STAFF REPORT

Council Meeting Date: August 25, 2020

Subject: Tree Canopy Preservation Zoning Text Amendment, Creation of Article XIX of the Unified Development Ordinance (UDO) and associated amendments to Articles II, VII and XII of the UDO.

Staff Resources: Ben Woody, AICP, Development Services Director;
Chris Collins, AICP, Planning & Development Manager;
Eric Edgerton, Senior Assistant City Attorney

Action Requested: Adoption of a zoning text amendment to establish new standards for Tree Canopy Preservation; and adoption of an ordinance amending the fees and charges manual for Fiscal Year (FY) 2020-21 to establish a fee-in-lieu of option for tree removal (land, administration, installation).

Background:

- New standards will create existing canopy-sensitive requirements for preservation and replanting of existing tree canopy when most land development activity occurs.
- These standards are designed to incentivize and promote existing canopy preservation over newly planted trees.
- In addition to centering around canopy preservation, the proposed text amendment will introduce requirements to preserve trees in commercial development and minor subdivisions where those requirements do not currently exist.
- The draft zoning standards have been reviewed by city staff from the Development Services Department, Planning & Urban Design and the City Attorney's office.
- Additionally, the draft ordinance has been presented to and/or reviewed by the Urban Forestry Commission, the Planning & Economic Development Committee, the Downtown Commission, the Development Customer Advisory Group, the Sustainability Advisory Committee and the Asheville Chamber of Commerce & Economic Development.
- City staff presented the ordinance at a public webinar hosted by Asheville Greenworks on August 19.
- The ordinance has received positive feedback from the Development Customer Advisory Group and support from the Urban Forestry Commission.
- On 7/1/2020, the Planning & Zoning Commission (PZC) recommended denial of the wording amendment while expressing concerns with the lack of concessions for affordable housing, the effect upon cost of development and possible barriers to increased density in the downtown area.
- In response to the PZC recommendation, staff has conducted an analysis of projects receiving LUIG funds for affordable housing over the last 5 years and found some to be in compliance already and all to be likely to meet the requirements via planting or preserving trees. More detailed results of this analysis are displayed in an attached memorandum.
- All housing developments in the City, including affordable housing developments, are likely to benefit greatly from enhanced and increased tree canopy. The inclusion of affordable housing developments in the application of the ordinance accordingly addresses important environmental justice and equity concerns.
- The Resource Management Districts referenced by this ordinance are proposed as an overlay district as a separate item on this agenda.

Comprehensive Plan Consistency: This proposal best aligns with the *Living Asheville Comprehensive Plan* themes of 'A Livable Built Environment' and 'Harmony with the Natural Environment' plan sections that include the following goals:

- Make Streets More Walkable, Comfortable and Connected (p. 146);
- A Healthy and Expanding Urban Tree Canopy (p. 208);

- Protect Land and Water Assets (p. 218); and
- Encourage Naturalized Stormwater Management Techniques, Goal 25, Outcome 2: Minimize growth of impervious surfaces citywide (p. 224).

In addition, this proposal is consistent with and supports the *Planning for Climate Resilience* (Appendix D of the Comprehensive Plan) as a means to reduce vulnerability and risk due to climate change.

Council Goal(s):
- A well-planned and livable community
- A clean and healthy environment

Committee(s):
- On October 22, 2019 and January 14, 2020, the Development Customer Advisory Group (DCAG) reviewed the proposal.
- On 02/17/2020, the Urban Forestry Commission reviewed the proposal and unanimously recommended support.
- On February 10, 2020 the Planning & Economic Development Committee reviewed the proposal.
- On February 19, 2020 the Sustainability Advisory Committee reviewed the proposal.
- On July 1, 2020 the Planning & Zoning Commission voted to recommend denial of the proposal by a 6-1 vote.

