

Bill No. 35-12  
Concerning: Trees - Tree Canopy  
Conservation  
Revised: 7/23/13 Draft No. 4  
Introduced: November 27, 2012  
Enacted: July 23, 2013  
Executive: July 31, 2013  
Effective: March 1, 2014  
Sunset Date: None  
Ch. 21, Laws of Mont. Co. 2013

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN ACT** to:

- (1) save, maintain, and establish tree canopy for the benefit of County residents and future generations;
- (2) provide for mitigation to offset the environmental impacts of development and address the loss of environmental resources, including trees and potential growing space for shade trees;
- (3) establish an account for shade tree planting projects, including plantings of individual trees or groups of trees on private and public property; and
- (4) generally revise County law regarding tree canopy conservation.

By adding

Montgomery County Code

Chapter 55, Tree Canopy

Sections 55-1, 55-2, 55-3, 55-4, 55-5, 55-6, 55-7, 55-8, 55-9, 55-10, and 55-11

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Chapter 55 is added as follows:****Article 1. Purpose and General Provisions.****55-1. Short title.**

This Chapter may be cited as the Montgomery County Tree Canopy Law.

**55-2. Findings and purpose.**

- (a) *Findings.* The County Council finds that it is in the public interest to offset the environmental impacts of development and address the loss of environmental resources, including trees and potential growing space for shade trees, and conserve tree canopy throughout the County. Trees and tree canopy constitute important environmental resources. Trees cleanse the air, offset the heat island effects of urban development, reduce energy needs, and provide oxygen. They improve the quality of life in communities by providing for a greater sense of well-being and increasing esthetic appeal and compatibility between different land uses. Trees filter groundwater, reduce surface runoff and soil erosion, help alleviate flooding, and supply necessary habitat for a diversity of wildlife. The Council finds that the damage to or loss of environmental resources as a result of development and other land disturbing activities is a serious problem in the County, and that establishing shade trees and tree canopy helps mitigate these losses and increase the diversity of species and age classes of trees. The Council finds that, given the expected survival rate of newly planted shade trees, at least 3 new shade trees should be planted to produce the canopy coverage of one mature shade tree.
- (b) *Purpose.* The purposes of this Chapter are to:

- (1) save, maintain, and establish tree canopy for the benefit of County residents and future generations; and
- (2) provide for mitigation when environmental resources, including trees and potential growing space for shade trees, are lost or disturbed as a result of development, by establishing:
  - (A) shade tree planting requirements and standards; and
  - (B) a program to plant shade trees, including planting individual trees or groups of trees, on private and public property.

**55-3. Definitions.**

In this Chapter, the following terms have the meanings indicated:

*Department* means the Department of Permitting Services.

*Director* means the Director of the Department of Permitting Services or the Director's designee.

*Limits of disturbance* means a clearly designated area where land disturbance is expected to occur.

*Person* means:

- (a) to the extent allowed by law, any agency or instrument of the federal government, the state, any county, municipality, or other political subdivision of the state, or a unit of any of them;
- (b) an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind;
- (c) any partnership, firm, common ownership community or other homeowners' association, public or private corporation, or a affiliate or subsidiary of any of them; or
- (d) any other entity.

*Public utility* means any water company, sewage disposal company, electric company, gas company, telephone company, or cable service provider.

*Sediment control permit* means a permit required to be obtained for certain land disturbing activities under Chapter 19.

*Shade tree* means a tree of large stature that is capable of growing to heights greater than 50 feet.

*Site* means any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land, under a single ownership, or contiguous and under diverse ownership.

*Subwatershed* means the total drainage area contributing runoff to a single point, and generally refers to the 8-digit hydrologic unit codes.

*Technical Manual* means a detailed guidance document that may be adopted under Section 55-9 and used to administer this Chapter.

*Tree canopy* means the area covered by the crown of one or more trees.

*Tree Canopy Conservation Account* means a special account maintained by the County to be used as specified in Section 55-10.

#### **55-4. Applicability.**

Except as otherwise provided in Section 55-5, this Chapter applies to any person required by law to obtain a sediment control permit.

#### **55-5. Exemptions.**

This Chapter does not apply to:

- (a) any activity that is subject to Article II of Chapter 22A;
- (b) any commercial logging or timber harvesting operation with an approved exemption from Article II of Chapter 22A;
- (c) any tree nursery activity performed with an approved Soil Conservation and Water Quality Plan as defined in Section 19-48;

