

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 15

Bill No. 64-2021

Introduced by: The Chairperson at the request of the County Executive

AN ACT prohibiting the cutting or clearing of certain specimen trees; providing that a property owner may proceed under certain conditions and upon the submission and approval of certain applications; providing for the contents of certain applications; providing for the criteria to use in the review of certain applications; providing for certain exemptions; requiring certain compliance; providing certain penalties for noncompliance; requiring surety for forest retention; defining certain terms; and generally related to forest conservation and the preservation of natural cover in Howard County.

Introduced and read first time _____, 2021. Ordered posted and hearing scheduled.

By order _____
Michelle Harrod, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to the Charter, the Bill was read for a second time at a public hearing on _____, 2021.

By order _____
Michelle Harrod, Administrator

This Bill was read the third time on _____, 2021 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Michelle Harrod, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2021 at ___ a.m./p.m.

By order _____
Michelle Harrod, Administrator

Approved/Vetoed by the County Executive _____, 2021

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland that the Howard
2 County Code is amended as follows:

3
4 *By inserting new subsections (b)(1.2) and (b)(48.1) into Section 16.108.*

5
6 *By amending:*

7 *Title 16, Subtitle 1.*
8 *Section 16.117.*

9
10 *Title 16, Subtitle 12.*
11 *Section 16.1210.*

12
13 **Title 16. Planning, Zoning and Subdivisions and Land Development Regulations.**
14 **Subtitle 1. Subdivisions and Land Development Regulations.**
15 **Article 1. General**

16
17 **Section 16.108. Rules of Construction; definitions.**

18 (b) *Definitions.* As used in these regulations, the following terms shall be defined as follows:

19 (1.1) *Adjoining property* means land which is touching or would be touching in the absence
20 of an intervening utility or road right-of-way, other than a principal arterial highway,
21 shall be considered adjoining for purposes of this subtitle.

22 (1.2) *AGRICULTURAL ACTIVITY* MEANS THE USE OF LAND FOR AGRICULTURAL PURPOSES,
23 INCLUDING: DAIRYING, PASTURAGE, GROWING CROPS, BEE KEEPING, HORTICULTURE,
24 FLORICULTURE, ORCHARDS, PLANT NURSERIES, CHRISTMAS TREE FARMS, VITICULTURE,
25 AQUACULTURE, SILVICULTURE, AND ANIMAL AND POULTRY HUSBANDRY; THE BREEDING,
26 RAISING, TRAINING AND GENERAL CARE OF LIVESTOCK FOR USES OTHER THAN FOOD, SUCH
27 AS SPORT OR SHOW PURPOSES; CONSTRUCTION AND MAINTENANCE OF BARNs, SILOS, AND
28 OTHER SIMILAR STRUCTURES, THE USE OF FARM MACHINERY, THE PRIMARY PROCESSING OF
29 AGRICULTURAL PRODUCTS AND THE SALE OF AGRICULTURAL PRODUCTS PRODUCED ON THE
30 LAND WHERE THE SALES ARE MADE; AND OTHER USES DIRECTLY RELATED TO OR AS AN
31 ACCESSORY USE OF THE PREMISES FOR FARMING AND AGRICULTURAL PURPOSES.

1
2 (48) *Scenic road* means a public road or road segment that is included in the scenic roads
3 inventory adopted by the County Council in accordance with section 16.1403 of this Code.

4 (48.1) *SPECIMEN TREE* MEANS:

5 (I) A TREE WITH A DIAMETER OF 75 PERCENT OR MORE OF THE DIAMETER OF THE
6 CURRENT STATE CHAMPION TREE OF THAT SPECIES, MEASURED AT 4.5 FEET ABOVE
7 THE GROUND; OR

8 (II) A TREE THAT IS 30 INCHES IN DIAMETER OR LARGER, MEASURED AT 4.5 FEET ABOVE
9 THE GROUND.

10
11 **Title 16. Planning, Zoning and Subdivisions and Land Development Regulations.**

12 **Subtitle 1. Subdivisions and Land Development Regulations.**

13 **Article II. Design Standards.**

14
15 **Section 16.117. Forest conservation, SPECIMEN TREE PROTECTION and preservation of**
16 **natural cover.**

17 (a) *Forest Resource Protection.* Land to be subdivided or developed shall be designed and
18 improved in reasonable conformity to existing topography in order to minimize clearing or
19 alteration of existing plant communities, especially forest areas, and to minimize associated
20 stormwater runoff and soil erosion impacts. Where required by subtitle 12 of this title, a forest
21 conservation plan shall be submitted.

22 (b) *Residential Restrictions.* In residential subdivisions forest conservation easements shall be
23 located in open space or a nonbuildable preservation parcel except as permitted in section 16.120
24 of this subtitle.

25 (C) *PROHIBITED CONDUCT.* UNLESS OTHERWISE PROVIDED IN THIS SECTION, A SPECIMEN TREE
26 MAY NOT BE CUT OR CLEARED ON ANY PROPERTY.

