

Model Legislation for a More Scenic America

**Prepared by SCENIC AMERICA
Tom Pelikan, Director of Policy
Meg Maguire, President**

January 2003

**Scenic America
801 Pennsylvania Ave., SE
Suite 300
Washington, DC 20003**

202-543-6200

www.scenic.org

Introduction

One important way to solve scenic problems is through good local ordinances. In this paper, *Model Legislation for a More Scenic America*, Scenic America offers five model ordinances covering some important aspects of scenic protection:

- I. Model State Prohibition of Billboards
- I. Model State Prohibition of Billboards II. Model Local Billboard Prohibition Ordinance
- III. Model Wireless Telecommunications Tower Ordinance
- III. Model Wireless Telecommunications Tower Ordinance IV. Elements of a Landscaping Ordinance
- V. Elements of a Tree Protection Ordinance

Scenic America helps communities to protect scenic beauty and distinctive community character by enacting and improving state and local legislation. Most scenic issues are governed at the local level through ordinances and regulations. Since 1986, we have:

- assisted many of the more than 750 communities in America that ban new billboards, including Los Angeles, California; Reno, Nevada; Irving, Texas; and Philadelphia, Mississippi;
- advised many communities including Block Island, Rhode Island and Frederick County, Maryland, on cell tower issues;
- spearheaded scenic byways programs in states like Georgia and Ohio, and assisted dozens of individual National Scenic Byways to take action to protect their scenic heritage; and
- supported dozens of communities like Sedona, Arizona and Guanella Pass, Colorado and states like Illinois and Delaware in their fight to get appropriate standards and practices for context sensitive highway design.

Through our technical assistance program, we've discovered examples of legislation that work well. By combining the best of these examples, we have developed this package of model legislation that, if enacted, can go a long way towards protecting local community character from visual blight.

We strongly urge activists and officials to study this legislation and consider adopting it as appropriate for their states and municipalities. By stopping new billboard construction, communities stop billboard blight from getting worse. By enacting policies to pay for billboard removal at the replacement value rather than their projected future earnings, taxpayers get a fair deal. By encouraging transportation planners to embrace context-sensitive highway design principles, the public gains assurance that new and rebuilt roads work will work with the land and respect local character. By enacting sound landscaping and tree protection ordinances, cities and towns can increase property values and protect the environment.

While urging state and local officials to adopt these measures, we recognize that one size does not fit all. Each state has its own unique laws and case law. More importantly, each community has its own legacy and character. Before adopting any legislation, communities must first consider what they want to protect and enhance and tailor the legislation to suit their unique needs. Activists and officials should also consult with experienced local attorneys to be sure that a proposed statute or ordinance will withstand judicial scrutiny in light of other state and local laws and court opinions. Furthermore, laws, like communities and people, are always works in progress. There will always be new examples to learn from, and new ways to improve these models.

I. Model State Prohibition of Billboards

Five states, Alaska, Hawaii, Vermont, Maine, and Rhode Island, currently prohibit new billboard construction. Oregon has adopted a statewide cap and replace law, meaning that no one may erect a new billboard until they remove an existing one. In fact, if a person wishes to erect a tri-vision billboard in Oregon, they must remove three static billboards.

The remaining 45 states, including Oregon, could all go considerably further in their efforts to fight billboard blight by prohibiting new billboard construction tomorrow. The following legislation is based on language used by Alaska, Hawaii, Vermont, Maine, and Rhode Island, language that has withstood repeated challenges by the billboard industry.

Scenic America believes that stopping new billboard construction is the single most effective way to stop billboard blight from getting worse. Such a prohibition does not force the removal of a single billboard, nor does it take anyone's property. However, it can ensure that areas currently unsullied by billboards remain that way forever.

Section 1. Findings and declaration of policy:

The Legislature hereby finds and declares:

That the proliferation in number, size and manner of outdoor advertising unreasonably distracts operators of motor vehicles and promotes confusion with regard to traffic lights, signs, or signals or other interference with the effectiveness of traffic regulations and is therefore hazardous to highway users;

That the excessive and inadequately controlled proliferation of billboards visible from highways endangers the uniqueness of our state and our communities and our scenic beauty;

That tourism and trade from both resident and nonresident highway users is an essential part of our economy;

That tourist-oriented direction signs and logo signs offer businesses cost-effective means of announcing their presence to the highway users with far less harm to our scenic beauty;

That regulation, including prohibition, of outdoor advertising signs, displays, and devices consistent with the public policy declared by the Congress relating to areas within and adjacent to the right-of-way of a highway of the interstate, primary, or secondary systems is essential to receiving the state's fair share of federal highway funding; and therefore

The erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to interstate highways, primary highways, and all state roads should be prohibited in order to protect the public investment in such highways, preserve the state's scenic beauty and distinctiveness, and promote the general health and welfare of the motoring public.

