

AN ORDINANCE TO AMEND CHAPTER 19 OF THE TOWN CODE
OF THE TOWN OF BILTMORE FOREST

TREE PROTECTION

Section 19-1 Purpose

In order to maintain the unique characteristics of the Town of Biltmore Forest as a residential neighborhood with a history beginning as part of the Vanderbilt Estate, it is necessary to preserve the quality and flavor that form so much of the traditional appearance of Biltmore Forest as a true forest. This is particularly true of trees along the roads and around the perimeter of lots. Reference is hereby made to Section 1109 of the Town Zoning Ordinance relating to removal of natural vegetation, which section is routinely involved when residences or other structures are placed on a lot. Trees provide shade, cooling, noise and wind reduction, prevent soil erosion, produce oxygen, filter dust and absorb carbon dioxide. Trees also provide natural habitat and aesthetic enhancement in the Town. Trees provide buffer and a natural canopy, and are a hallmark of the Town requiring protection. Damage to and removal of protected trees requires regulation and control.

Section.19-2. Identification

For purposes of this Ordinance, a protected tree ("Protected Tree") is any tree six inches or more in diameter at a height of 4 ½ feet from the ground (DBH-Diameter at Breast Height), that is in sound, healthy condition. Preservation of Protected trees is the intent of this Ordinance. This Ordinance shall apply to all properties within the Town of Biltmore Forest except properties owned, leased or controlled by the Town.

Section.19-3. Permits

No person shall remove or in any way damage any Protected Tree on a property without first filing an application for said removal, receiving approval from the Town Administrator or his designee for the removal, and paying the applicable fee. The Town Administrator, in his or her discretion, may allow the removal of up to three Protected Trees on the perimeter of a property or lot within the front, side or rear yard setbacks, as such setbacks are defined in the Town's Zoning Ordinance. Within the remaining central portion of a property or lot, and the portion on which structures or improvements may be located, the Town Administrator, in his or her discretion, may allow up to ten Protected Trees to be removed.

If the Town Administrator concludes that the removal of the number of trees requested would be undesirable, and not within the letter or intent of this Ordinance, he may refuse to approve such removal, or permit the removal of a lesser number of trees. Further, in his or her discretion, the Town Administrator may require that the applicant provide a survey showing the location, size and type of Protected Trees on a property, including common scientific names. The survey shall clearly indicate which Protected Trees are indicated for

removal and which will be left undisturbed. In the case of new construction, the site plan must show the location of building, driveways, terraces and other structures on the property. All Protected Trees must be clearly tagged as to retention or removal. An Applicant has the right to appeal a decision of the Town Administrator to the Board of Adjustment.

Section 19-4. Applications for Removal of Protected Trees in Excess of Ten (10)

An application for a permit to remove more than ten (10) Protected Trees on a property must be presented directly to the Board of Adjustment. Fees of \$ 25.00 shall accompany the application.

An application for the removal of thirty (30) or more Protected Trees on a property must be submitted to the Board of Commissioners for review and approval. A non-refundable fee of \$ 100.00 plus \$5.00 for each Protected Tree requested for removal shall accompany the application. Such applications will be considered on case-by-case basis. The cumulative removal of thirty (30) or more Protected Tees from a single property in one year will result in a formal review and must be approved by the Board of Commissioners. As a part of its review, the Board of Commissioners shall have the authority to require replacement and replanting of trees as the Board determines is necessary, including the specific location of replacement trees. The decision of the Board of Commissioners shall be final.

Section 19-5. Removal of Dead, Diseased, and Hazardous Trees.

A tree that is dead, produces no foliage during normal growing season, or a tree that is diseased or storm damaged to the extent that it is structurally compromised and, thus, poses a safety hazard, or a tree that, for any other reason, poses a safety hazard may be removed by the property owner after notifying the Town Administrator of the plans to remove said tree(s) and receiving approval to do so from the Town Administrator. The Town Administrator or the Board of Adjustment may require the property owner to retain a certified arborist to render an opinion as to the health and structural integrity of the tree(s) in question and report said findings, in writing, to the Town before final approval is given. The Town reserves the right to consult with its own tree specialist to confirm the health and condition of any tree(s) prior to removal.

