

**SEC. 51A-4.511. NEIGHBORHOOD FOREST OVERLAY.**(a) Findings and purpose.

(1) The city council intends to provide a means of conserving and maintaining the existing urban forest within the boundaries of neighborhood forest overlays.

(2) The neighborhood forest overlay is provided for the purpose of promoting the health, safety, and the general welfare of present and future inhabitants of city neighborhoods through the managed conservation and protection of the trees in the community. It is intended to help promote or restore the character of established communities as recognized by its inhabitants; to stabilize and protect the air quality near homes; to conserve the city's tree canopy; to retain the living green infrastructure for reducing flood and stormwater effects; to protect property against depreciation; to encourage sustainable construction methods and design in redevelopment; and to assure the sustained stability of neighborhoods for the future.

(3) A neighborhood forest overlay is a neighborhood-driven process that extends the protections prescribed within Division 51A-10.130, "Urban Forest Conservation," to the properties within the overlay area that contain single-family and duplex uses in residential districts on lots smaller than two acres in size.

(b) Interpretations. Except as otherwise provided in this subsection, the regulations in Article X apply in neighborhood forest overlay districts. Sections 51A-10.135(c), 51A-10.135(d), 51A-10.135(e), and 51A-10.135(f) do not apply. If there is a conflict between this section and Article X, this section applies. If there is a conflict between a neighborhood forest overlay ordinance and Article X, the neighborhood forest overlay ordinance controls.

(c) Definitions. In this section:

(1) **MEDIAN** means the middle number in a set of numbers where one-half of the numbers are less than the median number and one-half of the numbers are greater than the median number. For example, 4 is the median number of 1, 3, 4, 8, and 9. If the set of numbers has an even number of numbers, then the median is the average of the two middle numbers. For example, if the set of numbers is 1, 3, 4, 6, 8, and 9, then the median is the average of 4 and 6, or 5.

(2) **NEIGHBORHOOD COMMITTEE** means the owners of at least 10 properties within a proposed overlay.

(3) **STRUCTURE PROXIMITY AREA** means the five foot area around a dwelling unit.

(4) **TREE CONSERVATION AREA** means the area of tree protection and the site subject to urban forest conservation regulations.

(d) Petition, initiation, and process.

(1) Except as provided in this subsection, the procedures for zoning amendments contained in Section 51A-4.701, "Zoning Amendments," apply.

(2) A neighborhood forest overlay may only be placed on an area:

(A) containing lots that are primarily smaller than two acres in size;

(B) developed primarily with single family or duplex structures; and

(C) that is zoned either:

(i) as a residential district; or

(ii) as a planned development district, conservation district, or form district (or portion thereof) that is restricted to single family or duplex uses.

(3) The boundary lines of a neighborhood forest overlay should be drawn to include blockfaces on both sides of a street, and to the logical edges of the area or subdivision, as indicated by a creek, street, subdivision line, utility easement, zoning boundary line, or other boundary. Boundary lines that split blockfaces in two should be avoided. The minimum area of a subdistrict within a district is one blockface. An overlay:

(A) must contain at least 50 lots in a compact, contiguous area, or be an original subdivision if the subdivision contains fewer than 50 single family or duplex structures; or

(B) may contain less than 50 lots, but no less than 10 lots, if the lots are located alongside a primary natural area or if the lots maintain a current forest cover of mature large and medium trees, including significant trees, or trees established prior to the original subdivision.

(4) A neighborhood forest overlay may contain vacant lots and lots greater than two acres in size even though those lots will not be subject to the overlay regulations. Vacant lots within the boundaries of a neighborhood forest overlay, however, are not subject to the unrestricted zone exception in Section 51A-10.134(b).

(5) The neighborhood committee may request a petition form by submitting a request to the department on a form furnished by the department. The request must include the boundaries of the proposed district. The boundaries of the proposed district must comply with the requirements of this section.

(6) As soon as possible after the department provides the neighborhood committee with a petition form, the department shall conduct a neighborhood meeting. The department shall give notice of the neighborhood meeting to all property owners within the

proposed overlay as evidenced by the last approved city tax roll at least 10 days prior to the neighborhood meeting.

(7) The petition must be on a form furnished by the department. The petition form must include a map of the boundaries of the proposed overlay, a list of the proposed regulations, the name and address of all property owners within the proposed district, and a statement that by signing the petition the signers are indicating their support of the overlay.

(8) The petition must be submitted with the following:

(A) The dated signatures of property owners within the proposed overlay in support of the proposed overlay.

(i) For a proposed overlay with 50 or fewer single family or duplex structures, the signatures on the petition must be dated within three months following the date of the neighborhood meeting.

(ii) For a proposed overlay with more than 50 single family or duplex structures, the signatures on the petition must be dated within six months following the date of the neighborhood meeting.

(iii) If the proposed overlay is pursuant to Sections 51A-4.511(d)(2)(A) or 51A-4.511(d)(2)(B), 60 percent of property owner signatures are required for staff to accept the petition.

(iv) If the proposed overlay is pursuant to Sections 51A-4.511(d)(3) or 51A-4.511(d)(4), 70 percent of property owner signatures are required for staff to accept the petition.

(B) The application fee, if applicable.

(i) If a petition is signed by property owners of fewer than 75 percent of the lots within the proposed district, the application fee must be paid.

(ii) If a petition is signed by property owners of 75 percent or more of the lots within the proposed district, the application fee is waived.