Section 2. Definitions

A. "Outdoor advertising" includes any outdoor sign, display, or device used to advertise, attract attention to or inform and which is visible to a person on the main-traveled way of a highway of the interstate, primary, or secondary systems in this state, whether by printing, writing, painting, picture, light, drawing, or any other means.

B. "Official business directional sign" means a sign erected and maintained by the state or an entity authorized by the state to indicate to the traveling public the route and distance to public accommodations or commercial services for the traveling public.

C. "Tourist-oriented directional sign" means a sign erected and maintained by the state or an entity authorized by the state to indicate to the traveling public the route and distance to points of scenic, historic, cultural, educational, religious, and recreational interest.

D. "On-premises outdoor advertising sign" means an accessory sign which directs attention to a business, profession, commodity, service, or entertainment carried on, sold, or offered on the same premises as the sign.

E. "Off-premises outdoor advertising sign" means any sign not including official business directional signs or tourist-oriented directional signs that promotes products, services, or activities not sold or conducted on the premises on which the sign is located.

F. "Billboard" means any off-premises outdoor advertising sign excluding official business directional signs, tourist-oriented directional signs, and signs erected on transit system vehicles or shelters with areas of less than 100 square feet.

G. "Interstate, primary, or secondary highway" means any highway part of the National Highway System or the Interstate Highway System or any road or highway built and maintained even partially by the state or with the aid of state funds.

Section 3. Prohibition of New Billboard Construction

On and after the effective date of this Act, the Department of Transportation shall not accept applications for any new permits for billboards along any interstate, primary, or secondary highway or along any other road in the state.

Section 4. Construction of Permitted Billboards

Any holder of a permit for a billboard who has not started construction of the billboard as of the effective date of this act may initiate construction within 90 days of the effective date of this act. If the holder fails to do so, the Department of Transportation shall revoke the permit and refund all fees paid to the Department by the holder in relation to the permit.

Section 5. Maintenance and Repair of Existing Billboards

A. Any billboard lawfully erected prior to the effective date of this act may be maintained in accordance with Department of Transportation standards and ordinary business practices.

B. Any lawfully-erected billboard damaged by the negligent or malicious action of another party may be repaired to its original condition.

C. Any lawfully-erected billboard which deteriorates either through ordinary wear and tear or is damaged by natural forces or an act of God to the extent that the cost of repair or reconstruction of the billboard exceeds fifty percent of its fair market value as determined by the Department of Transportation shall be removed by the owner.

D. Repair, reconstruction, and maintenance of a billboard shall only include those actions required to restore the billboard to its original structural and mechanical condition. Such actions shall not include increasing the size or height of the billboard, converting the billboard to a multiple message or trivision sign, or adding any attachments to the billboard.

Section 6. Increase in Permit Fee and Inventory of Billboards

A. As of the effective date of this Act, the annual fee to renew a permit for a billboard shall increase by \$200 per

sign face.

B. The Department of Transportation shall use additional revenues resulting from subsection A. above to carry out a thorough statewide inventory of all billboards, including plotting the exact location of each sign, determining whether or not each sign has a valid permit from both the Department and any local government agency charged with regulating billboards, determining the age of the sign, and its condition. In compiling this inventory, the Department shall cooperate with billboard permit holders, local governments, the Federal Highway Administration, and citizens groups concerned with scenic conservation and transportation.

C. Upon completion of the above-referenced inventory, the Department shall initiate the removal of all signs operating without a valid permit.

D. Upon completion of the inventory referred to in subsection B and the removal of all illegal signs called for in subsection C, the annual billboard permit fee shall decrease by \$100 per sign face.

Section 7. Development of Official Business Directional Signs

The Department of Transportation is directed to develop, construct, and maintain and contract with public and private entities for the construction and maintenance of official business directional signs in addition to any such signs currently operated by the Department. The Department shall consult with scenic conservation groups, businesses and business organizations, and local governments to facilitate the development of these signs in such a way as to allow businesses to reach the traveling public without the deleterious impact on scenery wrought by billboards.

Section 8. Agreement with the Federal Government

The Department of Transportation is authorized to seek any modification of the state=s agreement with the United States Department of Transportation concerning the control of outdoor advertising to ensure that the intent of this Act is carried out and to ensure continued compliance with the agreement.

Section 9. Severability

This Act is hereby declared severable. In the event that any provision of this Act is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or the enforcement of either this Act as a whole or any parts not declared invalid or unconstitutional.

