

**AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE
REGARDING TREE COVERAGE, LANDSCAPING, AND BUFFER REVISIONS (TC1800005)**

WHEREAS, the Durham City Council wishes to amend certain provisions in the Unified Development Ordinance regarding trees, landscaping, and project boundary buffers; and

WHEREAS, it is the objective of the Durham City Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

NOW, THEREFORE, be it ordained that Article 4, Zoning Districts; Article 8, Environmental Protection; Article 9, Landscaping and Buffering; and Article 17, Definitions, of the *Unified Development Ordinance* is amended to make the following changes set forth in the deletions (strikethroughs) and additions (underlining) below:

PART 1

[Revisions to the Tuscaloosa-Lakewood NPO for consistency with proposed changes to Sec. 8.3, Tree Protection and Tree Coverage, and changes to the landscaping requirement in Sec. 6.8, Infill Development in Residential Districts]

Sec. 4.6 Neighborhood Protection Overlay (-P)

[Paragraphs not listed remain unchanged]

4.6.5 Tuscaloosa – Lakewood Neighborhood Protection Overlay

C. General Standards

1. Landscaping

This section shall apply to construction of any primary structure, and shall apply on individual lots.

- a. Trees, other than Pinus genus, located within required yards shall be retained unless removal is required to accommodate vehicular and pedestrian access or utilities, or the following is demonstrated by a certified arborist;
 - (1) The tree is determined to be unhealthy; or
 - (2) The tree would not survive construction activity.
- b. A minimum of ~~three~~seven percent tree coverage, met through preservation, replacement, or a combination thereof per Sec. 8.3, Tree Protection and Tree Coverage, is required regardless of the underlying zoning district.
- c. For single-family and two-family development, the ~~above~~-requirements in paragraph a, above, are applicable until a Certificate of Compliance has been issued for the residence on an individual single-family or two-family lot.

PART 2

[Revisions to Sec. 8.3, Tree Protection and Tree Coverage, requiring additional tree coverage in the Urban Tier and requiring preserved tree coverage]

Sec. 8.3 Tree Protection and Tree Coverage

[Paragraphs not listed remain unchanged]

8.3.1 Tree Coverage Standards

B. Applicability

- 1. Tree coverage standards shall only be applied in the Urban and Suburban Tiers.
- 2. ~~Developments in the RR and RS-20 Districts, and developments~~ Developments of less than ~~four~~ two acres in size in the Urban Tier, shall be exempt from tree coverage requirements if enforceable assurances are provided that no mass grading as defined in Sec. 17.3, Defined Terms, or clear-cutting as defined in paragraph 8.3.4, Clear-Cutting, will be utilized during the development process.
- ~~3. No tree coverage is required in non-residential districts in the Urban Tier.~~
- 43. Additions to existing residential structures, excluding multiplexes and apartments, are exempt from tree coverage requirements.

C. Tree Coverage

- 4. Tree coverage standards can be met either by preserving existing trees on the site, by planting replacement trees, or a combination of both, as required below.

a. Suburban Tier

The percentage of a tract which shall have tree coverage is as indicated ~~in the table~~ below. The total tree coverage area shown reflects the addition of replacement tree coverage area to the preserved tree coverage area shown. For certain calculation exclusions in paragraph 8.3.1C.5, Tree Coverage Calculation Exclusions, the total required tree coverage may be adjusted.

(1) Residential Development

(a) A minimum of 20% preserved tree coverage shall be required. If that amount cannot be satisfied pursuant to paragraph 8.3.1D, Preserved Tree Coverage, then the tree coverage percentages within the table below shall be required.

Residential Development

Preserved Tree Coverage Area (%)	Total Tree Coverage Area Required (%)
20	20
At least 15 but less than 20	23
At least 10 but less than 15	24
Less than 10	25

(b) Required Trees on Individual Residential Lots

- i. In addition to street tree requirements pursuant to Sec. 9.6, Street Trees, an existing tree shall be retained, or a new tree planted, prior to receiving a certificate of compliance for a new primary structure on a single-family or two-family residential lot.

- ii. A planted tree shall be an allowable canopy or understory tree pursuant to the *Durham Landscape Manual* and comply with the minimum planting area.

(2) Nonresidential Development

Nonresidential Development

Preserved Tree Coverage Area (%)	Total Tree Coverage Area Required (%)
10	10
At least 8 but less than 10	13
At least 6 but less than 8	14
Less than 6	15

b. Urban Tier

- (1) Residential developments and development in residential districts in the Urban Tier shall provide a minimum ~~three-seven~~ percent preserved tree coverage. If that amount cannot be satisfied pursuant to paragraph 8.3.1D, Preserved Tree Coverage, then the tree coverage percentages within the table below shall be required.

