CITY COUNCIL
ATLANTA, GEORGIA

A RESOLUTION

BY FINANCE/EXECUTIVE COMMITTEE

02-R-0353

A RESOLUTION TO AUTHORIZE THE ACCEPTANCE OF MONIES FROM CITIZENS AND DEVELOPERS REMOVING TREES IN THE CITY OF ATLANTA AS A MEANS TO RECOMPENSE FOR THE LOSS OF SAID TREES WHEN REPLACING TREES ON PROPERTY IS NOT FEASIBLE; AND TO AUTHORIZE THE CHIEF FINANCIAL OFFICER TO ESTABLISH A TREE TRUST FUND TO WHICH SAID CONTRIBUTIONS SHALL BE DEPOSITED; AND FOR OTHER PURPOSES.

WHEREAS, on December 3, 2001 the City of Atlanta adopted a revised Tree Protection Ordinance (01-O-1175), Chapter 158 of the Code of Ordinances; and

WHEREAS, the revised Tree Protection Ordinance, (Exhibit A) establishes a Tree Trust Fund (Section 158-66) for recompense monies from citizens and developers removing trees in the City of Atlanta when replacing trees on property is not feasible; and

WHEREAS, Tree Trust Fund revenue will be used to plant and maintain trees in the City of Atlanta.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:

Section 1: The Chief Financial Officer is authorized to establish a trust fund account 3P02 664101 Y12P0613QNA0) into which said tree recompense monies shall be anticipated and 3P02 7***** Y12P0613QNA0 of which said funds will be appropriated and expended.

TRUSTFUNDLEG

A true copy,
Rhonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED by the Council MAR 04, 2002
APPROVED by the Mayor MAR 12, 2002

CITY COUNCIL
ATLANTA, GEORGIA

EXHIBIT A

01-0-1175

A SUBSTITUTE ORDINANCE

BY COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE REPEALING ARTICLE II OF CHAPTER 158 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA, GEORGIA (1995) ENTITLED "TREE PROTECTION", AND ENACTING IN LIEU THEREOF A NEW TREE PROTECTION ORDINACE,ALSO DESIGNATED AS ARTICLE II OF CHAPTER 158 OF THE CODE OF ORDINACES OF THE CITY OF ATLANTA, GEORGIA (1995); AND FOR OTHER PURPOSES.

WHEREAS, during the past three the enforcement of the Tree Protection Ordinances by the Bureau of Buildings and the Tree Conservation Commission has revealed a number of substantive and procedural problems in said ordinance; and

WHEREAS, the Community Development /Human Resources Committee under the direction of its Chairperson, has established a working task force to propose changes to the ordinances; and

WHEREAS, the task force is composed of a number of volunteer professional and lay persons, who have devoted long hours to the task of drafting a proposal for Council; and

WHEREAS, the task force has made its report, submitting a proposed re-writing of the Tree Protection Ordinance, as attached hereto; and

WHEREAS, the proposed new ordinance will improve both the substance of the tree protection process and the procedural process of the ordinance.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA , AS FOLLOWS:

Section 1: THAT the Tree Protection Ordinance of the City of Atlanta, which is Codified as Article II of Chapter 158 of the Atlanta City Code (1995). at 158-26 through 158-110 thereof, BE and the same hereby is, REPEALED in its entirety.

Section 2: THAT a new Tree Protection Ordinance, BE, and the same hereby is, ENACTED, effective upon the repeal of the previous Ordinance as provided in Section One above, the text of which Tree Protection Ordinance shall read and shall be codified also as Article II of Chapter 158 of the Atlanta City Code (1995), at 158-26 through 158-110, thereof, as set forth in the Appendix to this Ordinance, which Appendix shall be a part hereof and incorporated herein by reference.

Section 3: THAT, the Tree Protection Ordinance shall apply to all applications for permits pending at the time it takes effect, unless such application to pending cases should work to deprive an appellant of the right to appeal, in which case the former deadlines, if any, should apply.

Section 4: THAT all ordinances and resolutions in conflict herewith BE, and the same are, hereby REPEALED to the extent of said conflict, and only for purposes of this ordinance.

