

CHAPTER 30

VEGETATION

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ARTICLE I. IN GENERAL

SECTIONS 30-1 - 30-15. RESERVED.

ARTICLE II. TREES ON PUBLIC PROPERTY

DIVISION 1. GENERALLY

SECTION 30-16. VIOLATIONS OF ARTICLE.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a Class 4 misdemeanor. In addition, wherever the words “City Manager” shall appear in this Article, they shall be deemed to include the City Manager’s designee. (Ord. No. 020-2001, 5-8-2001)

SECTION 30-17. ISSUANCE AND EXPIRATION OF PERMITS REQUIRED BY ARTICLE; APPEALS.

- (a) All permits required by this article shall be issued by the City Arborist. Any and all such permits shall expire at such time as may be designated therein.
- (b) The City Arborist shall advise the applicant and the City Manager, or his designee, in writing of his decision to issue or deny any permit required by the Article. Any original permit applicant aggrieved by the decision of the City Arborist to issue or deny any such permit shall have the right to appeal the decision to a panel comprised of the City Manager and two members of the Environmental Sustainability Taskforce,

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as described in Section 30-32, by advising the City Manager's Office in writing within ten (10) days of the date of the City Arborist's decision.
(Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-18. PERMIT TO PLANT.

It shall be unlawful for any person to plant any tree in any street, park, public place or public grounds of the City, without first having obtained a written permit therefor from the City Arborist, who may, at his option, consult the Environmental Sustainability Taskforce, setting forth the variety thereof and the location where the same may be planted, and without in all respects complying with the conditions and terms of such permit.

(Code 1959, §19-9; Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-19. PERMIT FOR ATTACHMENTS, SPRAY, TRIM, ETC.

It shall be unlawful for any person, without first having obtained a written permit from the City Arborist, who may, at his option, consult the Environmental Sustainability Taskforce, to attach any wire, insulator, rope, sign, poster, handbill or other thing or substance on, spray or otherwise treat or trim any living tree or any part thereof any tree growing in any street, park or public place or grounds or on any guard or protection device of such tree.

(Code 1959, §§19-1, 19-12; Ord No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-20. REPEALED.

(Ord. No. 2009-30, 10-13-09)

SECTION 30-21. PERMIT FOR CUTTING AND REMOVAL.

- (a) No cutting, meaning removal and/or destruction, of any live tree in any street, park, public place or grounds in connection with the work of any City department or agency of the City, other than the City Manager, or of any public service corporation or other person having a right to use the street, park, public place or grounds shall be done except upon issuance of a permit and in such manner as directed by the City Arborist, who may, at his option, consult the Environmental Sustainability Taskforce before directing such work to be performed or issuing any permit for same.

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- (b) Cutting, removal, or destruction of any live tree in any street, park, or public place or grounds that is done in connection with the work of any City Department or agency of the City as authorized by the City Manager or of any public service corporation or other person having lawful a right delegated by Common Council to use the street, park, public place or grounds and cut or remove trees in connection with said use, shall be exempted from the permit requirements of Section 30-21(a).
(Code 1959, §19-11; Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-22. REMOVING OR DAMAGING PROTECTIVE DEVICES.

It shall be unlawful for any person to remove, injure or misuse any guard or device placed or intended to protect any tree growing in any street, park or public place or grounds. (Code 1959, §19-2)

SECTION 30-23. PROTECTION DURING BUILDING OPERATIONS.

In the erection, alteration or repair of any building or structure, the owner thereof shall place, or cause to be placed, in accordance with the directions of the City Arborist, who may, at his option, consult the Environmental Sustainability Taskforce, such guards around nearby trees in the streets or public places or grounds as shall effectively prevent injury to such trees.

(Code 1959, §19-14; Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-24. OBSTRUCTING FLOW OF WATER AND AIR TO ROOTS.

It shall be unlawful for any person to place or maintain in a street or public place or grounds, any stone, cement or other substance which shall impede the free entrance of water and air to the roots of any tree. (Code 1959, §19-3)

SECTION 30-25. DESTRUCTION OF TREES, SHRUBS, ETC.

It shall be unlawful for any person to pick, pull, pull up, tear, tear up, dig, dig up, cut, break, injure, burn or destroy, in whole or in part, any tree, shrub, vine, plant, flower or turf found, growing or being upon any land reserved, set aside or maintained by the City as a public park, or as a refuge or sanctuary for wild animals, birds or fish without having previously obtained the permission in writing of such other or his agent or of the superintendent or custodian of such park, refuge or sanctuary so to do, unless the same be done under the personal direction, such superintendent or custodian of such park, refuge or sanctuary.

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Any person violating this section shall be guilty of a Class 3 misdemeanor; provided, however, that the approval of the superintendent or custodian of such park or sanctuary afterwards given in writing or in open court shall be a bar to further prosecution or suit. (Code 1950, §18.1-178; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 757.)

