Section

99.01 Establishment

99.02 Definitions

99.03 Nuisances on private property

99.04 Permits required for work or activity

99.05 Planting

99.06 Maintenance

99.07 Removal and replacement

99.08 Placing materials on town property

99.09 Public utility companies

99.10 Abuse or mutilation of town trees

99.11 Emergencies

99.98 Violations

**§ 99.01 ESTABLISHMENT.**

(A) The purpose of this chapter is to recognize the valuable asset the town has in the trees and shrubs that have been planted over the years and to encourage the protection of trees and shrubs along streets and on town grounds, because they are a continuing asset to the sound development of the town.

(B) To accomplish this purpose, this chapter:

(1) Establishes procedures for the planting and maintenance of trees and shrubs on town property; and

(2) Defines those situations in which trees growing on private property constitute a public nuisance.

(Ord. passed 5-9-91)

**§ 99.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***AGENT.*** A person authorized by another to act for him/her, one entrusted with another's business. Agency may be based on fact or pursuant to written agreement.

***ELECTRICITY RIGHT OF WAY.*** Any property within 15 feet of an electric pole.

***OWNER.*** The person in whom is vested the ownership, dominion or title of property, including each joint or common owner, or life tenant, as determined from the public records of Wayne County.

***PERSON.*** Any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or any other legal entity however designated.

***PUBLIC UTILITY COMPANY.*** A railroad company, pipeline company, gas company, electric power company, telephone company or any other company that performs a public service and is regulated as such by a public authority such as the North Carolina Utilities Commission or the town as franchiser.

***SHRUB.*** A self-supporting multi-stemmed woody plant, generally achieving an average maximum height of 12 feet in the environs of the town.

***SIGHT DISTANCE.*** The distance required for nearly all drivers to perceive and properly respond to traffic conditions or control devices.

***TOPPING.*** The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown so as to remove the normal canopy and disfigure the tree.

***TOWN ADMINISTRATOR*** The Town Administrator of the Town of Fremont and any other officer or agent of the town to whom the Town Administrator has delegated any function or power bestowed upon him/her by this chapter.

***TOWN TREE.*** A tree (see definition of “tree” set out in this section) located on town property or right-of-way.

***TREE.*** A self-supporting woody plant having a well-defined stem or trunk, or the capability of having a single stem through trained growth, a more or less definite crown, a height at maturity of at least eight feet in the environs of the town, and a trunk caliber at maturity of five inches or greater at a height six inches above the ground.

***TREE PLANTING AND MAINTENANCE SPECIFICATIONS AND STANDARDS.*** Criteria adopted by the Town Administrator to govern the planting designs, selection, locations, and methods; pruning, removal, fertilization, spraying, bracing, and protection of town trees.

(Ord. passed 5-9-91; Am. Ord. 4-96, passed 11-17-96)

**§ 99.03 NUISANCES ON PRIVATE PROPERTY.**

(A) *Duty of Property Owner.* The owner or agent of the owner of any real property bordering on any street and upon whose property there are trees shall maintain those trees so that they do not interfere with or endanger the use of the public streets; interfere with or obstruct illumination of street lights; obscure sight distance or create a traffic hazard; interfere with the visibility of any traffic-control device or sign; obstruct or impair the free passage of pedestrians on sidewalks; project into or overhang town sidewalks or other town rights-of-way at a vertical clearance of less than seven feet; project into or overhang paved town streets at a vertical clearance of 14 feet; or endanger the life, health, safety or property of the public.

(B) *Declaration of Public Nuisance.* The Town Administrator may declare that any obstruction or interference identified in this section is a public nuisance. When the Town Administrator so declares, he/she shall notify the owner or agent of the owner by certified mail (return receipt requested) of the existence of the nuisance and shall allow a specified period of time of 30 days or less in which to correct or to remove the nuisance. If the owner or agent or the owner does not correct or remove the nuisance within the specified period of time after receipt of notice, the Town Administrator may enter the property to correct or remove the nuisance. The town shall perform all corrective maintenance according to the tree planting and maintenance specifications and standards.