A true copy,

Deputy Clerk

ADOPTED by the Council DEC 03, 2001
APPROVED by the Mayor DEC 11, 2001

Tree Protection Ordinance Draft 11/8/01 (Showing Changes)

Chapter 158 VEGETATION*

*Cross reference(s)—Property to be maintained free of unhealthful conditions, including solid waste, junk, weeds and exterior storage, § 86-6; protection of plants in parks, § 110-69.

State law reference(s)—Constitutional grant of home rule powers, Ga. Const. Art. IX, § II; statutory grant of home rule powers, O.C.G.A. § 36-35-1 et seq.

ARTICLE II. TREE PROTECTION*

* Cross reference(s) – Environment, ch. 74

DIVISION 1. GENERALLY

Sec. 158-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means any person seeking approval to take action under this article.

Boundary tree ***means a tree on adjacent property whose tree save area intrudes across the property line of the site under consideration.***

Buildable area means that ***area of the lot available for the construction of a dwelling and permissible accessory uses after having provided the required front, side, rear and any other special yards required by part 15 or part 16 of the city code.*** ~~portion of a lot on which structures or improvements may be erected according to applicable zoning requirements contained in part 16 of this Code.~~

City arboricultural standards means the arboricultural specifications and standards of practice, prepared by the city forester ***and city arborist*** and approved by the tree conservation commission, which are adopted pursuant to this article.

City arborist means the agent of the department of planning ~~and~~ development ***and neighborhood conservation*** responsible for administering this article.

City forester means the agent of the department of parks and recreation responsible for preparing and regularly maintaining the arboricultural specifications and standards of practice, for preparing and administering the master plan and for regulating and conserving trees on public land.

Cover area means that area which falls within the drip line of any tree.

Destroy means any intentional or negligent act which will cause a tree to die within a period of ~~two~~ ***five*** years, ***as determined by the city forester or city arborist. Such acts*** ~~including~~ ***include***, but ***are*** not limited to, ***cut or fill grade changes that affect more than 20 percent of the tree save area; severing or exposing of the roots in more than 20 percent of the tree save area; trenching across or otherwise severing more than 20 percent of the structural root plate;*** cutting, ***girdling or inflicting other severe mechanical injury to*** the trunk, roots or other vital sections of the tree; ***removal in excess of 20 percent of the live crown of the tree;*** damage inflicted upon the root system of a tree by the application of toxic substances, ***including solvents, oils, gasoline and diesel fuel;*** damage caused by the operation of heavy machinery***; damage caused by the storage of materials;*** and damages from injury or from fire inflicted on trees which results in pest infestation.

Diameter at breast height (DBH) means the diameter ~~or width~~ of the main stem of a tree ***or the combined diameters of a multi-stemmed tree*** as measured 4.5 feet above the natural grade at the base. ***The top diameter of a stump less than 4.5 feet tall shall be considered the "DBH" of an illegally destroyed tree for the purpose of calculating recompense.***

Drip line means a vertical line extending from the outermost portion of a tree canopy to the ground.

Fair or better condition ***means that the tree has a relatively sound and solid root, trunk, and canopy structure, no major insect infestation or other pathological problem, and a life expectancy greater than 15 years as determined by the city arborist or city forester.***

Flush cutting ***means the removal of limbs by cutting immediately adjacent to the trunk, destroying the protective branch collar and exposing the trunk to decay organisms.***

Fully stocked ***means a site occupied by trees at a density of 1000 inches DBH/acre (e.g., 40 trees averaging 25 inches DBH on a one-acre site).***

Hardship ***means a unique or otherwise special existing condition that is not addressed by the ordinance.***

Hazard tree ***means a tree with uncorrectable defects severe enough to pose present danger to people or buildings under normal conditions, as determined by the city arborist or city forester.***

Heat island ***means a ground area covered by an impervious surface that retains solar or other heat energy and thereby contributes to an increase in the average temperature of the ecosystem. An external heat island is one situated outside a site, including but not limited to public streets. An internal heat island is one situated within a site, including but not limited to patios, driveways and other vehicular maneuvering and/or***

parking areas. Recreational areas including but not limited to swimming pools and game courts are excluded from this definition.