<u>Preserved Tree Coverage Area (%)</u>	<u>Total Tree Coverage Area Required (%)</u>
<u>At least 5 but less than 7</u>	<u>8</u>
<u>At least 3 but less than 5</u>	<u>9</u>
<u>Less than 3</u>	<u>10</u>

(2) Required Trees on Individual Residential Lots

- (a) In addition to street tree requirements pursuant to Sec. 9.6, Street Trees, an existing tree shall be retained, or a new tree planted, prior to receiving a certificate of compliance for a new primary structure on a single-family or two-family residential lot.
- (b) A planted tree shall be an allowable canopy or understory tree pursuant to the *Durham Landscape Manual* and comply with the minimum planting area.
- (3) Single-family and two-family residential developments required to meet standards under Sec. 6.8, Infill Development in Residential Districts, shall meet the standards of that section in lieu of the requirements paragraphs (1) and (2), above.
- (4) All other development shall provide a minimum of three percent tree coverage.

5. Tree Coverage Calculation Exclusions

b. Utility Easements (City Only)

- ~~(1) (City Only) For single-family residential development in the Suburban Tier: The~~ The exclusion shall only apply to single-family and two-family residential development for the area within a utility easement of record (power, gas, water, or sewer) that measures at least 50 feet in width and exists at the time of application submittal. ~~If an application claims this exclusion, the following shall apply:~~

- ~~(a)~~(2) The exclusion shall only be applied to the area calculation for Replacement Tree Coverage and shall allow for adjustment to the overall tree coverage percentage requirement to accommodate the exclusion;

Example: An application requires tree coverage for a 100-acre development tract, with five acres within a qualifying easement. Per the table in paragraph 8.3.1C.4.a, Suburban Tier, 15% is proposed for tree preservation, therefore requiring eight percent for tree replacement for a total of 23% tree coverage. The exclusion shall be applied as follows:

- 15% of 100 acres = 15 acres for tree preservation
- Eight percent of 95 acres (5 acres removed from the 100 acres) = 7.6 acres
- The total tree coverage required = 22.6 acres, or 22.6% (adjusted from the original 23% requirement to accommodate the exclusion)

~~(b) No density credit shall be allowed for land within the easement; and~~

~~(c) No pervious surface credit shall be allowed for land within the easement in determining the overall percentage of impervious surface of the development.~~

~~(2) Where evidence can be provided that a portion of a development tract has been in continuous agricultural use since January 1, 1980, the tree coverage standard indicated in paragraph 8.3.1C, Tree Coverage, can be reduced by the proportion of the entire development tract that is in such agricultural use, up to 33%. Such portion of the tract shall not be required to remain in agricultural use upon approval of a site plan by the approving authority. Tree coverage requirement reductions under this paragraph shall not apply to nonresidential development.~~

~~Example: A 100-acre site in the Suburban Tier is to be developed as single-family housing. Twenty percent of the site is currently in agricultural use. Therefore, instead of the 20% tree coverage requirement, the overall site is only required to provide 16% tree coverage.~~

D. Preserved Tree Coverage

3. Clusters of Trees

- e. At least 75% of the root protection zone for trees within the cluster measuring at least six inches dbh shall remain undisturbed ~~for a cluster of trees shall be located on the subject site~~ for it to be considered a protected cluster. Root zones extending into rights-of-way shall be considered disturbed area, unless legally binding protections are placed upon those areas.

4. Individual Trees

- b. At least 75% of the root protection zone for an individual tree shall ~~be located on the subject site~~ remain undisturbed in order for that tree to count as preserved. Root zones extending into rights-of-way shall be considered disturbed area, unless legally binding protections are placed upon those areas.
- c. An individual tree can be counted toward tree coverage credit provided that its diameter is ~~eight~~ six inches dbh or greater.

8.3.3 Tree Survey

B. Land Disturbance Tree Survey

1. A land disturbance tree survey shall be required for any area for which the limits of disturbance are within 30 feet of a preserved tree coverage area, floodplain, steep slope area, stream-riparian buffer, required landscape buffer, Inventory Site, wetland, or conservation area.
2. The land disturbance tree survey shall show the specific location, species, size and root protection zone of any tree(s) eight-six inches dbh or greater that is within 30 feet of any area proposed for disturbance, and meets the qualifications in the above paragraph.
3. The land disturbance tree survey shall be shown on all site, grading, and erosion control plans, as well as preliminary plats.
4. The survey shall be prepared in accordance with paragraph 9.2.4, Landscape Plans and Surveys.

PART 3

[Revisions to Article 9, Landscaping and Buffering affecting general standards, project boundary buffer standards, and street tree standards]

Sec. 9.2 Landscape Design

[Paragraphs not listed remain unchanged]

9.2.4 Landscape Plans and Surveys

Landscaping plans shall be prepared by certified arborists, landscape architects, or other similarly licensed professionals with a proficiency in preparing landscaping plans. Tree surveys shall be reviewed and signed by a certified arborist, forester, or landscape architect to confirm the size and species of the trees depicted on the plans.