(iii) If the proposed overlay is authorized pursuant to Section 51A-4.701(a)(1), the application fee is waived.

(C) A map showing the boundaries of the proposed district.

(D) A list of the names and addresses of the neighborhood committee members.

(E) Any other information the director determines is necessary.

(9) A public hearing to create an overlay is initiated by submission of a complete petition or by authorization pursuant to Section 51A-4.701(a)(1).

(10) For purposes of Section 51A-4.701, “Zoning Amendments,” once a complete petition has been submitted to the director, the neighborhood forest overlay shall be treated as a city plan commission authorized public hearing. If the district is initiated by petition, the notice of authorization contained in Section 51A-4.701(a)(1) is not required.

(11) Along with any other required notice, at least 10 days prior to consideration by the city plan commission, the director shall mail a draft of the proposed neighborhood forest overlay ordinance and a reply form to all owners of real property within the area of notification. The reply form must allow the recipient to indicate support or opposition to the proposed neighborhood forest overlay and give written comments. The director shall report to the city plan commission and the city council the percentage of replies in favor and in opposition and summarize any comments.

(12) Upon passage of a neighborhood forest overlay ordinance, the director shall file a copy of the ordinance in the county deed records to give notice of the regulations. The director shall also file in the county deed records a verified written instrument listing each property by the street address, if available, the legal description of the real property, and the name of the owner, if available.

(e) Neighborhood forest overlay.

(1) In general.

(A) A neighborhood forest overlay establishes regulations that must be selected from the options described in this subsection.

(B) The regulations of the neighborhood forest overlay must reflect the existing forest conditions within the neighborhood.

(C) Except as provided in the neighborhood forest overlay, all regulations of the underlying zoning remain in effect.

(2) Tree conservation area.

(A) The neighborhood committee will select their tree conservation area from the following options:

- (i) Front yard setback.
- (ii) Front yard to structure.
- (iii) Front, side, and rear yard setbacks.

(iv) Entire lot

(B) The conservation, establishment, and maintenance of trees in Section 51A-10.136(a) apply to trees within a tree conservation area.

(3) Additional options.

(A) Tree canopy cover goal option. To reduce tree replacement requirements, a portion of existing tree canopy coverage over a tree conservation area must be preserved.

(i) The tree canopy cover goal is determined by the neighborhood during the petition process. The minimum percentage is to be determined by the median of the tree canopy coverage in the tree conservation area on each lot within the proposed overlay.

(ii) Healthy large and medium trees preserved in the tree conservation area, including boundary trees, may be included in tree canopy cover calculations. Invasive trees and trees located within 20 feet on center of the nearest overhead public electric line are not included in the calculation.

(iii) Each large and medium nursery stock tree planted as landscaping may also qualify as 300 square feet of tree canopy cover. If the tree canopy cover goal is met, additional landscape trees are not required, except that one tree must be provided in the required front yard.

(iv) Boundary trees located on adjacent private property must be protected to the drip line according to the tree protection shown on the site assessment plan.

(v) The tree canopy cover for the tree conservation area on the lot may be measured by the property owner, and verified and approved by the building official.

(B) Minimum front yard tree option. Lots must maintain a minimum number of trees in the front yard, as designated by the neighborhood forest overlay ordinance. Replacement is not required in the case that a property falls below the minimum number of large or medium trees due to a reason enumerated in the defense to prosecution section of Section 51A-10.140(b).

(4) Structure proximity area. More than 50 percent of the tree trunk at grade must be within the structure proximity area to qualify for an exception from mitigation. An approved tree removal application is required prior to tree removal.

(5) Site assessment plan. Prior to any development, construction activity, or disturbance of an area that may affect trees within the tree conservation area, a tree removal application, or permits for construction or grading, a site assessment plan must be submitted to the building official. The overlay regulations do not prohibit the removal or alteration of unprotected trees, or landscape ornamental and small trees, or other landscape shrubs, grasses, or other

materials, that do not qualify as a protected tree. Any work or disturbance which includes significant soil compaction, trenching, tilling, excavation, paving, grading, chemical mixing, or pruning exceeding 10 percent tree canopy reduction, on the tree and within the dripline of the protected tree, is subject to the site assessment plan review. The site assessment plan must show the following:

- (A) Structures.
- (B) Paving.
- (C) Proposed development, construction or disturbance.
- (D) Location, diameter, and species of all trees (including boundary trees) in the tree conservation area, and 10 feet beyond.
- (E) Tree protection, as applicable.
- (F) Replacement trees, as applicable.

(6) Tree mitigation. Upon approval of tree removal within the tree conservation area, or an unauthorized removal of a protected tree, tree mitigation or replacement is required in accordance with Section 51A-10.134(c). The applicable methods are:

- (A) Replacement on the site of removal.
- (B) Replacement with a legacy tree on the site of removal.
- (C) If replacement is not possible on the lot of removal then:
  - (i) Replacement on other property within boundaries of NFO.
  - (ii) If replacement is not possible within NFO, the tree must be replaced within five miles of the NFO.
- (D) Payment into reforestation fund. This option is only available if the building official determines that, due to restrictive site conditions, it would be impracticable or imprudent for the responsible party to plant a replacement tree on the tree removal property or comply with one or more of the mitigation methods in this section.

(f) Criminal responsibility and defenses to prosecution. The criminal liability and defenses to prosecution provisions in Section 51A-10.140 apply to properties subject to a neighborhood forest overlay.