Historic tree means a tree which has been designated by the tree conservation commission, upon application by the city arborist or any other interested person, to be of notable historic value and interest because of its age, size or historic association, in accordance with the city arboricultural specifications and standards of practice. Such designation may occur only by resolution of the commission, and the city arborist shall maintain and file with the municipal clerk a complete listing of the location of each historic tree.

Illegally removed tree *means any tree that is removed or destroyed without a permit.*

Incursion *means any occasion of prohibited activity within an area protected by a tree protection fence.*

Injury *means any intentional or negligent act, including improper pruning practices and the use of climbing spurs or gaffs on trees not subject to removal, that exposes the cambium of a tree to insects or decay organisms.*

Lost tree *means any tree that is destroyed, injured or otherwise not protected according to the provisions of this ordinance.*

Master plan means the comprehensive urban forest master plan.

Public utility means any publicly, privately or cooperatively owned line, facility or system for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil products, water, steam, clay, waste, stormwater not connected with highway drainage and other similar services and commodities, including publicly-owned fire and police and traffic signals and lighting systems, which directly or indirectly service the public or any part thereof.

Required yard area means the open space on a lot not occupied by a structure.

Saved tree *means any tree that is to be protected and not destroyed or injured during construction as required by this ordinance.*

Specimen tree means a tree ~~which has been designated by the tree conservation commission, upon application by the city arborist or any other interested person, to be of high value because of its type, size, age, or unique quality, in accordance with the city arboricultural specifications and standards of practice. Such designation may occur only by resolution of the commission, and the city arborist shall maintain and file with the municipal clerk a complete listing of the location of each specimen tree~~ ***that meets the following criteria: (1) Large hardwoods (eg. oaks, elms, poplars, etc.) and softwoods (eg. pine sp.) in fair or better condition with a DBH equal to or greater than 30"; (2) Smaller understory***

trees (dogwoods, redbuds, sourwoods, persimmons, etc.) in fair or better condition with a DBH equal to or greater than 10"; and (3) lesser-sized trees of rare species, exceptional aesthetic quality, or historical significance as designated by the tree conservation commission.

Spiking *means the use of metal spurs or gaffs to climb live trees for any purpose other than tree removal or human rescue.*

Standard replacement cost *means the dollar value for the purchase, planting, and maintenance for one year of a good quality, two and one-half (2.5) caliper inch hardwood shade tree. The January 2002 baseline is $150 per caliper inch, for a standard replacement cost of $375. This figure shall be evaluated and adjusted periodically by amendment to this ordinance, as proposed by the tree conservation commission in consultation with the city arborist.*

Severe mechanical injury *means a wound or combination of wounds, measured at its or their widest extent, that expose or destroy the cambium layer of 30 percent or more of the circumference of the tree, measured at the top of the wounded area.*

Structural root plate *means the zone of rapid root taper that provides a tree stability against windthrow. The radius of the root plate is proportional to the stem diameter (DBH) of a tree. The table below provides examples of root plate radii for upright trees without restricted roots.*

DBH (inches)	*8*	*16*	*32*	*48*
Root plate (feet)	*5.5*	*8*	*10.5*	*12*

Tipping *means the cutting of a lateral limb in such manner as to leave a prominent stub extending beyond a branch node or the trunk.*

Topping *means the cutting of a leader trunk in such manner as to leave a prominent stub extending beyond the node (crotch) of another leader trunk or major branch that may become a leader trunk.*

Tree means any self-supporting woody, perennial plant which has a trunk diameter of two inches or more when measured at a point six inches above ground level and which normally attains an overall height of a least ten feet at maturity, usually with one main stem or trunk and many branches.

Tree conservation commission means the commission established pursuant to section 158-61.

Tree replacement plan means a drawing which depicts the location, size and species of existing and replacement trees on the lot for which a permit is sought ***and a table detailing, by***

species and DBH, the existing trees to be saved, lost or destroyed, and, by species and caliper, the replacement trees to be planted.

Tree save area means the area surrounding a tree that is essential to that tree's health and survival. At a minimum, the tree save area shall consist of a circle having a ~~minimum diameter~~ ***radius*** of one foot for each one inch of diameter at breast height of the tree~~, or such larger area as may be designated by the city arborist~~.

~~*Yard area* means the open space on a lot not occupied by a structure.~~

(Code 1977, § 10-2035)

Cross references(s)--Definitions generally, § 1-2.