State Law Reference--Similar provision, Code of Virginia, §18.2-140.

SECTIONS 30-26 - 30-30. RESERVED.

DIVISION 2. ENVIRONMENTAL SUSTAINABILITY TASKFORCE AND CITY ARBORIST

SECTION 30-31. CITY ARBORIST

The City may employ a person or private contractor to serve as the “City Arborist”. The City Arborist shall provide recommendations to the City Manager with regard to the removal of existing trees in the City of Winchester, planting and maintenance of tree in the City, and other matters for which it may be deemed that his knowledge, training, and experience could be of benefit to the City of Winchester.
(Ord. No. 2009-30, 10-13-09)

SECTION 30-32. ENVIRONMENTAL SUSTAINABILITY TASKFORCE CREATED; COMPOSITION; APPOINTMENT AND TERMS OF MEMBERS; FILLING VACANCIES.

- (a) There is hereby created an Environmental Sustainability Taskforce that will assume all of the duties and functions previously assigned to the Tree Commission and the Natural Resources Advisory Board, both of which are hereby disbanded. The Environmental Sustainability Taskforce will be composed of seven (7) members, six (6) of whom shall be residents of the City appointed by Common Council. Initially, three (3) of the members shall be appointed to serve until December 31, 2015, and three (3) to serve until December 31, 2017. Thereafter all members shall serve for a term of four (4) years or until their successors take office. The City Arborist or other designee of the City Manager, shall serve as the seventh full voting member. The City Manager may remove and replace his designee at his discretion.
- (b) With the exception of the City Manager’s designee, who may be appointed, removed, or replaced as described in paragraph (a), vacancies occurring on the

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Environmental Sustainability Taskforce other than through the expiration of term shall be filled for the unexpired term by the appointment of Common Council.

- (c) During the pendency of appointment to fill a vacancy as described in paragraph (b), the City Manager may appoint an interim member of the Environmental Sustainability Taskforce who shall serve until such time as Common Council makes an appointment to fill the vacancy as described in paragraph (b).
- (d) In accordance with Section 30-17, within thirty (30) days of receipt of a written appeal of a decision by the City Arborist regarding the issuance of a permit pursuant to this Article, the Environmental Sustainability Taskforce shall review the City Arborist's decision and render a final written decision to sustain, reject, or modify the decision made by the City Arborist. Such determination by this committee shall be issued within thirty (30) days of review by the committee and shall be final and unappealable. The meetings of the committee convened pursuant to this section shall be an open public meeting. The City Manager or his designee shall appoint a secretary for such meetings who shall be responsible for recording minutes and ensuring that proper public notice is issued for any meetings of the committee. The City Manager or his designee shall also ensure that the City Attorney or his designee is provided with proper notice to attend the meetings to provide necessary legal advice as needed by the committee.

(Code 1959, §19-4; Ord. No. 001-80, 1-8-80; Ord. No. 2013-34, 11-12-13)

SECTION 30-33. MEMBERS NOT COMPENSATED.

All members of the Environmental Sustainability Taskforce shall serve without compensation.

(Code 1959, §19-4; Ord. No. 001-80, 01-08-80; Ord. No. 2013-34, 11-12-13)

SECTION 30-34. ORGANIZATION; ELECTION OF OFFICERS; QUORUM.

The members of the Environmental Sustainability Taskforce shall, immediately after their appointment, meet and organize. They shall elect a chairman, a vice-chairman and such other officers as they may deem necessary. A majority of the members of the Environmental Sustainability Taskforce shall constitute a quorum for the transaction of business.

(Code 1959, §19-5; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

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SECTION 30-35. POWERS AND DUTIES.

The Environmental Sustainability Taskforce is an advisory board created to identify ways to reduce the impact of the City of Winchester on its environment, to encourage environmental stewardship and education among residents, to encourage collaboration among various entities in the Shenandoah Valley to preserve the environment, and to suggest areas for policy recommendation to the City Manager and City Council. The Taskforce also assumes the responsibilities of the former Tree Commission and Natural Resources Advisory Board with respect to permits and appeals as described in Chapter 30 and may be called upon to render advice to the City Arborist and City Manager regarding the planting and preservation of trees in the City of Winchester. This board serves in an advisory capacity only and possesses no adjudicatory, executive, or legislative powers.

The Environmental Sustainability Taskforce, at the request of the City Arborist or of the City Manager, shall provide advice and expertise regarding the trees now standing or hereafter planted on the streets, parks, public places and public grounds of the City. It shall have the duty to render advice and assistance to the City Arborist, at his request, as to the planting, trimming and removing of such trees and to provide advice and expertise to the City Arborist, at his request, as to the issuance of permits therefor.