Pro(s):
- Proposed changes will change the focus of the City's tree save provisions to a canopy area based requirement and more directly equate to canopy preservation and provision on privately owned property.
- Multiple options for compliance are built into the ordinance, making the application for a variance a very unlikely option.
- Creates tree preservation and provision requirements for development types that currently have none.
- Allows for a fee-in-lieu payment option when development sites and projects cannot physically comply with planting and preservation requirements which allows for an equitable distribution of tree canopy through administration of the program.
- Will affect an overall reduction in the rate of loss of tree canopy in the City of Asheville.
- Creates a predictable and easy-to-follow process for land development applicants which generally correlates to success in implementation.

Con(s):
- Does not outright disallow the removal of existing trees from sites.
- May increase the financial cost of development on some sites.

Fiscal Impact:
- The ordinance establishes a fee-in-lieu of option, whose specifics are outlined below. These funds would be required to be spent for tree canopy only within a similar district and therefore would not have an overall fiscal impact on the City's operations or budget.

	Current Fee	**Proposed New Fee**
Fee-In-Lieu for Tree Removal - Land, Admin, and Installation - Downtown	$0.00	$31.44

Fee-In-Lieu for Tree Removal - Land, Admin, and Installation - Urban	$0.00	$5.42
Fee-In-Lieu for Tree Removal - Land, Admin, and Installation - Suburban	$0.00	$4.54
Tree Removal	$0.00	$100.00

- Existing staff will administer the ordinance and no additional Full Time Equivalents are requested at this time.

Staff Recommendation:

- Staff recommends approval of the proposed zoning text amendment to establish new standards for Tree Canopy Preservation in Articles II and VII and with the new Article XIX because this is consistent with the *Living Asheville* comprehensive plan in that it directly furthers several goals of the plan while promoting specific Council goals as well.

Suggested Motion:

- Motion to approve the proposed wording amendments to Articles II and VII and XII of the UDO and to add a new Article XIX to the UDO and find that the proposed amendments are consistent with the city's comprehensive plan in that the amendment will 1) preserve and enhance the urban tree canopy creating a more comfortable environment; 2) better protect land and water assets improving the health of the community; and 3) build climate resilience by reducing risk and vulnerability to flooding, erosion and landslides.
- Motion to approve an ordinance amending the fees and charges manual for Fiscal Year (FY) 2020-21 to establish a fee-in-lieu of option for tree removal (land, administration, installation).

Attachment(s)

- Draft UDO Ordinance
- Draft Fees & Charges Manual Ordinance
- Memorandum Regarding Impact on Affordable Housing
- P&Z Recommendation
- P&Z Minutes (Excerpt)

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO ESTABLISH TREE CANOPY PRESERVATION STANDARDS

WHEREAS, the City's Comprehensive Plan encourages development that minimizes or mitigates environmental impacts and safeguards the health and comfort of the community; and

WHEREAS, the City of Asheville recognizes that trees are one of its most valuable natural resources; and

WHEREAS, the City commissioned Davey Resource Group to perform a study of the City's urban tree canopy; and

WHEREAS, the October 23, 2019 study by Davey Resource Group found that, during the ten-year period from 2008 to 2018, the City of Asheville's lost 891 acres of tree canopy, representing a 6.4% reduction in the City's tree canopy;

WHEREAS, the Davey Resource Group Study concludes that the City of Asheville has suffered measurable increases in airborne pollutants and damaging stormwater runoff as a result of its loss of tree canopy; and

WHEREAS, the National Aeronautics and Space Administration's DEVELOP program subsequently conducted a study comparing the areas of canopy loss within the City of Asheville to land surface temperature data collected by NASA's Landsat 5 Thematic Mapper and Landsat 8 Operational Land Imager; and

WHEREAS, the NASA DEVELOP study found a high level of correlation between the loss of tree canopy and increased land surface temperatures; and

WHEREAS, the heat islands created by canopy loss pose serious threats to the health, safety, and welfare of the communities that live within them; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-381(a) the City is authorized to adopt zoning ordinances for the purpose of promoting the health, safety, or general welfare of the community; and

WHEREAS, pursuant to Session Law 1985-556, the City is authorized to "enact and enforce ordinances to regulate the planting, maintenance, removal, replacement, grading, and preservation on public and private property" within resource management districts, and

WHEREAS, in order to protect the health, safety, and welfare of its citizens, the City determines that it is necessary to regulate the removal of trees within the City of Asheville, and