Sec. 158-27. Authority.

This article is enacted pursuant to the city's planning authority granted by the constitution of the state, including but not limited to Ga. Const. Art. IX, § II, ¶¶ 3 and 4; the city's general police power; appendix I of the city Charter, paragraphs 15, 21, 25, 30, 31, 47 and 57; and all other state and local laws applicable to this article.

(Code 1977, § 10-2032)

Sec. 158-28. Policy, purpose and intent.

It is the policy of the city that there shall be no net loss of trees within the boundaries of the city. The purpose of this article is to establish the standards necessary to assure that this policy will be realized and that the city will continue to enjoy the benefits provided by its urban forest. The provisions of this article are enacted to:

(1) Establish and maintain the maximum amount of tree cover on public and private lands in the city by prohibiting the destruction and removal of trees except in accordance with the standards set forth in this article;

(2) Maintain trees in the city in a healthy and nonhazardous condition through professionally accepted arboricultural practices;

(3) Establish and revise as necessary standards for the planting and maintenance of trees so as to improve the economic base of the city by improving property values, to enhance the visual quality of the city and its neighborhoods and to improve public health by lessening air pollution and the incidence of flooding;

(4) Minimize hazards and damage to streets and sidewalks and lessen public rights-of-way maintenance costs;

(5) Provide for the designation of historic and specimen trees; and

(6) Promote efficient and cost-effective management of the urban forest through the development of a comprehensive long-range urban forest master plan.

(7) ***Provide latitude in the interpretation and application of city administrative rules, standards and guidelines when reasonable and necessary to minimize the destruction of trees.***

(Code 1977, § 10-2033)

Sec. 158-29. Scope

The terms and provisions of this article shall apply to all private property *and all* ***public property subject to city regulation*** ~~within the city and~~ ***, including*** all public school property ~~and~~ , public housing property, ***parks, rights-of-way, and easements granted to other private or public entities, including public utilities, except where superceded by franchise agreements.***

(Code 1977, § 10-2034)

Sec. 158-30. Parking lot requirements.

All surface parking lots with a total of 30 or more parking spaces, whether primary or accessory in use and whether commercial or noncommercial, shall have minimum barrier curb and landscaping requirements as follows:

(1) Barrier curbs shall be installed around the perimeter of the parking lot and around landscaped areas that are required in this article, except where the perimeter abuts an adjacent building or structure and at points of ingress and egress into the facility, so as to prevent encroachment of vehicles onto adjacent property, rights-of-way and landscaped areas.

(2) Barrier curbs shall be a minimum of six inches in height and a minimum of eight inches in width and permanent in nature. Barrier curbs shall be concrete or stone. Such curbs shall be securely installed and maintained in good condition.

(3) Where the end of a parking space abuts a landscaped area, barrier curbs may be placed in the parking space at a maximum of two feet from the end of the parking space. This two-foot wide area may have the pavement removed and be developed as part of the required landscaped area.

(4) Surface parking lots shall have a minimum landscaped area equal to at least ten percent of the paved area within such lot. In no case shall a parking lot owner be required to provide landscaped areas that exceeds ten percent of the paved area.

A minimum of one tree per eight parking spaces shall be included in the required landscaped areas. For the purpose of satisfying this requirement, existing trees that are 2 ½ inches or more in caliper as measured at a height of 36 inches above ground level shall be considered to be equivalent to one or more newly planted trees on the basis of one tree for each 2 ½ inches of caliper.

(6) In addition to trees, ground cover shall also be provided in order to protect tree roots and to prevent erosion. Ground cover shall consist of shrubs, ivy, liriope, pine bark mulch and other similar landscaping materials.

(7) Shrubs shall be maintained at a maximum height of 2 ½ feet, except where such shrubs are screening the parking surface from an adjacent residential use.

(8) If landscaped areas are in the interior of a parking lot they shall be a minimum of six feet in width and six feet in length with a minimum area of 36 square feet.

(9) Continuous landscaped buffer strips shall be constructed along sidewalks and public rights-of-way where surface parking lots are adjacent to such sidewalks or public rights-of-way except at points of ingress and egress into the facility. Such landscaped buffer strips shall be a minimum of five feet in width and shall contain, in addition to ground cover, trees planted a maximum of 42 ½ feet on center along the entire length.