Section 10. Conflict

If any part of this Act is found to be in conflict with any other state law or regulation, the most restrictive or highest standard shall prevail.

Section 11. Effective Date

This Act shall be effective upon signature by the Governor.

Notes
Notes

1. For more information on how to advocate for good state billboard controls, see Scenic America=s publication *Fighting Billboard Blight*, available through our web site at www.scenic.org

II. Model Local Billboard Prohibition Ordinance

Of the 45 states that allow new billboard construction, 41 allow municipalities to prohibit new billboard construction. Scenic America strongly recommends local prohibitions of new construction as a valid means of stopping billboard blight from getting worse.

The following model ordinance is based on language from a variety of the more than 720 communities throughout America with billboard prohibitions confirmed by Scenic America. The ordinances of places as diverse as Baltimore, Maryland; Richland County, South Carolina; Scottsdale, Arizona; and Fort Worth, Texas offer worthy examples for other communities. For more information about communities that prohibit new billboards, please see the Scenic America web site at www.scenic.org.

Ordinance No.

City of Any Town, East Dakota, USA
City of Any Town, East Dakota, USA

Whereas, the proliferation in number, size, and manner of off-premise outdoor advertising signs unreasonably distracts operators of motor vehicles and promotes confusion with regard to traffic lights, signs or signals and is therefore hazardous to the health and safety of road and highway users; and

Whereas, excessive and inadequately controlled off-premise signs endangers the uniqueness and scenic beauty of Any Town, harms the appearance of our neighborhoods, and reduces the property values of neighboring property owners; and

Whereas, tourism and trade from both resident and nonresident highway users is an essential part of Any Town's economy; and

Whereas, logo signs, well-designed on-premise signs, information centers, and other forms of media in Any Town offer local businesses ample opportunity to promote their goods and services to residents and visitors alike; and

Whereas, Section _____ of the Code of East Dakota permits local governments to strictly control and prohibit the construction and reconstruction of new off-premise outdoor advertising signs; and

Whereas, The City Council of Any Town finds that a complete prohibition of the construction of new outdoor advertising signs advances the public health, safety, and welfare of Any Town;

Therefore be it ordained that the following subsections shall be added to Section 12 of the Municipal Zoning Ordinance of Any Town and shall be effective immediately. New language is in *italics*.

Section 12-2. Definitions:

(a) "Official business directional sign" means a sign erected and maintained by the state or an entity authorized by the state to indicate to the traveling public the route and distance to public accommodations or commercial services for the traveling public.

(b) "Off-premise sign" means a business sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same premises where such business sign is located. For purposes of this article, easements and other appurtenances shall be considered to be outside such platted parcel of land and any sign located or proposed to be located in an easement or other appurtenance shall be considered an off-premise sign.

Section 12-5. Prohibited Signs.

(a) All off-premise signs are prohibited and no permit shall be granted for the construction of any off premise signs on or after the effective date of this subsection.

Section 12-6. Repair and Reconstruction of Signs.

(a). Off-premise signs: Should any sign be damaged by Acts of God, weather, unintentional harm or negligence or should any off-premise sign deteriorate due to failure to properly maintain said sign to the point that the cost of repair is greater than 50 percent of its current fair market value, the City shall not grant any permits for the repair or reconstruction of the sign. This prohibition does not apply to signs damaged by vandalism or other criminal acts.

Section 12-10 Protection of First Amendment Rights.

(a). Any sign allowed under this ordinance may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business, activity conducted, or product sold or offered at a location not on the same premises where such business sign is located.

Section 12-12 Severability and Conflict.

(a). Severability. This ordinance and its various parts are hereby declared to be severable. If any section, clause, provision or portion of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of either this ordinance as a whole or any parts not declared invalid or unconstitutional.

(b). Conflict. If any part of this ordinance is found to be in conflict with any other ordinance of the City of Any Town, the most restrictive or highest standard shall prevail.

Notes

1. This model ordinance is intended to amend existing sign laws or an existing ordinance. It could also serve as a stand-alone ordinance. As with other model ordinances, Scenic America urges activists and officials to consult with experienced local counsel and modify this ordinance to comply with current state law.
2. Four states, Ohio, Pennsylvania, Missouri, and South Dakota do not allow communities to prohibit billboards completely. Pennsylvania law may allow communities that already have billboards in their community to prohibit new billboards, but that question remains unsettled.
3. For more information on how to advocate for good state and local billboard controls, see Scenic America's publication *Fighting Billboard Blight*, available through our web site at www.scenic.org

III. Model Wireless Telecommunications Tower Ordinance

This model ordinance combines the best of several ordinances that Scenic America reviewed in the process of assembling our publication *Taming Wireless Telecommunications Towers*.