- (d) cutting or clearing trees in a public utility right-of-way for the construction or modification of electric generation facilities approved under the Maryland Code Public Utilities Article if:
  - (1) the person cutting or clearing the trees has obtained a certificate of public convenience and necessity required under Sections 7-207 and 7-208 of the Public Utilities Article; and
  - (2) the cutting or clearing of forest or tree canopy is conducted so as to minimize the loss of both;
- (e) routine maintenance of a public utility right-of-way, and cutting or clearing any tree by a public utility as necessary to comply with applicable vegetation management requirements, to maintain, repair, replace, or upgrade any public utility transmission or distribution line, or for a new transmission or distribution line;
- (f) any activity conducted by the County Parks Department;
- (g) routine or emergency maintenance of an existing stormwater management facility, including an existing access road, if the person performing the maintenance has obtained all required permits;
- (h) any stream restoration project if the person performing the work has obtained all necessary permits;
- (i) cutting or clearing any tree by an existing airport currently operating with all applicable permits to comply with applicable provisions of any federal law or regulation governing the obstruction of navigable airspace if the Federal Aviation Administration has determined that the trees create a hazard to aviation;
- (j) cutting or clearing any tree to comply with applicable provisions of any federal, state, or local law governing the safety of dams;

- (k) any development activity permitted as a small land disturbing activity under Section 19-5B; or
- (l) any non-coal surface mining conducted in accordance with applicable state law.

**Article 2. Mitigation Requirements and Review.**

**55-6. Shade Tree Planting.**

- (a) *Alternatives.* An applicant for a sediment control permit must plant shade trees on the affected property or, if the applicant opts not to plant the required number of trees, pay a fee under subsection (d).
- (b) *Quantity.* The number of shade trees required to be planted under this Section must be based on the square footage of the area in the limits of disturbance.
  - (1) Unless modified or superseded by applicable regulations adopted under Method 1, the number of shade trees planted must comply with the following schedule:

Area (sq. ft.) of the Limits of Disturbance		Number of Shade Trees Required
From	To	
1	6,000	3
6,001	8,000	6
8,001	12,000	9
12,001	14,000	12
14,001	40,000	15

- (2) If the area in the limits of disturbance exceeds 40,000 square feet, the minimum number of shade trees required must be prorated using the ratio of 15 trees per 40,000 square feet.
- (c) *Planting.* Each planting of shade trees under this Section must conform to the following requirements:
  - (1) Each shade tree must be allowed at least 400 square feet, unless applicable regulations adopted under Method 1 specify a smaller

amount, of open surface area free of any impervious surface, utility, stormwater management system, or other impediment to root growth and development.

- (2) Shade trees may be planted anywhere on the subject property, including outside the limits of disturbance if sufficient open surface area is available entirely within the property boundaries. Open surface area on an adjacent County right-of-way may be included if no utility, public utility easement, or impervious surface is located in that part of the right-of-way and the tree is located on the affected property so that its stem will not grow into the right-of-way.
- (d) *Fees.* If the applicant concludes that any required shade tree cannot be planted on the affected property because sufficient open surface area is not available or for any other reason, the applicant must pay into the Tree Canopy Conservation Account a fee for each required shade tree that is not planted on the affected property. The fee must be equal to the applicable rate the Department sets for bonding trees in the right-of-way.

**55-7. Submissions.**

- (a) *Required submissions.* A person subject to this Chapter must submit to the Director the following information with each application for a sediment control permit:
  - (1) a plan delineating:
    - (A) the property boundaries;
    - (B) the proposed limits of disturbance, including any off-site areas;

- (C) any shade tree planting locations and the required open surface area for each planting location;
- (2) a table summarizing:
  - (A) the square footage of the property;
  - (B) the square footage of the limits of disturbance of the proposed activity;
  - (C) the number of shade trees required under Section 55-6(b), the number of shade trees to be planted, and the amount of fees to be paid under Section 55-6(d); and
  - (D) the open surface area surrounding each shade tree planting location; and
- (3) any additional information specified by regulation.
- (b) *Qualification of preparer.* A professional engineer, land surveyor, architect, or other person qualified to certify an erosion and sediment control plan under Chapter 19 is also qualified to submit the information required under this Chapter.
- (c) *Incomplete submissions.* The Director must not accept an incomplete submission.
- (d) *Review of submissions.* Each submission required under this Chapter must be reviewed along with any submission required under Article I of Chapter 19.
- (e) *Coordination of review.* The Director may coordinate the review of any information submitted under subsection (a) with one or more other agencies as appropriate. If the Director coordinates the review with other agencies, the reviews must be performed concurrently and in accordance with any review coordination required under Chapter 19.

- (f) *Issuance of sediment control permit.* The Director must not issue a sediment control permit to a person that is subject to this Chapter until:
  - (1) the Director has approved the applicant's planting plan;
  - (2) the applicant pays any fee required under this Article; and
  - (3) the applicant has satisfied all applicable requirements under Article I of Chapter 19.
- (g) *Validity period.* An approved shade tree planting plan remains valid for the length of the associated sediment control permit.
- (h) *Application requirement.* To prevent circumvention of this Chapter, the Director may require a person to apply for a sediment control permit if that person limits the removal of tree canopy or limits land disturbing or construction activities below the requirements for a sediment control permit and within the next 10 years disturbs additional tree canopy or land on the same property, or conducts other activities, such that in the aggregate a sediment control permit would have been required.