(C) *Cost of Correction.* Violation of this section shall subject the property owner to a civil penalty based on the cost of correction or removal of the nuisance and to be recovered by the town in a civil action in the nature of debt if the property owner does not pay the penalty within 30 days after he/she has been cited for violation of this section and demand for payment has been made by the Town Administrator.

(Ord. passed 5-9-91)

**§ 99.04 PERMITS REQUIRED FOR WORK OR ACTIVITY.**

(A) *Permit Required.* No person shall perform or undertake, or cause to be performed or undertaken, any work or activity governed by and included within this chapter on any town property without first filing an application with and obtaining a permit from the Town Administrator. The town and public utility companies are eligible for a master permit as described in § 99.09 (in lieu of individual permits) for jobs requiring tree maintenance or excavation affecting trees.

(B) *Standards for Review.* Application for permits must be made at the office of the Town Administrator not less than 48 hours prior to the time the work is to be done. The Town Administrator shall issue the permit provided for herein when he/she determines that the proposed work or activity is consistent with the town's interest in town trees and the proposed method and workmanship are consistent with the tree planting and maintenance specifications and standards.

(C) *Scope of Permit.* Each permit shall include a description of the location and nature of the work or other activity authorized by it. The permit holder shall perform all work in strict accordance with the tree planting and maintenance specifications and standards. The permit shall bear a definite date of expiration, and the work shall be completed within the time allowed by the permit and in the manner described therein. The permit holder shall notify the Town Administrator that the project has been completed no later than five days after project completion. The Town Administrator may require inspection of the site upon completion of the project.

(Ord. passed 5-9-91)

**§ 99.05 PLANTING.**

(A) *Permit Required.* No person shall plant any tree or shrub on town property without first filing an application with and obtaining a permit from the Town Administrator. The application required herein shall state the number of trees or shrubs to be planted; the location, grade, size, species, cultivar or variety of each tree or shrub; and such other information as the Town Administrator shall find reasonably necessary to a thorough review of the application. All tree planting must conform to a master tree planting plan. The Town Administrator may cause the removal of any tree(s) or shrub(s) that is planted in conflict with the provisions of this section. When the person who planted the tree(s) or shrub(s) can be identified, the Town Administrator shall notify him/her of the violation of this chapter and shall order him/her to remove the tree(s) or shrub(s) and restore the site to its condition before the tree(s) or shrub(s) was planted within ten days. If the tree(s) or shrub(s) has not been removed after ten days, the Town Administrator shall remove the tree(s) or shrub(s).

(B) *Planting Plans Required.* Any person desiring to plant more than ten trees or shrubs on any town property shall, in addition to applying for a permit, submit a planting plan or written statement to the Town Administrator. The Town Administrator shall review and approve the statement or plan before issuing a permit to plant. All planting plans shall show accurately:

(1) The proposed or existing street right-of-way width; the subdivision of pavement, curb, and gutter within the street right-of-way; distance from face of curb to property line; and location of sidewalk. All plans shall be drawn to a definite, indicated scale.

(2) The proposed location of each new tree and shrub and the location of each existing tree and shrub within the proposed street line. The location of each proposed or existing tree and shrub shall be shown in scaled relation to the other features of the plan.

(3) The species, cultivar or variety of each tree and shrub proposed to be planted and those already existing within the proposed street lines, either indicated on the plans or referenced with a number to a key list.

(4) The distance (in feet) between trees and shrubs in any one row.

(5) The nature of the soil in the planting space to a depth of two feet, and any existing or proposed surface or subsoil drainage system.

(C) All statements filed in lieu of a planting plan shall contain the same information as required on the plan.

(D) Restriction on planting in right-of-way.

(1) No planting of any shrubs or trees within 30 feet of a street right a way at an intersection.

(2) No planting of any trees in electricity right of ways. Shrubs may be planted under electric power lines, but may not exceed three feet in height.

(3) In right of ways where no electric lines are present ornamental trees approved by the Town Administrator may be planted.

(4) Property owners shall always be responsible for trimming trees or shrubs to ensure that plantings do not interfere with use of streets or sidewalks.

(5) A planting clearance of five feet shall be maintained around fire hydrants.