This constitutes a bare-bones ordinance, rather than the sort of comprehensive policy document that should accompany every ordinance. Scenic America recommends that each community develop a thorough understanding of its communications needs and visual environment and develop a policy and ordinance to meet the former without compromising the latter.

The Federal Telecommunications Policy Act of 1996 seriously restricts the abilities of communities to regulate wireless telecommunications facilities. Communities cannot prohibit towers. They cannot discriminate among service providers. And they cannot regulate towers on the basis of electromagnetic emissions or other health concerns. However, they can exert reasonable control over tower aesthetics including height restrictions, co-location, setbacks, and other design issues.

Readers should also note that at least two states, Connecticut and Kentucky, decide tower siting issues at the state level. Accordingly, municipalities in those states must tailor their ordinances as needed.

Section 101.1 Statement of purpose and findings:

The City Council of the City of Ourtown, West Missouri, hereby declares that the purposes of this section are to:

- (a) establish standards for the siting of telecommunications towers and antennas;
- (b) encourage the use of existing structures as an alternative to new tower construction;
- (c) encourage the joint use of towers;
- (d) encourage the design and construction of towers and antennae which minimize adverse visual impacts;
- (e) ensure compliance of all telecommunications facilities with current federal, state, and local regulations;
- (f) facilitate the provision of wireless telecommunications services; and
- (g) prevent harm to the health, welfare, and visual environment of Ourtown and its citizens.

Section 101.2 Requirements for facility permit submissions

In addition to any other materials required for a standard permit under this section or any other ordinance of the City of Ourtown, all applicants for permits to construct a telecommunications tower or antenna shall submit visual impact demonstrations using photo simulations of the proposed facility as it would be seen from residential areas, public rights of way, and public parks and other sites as deemed appropriate by the Planning Department.

Section 101.3 Location of facilities on or near historic structures, historic districts, and scenic corridors

Towers and antennae may be approved on or near historic structures and districts and designated scenic corridors by special exception and only if so concealed as to be substantially invisible. The views of, and vistas from, such structures, districts, and corridors shall not be impaired or diminished by the placement of telecommunications towers and antennae.

Section 101.4 Height Restrictions

a. No new telecommunications facility shall exceed 100 feet in height. However, in the event of dense vegetation or other substantial obstacles to signal propagation, facilities can extend to a height of no more than 20 percent above the average tree canopy height within 1,000 feet of the proposed facility.

b. Telecommunications facilities that simulate objects that typically occur in landscapes similar to the proposed location (except billboards, electrical transmission, or telecommunications towers) may exceed 100 feet in height if, based on the judgement of the City Planning Department, it would appear in context on the landscape, is aesthetically acceptable, and would be a preferable alternative to an undisguised facility.

c. Telecommunications facilities located atop or within existing buildings or structures may result in an overall increase in height of the structure of no more than ten percent of the structure's height without the facility or the maximum height allowed in the zoning district in which the structure is located, whichever is less.

Section 101.5 Co-location

a. In all applications for construction of a new facility, the applicant must prove by substantial evidence that a bona fide need exists for the facility and that no reasonable combination of locations, techniques, or technologies will obviate the need. The applicant must further prove that it has made all reasonable efforts to procure antenna space on existing facilities and that the cost of co-location exceeds the cost of a new facility by at least fifty percent.

b. Prior to the issuance of a permit for a new tower, the applicant shall demonstrate commitment to joint use as follows.

1. The applicant requesting the permit shall submit evidence to the city demonstrating that a genuine effort has been made to solicit additional users for the proposed new tower. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless communications services within Bent County and adjacent counties, advising of the intent to construct a new tower, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within 15 business days.

2. The applicant shall sign an instrument, maintained by the city, agreeing to encourage and promote the joint use of telecommunications towers within the city and, to that extent, committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing or delaying joint use of any tower where fair and just market reasonable compensation is offered for such use.

Section 101.6 Setback

No new tower shall be constructed without a setback from the tower's base of at least 1.5 times the tower height to a public or private road and at least 2.5 times the tower height to the nearest property line.

Section 101.7 Equipment shelters.

No equipment shed for a telecommunications facility shall exceed 750 square feet in area nor 12 feet in height. All such sheds shall be screened with vegetation or other aesthetically pleasing materials. Furthermore, all such sheds shall be secured with approved fencing and a locked gate.

Section 101.8 Signs

No commercial messages nor any other signs beyond safety warnings and an identification sign of not greater than 6 square feet shall be placed on any tower or facility.

