

## **Chapter 25**

### **Trees**

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### **Sec. 25.1. Intent**

This article is intended to prevent clear cutting of trees from building sites on private and public property, and to recognize trees as a valuable asset to the community, contributing to air and water quality, shade and aesthetics, and to further recognize healthy trees of circumferences of seventy-five (75) inches or more as entitled to special protection as irreplaceable historic natural resources.

### **Sec. 25.2. Jurisdiction**

This article shall apply to all parcels of real property, no matter the size, within the corporate limits of the town, except as exempted in 25.3.

### **Sec. 25.3. Exemptions**

This article shall not apply to the following:

- (a) Any tree certified by the town administrator to be hazardous to public health or safety, or a threat to developed property.
- (b) For any period of emergency, such as hurricane, tornado, or flood, the requirements of this article may be waived by the mayor or his assignee.

### **Sec. 25.4. Definitions**

- (a) Tree: Any living, self-supporting woody perennial plant which has a trunk circumference of fifteen (15) inches or more, except for flowering dogwoods (*cornus florida*) or eastern redbuds (*cercis canadensis*) which have a trunk circumference of nine (9) inches or more.
- (b) Historic tree: Any tree having a trunk circumference greater than seventy-five (75) inches.
- (c) Protected tree: All historic trees, and not less than fifty (50) percent of all other trees on the property to be developed.
- (d) Circumference: The distance around the trunk of a tree, measured one (1) foot above the ground level.
- (e) Buildable area: That portion of a lot, exclusive of required setbacks, upon which a structure may be placed, according to the town ordinance for each district.
- (f) Developed property: Property upon which a structure has been placed, or for which a grading or building permit has been issued.

(g) Destruction or removal of trees: Any intentional or negligent act which causes, or will cause, a tree to die within one (1) year, including damage inflicted upon root system by toxic substance, machinery, excavation, filling, or paving over, and damage caused by fire or other injury which results in fatal or hazardous pest infestation.

(h) Developer: The owner/agent of any parcel of land that is developable under town ordinance requirements.

### **Sec. 25.5. Protection**

During or after development, trees shall be protected as follows:

(a) After appropriate permits have been issued, and before any site work is commenced, the developer shall mark all protected trees with surveyor's flagging tape, and shall instruct construction crews to protect and preserve such trees during development.

(b) During development, a minimum protective zone shall be established and maintained around all protected trees. There shall be no construction, paving, grading, operation of equipment or vehicles, or storage of materials, within this zone. This zone shall be a minimum of five (5) feet from the circumference of the trunk of a protected tree, extended to 15 feet in the case of historic trees unless a special permit is granted.

### **25.6. Site Plan Review**

No building or grading permit, which involves the intentional or potential destruction or removal of any trees, shall be issued for any improvements or development until a site plan has been submitted by the developer, and approved by the town administrator. This site plan shall include:

(a) Location of all historic trees.

(b) Approximate location of all other trees on the site. Groups of trees may be shown as clusters or clumps, designating predominant types, estimated number, and average circumference.

(c) Identification of all trees to be protected.

(d) Location of all improvements, existing and proposed.

### **Sec. 25.7. Replacement**

If a development results in destruction or removal of protected trees, such trees shall be replaced with trees, of types approved by the town administrator, having minimum circumference of six (6) inches and a minimum height of eight (8) feet, except if flowering trees are approved, they may be smaller, as appropriate.

### **Sec. 25.8. Specific Relief**

In appropriate cases, where literal enforcement would work an economic hardship on the owner (i.e. prevent any reasonable development as zoned), or cause a result not in the public interest, the town administrator may permit alternative relief, including alternate re-vegetation, or other landscaping.

### **Sec. 25.9. Violations and Penalties.**

If the town administrator determines that any requirement of this article has been violated, he shall notify the developer and the owner of the property, describing the violation, and the action necessary to correct it. Failure to correct or to file an appeal within ten (10) days to the board of appeal will result in the issuance of a summons and a hearing in municipal court. Conviction for violation of this article shall be a misdemeanor, punishable as defined in Section 14.5 of this Code. Each tree destroyed or removed in violation of this article, or each day that a violation is allowed to continue after notice, may constitute a separate offense. Any person who participates, commits, or assists in such violation may be found guilty of a separate offense.

### **Sec. 25.10. Appeals**

Any person aggrieved by a determination of the town administrator may, within ten (10) days of notice, file a written appeal with the board of appeal. The board shall hear and decide the appeal within thirty (30) days. If the appeal is not heard within thirty (30) days, the appeal is considered granted. If the board concludes that the town administrator made an error, or improperly interpreted this article, or that the action being appealed from is in the public interest, it may reverse the decision of the town administrator. All decisions of the board are final. Such final decisions are appealable by either party by way of certiorari to the circuit court of Dillon County.

### **Sec. 25.11. Severability**

Should any section of this article be declared unconstitutional or void by a court of law, such declaration shall not affect the remainder of the article.