(Code 1959, §19-6; Ord. No. 020-2001, 5-8-2001; Ord. No. 2009-30, 10-13-09; Ord. No. 2013-34, 11-12-13)

SECTION 30-36. RECOMMENDATIONS TO COUNCIL.

The City Arborist, through the City Manager, shall, on or before March 1st of each year, recommend to the Council such regulations as may be necessary for the proper preservation and protection of trees and the improvement of any public park, public place or public grounds, to specifically include recommendations for planting and maintenance of such trees. The City Arborist may consult with the Environmental Sustainability Taskforce in formulating his annual recommendations as deemed necessary by the City Arborist.

(Code 1959, §19-7; Ord. No. 020-2001, 5-8-2001; Ord. No. 2013-34, 11-12-13)

SECTION 30-37. INTERFERING WITH ARBORIST, TASKFORCE OR CITY.

It shall be unlawful for any person in any way to interfere, or cause any person to interfere, with the City Arborist, the Environmental Sustainability Taskforce, or any employee of the City of Winchester, its agents or employees while planting, spraying, removing or otherwise caring for and protecting any tree in any street, park, public place or grounds. (Code 1959, §19-13; Ord. No. 2013-34, 11-12-13)

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SECTIONS 30-38 - 30-48. RESERVED.

ARTICLE III. GRASS, WEEDS AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY

SECTION 30-49. DEFINITIONS.

For the purpose of this article, the following words shall have the meanings respectively ascribed to them by this section:

Growing Season: Time period beginning April 20th and ending October 29th.
Source: Vegetable Planting Guide and Recommended Planting Dates, Virginia Cooperative Extension Publication 426-331.

Owners: Persons holding title to any land or lot in the City; lessees, tenants and principal occupants of any land or lot in the City or agents of persons holding title to such lands or lots, and agents of persons having care, custody, control or management of the land or lot; and fiduciaries holding title to or having the care, custody, control or management of land or lots in the City for others.

Weeds: Wild or uncontrolled growth or vegetation of every kind standing on land, other than trees, ornamental shrubbery, flowers and garden vegetables.
(Code 1959, §1-5; Ord. No. 049-95, 10-17-95; Ord. No. 2013-38, 12-10-13)

SECTION 30-50. DUTY OF PROPERTY OWNERS TO CUT.

- (a) Owners of property within the City shall not allow grass, weeds and other foreign growth thereon to exceed ten (10) inches in height. All grass, weeds and foreign growth on a one hundred (100) feet by one hundred (100) feet or smaller lot or acreage must be cut. In case of a larger lot or acreage, all grass, weeds and foreign growth thereon must be cut a distance of one hundred (100) feet from all adjoining property lines.
- (b) Any owner who violates any provision of this section shall be subject to a civil penalty of Fifty Dollars (\$50.00) for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within twelve (12) months of the first violation shall be Two Hundred Dollars (\$200.00). Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of Three Thousand Dollars (\$3,000.00) in a twelve (12) month period.

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- (c) Violations of any provision of this section shall be a Class 3 misdemeanor in the event three (3) civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, with a twenty-four (24) month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.
(Code 1959, §11-5; Ord. No. 022-94, 07-12-94; Ord. No. 13-2006, 4-11-06)

SECTION 30-51. NOTICE TO CUT.

Where grass, weeds or other foreign growth in excess of ten (10) inches in height are found upon property, the code enforcement officer, as defined in section 11-2 shall immediately notify the owner of such property to cut such grass, weeds, or other foreign growth down to a height not to exceed three (3) inches. One written notification per growing season to the owner shall be considered reasonable notice for this article provided it is made by the same procedure as set forth in Section 11-37 of this Code.
(Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 029-91; 6-11-91; Ord. No. 022-94, 07-12-94; Ord. No. 028-97, 10-14-97; Ord. No. 2013-38, 12-10-13)

SECTION 30-52. CUTTING BY THE CITY.

- (a) If grass, weeds, or other foreign growth have not been cut within ten (10) days from the date the notice provided for in Section 30-51 is sent, the code enforcement officer, as defined in section 11-2 shall cause the cutting by the City's forces or the City's agent of such grass, weeds or other foreign growth forthwith.
- (b) Where grass, weeds or other foreign growth have been cut by order of the code enforcement officer pursuant to the provisions of this section, the cost of such cutting and a Fifty Dollar (\$50) fee to offset the administrative expenses shall be billed to the owner of the property. If such bill is not paid, it shall be added to the City real estate tax bill on such property and shall be a lien on such property to the same extent and effect as such real estate tax is.
(Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 029-91, 6-11-91; Ord. No. 022-94, 07-12-94; Ord. No. 028-97, 10-14-97; Ord. No. 2013-38, 12-10-13)

State Law References--Authority of city to require cutting or removal of weeds and other foreign growth, Code of Virginia, §§15.2-0-1, 15.2-1115, §15.2-1429(penalty).