Section 101.9 Electronic emissions and electromagnetic radiation

- a. Prior to commencing regular operation of the facility, all facility owners and operators must submit a certificate of compliance with all current Federal Communications Commission regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility.
- b. All facility operators and owners must sign an agreement, to be maintained by the city, agreeing to bring facilities into compliance with any new federal, state, or local laws or regulations concerning electromagnetic radiation and other electronic emissions applicable to the facility within 120 days of the effective date of the regulations.

Section 101.10 Removal of facilities

The owner of a facility shall establish a \$10,000 cash security fund or provide the City with an irrevocable letter of credit in the same amount to secure the cost of removing an antenna, antenna array, or tower that has been abandoned. In the event of a transfer of ownership, the seller shall be responsible for notifying the buyer of this requirement and for notifying the City of the transfer.

Notes

1. For more information on regulating wireless facilities, see the Scenic America publication *Taming Wireless Telecommunications Towers*, available via our web site at www.scenic.org.
2. One of the best local wireless policies and ordinances is that of Albemarle County, VA. The entire policy is available on the county's web site at: <http://www.albemarle.org/planning/WirelessPolicy.htm>.

IV. Elements of a Landscaping Ordinance

Landscaping ordinances can and do serve a noteworthy purpose in preserving the visual environment of a community. Well-designed and maintained landscaping can screen visually undesirable features from public view, can protect the privacy of residents, and can promote the community as one that cares about its appearance. It can also improve the physical environment of a community through the use of plants best suited to the climate, improving drainage, and enhancing air quality.

There are three general types of landscape ordinances:

1. Comprehensive landscape ordinances focus on pre-construction efforts and restrict everything from grading to tree removal, wildlife habitat to aquifer recharge. These ordinances often include provisions targeted at specific environmentally-sensitive areas in a community such as wetlands or ridgelines. Compliance tends to be expensive and time-consuming, but also gets the best results.
2. Post-construction landscape ordinances focus on individual site plans, rather than ecosystems. They often require screening of loading zones, trash receptacles, etc. Furthermore, they usually require planting and the design of buffer zones between uses and restrict increases in impervious surfaces so as to control stormwater runoff. Buck Abbey of the American Society of Landscape Architects noted that these ordinances are most often designed to put nature back into a city after existing features have been removed.
3. Tree ordinances are the most common landscape ordinances around, many dating back to the 19th century. These ordinances recognize both the aesthetic and environmental values of trees, set requirements for planting and conditions for removal, and often regulate the types of trees that developers and individuals can plant on a property.

From a scenic conservation perspective, the best local ordinances include all three types. Rather than attempt to draft a comprehensive ordinance that could fit any community, Scenic America believes that an outline of the elements of a successful ordinance would serve the scenic conservation community best.

Key Elements:

1. **Findings and Policy Statement.** Whenever a developer or other party challenges an ordinance in court, the court wants to know WHY a municipality enacted the ordinance. For example, Fort Collins, Colorado explicitly wants landscaping plans to reduce glare and heat build-up, contribute to visual quality and continuity within and between developments, provide screening and mitigation of potential conflicts between activity areas and site elements, enhance outdoor spaces, reduce erosion and stormwater runoff, and mitigate air pollution. Any one of those purposes is acceptable, but the combination works best. A legitimate purpose for landscaping and tree ordinances not mentioned by Fort Collins is the protection of property values. Study after study indicates that well-landscaped homes and building sites increase property values by at least five and often more than twenty percent. Beyond individual property values, a Tucson, Arizona study showed that for every dollar spent to maintain trees and other landscaping, residents realized \$2.62 worth of benefits in the form of energy savings, dust reduction, and storm water control.
2. **Applicability.** Ordinances must specify the places and circumstances to which they apply. For example, Merced, California=s landscaping ordinance applies only to new developments within the city. The city could expand that applicability to include substantial reconstruction or redevelopment projects. At the same time, tree ordinances tend to apply to all street trees and to trees that extend into public rights of way or across property lines.
3. **Plan requirements.** Under most comprehensive landscape and post-construction landscape ordinances, communities require developers to submit landscaping plans for a given site. To provide developers guidance on what is expected of them, such ordinances should specify exactly what a plan must contain. For example, if the ordinance requires a planted buffer between the parking area and the street, the ordinance should require that a

landscape plan show such a buffer. The ordinance may also require pre-development photographs, topographical maps of the site, drawings to a certain scale, artist=s renditions of the proposed plan, and other required aspects of the plan. Davie, Florida even requires that the plan be prepared by and signed by a Florida-registered landscape architect. Furthermore, the ordinance should designate a staff person, department, or agency responsible for certifying compliance with the plan requirements and with authority to require additional information based on professional judgment and criteria.

