

**ADOPTION OF AN AMENDMENT TO  
CHAPTER 122 (TREE CONSERVATION ORDINANCE)  
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA**

*At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium, Lobby Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, June 25, 2019, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 122 (Tree Conservation Ordinance) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:*

**BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX  
COUNTY, VIRGINIA:**

*That the Code of the County of Fairfax, Virginia, Chapter 122 (Tree Conservation Ordinance), is amended, as follows:*

**Amend Article 5 (Violations and Penalties), Section 122-5-1 (Constitution and Processing of Violations), to read as follows:**

Section 122-5-1. - Constitution and Processing of Violations.

- (a) Any land disturbing activity and any removal of vegetation contrary to any of the provisions of this Chapter shall constitute a violation.
- (b) Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Chapter, or permits any such violation, or fails to comply with any of the requirements hereof; or any professional, as defined in 18 VAC 10-20-10, or Certified Arborist or Registered Consulting Arborist, as defined in PFM Section 12-0307.2G, who directs or causes another person to violate any provision of this Chapter, shall be subject to the enforcement provisions of this Article.
- (c) Upon becoming aware of any violation of any provisions of this Chapter, the Director shall serve a notice of violation on the property owner, professional, or any other ~~the~~ person committing or permitting the ~~same violation,~~ either in person or by registered or certified mail ~~to the property or the owner's address.~~ Such notice shall specify the provisions of the Chapter which have been violated, the measures needed to remedy the violation, and a reasonable time in which to remedy the violations. Failure to take steps to comply with such notice within the time provided for therein shall constitute a separate violation of this Chapter.
- (d) The Director, on behalf of the Board of Supervisors, may apply to the Fairfax County Circuit Court for injunctive relief to enjoin a violation or a threatened violation of any provision of this Chapter.

**Amend Article 5 (Violations and Penalties), Section 122-5-3 (Penalties), to read as follows:**

Section 122-5-3. Criminal Violations and Penalties

- (a) Any violation of the provisions of this Ordinance shall be deemed a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than \$10 and not more than \$1000. Failure to remove or abate a violation within the time period established by the Court shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1000, and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten day period punishable by a fine of not less than \$100 nor more than \$1500.
- (b) The remedy provided for in this Section shall be in addition to any other remedies provided by law including but not limited to violations of Chapters 101 (Subdivision Ordinance), 104 (Erosion and Sedimentation Control Ordinance), 112 (Zoning Ordinance), and 118 (Chesapeake Bay Preservation Ordinance) of the Code, however, the designation of a particular violation of this Ordinance for a civil penalty precludes criminal prosecution or sanction, except for any infraction that results in civil penalties that total \$5000 or more. (64-08-122.)

**Amend Article 5 (Violations and Penalties), to add Section 122-5-4 (Infractions and Civil Penalties), to read as follows:**

Section 122-5-4. Infractions and Civil Penalties

- (a) A violation of any provision of this Ordinance shall be deemed an infraction and shall be punishable by a civil penalty of \$200 for the first violation; and subsequent violations arising from the same set of operative facts shall be punishable by a civil penalty of \$500 for each separate offense.
- (b) Each day during which any violation is found to have existed shall constitute a separate offense. However, in no event shall any such violation arising from the same set of operative facts be charged more frequently than once in any ten (10) day period, nor shall a series of such violations arising from the same set of operative facts result in civil penalties which exceed a total of \$5000.
- (c) The designation of a particular violation as an infraction pursuant to Par. (a) above shall be in lieu of criminal sanctions, and such designation shall preclude the prosecution of a violation as a criminal misdemeanor unless such violation results in injury to any person or persons or the civil penalties under Par. (a) above total \$5000 or more for such violation. If the civil penalties for a violation under Par. (a) above total \$5000 or more, the violation may be prosecuted as a criminal misdemeanor.
- (d) After a notice of violation has been served on any person who violates this Ordinance, if the violation has not ceased within the reasonable time specified in the notice, then, upon the approval of the County Attorney, the Director shall serve a summons upon such person.
- (e) Such summons shall contain the following information:
  - 1. The name and address of the person charged.
  - 2. The nature of the infraction and the Ordinance provision(s) being violated.
  - 3. The location, date and time that the infraction occurred or was observed.
  - 4. The amount of the civil penalty assessed for the infraction.
  - 5. The manner, location and time in which the civil penalty may be paid to the County.
  - 6. The right of the recipient of the summons to elect to stand trial for the infraction and the date for such trial.
- (f) The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the Department of Finance at least seventy-two (72) hours before the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court; however, an admission shall not be deemed a criminal conviction for any purpose.
- (g) If a person charged with a violation does not elect to waive trial and admit liability, the violation shall be tried in the General District Court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
- (h) The remedies provided for in this Section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

**Amend Article 8 (Definitions), to revise Section 122-8-1 (Definitions), paragraph (b), to read as follows:**

(b) *Director* means the Director of the Department of ~~Public Works and Environmental Services~~ Land Development Services.

**This amendment shall become effective on June 26, 2019 at 12:01 a.m.**

**GIVEN under my hand this 25<sup>th</sup> day of June, 2019.**

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**CATHERINE A. CHIANESE**  
**Clerk to the Board of Supervisors**