

Trends in Tree Protection Ordinances




2022 GREAT NC
TREE CONFERENCE



OVERVIEW

- Legal Framework for Tree Protection
- Terminology
- Retention Spectrum
- Clear Cutting (on development sites)
- Mitigation Measures
- Enforcement



21 Codes Completed
29 Years of Experience

CodeWright
Make Towns Just Works

- Simple Language
- Measurable Criteria
- Intuitive Structure
- Beautiful Documents
- Balance Flexibility & Predictability
- Post-Adoption Assistance


CodeWright Planners, LLC, is a planning and zoning consultancy founded in Durham, NC in 2014. Chad Meadows serves as Principal and sole employee. CodeWright prepares development codes, plans, and studies solely for local government clients across the Southeast. We are passionate about creating beautiful, effective documents that meet our client's needs and exceed their expectations.

Legal Framework

- This presentation is focused on government regulations that require tree protection or retention on private land as part of proposed or existing development




Legal Framework for Tree Ordinances in NC

or·di·nance  (ôr'dn-əns)

n.

1. An authoritative command or order.
2. A custom or practice established by long usage.
3. A Christian rite, especially the Eucharist.
4. A statute or regulation, especially one enacted by a municipal government.

[Middle English ordinaunce, from Old French ordenance, from Medieval Latin *ordinantia*, from Latin *ordināns*, *ordinant-*, present participle of *ordināre*, *to ordain*, from *ordō*, *ordin-*, *order*; see [ar-](#) in [Indo-European roots](#).]

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- North Carolina is a Dillon's Rule State
- This means that all authority that a local government has is given to them by the State government
- Whether or not a local government has the authority to adopt a tree protection ordinance is a matter of some dispute among legal scholars

Legal Framework for Tree Ordinances – 2 Views

NARROW CONSTRUCTION VIEW

- Local governments have only the powers expressly granted to them by the State
- Local governments must have special authorization from the General Assembly to require tree retention

BROAD CONSTRUCTION VIEW

- Local governments have broad police power to protect the public health, safety, and general welfare
- Local governments do not require additional special authorization to require tree retention

Legal Framework for Tree Ordinances – Local Authority

There are 35 local governments with
recognized special authorization from the NC
General Assembly to have a tree ordinance:

Wilson, Greenville (1977) Greensboro (1979)
Asheville, Raleigh, Pine Knoll Shores (1985)
Southport, New Hanover County (1987)
Chapel Hill, Wrightsville Beach (1989)
Highlands (1991)
Charlotte, Kinston, Apex, Cary, Garner, Morrisville (2000)
Durham, Knightdale, Fuquay-Varina, Spencer (2001)
Rutherfordton, Wake County, Mount Airy, Rockingham,
Smithfield, Statesville (2003)
Cornelius, Davidson, Huntersville, Nags Head (2005)
Clayton, Reidsville, Matthews (2006)

...but there are
many, many
others with tree
ordinances who
do not have any
special
authorization

Terminology Matters

It is important to remember that there are numerous different laws and distinctions in place with respect to trees and tree protection