(10) Newly planted trees shall be a minimum of 2 ½ inches in caliper as measured at a height six inches above ground level, shall be a minimum of ten feet in height, shall have a 40-foot minimum mature height and shall be drought-tolerant. Trees shall be planted at a minimum of 30 inches from any barrier curb so as to prevent injury to trees from vehicle bumpers.

(11) Where landscaped area are located adjacent to vehicle overhangs, the trees shall be planted in line with the side stripes between parking spaces in order to avoid injury to trees by vehicle bumpers.

(12) All landscaped areas, including trees located in the public right-of-way that are counted in the fulfillment of this requirement, shall be properly maintained in accordance with approved landscape plans. If a tree or any plant material dies, it shall be replaced within six months so as to meet all requirements of this section and to allow for planting in the appropriate planting season.

(13) If it is determined by the city arborist that implementation of these regulations will result in the loss of parking spaces in existing lots, the director of the bureau of traffic and transportation may increase the allowable percentage of compact car spaces from 25 percent up to 35 percent so as to minimize the loss of parking spaces.

(14) Notwithstanding subsection (13) of this section, existing parking lots shall not be required to reduce the number of parking spaces by more than three percent as a result of implementing these landscaping regulations.

(5) Upon written application by any person subject to the provisions of this section, the director of the bureau of planning is hereby authorized to grant administrative variances to the requirements of this section only upon making all of the following findings:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, topography, subsurface conditions, overhead structures or the existence of sufficient trees in the public right-of-way within ten feet of the property line.

b. Such conditions are peculiar to the particular piece of property involved; and

c. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this article and of part 16 of this Code.

(Code 1977, § 10-2038)

Sec. 158-31. Easements to plant trees on private property.

The mayor is hereby authorized to enter into agreements with the owners of private property located within the city for the purpose of acquiring easements to plant trees on such property, in consideration for which such private property owner shall acquire ownership of such trees as the city may plant. Provided, however, that any such agreement shall limit the duration of the easement to a time period of two years and shall limit the property interest acquired by the city to that distance sufficient to allow the planting of trees, in no case to exceed a maximum of a 15-foot setback from the property line or right-of-way held by the city. Provided further, that under such agreement the private property owner shall agree to maintain the trees planted thereon and shall also agree to hold the city harmless for any liability attributable to the planting or presence of the trees on the private property.

(Code 1977, § 10-2043)

Sec. 158-32. Conservation easements.

The mayor is hereby authorized to accept conservation easements created pursuant to the provisions of the Georgia Uniform Conservation Easement Act, O.C.G.A. § 44-10-1 et seg., as amended from time to time, or any successor provision of law, the purpose of which easements are to preserve land in its natural scenic landscape or in a forest use. Such easements may be perpetual in duration and may contain such other terms and provisions as the mayor shall deem appropriate.

(Code 1977, § 10-2044)

Sec. 158-33. Enforcement

The bureau of parks and the bureau of buildings shall be charged with the enforcement of this article. For purposes of enforcement of this article, the city ***forester and the city*** arborist ~~and an official of the bureau of buildings are designated by the mayor by executive order~~ *are* clothed with police power to do all acts necessary to ensure that the provisions of this article are not violated, including, but not limited to, the issuance of citations for the violation of any provision of this article. ***In instances in which an individual or firm is found cutting or otherwise destroying a tree without a permit to do so in their possession, the Atlanta Police Department shall require such person or persons to cease such operations until a permit is obtained.***

(Code 1977, § 10-2045)

Sec. 158-34. Penalties.

(a) **Legal.** Any person violating any of the provisions of this article shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in section 1-8 ***of the Atlanta Code of Ordinances. Each tree removed, destroyed or injured or each incursion into a designated tree save area in violation of this article is a separate offense. Injurious tree climbing practices, in particular spiking, and tree pruning practices, in particular topping, tipping, and flush cutting, shall be considered punishable offenses.*** Each day's continuance of a violation may be considered a separate offense. The owner of any building, structure or site, or part thereof, where anything in violation of this article exists, and any architect, builder, contractor or agent of the owner, or any tenant who commits or assists in the commission of any violation shall be guilty of a separate offense.