4. Standards. The longest and most detailed sections of landscaping ordinances consists of standards. Standards sections all should have the following items in common:

- a. Clarity. The average developer should be able to understand what he or she must do to meet the standards.
- b. Context-sensitivity. Not every location can and should have the same landscaping standards as every other. As such, many ordinances have different levels of landscaping standards, depending on the environmental and visual sensitivity and needs of the areas governed by the levels. For example, Eugene, Oregon has a basic landscaping standard as follows with others for low-screening requirements, high wall areas, and high screen requirements.

1) Basic Landscape Standard (L-1).

(a) Required Plant Materials. Basic Landscape Standard (L-1) requires the installation and maintenance of all of the following:

1. 1 canopy tree per 30 linear feet as measured along the property line.
2. 6 shrubs per 30 linear feet as measured along the property line.
3. Living plant materials covering a minimum of 70 percent of the required landscape area within 5 years of planting. The required plant materials may be installed in the required area in any arrangement and do not need to be linear in design.

- c) A basis for the standards. Standards sections will frequently refer to the standards set forth by professional organizations and associations to as a basis for the community=s own rules. Deerfield Beach, Florida requires landscaping to be installed according to accepted good planting procedures as developed by the American Society of Landscape Architects. Tree preservation standards are often based on standards set forth by organizations of professional arborists. Whether or not such references are explicitly in the ordinance, there should be some reference to them either in the minutes of the committee that drafted the ordinance or in the hands of those charged with enforcing the ordinance.

5. Location-specific provisions. Communities with any sense tailor their landscaping ordinances to their particular climate and terrain. For example, municipalities in dry climates often require xeriscaping, or landscaping with drought-resistant plants that use less water. Even Dade County, Florida=s landscape ordinance promotes xeriscape principles. Anchorage, Alaska also has some provisions, including designation of local hardiness zones, particularly adapted to its cold climate. Communities should, with the help of experts, evaluate their situation and select species and techniques best suited to their needs.

6. Administration provisions. Regardless of the size of the community establishing the ordinance, somebody has to manage it. Most communities designate the department that handles planning and zoning matters to receive and review applications and to monitor compliance. However, there are variations. Many tree ordinances authorize the municipality to appoint a shade tree commission or similar entity to develop and recommend policies and to review proposals. Many municipalities also employ the services of an arborist, either as a member of their staff or on a contract basis, to handle tree-related issues. Tampa, Florida's Parks Department administers that city's landscape ordinance. In many places, planning commissions consisting of local residents review development plans including landscaping plans, while professional staff actually monitors and enforces compliance. Finally, in Pennsylvania, townships may authorize environmental advisory councils to review plans for compliance with environmental provisions such as landscaping and tree protection ordinances as part of the development review process.

7. Enforcement provisions. Failure to comply with landscaping and tree protection ordinances must have consequences. In the case of landscaping required as a condition of approval for development, the standard consequence is denial of approval. Failure to properly install landscaping in an approved project can result in denial of additional permits required as part of the development process. For example, Charleston, South Carolina specifically provides that "no certificate of occupancy shall be issued until the landscaping is completed as certified by an on-site inspection by the Zoning Administrator." Fort Collins, Colorado's ordinance provides that any plant that dies or is removed in the landscaped area must be replaced by a plant of equal or greater size and value. In the case of tree ordinances, the best and most effective impose substantial penalties for illegally removing trees. Chapel Hill, North Carolina not only requires replacement of any tree illegally removed, but also provides for civil penalties equivalent to 1.5 times the monetary value of the trees or topsoil removed or destroyed up to a maximum of \$20,000.

Sources

The best source of information on how to draft a successful tree conservation ordinance remains *Tree Conservation Ordinances*, by Christopher J. Duerksen with Suzanne Richman, published in 1993 by the American Planning Association and Scenic America. This book can be ordered via the Scenic America web site, www.scenic.org. Scenic America also has a number of fact sheets about the economic, social, and scenic benefits of tree conservation available on our web site.

The most comprehensive review of individual landscaping ordinances is *U.S. Landscape Ordinances: An Annotated Reference Handbook*, by Buck Abbey. This book can be ordered directly from the publisher, John Wiley & Sons, www.wiley.com.

Several organizations also concern themselves with community tree preservation and landscaping. National organizations include the American Society of Landscape Architects (www.asla.org), the National Arbor Day Foundation (www.arborday.org), the National Tree Trust (www.nationaltreetrust.org), and the Society of Municipal Arborists (www.urban-forestry.com).