WHEREAS, this revision aligns with the City Council goals to update the Unified Development Ordinances in order to reflect recommendations in the Comprehensive Plan; and

WHEREAS, this Ordinance is determined to be reasonable, in the public interest, and is

consistent with the Comprehensive Plan in the following ways:

1. Preserves and enhances the urban tree canopy creating a more comfortable environment;
2. Protects land and water assets improving the health of the community; and
3. Builds climate resilience by reducing risk and vulnerability to flooding, erosion and landslides.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1: Chapter 7 of the Code of Ordinances of the City of Asheville is hereby amended as follows:

a. Amend section 7-2-5 by adding the following definitions to be inserted alphabetically:

Resource Management Overlay Districts. The Downtown/CBD, Urban, and Suburban Resource Management Overlay Districts shall be comprised of the following future land use districts:

Downtown/ CBD: Downtown
Urban: Neighborhood Centers, Town Center, Traditional Corridor, Traditional Neighborhood, Urban Center, Urban Corridor
Suburban: Employment/Anchor Institution, Parks and Open Spaces, Regional Corridor, Industrial / Manufacturing, Residential Neighborhood

Canopy Requirement (CR): Means the defined tree canopy area that must be preserved or installed expressed as a percentage of the gross site area (GSA). The formula to obtain the quantitative requirement is GSA (square feet) x CR (Decimal Percentage) = Canopy Requirement (Square Feet).

Diameter at Breast Height (DBH). Means a measure tree caliper used in this ordinance and expressed in inches. DBH is measured at 4’6” above the ground for existing trees and at 6” above the ground for newly planted trees.

Large Tree Species. Means those species identified as Large in the preferred species list.

Medium Tree Species. Means those species identified as Medium in the preferred species list.

Small Tree Species. Means those species identified as Small in the preferred species list.

Tree Canopy Protection Area (TCPA). Means the area of tree canopy required by this Section to be preserved or planted and maintained during and after all construction activities. TCPA shall include the critical root zone of the trees within.

b. Amend Article IX by replacing Sec. 7-9-1 [Reserved] with:

Sec. 7-9-1. - Resource Management Overlay District.

(a) *Purpose.* The Resource Management Overlay District is established to regulate the planting and preservation of trees during development activities.

c. Amend Article XI by removing Section 7-11-3(d) as follows:
(d)Standards. Landscape requirements are broken down in the following categories:

a.Property line buffer — Landscaping along property lines separating different zoning districts.
b.Street buffer — Landscaping along street rights-of-way between parking areas and pedestrian zones.
c.Street trees — Shade trees planted along street frontages to improve the pedestrian environment and enhance the urban streetscape.
d. Parking lot landscaping — Landscaping in and around vehicular use areas.
e. Building impact landscaping — Landscaping used to enhance the site.
f. Screening — Landscaping around utility use, outdoor storage, and loading areas.
~~g.Tree save areas — Tree preservation and/or replanting areas for residential developments.~~

d. Amend Article XI by removing Section 7-11-3(d)g (Tree Save Areas) in its entirety.

e. Amend Article XI by removing a reference to appendix 7-C and changing approval authority from Section 7-11-3(f) as follows:

a.Recommended plant species. Plants may be chosen from the recommended plant species list *as maintained by the City*. ~~(See Appendix 7-C.)~~ Specific riparian species, as identified in the recommended species list, trees and shrubs for damp sites and river districts, shall be required for developments located within the 100-year flood plain. The list encourages the use of plant materials which are indigenous to this region and are readily available from local nurseries. Plant materials which are not on the list may also be used following approval from the

~~planning and development director~~ *director of Development Services or designee*.

f. Amend Article XI, Section 7-11-3(f)2 to include a statement on the maintenance of required street trees as follows:

The owner or lessee of the property where landscaping is required shall be responsible for the maintenance and protection of all required and preserved plant and screening material. Landscaped areas shall be maintained in good condition and kept free of debris. *When street trees planted to satisfy the requirements of 7-11-3(d)(3) are located in the public right of way, they shall be maintained by the owner of the property that originally installed said street trees for a period of two years after planting.*

g. Amend Article 12, Section 7-12-2(e)2(d) to disallow grading a site without an approved development plan as follows:

d. *Grading without an approved development plan:* Land disturbance without an approved development plan, defined as the grading *(including mass tree removal)* of a site for which no development plan has been approved, *shall not be permitted.* ~~is permitted in all districts except the residential districts and the river district if the following conditions are met:~~

~~1.A landscape plan must be approved by the planning department and an erosion control plan must be approved by the stormwater administrator prior to initiation of the land disturbing activity. No grading and stormwater permits shall be issued prior to review and approval of the landscape plan by the planning department.~~

~~2.The landscape plan must show the location of existing trees to be preserved and the location and type of any required buffer yard trees and street trees which will remain. The determination of the type of buffer required shall be based upon the most intense development permitted in the zoning district in which the project being graded is located.~~

~~3.All required trees shall be planted within 30 days of completion of the land disturbance activity or within 12 months of the date the land disturbance activity was initiated, whichever is less. This time period may be extended through the posting of a financial guarantee as provided for in section 7-11-2 of the UDO.~~

~~4.An effective permanent ground cover shall be applied on the site within 14 days of completion of the land disturbing activity unless completion occurs~~

~~outside a growing season, in which case an effective temporary ground cover shall be applied within 14 days. No ground cover shall be required for bare rock.~~

h. Amend Chapter 7 by adding a new Article XIX as follows:

ARTICLE XIX. - TREE CANOPY PRESERVATION.

7-19-1 APPLICABILITY

The requirements of this Article shall apply to any of the following development activities:

A. Single Family Residential
    1. Any major or minor subdivision of land
    2. Removal of trees within any steep slope zone or an aquatic buffer.
B. Multifamily Residential & Non-Residential
    1. Any major or minor subdivision of land
    2. New building construction
    3. New open uses of land
    4. Expansion of existing buildings by over 1,500 square feet
    5. Expansion of open uses of land by over 3,000 square feet

7-19-2 TREE CANOPY PRESERVATION REQUIREMENTS

A. The tree canopy on a development site shall meet the applicable standards according to the site's Resource Management Overlay District, proposed land use, and the amount of tree canopy preservation, as set forth in Tables 7-19.1, 7-19.2 and 7-19.3 below. (Percentages refer to the relation of tree canopy requirement to gross site area in square feet.)

B. Residential subdivisions and multi-lot commercial developments may group trees in clusters throughout the development rather than meeting the canopy requirements on a lot-by-lot basis.

C. Trees preserved to satisfy the planting requirements of Section 7-11-3 shall be permitted to satisfy the requirements of this section when such trees are existing wholly on the property and not within the public right-of-way.

D. All trees used to meet requirements must be healthy, non-hazardous and non-invasive.

E. Areas designated as Tree Canopy Protection Areas shall remain as such in perpetuity. Tree removal shall be prohibited in these areas unless otherwise permitted.

F. Excluded Areas: Tree Canopy Protection Areas shall not include any of the following:

1. Drainage Easements
2. Cross Access Easements
3. Governmental and Utility Easements That Prohibit Trees
4. Any Easement Authorizing Tree Disturbing Activities
5. Areas devoted to future transportation (including greenways) and / or stormwater infrastructure.

G. No structures or improvements are permitted to be installed within designated Tree Canopy Preservation Areas.

Table 7-19.1 | Tree Canopy Requirement Classification

Land Use	**Resource Management District**		
	Downtown	**Urban**	**Suburban**
Residential Subdivision	Class A	Class C	Class C
Multi-Family & Office	Class A	Class B	Class C
Institutional	Class A	Class C	Class C
Commercial	Class A	Class B	Class C
Industrial	Class A	Class B	Class C

Table 7-19.2 | Class Based Canopy Requirement, Classes A & B*

Canopy Requirement Class	**Existing Tree Canopy Preserved**	**New Tree Canopy Installation Required**	**Total Tree Canopy Required**
Class A	5%	0%	5%
	4%	2%	6%
	3%	4%	7%
	2%	6%	8%

	1%	8%	9%
	0%	10%	10%
Class B	10%	0%	10%
	8%	3%	11%
	6%	6%	12%
	4%	9%	13%
	2%	12%	14%
	0%	15%	15%

*Percentages not shown on this table are rounded down to the nearest whole entry.

