



Natural Resource Conservation:

Components of a Tree and Landscape Ordinance, Part I

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A Tree and Landscape Ordinance is an important mechanism to preserve the natural resources and environmental quality of a community. It also provides guidance to contractors and developers regarding community development standards. A properly developed ordinance can minimize the environmental degradation often associated with growth and development in a community. The environmental benefits of a Tree and Landscape Ordinance include clean air, clean water, less water lost via runoff, cooler air temperatures, and a more aesthetically pleasing community.

A Tree and Landscape Ordinance is one of the few ways the general public can have input regarding development standards in a community. The ordinance should reflect the values and goals of the community. For these reasons, ordinance development should include input from the greatest possible number of community groups. Generally, a Tree and Landscape Ordinance generates a great deal of interest, since it impacts the appearance and the quality of air and water in a community.

Components of a Tree and Landscape Ordinance can vary by the community. Most ordinances, however, address the following items that relate to applicability, permit, procedures, and enforcement:

- (1) type of development affected by the ordinance
- (2) required permits and necessary data
- (3) permit procedures
- (4) tree inventory
- (5) enforcement procedures, including inspections
- (6) violations, penalties, and appeals
- (7) permit exemptions

(1) APPLICATION OF THE ORDINANCE. Determine the type of development or zoning affected by

the ordinance. For simplicity, these can usually be divided into commercial or residential. Most ordinances apply to both commercial and residential development. It is probably best to identify application of the ordinance by the zoning classification, since usually several zoning classifications exist within each of these two categories. A complete list of zoning classifications for commercial and residential can be obtained from the community Planning and Zoning Commission.

Commercial zoning includes but is not limited to Industrial, Commercial, and Office-Professional.

Residential development includes subdivision development and development of individual lots. Most ordinances apply to development of a subdivision but not to individual lots. For instance, a subdivision development can be required to have a tree inventory and replace trees removed, while an individual on a single lot would not be subject to these ordinance provisions.

Another consideration is whether the ordinance applies only to “new development” or if it also applies to existing lots and property in the community. For instance, do tree removal restrictions apply only to new development or do they also apply to activity on existing property?

Other situations where a Tree and Landscape Ordinance may apply include (a) property annexed into the city that previously was not subject to an ordinance, (b) expansion of the vehicular use area (such as parking lots) without building construction, and (c) “major” renovations of existing property.

(2) REQUIRED PERMITS. Identify activities requiring a formal permit before you begin the activity. The requirement of a permit usually

includes submission of a formal plan for the activity involved and inspection for compliance by a government representative. Permits require considerable time on the part of developers and compliance officers and should be required only for key steps in the process.

A **Tree Removal Permit** is usually required prior to any activity on the site. To obtain a Tree Removal Permit, you must submit a tree inventory. A tree inventory includes a site map drawn to scale showing location and size of trees (above an established minimum diameter), proximity of trees to buildings and parking areas, and designation of trees to be removed and trees to be saved. A site inspection by the landscape inspector or city arborist is required to (a) verify the inventory and (b) locate structures to minimize the removal of trees. This early intervention, prior to development activity, allows developers to make changes with minimal impact on project costs.

A **Landscape Permit** is usually required before developing or landscaping activity. A detailed plan of the site drawn to scale must be submitted. The landscape plan addresses items in the ordinance related to landscape requirements. This usually includes location of buildings, parking areas, utility service areas, signs, loading areas, storage areas and sidewalks. The information required in the landscape plan regarding plant material includes (a) size and location of trees to be saved, (b) undisturbed area for each saved tree, and (c) proposed landscaping including location, plant names and size of trees and shrubs to be installed.

The landscape plan should include information necessary to calculate the number of trees to be planted on site. If the ordinance has a minimum Green Space (unpaved area with grass, trees and other plant material) requirement, identify the areas and show calculations on the plan. The landscape plan is used to (a) ensure development plans are consistent with the ordinance and (b) verify that the installed landscape followed the landscape plan. Verification of the landscape plan should occur prior to issuing a Certificate of Occupancy.

A **Land Disturbance Permit** for site development is required for parcels 1.1 acres or larger. The Land Disturbance Permit should be issued only after the developer obtains a Tree Removal Permit. The Land Disturbance Permit is required by state law and has to be obtained even in the absence of a Tree and Landscape Ordinance. A Land Disturbance Permit requires the

developer to address several items, including wetland areas, size and design of retention/detention ponds, and soil erosion.

(3) PERMIT PROCEDURES. If a Tree Removal Permit is required in the ordinance, developers should be required to obtain the Tree Removal Permit prior to any site disturbance or removal of trees, since tree removal does not necessarily constitute site disturbance. Protecting trees on property, even property not being developed, requires a clearly worded statement that a Tree Removal Permit is required before any tree is removed on designated property.

The landscape plan should not be approved until the Tree Removal Permit is issued, since the removal of trees affects the landscape planting requirements. Once the Tree Removal Permit is issued, the landscape plan can be developed accurately. The Landscape Plan should reflect decisions on which trees are to be removed, which trees are to be saved, and how many trees must be planted.

