake Bay watershed.

2. When planting trees in locations that will expose the trees to harsh conditions such as poor soil, lack of water, heat, pollution, salt contamination, or vandalism, preference may be given to non-native species that are tolerant of these conditions.

3. In no event shall the City plant trees of species designated as invasive by this Code, the Maryland DNR Forest Service, or any other appropriate governmental agency.

SECTION 12B-22. PUBLIC PROPERTY—TREE DISTURBANCE FROM ACTIVITY ON PRIVATE PROPERTY.

A. Street Trees. If proposed activity on private property will damage a street tree’s roots that exceed one inch in diameter or require the trimming of a street tree’s branches, the Roadside Tree Care Expert or the Maryland DNR Forest Service shall review the proposed activity as required under State law.

B. Public Property Trees. If the proposed activity on private property will damage a public tree’s roots that exceed one inch in diameter or require the trimming of a public tree’s branches, the process of Section 12B-13 shall be followed.

C. “Public property” means all government easements and all property owned by the City, county, state, or federal governments, or the Maryland-National Capital Park and Planning Commission.

SECTION 12B-23. PUBLIC PROPERTY— INJURY TO VEGETATION

A. No person shall break, injure, mutilate, kill or destroy any tree, shrub, or herbaceous plant on public property, or permit any animal under that person’s control to do so; permit any leak to exist in any gas line within the root zone of any tree or shrub; permit any toxic chemical to seep, drain, or be emptied on or about any tree or shrub; or permit electric or communication wires to come in contact with any tree or shrub.

B. During building or construction operations, suitable protective barriers shall be erected around trees and shrubs on public property that may be subject to injury or destruction.

C. No person shall fasten any sign, rope, wire, or other materials to, around, or through any trees or shrubs on public property without obtaining prior written approval from the City Manager except in emergencies such as storms or accidents.

D. Sidewalks in residential areas of the City may be as narrow as 3.5 feet wide in order to accommodate tree trunks and roots, but a section of sidewalk must be at least 5 feet in width every 200 feet to allow for passing. When replacing sidewalk sections adjacent to trees, the sidewalk may be narrowed to accommodate a public or private tree as necessary.

SECTION 12B-24. ENFORCEMENT AND PENALTIES

A. The City Manager has primary responsibility for the administration and enforcement of this Chapter.

B. A violation of this Chapter is a municipal infraction with a fine of \$500 for each tree affected, plus fifty dollars (\$50.00) per inch of tree DBH greater than 18” (56.55-inch circumference, measured at four and one-half (4-1/2) feet above ground level, with a maximum fine of one thousand dollars (\$1,000.00) per tree affected. In the event the tree has been removed so that no

accurate measurements can be taken to assess the fine, the fine, at the discretion of the City Manager, shall not exceed one thousand dollars (\$1,000.00) per tree.

C. In addition to all other means of enforcement provided by law, the City Manager, code enforcement officials, or police officers may issue a stop-work order to any person who violates any provision of this Chapter. A stop-work order also may be issued on the basis of an affidavit received setting forth the facts of the alleged violation. Any person who receives such a stop work order shall immediately cease the activity that constitutes the violation. The person shall comply with all terms and conditions of the stop work order before the activity may resume. If a person who receives a stop work order continues the activity that constitutes the violation, such person shall be issued a municipal infraction citation with a fine of one-thousand dollars (\$1,000.00). Each day that work continues in violation of the stop work order is a separate offense.

D. In the event that any City employee or elected official discovers anyone engaging in activity without a required tree permit or in violation of the terms of a tree permit, the employee or elected official immediately may issue an oral temporary stop work order. Said employee or official shall then contact the City Manager or the Mount Rainier Police Department, who may cause a police officer or code enforcement officer to investigate the violation and, if necessary, issue a written emergency stop work order. An emergency stop work order expires forty-eight (48) hours after posting. However, the City Manager or code enforcement officer may issue an indefinite stop work order and post it on the property.

E. A written order issued pursuant to this Section posted on the property in a conspicuous location shall be sufficient service upon all persons physically on the property. A posted notice shall not be removed except under the authority of the City Manager. Unauthorized removal of a stop work order is a municipal infraction with a penalty of \$500.00.

F. In addition to the issuance of a municipal infraction citation, the City Manager may order that the person violating this chapter plant replacement trees at a designated place, or reimburse the City for the purchase and planting of replacement trees. Failure to plant or reimburse the City for replacement trees as ordered shall result in a fine of \$300.00 per required replacement tree.

G. If a fine is not paid or reimbursement not made within 30 calendar days, the cost shall be a lien against the real property which may be collected and enforced in the same manner as are property taxes or by a suit against the owner.

SECTION 12B-25. PRIVATE PROERTY—WILDLIFE HABITATS

A. The City Manager, with the advice of the appropriate City committee or other qualified person(s), may designate properties or areas of property as wildlife habitat. To be designated as a wildlife habitat, a property or area of a property must satisfy the following criteria:

1. the landscape must provide food, water, cover, and shelter — the four criteria required to designate it as wildlife habitat by the National Wildlife Foundation; and
2. the property or area must be free from invasive species, including, but not limited to:

- a. Tree of Heaven (*Ailanthus altissima*)
 - b. Porcelainberry (*Amelopsis glandulosa var. brevipedunculata*)
 - c. Garlic mustard (*Alliaria petiolate*)
 - d. English ivy (*Hedera helix*)
 - e. Bamboo
7. Tree species present on the property or area cannot be ones that host or harbor a known contagious pest or disease, such as American elm, white ash, or others (to be specified by the Tree Commission).

B. Wood boring insects and fungus are expected in a fallen tree or nonhazardous standing tree within a designated wildlife habitat. To minimize danger to surrounding wood structures, all fallen trees must be at least 10 feet from any wooden structure. A fallen tree that harbors a pathogen or pest which has caused proven damage, or may be an unreasonable risk to other woody vegetation, or has caused proven damage, or may pose a threat to persons or the property of others, shall be removed and disposed of in accordance with the recommendations of the DNR Forest Service.

C. Notwithstanding the provisions of Section 12B-16, a fallen or nonhazardous standing dead tree may be maintained on private property when the property or area of the property in which the tree is located has been designated a wildlife habitat by the City Manager.