Table 7-19.3 | Class Based Canopy Requirement, Class C***			
Canopy Requirement Class	**Existing Tree Canopy Preservation Requirement**	**New Tree Canopy Installation Requirement**	**Total Tree Canopy Requirement**
Class C, Sites with 76-100% existing canopy coverage	15%	0%	15%
	12%	6%	18%
	9%	12%	21%
	6%	18%	24%
	3%	24%	27%
	0%	30%	30%
Class C, Sites with 41-75% existing canopy coverage	15%	0%	15%
	12%	5%	17%
	9%	10%	19%
	6%	15%	21%

	3%	20%	23%
	0%	25%	25%
Class C, Sites with 0%-40% existing canopy coverage	15%	0%	15%
	12%	4%	16%
	9%	8%	17%
	6%	12%	18%
	3%	16%	19%
	0%**	20%	20%**

***Percentages not shown on this table are rounded down to the nearest whole entry.

7-19-3 CALCULATION OF TREE CANOPY AREA

A. Any development site greater than two acres in size shall be permitted to determine the area of existing tree canopy coverage to be preserved by ground checking or aerial analysis according to the most recent data provided by the city. Tree canopy calculated by aerial analysis shall be limited to that within the boundary of the subject property. If ground checking is utilized, credit for existing trees intended to be retained may be calculated in either of two ways:

    1. Measurement of the trunk of each individual tree (i.e. a tree not grouped with other trees or a part of a tree stand) to determine its DBH and the credit given for that tree shall be in accordance with Table 7-19.4, below; or
    2. The dripline may be plotted on the site plan and tree canopy credit given for the square footage of the site within the dripline.

B. For any development site two acres or less in size the area of tree canopy coverage for any group of trees to be retained in order to meet the tree canopy requirements of this Part shall be determined by ground checking. Credit for existing trees intended to be retained may be calculated in either of two ways:

    1. Measurement of the trunk to determine its caliper and the credit given for that tree shall be in accordance with Table 7-19.4, below; or

2. The dripline may be plotted on the site plan and tree canopy credit given for the square footage of the site within the dripline.

C. Trees planted within one (1) calendar year of the date of development application shall not be included in the calculation of existing tree canopy.

D. The calculation must be conducted and certified by a land surveyor, civil engineer, landscape architect licensed by the State of North Carolina or Arborist certified by the International Society of Arboriculture.

Table 7-19.4 | Tree Canopy Credit for Preserved Trees

DBH	Size Classification*	Canopy Credit
Over 10 inches	Large	1,600 sq ft
	Medium	900 sq ft
	Small	400 sq ft
3 inches to 9 inches	Large	960 sq ft
	Medium	576 sq ft
	Small	142 sq ft
1 ¾ inches to less than 3 inches	Large	720 sq ft
	Medium	432 sq ft
	Small	106 sq ft

As found in recommended species list

Table 7-19.5 | Tree Canopy Credit for Newly Installed Trees

Size Classification*	Canopy Credit
Large	560 sq ft
Medium	315 sq ft
Small	140 sq ft