The Land Disturbance Plan can be reviewed and the Land Disturbance Permit approved after the Tree Removal Permit is issued.

(4) TREE INVENTORY. The tree inventory is an important tool to monitor the removal of trees in the community. It provides an opportunity for early intervention and is the basis for issuing the tree removal permit. The requirements of the tree inventory depend on the elements of the final ordinance. The ordinance should identify the minimum size tree targeted for preservation. The tree inventory would include all trees on the site of this size or slightly smaller. Preserve a range of tree sizes to ensure a mixed age urban forest. While much of the emphasis is appropriately placed on preserving older, larger trees, it is important to save younger trees as well.

The Tree and Landscape Ordinance should contain a replacement provision for removal of large trees deemed important in the community. Large trees are often referred to as *specimen trees*. Identify specimen trees by name, diameter and location on the tree inventory. This helps with preservation as well as calculation of the replacement requirements for trees removed. Identify the location and condition of preserved trees in the Tree Inventory and the Landscape Plan since preserved trees may be eligible to substitute for newly planted trees.

(5) ENFORCEMENT PROCEDURES. Identify the position responsible for enforcement of the Tree

and Landscape Ordinance. The enforcement position is usually the city/county arborist or someone from the Inspections Department or perhaps a combination of the two. The arborist is usually familiar with plant materials, planting requirements and preservation procedures. The arborist is also capable of making judgment calls on site. The Department of Inspections is already organized to do similar inspections (electrical, plumbing, etc). The Inspections Department could hire someone with training in horticulture or forestry to do landscape inspections.

The review of site development plans (Tree Inventory, Landscape Plan) and on-site inspections are key elements of enforcement. Plans submitted by developers must be verified in the field to assure compliance with the Tree and Landscape Ordinance.

Verification of the Tree Inventory submitted for the Tree Removal Permit will probably be the first site inspection. The site inspection should verify that (a) information on the inventory sheet is accurate and (b) all trees on the site have been inventoried. The site inspection is a good time to check for trees that may have been recently removed without a permit.

During the tree inventory verification or prior to site disturbance, the site should be inspected to ensure proper installation of tree and vegetation protection devices. Tree protection devices must be properly installed prior to site disturbance activity.

Certificate of Occupancy Inspection is very important to ensure compliance with the Tree and Landscape Ordinance. The inspector should verify that all aspects of planting and preservation identified in the Tree Inventory and the Landscape Plan were satisfied. The landscape inspector should not sign off on the Certificate of Occupancy unless the ordinance requirements are satisfied.

If landscape installation is not complete and delay of occupancy would cause a hardship, a temporary occupancy permit can be issued. The issuance of a temporary Occupancy Permit should require posting of a performance bond that exceeds about 110 percent of the cost of non-installed landscape features. The temporary Certificate of Occupancy should specify a deadline for installation (such as three months). Once the site is in compliance with the Tree and Landscape Ordinance, a permanent Certificate of Occupancy can be issued.

Require **Post-Occupancy Inspection** in the ordinance to ensure that installed trees survive.

Since most landscapers provide a one-year survival guarantee with the landscape, inspection within one year can be of substantial benefit to the project owner. The post-occupancy inspection provides incentive for landscapers to provide a quality installation job. It requires the inspector to set up a schedule of inspection at the time the Certificate of Occupancy is issued. Trees that died or have been removed should be identified during the post occupancy inspection. A list of replacement requirements should be provided to the project owner along with a deadline for planting.

(6) **Violations, Penalties, and Appeals.** The Tree and Landscape Ordinance should identify (a) items that constitute a violation, (b) penalties associated with the violations and (c) mechanisms for handling the offense. For a city ordinance, enforcement would usually be handled in Municipal Court. The punishment and fine is usually governed by and limits set by state law. For instance, the maximum allowable fine for each offense in municipal court is \$1,000. However, the ordinance can identify what constitutes an offense. For instance, each tree removed without a tree removal permit could count as a separate offense. The list of offenses that could result in fines would include (a) removal or destruction of a tree without a Tree Removal permit, (b) commencing construction without a Land Disturbance permit, (c) failure to adequately protect trees during construction, and (d) failure to replace dead trees. The city or county attorney can assist with this section of the Tree and Landscape Ordinance.

Opportunity must be provided for any dissatisfied person to appeal the decision of the landscape inspector. Establish a deadline for filing the appeal in the ordinance. This ensures that issues are dealt with in a timely manner. The local Zoning Board of Appeals is usually the organization identified to hear the appeals.

(7) **PERMIT EXEMPTIONS.** There may a few situations where local government grants exemptions to all or part of the ordinance. Permissible exemptions must be specifically identified in the ordinance. For instance, the ordinance may allow for immediate removal, without a permit, of trees damaged by acts of nature. Any situation that may endanger public health, safety or welfare and requires immediate action could be exempted. The governing body may want powers to waive all or part of the ordinance in periods of emergency, such as tornadoes.



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