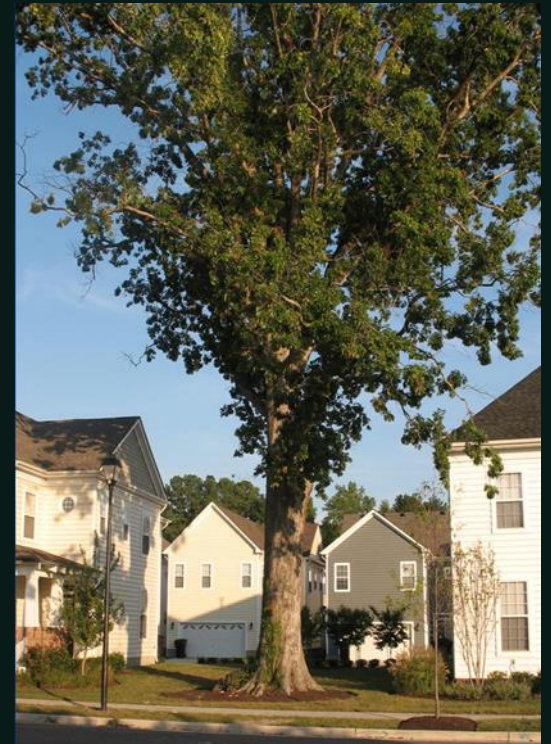
Required
Landscaping



Tree Protection
During Construction



Tree Retention in
Unbuildable Areas



Tree Retention in
Buildable Areas

Terminology Matters

PROTECTION



Standards to keep retained and newly-planted trees safe during construction

RETENTION

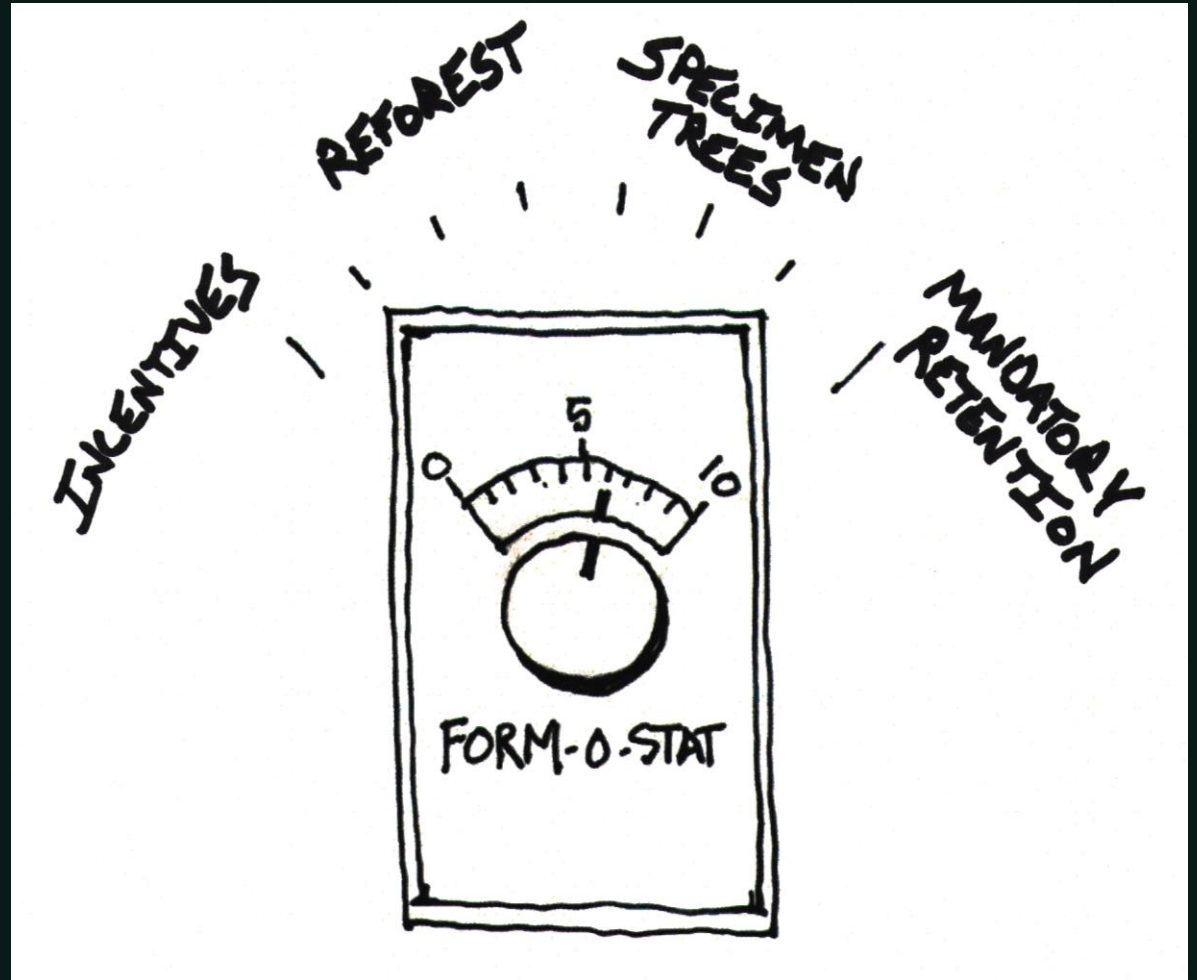


Standards to retain existing trees after construction

Spectrum of Approaches to Tree Retention

There is a continuum of approaches to tree retention that range in expense, difficulty, and effectiveness