#### **55-8. Inspections.**

- (a) *Permission to gain access.* The Director may enter any property permitted under this Chapter to inspect the property and enforce this Chapter while the permit is in effect.
- (b) *Plan to be on site; field markings.* A copy of the approved limits of disturbance, including planting locations and minimum open surface areas, must be available on the site for inspection by the Director. Field markings must exist on site before and during installation of all newly planted shade trees, sediment and erosion control measures, construction, or other land disturbing activities.

- (c) *Inspections.* The Director must conduct field inspections for any activity subject to this Chapter along with any inspection required for a sediment control permit under Article I of Chapter 19. The Director may authorize additional inspections or meetings as necessary to administer this Chapter.
- (d) *Timing of inspections.* The inspections required under this Section must occur after all construction activities are completed to determine the level of compliance with shade tree planting requirements.

### **Article 3. Administration.**

#### **55-9. General.**

- (a) *Regulations.* Except as otherwise provided, the County Executive must adopt regulations, including a technical manual, to administer this Chapter, under Method 2.
- (b) *Technical manual.* The technical manual must include guidance and methods to:
  - (1) preserve trees onsite where possible;
  - (2) identify, map, and evaluate the suitability of planting site locations, including acceptable shapes of open surface areas and the use of County rights-of-way;
  - (3) identify criteria for acceptable species, sizes, and health of newly planted shade trees;
  - (4) identify criteria for acceptable installation techniques; and
  - (5) otherwise comply with program requirements, consistent with this Chapter and applicable regulations.
- (c) *Administrative fee.* The County Executive may, by Method 2 regulation, adopt a schedule of fees to administer this Chapter.

- (d) *Reports.* On or before March 1 of each year, the Directors of Permitting Services and Environmental Protection must jointly submit an annual report on the County shade tree planting program to the County Council and County Executive.
- (e) *Comprehensive planting plan.* The Director of Environmental Protection must adopt and maintain a comprehensive County-wide shade tree planting plan to specify appropriate uses for funds in the Tree Canopy Conservation Account. The Director should develop the plan after consulting other County agencies and the Planning Department.
- (f) *Survival and mortality analysis.* The Department of Environmental Protection must collect data on shade trees planted under this Chapter, and those planted under other programs, to evaluate and provide guidance to the County's tree canopy programs.
- (g) *Tree canopy plan.* The Director of Environmental Protection, after consulting other County agencies, the Planning Department, the Forest Conservation Advisory Committee, organizations representing development and environmental interests, and the public, must propose to the Executive and Council recommendations regarding:
  - (1) tree canopy goals for the County; and
  - (2) a comprehensive strategy to increase the number of trees planted in the County.

**55-10. Tree Canopy Conservation Account.**

- (a) *Established.* A Department assigned by the Executive must create a County Tree Canopy Conservation Account. The Account must be used as provided in this Chapter and the adopted operating budget.
- (b) *Use of funds.* The assigned Department must use funds deposited in the

Tree Canopy Conservation Account only to plant and maintain shade trees, including costs directly related to site identification, preparation, and other activities that increase tree canopy. Funds deposited into the Account must not revert to the General Fund and must not be used to hire additional County staff or to supplant funds otherwise appropriated to plant and maintain shade trees and enhance tree canopy.

- (c) *Fines.* Any fine collected for noncompliance with shade tree planting requirements must be deposited in a separate account in the Tree Canopy Conservation Account and must be used to administer this Chapter.
- (d) *Plantings.*
  - (1) Shade trees native to the Piedmont area of the County should be used, if feasible, to meet the mitigation requirements of this Chapter.
  - (2) The planting of shade trees under this Chapter must occur in the subwatershed where the project is located, if feasible. Otherwise the shade trees may be planted anywhere in the County.
  - (3) In planting trees under this paragraph, the assigned Department must give highest priority to those areas of the County, such as central business districts and other urban and suburban areas, that have relatively low tree canopy coverage.

#### **55-11. Enforcement.**

- (a) *Compliance.* The Director may issue a notice of violation, corrective order, stop-work order, or civil citation to any person that causes or allows a violation of this Chapter.
- (b) *Civil penalty.* A violation of this Chapter is a Class A violation. The maximum civil penalty for any violation of this Chapter or any

regulation adopted under this Chapter is \$1,000. Each day that a violation continues is a separate offense.

**Sec. 2. Effective date; transition.**

This Act takes effect on March 1, 2014. County Code Chapter 55, as inserted by this Act, does not apply to any application for a sediment control permit that is accepted by the Director of Permitting Services before that date.

1 *Approved:*

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3 /s/ July 26, 2013

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4 Nancy Navarro, President, County Council Date

5 *Approved:*

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7 /s/ July 31, 2013

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8 Isiah Leggett, County Executive Date

9 *This is a correct copy of Council action.*

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11 /s/ July 31, 2013

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12 Linda M. Lauer, Clerk of the Council Date