V. Elements of a Tree Protection Ordinance

In virtually every community, trees represent an important but in far too many cases disappearing resource. Consider the benefits of tree protection for a community:

Air quality: A canopy of trees in an urban environment can slash smog levels up to six percent, while even a single tree produces nearly three quarters of the oxygen required for a person;

Water quality: Trees reduce runoff, thus saving the cost of technological solutions to storm water management. For example, a street lined with 32-foot tall trees can reduce runoff by 327 gallons;

Noise pollution: Studies suggest that belts of trees 100 feet wide and 45 feet long can reduce highway noise in adjacent neighborhoods by 50 percent;

Climate effects and energy costs: Urban areas with little vegetation can experience temperatures up to seven degrees higher than those with tree cover. Properly planted trees can cut heating and cooling costs and the resultant power demand by as much as 12 percent;

Economics: Nine out of ten commercial real estate appraisers believe that trees boost the sales appeal of commercial properties. Three out of four customers prefer to shop in places graced by trees and other landscaping. In residential areas, homes on lots with trees sell for an average of five percent more than homes without and unimproved lots with trees can sell for up to 30 percent more.

With all those benefits, it is little wonder that the most common municipal landscaping ordinances are those aimed at protecting trees. Despite the proliferation of such ordinances, many are often incomplete at best or simply inadequate, resulting in the loss of acres of trees every year.

Scenic America recommends that communities evaluate their trees, looking for those trees and forested areas that need protection, identifying areas that need improvement, and then adopt strong ordinances that will not only protect the existing resources but ensure the development of new and better tree canopies and vistas in the future.

Key Elements

NOTE: Most of the following guidelines are taken from *Tree Conservation Ordinances*, by Christopher Duerkesen with Suzanne Richman, a publication of Scenic America and the American Planning Association and available through Scenic America's web site, www.scenic.org.

Since every community is different, every ordinance will be different as well. Communities and activists should treat these elements as a guide, rather than a standard from which none can deviate in the slightest. Furthermore, every community should seek the advice of its legal advisors to ensure that the ordinance is within the powers granted to communities under state law.

1. Purpose: This section should reflect the community's priorities in tree conservation. Does the community want to protect trees in order to protect its watershed, as Fairfax County, Virginia, did in stating that it adopted its ordinance ". . . to alleviate erosion, siltation, and other harmful effects of land-disturbing activities . . ." ⁱ? Or is it to protect historic trees? From a legal standpoint, it is most important that communities clearly state what they want the ordinance to accomplish. Scenic America strongly urges towns to prominently state the aesthetic benefits they hope to realize with their ordinance. If someone challenges the ordinance in court, the courts will look very closely at this section to determine whether or not subsequent sections serve this purpose.

2. Authority: It is also useful to cite the state enabling legislation that allows communities to protect trees. In doing so, the community acknowledges that they have the authority to do so and that they have verified that their ordinance does not exceed that authority.

3. Definitions: Depending on the scope of the ordinance, these can range from defining a "tree," which every ordinance should do (for example, does it cover large, woody plants with a height that will exceed ten feet or does it cover understory vegetation?), to defining "a heritage tree" (i.e. trees with some combination of age, historical connotations, etc., that the community finds particularly valuable) to defining more technical terms such as "mitigation," "dripline," and "afforestation." Outstanding sources of definitions include the aforementioned *Tree Conservation Ordinances* and *U.S. Landscape Ordinances: An Annotated Reference Handbook*, by Buck Abbey.

4. Inventory/Information Requirements: There are two elements to this section. First, communities can and should, regardless of whether they're developing their first ordinance or refining an existing one, conduct their own inventories of trees, including assessing species, the health of trees, and information about where the trees are in relation to other resources such as watersheds, etc. Second, where the ordinance protects trees on private property, the ordinance should require developers to perform an on-site tree inventory. Outstanding examples of provisions doing this are found in the ordinances of Austin, Texas ⁱⁱ and Prince George=s County, Maryland. ⁱⁱⁱ

5. Identification of Protected Trees: This section clearly delineates what sort of trees the community wants to protect. Some communities use a simple size measure, protecting only trees, for example, with a diameter at breast height of 30 inches. Others, recognizing that while an oak of that size is common while a dogwood that large would be extremely rare, set different size limits for different species. Still others use factors such as age, location, general condition, etc. Some communities also promote the protection of durable or aesthetically pleasing trees while offering less protection to trees unusually prone to breakage during wind or ice storms, trees that drop messy fruit (such as Bradford Pears), etc.

6. Identification of Who Must Comply with the Ordinance: This section identifies the activities that trigger the ordinance and who must and who must not comply with it. For example, some communities do not require tree

ⁱ. Fairfax County, Virginia, Erosion and Sedimentation Control and Conservation Ordinance, Part 3, Chapter 104-1-1.

ⁱⁱ. Austin, Texas, City Code, Chapter 13-2A (Zoning) Section 5187.