Each community likely has a different preference or comfort level



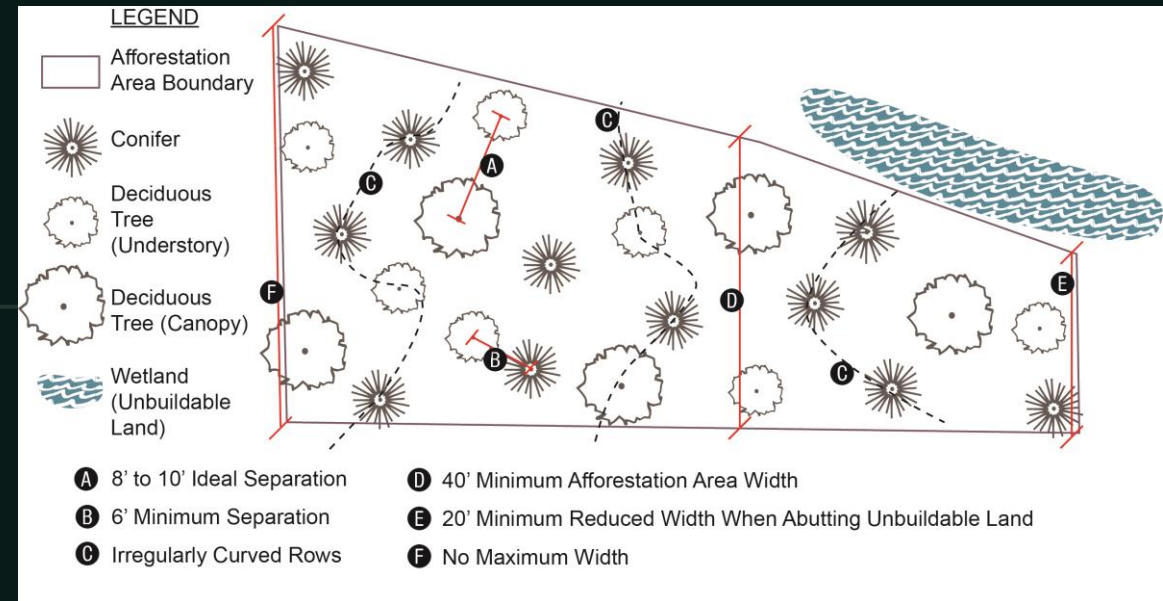
Incentive-Based Approach



- The “easiest” approach
- Retention of existing trees is Voluntary, at the will of the developer or landowner
- Provides something “in trade” for retaining existing trees, like relief from landscaping or open space requirements
- Often consists of accelerated credit towards landscaping or open space requirements
(1” of retained tree DBH = 2” of credit towards required tree DBH)
- Tends to result in tree retention only in areas where trees can serve a screening function
- Rarely results in optimal tree retention in terms of species, diversity, or locations
- Can be successfully paired with other tree retention standards

Reforestation Approach

- Practical - Allows some or all existing trees to be removed from a site
- Mandates that new trees will be planted following construction and maintained in perpetuity
- Often takes the form of a “reforestation area” occupying a minimum percentage of a site
- Typically establishes a tree density requirement
- Takes many years to establish a mature canopy, but helps encourage functional habitat areas
- Preventing subsequent encroachment into reforestation areas is challenging