27 (D) A PROPERTY OWNER SHALL OBTAIN A NOTICE TO PROCEED FROM THE DEPARTMENT OF
28 PLANNING AND ZONING BEFORE CUTTING OR CLEARING A DEAD OR DISEASED SPECIMEN TREE ON A
29 RESIDENTIAL LOT OF ONE ACRE OR LARGER, OR ON ANY NON-RESIDENTIAL LOT.

1 (E) *APPLICATION REQUIRED.* TO OBTAIN A NOTICE TO PROCEED, A PROPERTY OWNER SHALL
2 SUBMIT AN APPLICATION ON A FORM DEVELOPED BY THE DEPARTMENT, INCLUDING ALL REQUIRED
3 ATTACHMENTS.

4 (F) *CONTENTS OF APPLICATION.* THE NOTICE TO PROCEED APPLICATION SHALL INCLUDE, BUT IS
5 NOT LIMITED TO AN INVENTORY OF EACH SPECIMEN TREE TO BE CUT OR CLEARED THAT SHALL:

6 (1) INCLUDE THE DIAMETER MEASURED AT 4.5 FEET ABOVE THE GROUND, SPECIES,
7 LOCATION, AND HEALTH OF EACH SPECIMEN TREE, INCLUDING AN ASSESSMENT OF
8 DISEASE AND VIABILITY; AND

9 (2) BE PREPARED AND APPROVED BY A MARYLAND LICENSED TREE EXPERT OR CERTIFIED
10 ARBORIST.

11 (G) *REVIEW OF APPLICATION.* THE DEPARTMENT SHALL REVIEW THE APPLICATION FOR THE NOTICE
12 TO PROCEED AND APPROVE THE SAME WHERE CLEAR AND CONVINCING EVIDENCE IS SHOWN THAT A
13 SPECIMEN TREE IS DISEASED OR DEAD. THE DEPARTMENT MAY REQUEST ADDITIONAL
14 INFORMATION OR INSPECT THE SPECIMEN TREE IN FURTHERANCE OF ITS REVIEW OF AN
15 APPLICATION. AN APPROVED NOTICE TO PROCEED AUTHORIZES A PROPERTY OWNER TO CUT OR
16 CLEAR AN APPROVED SPECIMEN TREE OR TREES WITHIN ONE YEAR OF ISSUANCE.

17 (H) *EXEMPTIONS.* THE FOLLOWING CONDITIONS OR ACTIVITIES ARE EXEMPT FROM THE PROVISIONS
18 OF THIS SECTION:

19 (1) DEVELOPMENT SUBJECT TO SUBTITLE 12 OF THIS TITLE.

20 (2) THE CUTTING OR CLEARING OF A SPECIMEN TREE THAT, DUE TO HEALTH,
21 DETERIORATION OR DAMAGE NOT CAUSED BY OR AT THE BEHEST OF THE PROPERTY
22 OWNER, PRESENTS AN IMMINENT THREAT TO PERSON OR PROPERTY. THE PROPERTY
23 OWNER SHALL OBTAIN A CERTIFICATE FROM A MARYLAND LICENSED TREE EXPERT OR
24 CERTIFIED ARBORIST INCLUDING THE DIAMETER MEASURED AT 4.5 FEET ABOVE THE
25 GROUND, SPECIES, LOCATION, AND DESCRIBING THE DEGREE OF THE DISEASE,
26 DETERIORATION OR DAMAGE AND THE IMMINENT THREAT PRESENTED BY EACH TREE
27 THAT IS TO BE CUT OR CLEARED.

28 (3) SPECIMEN TREE CUTTING OR CLEARING ASSOCIATED WITH REPAIR, MAINTENANCE OR
29 MODIFICATION OF PUBLIC INFRASTRUCTURE AND UTILITIES SUCH AS ROADWAYS,
30 SIDEWALKS, SHARED USE PATHWAYS, STORM DRAINS, WATER, SEWER, AND OTHER
31 SIMILAR PUBLIC IMPROVEMENTS.

1 (4) SPECIMEN TREE CUTTING OR CLEARING IN PUBLIC UTILITY RIGHTS-OF-WAY, OR LAND
2 FOR ELECTRIC GENERATING STATIONS LICENSED PURSUANT TO TITLE 7, SUBTITLE 2 OF
3 THE PUBLIC UTILITY COMPANIES ARTICLE OF THE ANNOTATED CODE OF MARYLAND,
4 IF:

5 (I) REQUIRED CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY HAVE BEEN
6 ISSUED IN ACCORDANCE WITH THE NATURAL RESOURCES ARTICLE, SECTION 5-
7 1603(F), ANNOTATED CODE OF MARYLAND; AND

8 (II) CUTTING OR CLEARING OF SPECIMEN TREES IS CONDUCTED TO MINIMIZE THE LOSS
9 OF SPECIMEN TREES.

10 (5) SPECIMEN TREE CUTTING OR CLEARING ON A RESIDENTIAL LOT LESS THAN ONE ACRE IN
11 SIZE, UNLESS PROTECTED BY A FOREST CONSERVATION EASEMENT.