ⁱⁱⁱ. Prince George=s County, Series No. 9058201522, A Manual for Tree Preservation in Development Areas, @ 1982.

preservation measures if only small parcels are affected or if small amounts of trees are involved. Tampa, Florida, for example, exempts expansion of single and two family dwellings that do not increase the total floor area on a parcel by more than 15 percent or exceed a cost of \$15,000. Gibbsboro, New Jersey, allows individual lot owners to remove fewer than two trees at any one time or six in any one year.

In addition to protecting trees from disturbance during the development process, many communities also protect trees from excessive or improper pruning. Chesapeake, Virginia contains an extensive section on tree preservation and implementation of its ordinance.^{iv} At the same time, San Juan Capistrano, California targets the practice of “topping,” in which tree owners reduce major branches to stubs. Specifically, no property owner in certain zones may have his trees “severely trimmed,” which the ordinance defines as “the cutting of the branches and/or trunk of a tree in a manner which will substantially reduce the overall size of the tree area so as to destroy the existing symmetrical appearance or natural shape of the tree in a manner which results in the removal of main lateral branches, leaving the trunk of the tree in a stub appearance.”^v

7. Administration: This section identifies the agency or individual responsible for ensuring compliance with the tree ordinance. Most communities assign the job to one of four types of agencies: planning and zoning; parks and recreation; public works; or environmental resources. Many communities also have shade tree commissions which, in addition to reviewing and updating the ordinance and related guidelines, may also review applications for permits.

At some point or at some level of discussion, communities will need a professional arborist or forester to assess compliance and provide technical expertise. While only the larger and wealthier cities tend to have such a professional on staff, most communities can retain one in their area.

8. Standards: Somewhere, either in the ordinance or in related regulations, the community should make some reference to the standards to which they intend to hold developers and property owners. Communities may either adopt comprehensive standards on their own or refer to accepted professional standards. For example, Alachua County, Florida, requires compliance with the *National Arborist Association Standards for Pruning of Shade Trees* when trimming trees on public or private property except in cases of emergency.^{vi}

9. Enforcement: Ultimately, after all the decisions of what to protect and how to protect it have been made, to be of any value the ordinance must contain some provisions for penalizing violators. Small fines might just be seen as a cost of doing business. However, such measures as linking fines and penalties to the actual value of trees destroyed, considering each tree damaged or removed a separate violation, and invoking penalties for each day the violations persist can have a significant impact on the attitudes of potential violators.^{vii}

^{iv}. Chesapeake, Virginia, Land Use Code, Section 22.20-520.

^v5. San Juan Capistrano, California, City Code, Section 9-3.625.

^{vi}6. Alachua County, Florida, Ordinance, 91-14, Section 4 (1991).

^{vii}7. Duerksen, Christopher J. and Richman, Suzanne, *Tree Conservation Ordinances*, American Planning Association and Scenic America, Washington, DC, 1993

Conclusion

With careful planning, with an ordinance containing all of the above ordinances, and most important of all, with vigorous enforcement and implementation, every community can protect its trees and enjoy the environmental, economic, and aesthetic benefits of tree conservation.

References

A. The best source of information on how to draft a successful tree conservation ordinance remains *Tree Conservation Ordinances*, by Christopher J. Duerksen with Suzanne Richman, published in 1993 by the American Planning Association and Scenic America. This book can be ordered via the Scenic America web site, www.scenic.org. Scenic America also has a number of fact sheets about the economic, social, and scenic benefits of tree conservation available on our web site.

B. The most comprehensive review of individual landscaping ordinances is *U.S. Landscape Ordinances: An Annotated Reference Handbook*, by Buck Abbey. This book can be ordered directly from the publisher, John Wiley & Sons, www.wiley.com.

C. Several organizations also concern themselves with community tree preservation and landscaping. National organizations include the American Society of Landscape Architects (www.asla.org), the National Arbor Day Foundation (www.arborday.org), the National Tree Trust (www.nationaltreetrust.org), and the Society of Municipal Arborists (www.urban-forestry.com).

Footnotes

ABOUT SCENIC AMERICA

Scenic America is the only national nonprofit organization dedicated solely to protecting natural beauty and distinctive community character. We provide technical assistance across the nation and through nine state affiliates (CA, FL, KY, MI, MO, OH, TX, TN, VA) and 15 scenic associates on scenic byways, billboard and sign control, context-sensitive highway design, wireless telecommunications tower location, transportation enhancements, and other scenic conservation issues. We advance our mission, *to safeguard America's natural beauty and community character*, through citizen education, site-specific projects in various states, grassroots organization, and publications on preserving scenic beauty, open space, and quality of life.

Visit our web site at www.scenic.org