Sec. 9.3 Existing Vegetation Credits for Required Landscaping

[Paragraphs not listed remain unchanged]

9.3.2 Existing Trees

- C. In order to receive credit for any retained trees, at least 8075% of the root protection zone shall remain undisturbed. Root zones extending into rights-of-way shall be considered disturbed area, unless legally binding protections are placed upon those areas. Trees whose root protection zones fall outside the protected area but are within larger groups of trees, shall not count toward any landscaping requirements but shall be left in place unless they are diseased or otherwise hazardous to the integrity of the buffer or the development.

9.3.3 Sampling

- A. All trees, shrubs and groundcover within a minimum 20 foot by 20 foot area for each unique stand of vegetation proposed to be retained shall be inventoried and identified on the landscape plan.
 1. Photographs can be used to supplement the sample but shall not replace it.
 2. For purposes of determining preserved tree coverage, shrubs and groundcover need not be included in the sampling.
- B. The Planning Director, or designee, can require additional sample areas as needed to ensure a representative sample of the existing vegetation.

Sec. 9.4 Project Boundary Buffers

[Paragraphs not listed remain unchanged]

9.4.2 Location

A. Along Rights-of-Ways

1. In the Suburban Tier, a project boundary buffer for a residential project is not required adjoining a street or railroad right-of-way that is greater than 80 feet.
2. In all other locations, ~~Required~~ required project boundary buffers shall be provided along the perimeter of any lot or development except adjoining a street or railroad rights-of-way that ~~are~~ is greater than 60 feet in width.

9.4.3 Standards

C. Modifications of the Project Boundary Buffer Table

6. For residential development utilizing mass grading in the Suburban Tier, a minimum opacity of 0.4 shall be required, unless a greater opacity is otherwise required.

D. Specimen Trees Protected

Existing specimen trees, as defined in paragraph 8.3.5, Specimen Trees, located within a required project boundary buffer shall be surveyed and protected as described in paragraphs 8.3.5 and 9.3.2, Existing Trees. Removal of such trees is allowed only as required to provide access to the property.

9.4.4 Natural Buffers

A. Natural Buffer Required

1. Existing healthy, natural forest cover and other vegetation shall be used to meet buffer requirements in the Rural and Suburban Tiers in the following instance:
 - a. Where a buffer with an opacity of ~~0.80.6~~ or greater is required; ~~and~~
 - b. Where the existing tree cover exceeds 15 feet in height; and
 - c. Where the existing tree canopy covers at least 25%~~75% or more~~ of the required buffer area.
2. The minimum width of a required natural buffer shall be ~~50~~30 feet.

B. Natural Buffer as an Option

In the Urban Tier and in projects in the Rural and Suburban Tiers that do not require use of a natural buffer, a natural buffer can be employed. A minimum natural buffer width of ~~25~~20 feet or the width required to satisfy paragraph 9.4.5, Constructed Buffer, whichever is greater, shall be required in these instances.

9.4.5 Constructed Buffer

~~E. Specimen Trees Retained~~

~~Existing specimen trees, as defined in paragraph 8.3.5, Specimen Trees, located within a required project boundary buffer shall be retained; except where the removal of such trees is required to provide access to the property.~~

~~FE.~~ **Buffer Width Modification** [text remains unchanged]

Sec. 9.6 Street Trees

[Paragraphs not listed remain unchanged]

9.6.2 Required Street Trees

A. Street Trees in Districts other than SRP-C (County Only), CI or Design Districts

1. Trees shall either be retained or planted such that there is an average of at least one street tree for every 40 feet of street frontage along the sides of all existing and proposed rights-of-way (except alleys), and private street easements. If understory trees are planted, then the average shall be at least one understory street tree for every 30 feet of street frontage along the sides of all existing and proposed rights-of-way (except alleys), and private street easements.

9.6.3 Credit for Existing Trees

- A. Developers can use existing trees to meet the requirements of this section, as long as existing trees are protected in accordance with the standards of paragraph 8.3.2, Protection of Existing Vegetation. However, the amount of required trees pursuant to paragraph 9.6.2A.1 shall apply regardless of the credit received for the use of existing trees.
- B. Trees preserved to meet other requirements of this Ordinance can be used to meet the requirements of this section as well, provided they meet the minimum size and location requirements of this section.
- C. Trees located in a side yard behind the front building line or located behind any portion of a building cannot be used for credit.

PART 4

[Revisions to the definition of “mass grading”]

Sec. 17.3 Defined Terms

Mass Grading: The grading of four acres or more at one time to prepare one or more lot(s) for construction. The phasing or staged grading of a project resulting in less than four acres in any given phase or stage shall not exclude the project from this definition.

PART 5

That the Unified Development Ordinance shall be renumbered, including references, as necessary to accommodate these changes.

PART 6

That this amendment of the Unified Development Ordinance shall become effective November 1, 2019.