12 (6) SPECIMEN TREE CUTTING OR CLEARING ASSOCIATED WITH COUNTY PARKLAND AND
13 COUNTY OPEN SPACE, WHERE A TREE HAS BEEN DEEMED HAZARDOUS BY A CERTIFIED
14 ARBORIST OR A PUBLIC AGENCY ROADSIDE TREE CARE EXPERT.

15 (7) SPECIMEN TREE CUTTING OR CLEARING ASSOCIATED WITH INVASIVE SPECIES
16 MANAGEMENT AND/OR FOREST MANAGEMENT ON COUNTY PARKLAND AND OPEN
17 SPACE VERIFIED BY A CERTIFIED ARBORIST OR A PUBLIC AGENCY ROADSIDE TREE
18 CARE EXPERT.

19 (8) SPECIMEN TREE CUTTING OR CLEARING WITHIN A PUBLIC STREET RIGHT-OF-WAY.

20 (9) SPECIMEN TREE CUTTING OR CLEARING IN ASSOCIATION WITH AGRICULTURAL
21 ACTIVITY.

22 (i) *COMPLIANCE.* THE DEPARTMENT MAY ISSUE A NOTICE OF VIOLATION, STOP-WORK ORDER, OR
23 CIVIL CITATION TO ANY PERSON THAT CAUSES OR ALLOWS A VIOLATION OF THIS SECTION.

24 (j) *NONCOMPLIANCE PENALTIES.* THE COUNTY SHALL ASSESS A NONCOMPLIANCE PENALTY FOR
25 EACH VIOLATION OF THIS SECTION, TO INCLUDE A REPLANTING REQUIREMENT FOR EACH SPECIMEN
26 TREE CUT OR CLEARED, AND THE COUNTY SHALL NOT ACCEPT AN APPLICATION FOR THE
27 RESIDENTIAL SUBDIVISION OF THE PROPERTY FOR FIVE YEARS.

28 (k) *CIVIL PENALTY.* IN ADDITION TO AND CONCURRENT WITH ALL OTHER REMEDIES, THE
29 DEPARTMENT MAY ENFORCE THE PROVISIONS OF THIS SECTION WITH CIVIL PENALTIES PURSUANT
30 TO THE PROVISIONS OF TITLE 24, "CIVIL PENALTIES," OF THE HOWARD COUNTY CODE. A

1 VIOLATION SHALL BE A CLASS A OFFENSE. EACH SPECIMEN TREE CUT OR CLEARED IN VIOLATION
2 OF THIS SECTION IS A SEPARATE VIOLATION.

3

4 **Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations.**

5 **Subtitle 12. Forest Conservation.**

6

7 **Section 16.1210. Financial security for [[reforestation and afforestation]] REFORESTATION,
8 AFFORESTATION, AND RETENTION.**

9 (a) *Financial Security Required.* A person required to provide [[afforestation or reforestation]]
10 AFFORESTATION, REFORESTATION, OR RETENTION under this subtitle shall furnish financial
11 security in the form of a bond, an irrevocable letter of credit, or other security approved by the
12 County. This shall be provided prior to plat recordation if the [[afforestation or reforestation]]
13 AFFORESTATION, REFORESTATION, OR RETENTION is required for approval of a subdivision; prior
14 to site development plan approval if the [[afforestation or reforestation]] AFFORESTATION,
15 REFORESTATION, OR RETENTION is required for site development plan approval; and prior to
16 grading permit issuance if the [[afforestation or reforestation]] AFFORESTATION, REFORESTATION,
17 OR RETENTION is required for issuance of a grading permit. The security shall:

18 (1) Assure that the afforestation, reforestation, RETENTION, and the associated forest
19 conservation agreement are implemented in accordance with the approved forest
20 conservation plan;

21 (2) Be in an amount equal to the estimated cost, as approved by the County, of [[reforestation
22 and afforestation]] AFFORESTATION, REFORESTATION, OR RETENTION; and

23 (3) Be in a form and of a content approved by the County.

24 (b) *Release of Financial Security.* If, after three growing seasons following the [[afforestation or
25 reforestation]] AFFORESTATION, REFORESTATION, OR RETENTION or as provided in the forest
26 conservation agreement, the plantings OR RETENTION associated with the [[afforestation or
27 reforestation]] AFFORESTATION, REFORESTATION, OR RETENTION meet or exceed the standards of
28 the manual, the amount of the bond, letter of credit, or other security shall be returned or
29 released.

30 (c) *Default and Lien.* If, after three growing seasons or as provided in the forest conservation
31 agreement, the plantings OR RETENTION do not meet the aforesaid standards, the County shall

1 have the right to draw on the security according to its terms and use the sums withdrawn for the
2 costs incurred by the County in achieving the [[afforestation or reforestation]] AFFORESTATION,
3 REFORESTATION, OR RETENTION standards required by the plan and manual. Any costs incurred
4 by the County in excess of the security amount shall be charged against the developer and, unless
5 they are paid or appealed to the Board of Appeals within 30 days after billing by the County,
6 shall become a final lien against the property being developed and shall in every respect be
7 treated as County real estate taxes.

8

9 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County, Maryland that
10 *this Act shall become effective 61 days after its enactment.*