As found in recommended species list

7-19-4 DOCUMENTATION AND PLAN REVIEW

A. Tree Canopy Protection Plan
    1. The Tree Canopy Protection Plan shall be drawn on a separate plan sheet in addition to all other required submissions.
    2. The Tree Canopy Protection Plan shall show all designated Tree Canopy Protection Areas and shall identify the total site acreage as well as the protected tree canopy percentage.
    3. The Tree Canopy Protection Plan shall show all trees on the development site.
        a) If ground checking is utilized to calculate the tree canopy area, trees shown on the plan shall be labeled as to their diameter at breast height and species.
        b) If aerial analysis is utilized to calculate the tree canopy area, tree canopy area shall be shown, labeled and described on the plan.
    4. Plans shall display the following required note: Areas designated as Tree Canopy Protection Areas shall remain as such in perpetuity. Tree removal shall be prohibited in these areas unless otherwise permitted.
    5. The Approved Tree Canopy Protection Plan must be recorded with the Buncombe County Register of Deeds.
    6. A copy of the recorded Tree Canopy Protection Plan shall be provided to the City prior to the issuance of the Certificate of Occupancy or Certificate of Compliance.
B. All Plats for Affected Properties:
    1. TCPA shall be shown on all subdivision final plats
    2. Plats shall display the following required note: Areas designated as Tree Canopy Protection Areas shall remain as such in perpetuity. Tree removal shall be prohibited in these areas unless otherwise permitted.

7-19-5 PAYMENT IN LIEU OF COMPLIANCE

A. Payment may be made in lieu of compliance to fulfill the New Tree Canopy Installation requirements for a site as found in table 7-19.2 and 7-19.3.
B. Payments in lieu of compliance received in relation to properties within a given Resource Management Overlay District shall be used to acquire land and plant or preserve trees within that same Resource Management Overlay District.
C. Exclusions: Payment in lieu of compliance shall not be accepted for:
    1. Areas containing aquatic buffers.
    2. Areas defined as steep slope zone A or B as defined by Section 7-12-4.
D. Calculation of Payment Amounts.

1. The payment amount in lieu of planting shall be based on values listed in the current year fees and charges manual.

7-19-6 PERMITTING

A. Tree Removal Permits
    1. A permit shall be required for the following activities
        a) The removal of any trees on properties within any Steep Slope Zone or an Aquatic Buffer
        b) The removal of any tree within an established Tree Canopy Protection Area.

    2. Fees
        a) Fees for Tree Removal Permit applications shall be established and listed in the current year fees and charges manual.
B. Application Requirements:
    1. The applicant for a Tree Removal Permit shall supply, at a minimum:
        a) A photo of the tree to be removed;
        b) A site plan showing the location of the tree to be removed;
        c) Copies of any site plans showing required Tree Canopy Preservation Area;
        d) A letter from a certified arborist recommending removal of the tree and the facts supporting that recommendation. Reasons may include but are not limited to:
            (1) Trees that are dead, diseased or dying; or
            (2) Trees that pose a threat to life or property safety.
        e) A replanting plan showing the installation of tree canopy equivalent to that being removed as defined by Table 7-19.4.
    2. Staff shall either approve or deny the application within 10 business days.
C. Appeals
    1. Appeals of staff decisions will be conducted as detailed in Section 7-6-2.

7-19-7 ENFORCEMENT

1. Violations of this Article shall be enforced as specified in Article 18 of this chapter.
2. A violation of Section 7-19-3(4) shall be subject to a civil penalty in the amount specified in Appendix B
3. Remediation-Replanting in addition to fines
    a) In addition to any fines assessed, the violator shall install a new tree or trees with a canopy area equivalent to that which was removed as defined by Table 7-19.4.

Section 2: If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3: All ordinances or parts of ordinances in conflict are hereby repealed to the extent of such conflict.

Section 4: This ordinance will become effective upon adoption.

Read, approved, and adopted this _____day of September, 2020.

_____ _____

City Clerk Mayor

Approved as to form:

_____

City Attorney

ORDINANCE NO. _____

ORDINANCE AMENDING THE FISCAL YEAR 2020-2021 FEES & CHARGES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The changes below to the Fiscal Year 2020-21 fees and charges, are hereby adopted.

	Current Fee	**Proposed New Fee**
Fee-In-Lieu for Tree Removal - Land, Admin, and Installation - Downtown	$0.00	$31.44
Fee-In-Lieu for Tree Removal - Land, Admin, and Installation - Urban	$0.00	$5.42
Fee-In-Lieu for Tree Removal - Land, Admin, and Installation - Suburban	$0.00	$4.54
Tree Removal	$0.00	$100.00

That this ordinance shall be in full force and effective adoption.

Read, approved and adopted this 25th day of August, 2020.

_____ _____

City Clerk Mayor

Approved as to form:

_____

City Attorney