Section.19-6. Pre-Construction Conference & Supervision

Prior to the commencement of any pre-construction land-clearing or soil disturbance, a pre-construction conference will take place between the responsible representative of the Town and the applicant to review procedures for protection and management of all Protected Trees and other landscape elements identified in the approved landscape plan. The applicant will designate one or more persons responsible for ensuring the protection of new or existing landscaping elements to be preserved. The responsible person shall be present on site whenever activity is taking place that could damage or disturb such landscape elements, and will notify the town Administrator that such activity is taking place.

The Town Administrator shall have developed sites inspected frequently to ensure work is conforming to the approved landscape plan and the applicable sections of this ordinance.

Prior to the commencement of any pre-construction land-clearing or soil disturbance, the developer / contractor shall be required to sign a document agreeing to abide by the conditions stipulated in this ordinance. At the option of the town, a compliance bond may be required

Section.19-7. Enforcement

If any unauthorized removal, cutting or damage to Protected Trees takes place, the Town Administrator may issue a Stop-Work Order which shall remain in effect until all corrections are made to bring the Property in compliance with this Chapter.

Section.19-8. Dip Line Protection

The health of Protected Trees requires the prevention of soil disturbance within the drip line of the trees. Covering this area with pavement or other materials, including excess soil, can affect the health of the tree. Landscape plans, to the extent feasible, shall protect this area around the tree.

Section.19-9. Replacement of Trees

Any Protected Trees removed must be replaced in that particular area of the property at a replacement ratio of 2 to 1 (inches in diameter); that is, the diameters of the young trees (measured one foot from the ground level) used in replacement of each removed tree must total at least one half the diameter at breast height of the removed tree. Any replacement tree must be in the ground within eighteen (18) months of removal of original trees.

Depending on extenuating circumstances related to proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Town Administrator or by the Board of Adjustment (in the case of an appeal from the Town) or the Town Administrator may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive."

Section.19-10. Inspections

All Protected Trees designated to remain, pursuant to a tree survey, plus any replacement trees, shall be inspected by the Town Administrator or his designee one year following any construction and/or replacement trees, to ensure the trees are in a healthy condition. The Town Administrator can require replacement or replanting of replacement trees.

Section.19-11. Appeals

Any person aggrieved by the a decision made under this Ordinance by the Town Administrator or his designee may file, within five days after the date of such decision, a petition to have such decision reviewed and acted upon by the Board of Adjustment. The

decision of the Board of Adjustment shall be final, subject only to review by the Board of Commissioners.

Section.19-12. Penalties and Enforcement

A violation of this Ordinance is a Class 3 misdemeanor under North Carolina law. The penalty for violating this ordinance shall be \$250 per day. . Each day of continued violation shall be a separate offense. The Town shall also have the right to pursue civil remedies for a violation of the Ordinance including injunctive relief, and a civil penalty of \$250.00 for each day's violation of the ordinance pursuant to N.C.G.S. 160A-175.

Upon determining that a violation has occurred, the Town Administrator shall record the nature of the violation, and send a Notice of Violation to the responsible person or entity by regular and certified mail. The responsible person or entity shall have 30 days from the date of the letter to correct the violation. If the violation is not corrected within 30 days, the Town Administrator may proceed with criminal charges pursuant to N.C.G.S. 14-4, or may take such other enforcement action as may be necessary to carry out the purposes of this Ordinance.

Section.19-13. Bond

At the option of the Town, a bond or other type of guarantee can be required of the property owner when initiating new construction, to ensure that all permits and agreements are met, to the satisfaction of the Town.