(Ord. passed 5-9-91; Am. Ord. 4-96, passed 11-17-96)

**§ 99.06 MAINTENANCE.**

(A) *Permit Required.* No person shall spray, fertilize, preserve, prune, brace, perform surgery on, treat for disease, infection or insect infestation, cut any branch or root, or otherwise disturb any town tree without first obtaining a permit from the Town Administrator. The application required herein shall state the number and kinds of trees to be maintained, the kind of treatment and method of workmanship to be administered, the composition of the material to be applied, and other information as the Town Administrator shall find reasonably necessary to a thorough review of the application.

(B) *Topping Not Allowed.* No person shall top any town tree. The Town Administrator may exempt an applicant from the requirement of this subsection upon finding that a tree has been severely damaged by storm or other causes or is under utility wires, and other pruning practices are impractical.

(Ord. passed 5-9-91)

**§ 99.07 REMOVAL AND REPLACEMENT.**

No person shall remove a town tree without first obtaining a permit from the Board of Aldermen. As a condition to any permit for removal of any town tree, the Board of Aldermen may require that the permit holder pay a fee of not more than $50 for each tree to be removed for the town to plant a designated species of tree(s) as nearly equivalent in size as reasonably possible in place of the one(s) removed. (Ord. passed 5-9-91)

**§ 99.08 PLACING MATERIALS ON TOWN**

**PROPERTY.**

No person shall deposit, place, store or maintain upon town property any stone, brick, sand, concrete or other materials which may impede the free passage of water, air, and fertilizer to the roots of any town tree, except by written permission of the Town Administrator.

(Ord. passed 5-9-91)

**§ 99.09 PUBLIC UTILITY COMPANIES.**

(A) The town and public utility companies are not required to obtain individual job permits to perform necessary tree maintenance or excavation affecting town trees but instead may obtain a master permit from the Town Administrator. No master permit shall be valid for a period greater than one year from the date of issuance. The permit authorizing such trimming or other operations affecting a town tree shall be limited to the minimum trimming or other operations affecting a town tree that will allow the installation and maintenance of the public utility company lines. The Town Administrator and the public utility company shall jointly determine the extent of trimming or other operations affecting a town tree that will be necessary to facilitate the functions of the public utility company; however, the Town Administrator shall have the ultimate authority as to the final determination.

(B) In addition to acquiring a master permit, any public utility company shall notify the Town Administrator prior to performing any work that will affect a town tree(s). Such work shall be done in a neat and professional manner and in accordance with the tree planting and maintenance specifications and standards and any additional specifications outlined by the Town Administrator. The Town Administrator may inspect all work done pursuant to a master plan.

(Ord. passed 5-9-91)

**§ 99.10 ABUSE OR MUTILATION OF TOWN TREES.**

Unless specifically authorized by the Town Administrator, no person shall:

(A) Damage, cut, carve, break, transplant or remove, climb with spikes, kill or cause to be killed any town tree; or

(B) Attach any rope, wire, nails, signs, advertising posters or other device to, around or through any town tree, or

(C) Place, spray or allow any solid, liquid or gaseous substance which the person or agent of the person placing, spraying or otherwise allowing such substances to come in contact with any town tree(s) knows or should have known would reasonably likely be harmful to any town tree(s).

(D) Remove or damage any guard devices placed to protect any town tree(s).

(Ord. passed 5-9-91)

**§ 99.11 EMERGENCIES.**

In case of emergencies, such as windstorms, ice storms, floods, hurricanes, major interruptions of utility service, or other disasters, any requirement of this chapter which would hamper private or public work to restore order to the town shall be waived during emergency work so as to prevent injury or damage to the public. Within 48 hours, the Town Administrator shall be notified of the location(s) and nature of any emergency maintenance affecting a town tree. This work shall be done in accordance with emergency standards as outlined by the Town Administrator.

(Ord. passed 5-9-91)

**§ 99.98 VIOLATIONS.**

(A) No person shall fail, neglect or refuse to comply with an order or notice of violation from the Town Administrator or with the provisions of this chapter.

(B) The provisions of this chapter may also be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

(C) The remedies and penalties established by § 10.99 are in addition to the specific remedies and penalties established by other sections of this Code of Ordinances and any applicable State Law. The remedies and penalties established by § 10.99 may be applied in combination with the remedies and penalties of other sections of this Code of Ordinances or with each other.

(Ord. passed 5-9-91)