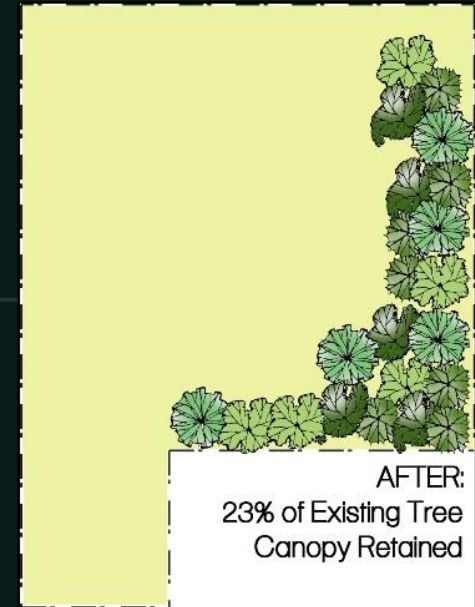


Specimen/Heritage Tree Conservation Approach

- First “step” along the continuum that bars removal of some trees
- Includes standards identifying threshold tree size and/or species to retain
- Retains the oldest and most majestic trees, but the oldest trees are the ones closest to death
- Protection from nearby development activity be extraordinarily expensive and often inadequate – the tree dies anyway
- Depends upon a robust mitigation system for replacement of trees that prevent use of the site or that die shortly after development
- Most effective on large, low intensity sites where disturbance is limited

Mandatory Retention Approach(es)

- As part of a subdivision of land
- As part of new construction in a development
- On existing lots



Mandatory Retention Approach

(new subdivision or construction)

- Requires an applicant to retain a minimum amount of tree cover on a site
- Typically uses a sliding scale approach where the fewer the existing trees you have on site, the more of them you have to retain
- Can allow for identification and retention of the “best” trees to save (subject to codified criteria on what “best” means)
- Most effective approaches do not require expensive whole-site tree surveys
- Tree retention or save areas should be located outside of designated construction areas (tree save areas should not be within buildable subdivision lots)
- Must recognize the development potential of the tree retention area impacts in terms of total density yields, impervious surfaces, and lot dimensional requirements (work to avoid making the retention area a “liability” in terms of development potential)

Mandatory Retention Approach

(on existing lots)

- Requirements that landowners (often single-family homeowners) retain existing trees on their established homesites
- Very popular with residents...also the pinnacle of expense and difficulty in terms of enforcement
- Necessary to specify wide range of conditions when trees can be removed without penalty (emergency, disease, danger to structures, etc.)
- Avoid this approach whenever possible

Blended Approaches

- It is quite common to use a blended approach of incentives to encourage more robust landscaping, conservation of specimen trees in remote areas, retention in areas where it is practical, and reforestation in areas where retention isn't
- Every additional aspect of tree protection comes with an enforcement cost



Clearcutting (on development sites)

- Removal of “all or substantially all” existing trees on a piece of land intended for use as a development site
- North Carolina General Statutes 160D-921 allows
Local governments may delay approval of building permits, site plans, or subdivisions for 3 years on land subject to clear cutting in advance of a development application
The delay may be for 5 years in cases where the government can demonstrate the removal was “willful”
- The local government must have standards in place that limit tree removal prior to the clear cutting

Clearcutting (of existing landscaping or retained trees)

- Often referred to as “sever pruning”
- The pruning, cutting, or damaging of the natural form of a tree such that 25% or more of the tree’s crown is removed or if 1/3 of the overall circumference of the tree canopy is removed or exposed by pruning cuts
- This requires replacement of damaged vegetation and can often include fines as well



Mitigation for Tree Removal

- Replacement

Often applied at a 1:1 ratio (DBH, count, basal area) for natural death

Can be applied at an accelerated amount (2:1) for willful removal – this can often require off-site replanting allowances

- Payment

Many local governments operate a “tree bank” where mitigation can take the form of payment into an account used to provide trees on public lands

- Guarantees

Most effective ordinance require the violator to post a performance guarantee in addition to replanting that runs for a 2-3 year period to ensure the new trees live

Elements of an Effective Tree Ordinance

- FINDINGS/PURPOSE
Why save trees?
- APPLICABILITY
Define what type of trees/sizes are protected
- PROCEDURE
How are development proposals reviewed?
- STANDARDS
What are the minimum requirements?
- INCENTIVES
Reasons to save more trees than the minimum?
- PROTECTION
Protect before and during construction
- MITIGATION
What happens when removal is unavoidable?
- ENFORCEMENT
What happens when trees aren't protected?



QUESTIONS?

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