(b) **Administrative.** ***Any tree of six inches or greater DBH that is removed or destroyed in violation of this article shall be recompensed by the violator.***

(1) Recompense or partial recompense in the form of in-kind replacements on site shall be in a ratio of two trees replaced for each tree illegally removed or destroyed. On site replacement trees shall be in addition to the minimum required tree coverage established in Sec. 158-103(c). In-kind replacements shall be minimum two and one-half caliper inch trees of species with potential for comparable or greater size and comparable or better quality at maturity as the trees illegally removed or destroyed, as determined by the city arborist. In-kind replacement trees must be maintained for a minimum of one year and shall not subsequently be removed or destroyed without a permit from the city arborist.

(2) Recompense or partial recompense in the form of cash payment to the tree trust fund shall be calculated on the following bases:

(i) Recompense (C) for trees of known number removed (N_{rem}) and known total diameter removed ($TDBH_{rem}$) shall be calculated according to the formula

$$C = \$375N_{rem} + \$15(TDBH_{rem})$$

(ii) Recompense for trees of known number removed but unknown total diameter shall be calculated according to the formula

$$C = \$750N_{rem}$$

(iii) Recompense for trees illegally removed or destroyed for which neither total diameter nor number can be determined shall be made under the assumption that the site was fully stocked prior to clearing. Recompense shall be calculated by the formula

$$C = \$30{,}000/acre$$

(iv) Recompense for specimen and historic trees shall be one and one-half times the calculated dollar cost C.

(v) Recompense for trees removed or destroyed with the intent or the effect of by-passing or subverting other sections of this article, in particular the public notice provisions of Sec. 158-101(e) and the tree replacement calculations of Sec. 158-103(a) and (b), shall be assessed a double dollar cost C.

(c) **Tree protection.** *Fences surrounding tree save areas must be erected before any land disturbance, demolition or construction commences. Fences must comply with City of Atlanta arboricultural standards. More substantial wood or steel fencing may be required by the arborist on commercial or other heavy construction sites or upon multiple violations. No activity, including construction material storage, shall occur in areas protected by tree fences. Tree protection fences must remain in place and upright until such time as final landscaping of a site requires their removal. The arborist may assess additional recompense against the violator if, in the arborist's opinion, the incursion has converted trees from the status of saved trees to the status of injured, lost, or destroyed trees, as set forth in this section above.*

(d) **Additional actions and penalties.** *In addition to all other actions and penalties authorized in this section, the city attorney is authorized to institute injunctive, abatement or any other appropriate judicial or administrative actions or proceedings to prevent, enjoin, abate, or remove any violations of this section.*

(Code 1977, § 10-2046)

Secs. 158-35—158-60. Reserved.

DIVISION 2. TREE CONSERVATION COMMISSION*

*Charter reference(s) – Boards and commissions, § 3-401

Cross reference(s) – Boards, councils, commissions and authorities, § 2-1851 et seq.

Sec. 158-61. Establishment; appointment of members.

There is established a tree conservation commission of the city, referred to in this article as the commission. The commission shall consist of 14 members, ten of whom shall be appointed by the mayor and four by the council. All members shall be confirmed by the city council. The membership shall consist of the following:

(1) One member shall be appointed by the mayor who is a registered landscape architect.

(2) One member shall be appointed by the mayor who is either a botanist, forester, horticulturist or nursery worker.

(3) Two members shall be appointed by the mayor who are registered architects.

(4) One member shall be appointed by the mayor who is a member of an environmental organization.

(5) Two members shall be appointed by the mayor who are real estate professionals.

(6) Three members shall be lay citizens appointed by the mayor interested in environmental protection.

(7) Three members shall be citizens appointed by the paired districts in consultation with the at-large councilmember.

(8) One member shall be an urban planner or an environmental resource planner appointed by the president of council.

(Code 1977, § 10-2-41 (a); Ord. No. 1998-65, § 1, 9-23-98; Ord. No. 2000-17, § 1, 3-29-00.)

Sec. 158-62. Terms; vacancies; compensation.

(a) The initial tree conservation commission membership shall contain three members appointed for a term of one year and four members appointed for a term of two years. Thereafter, all subsequent appointments shall be for a term of two years. Members of the tree conservation commission may be appointed for consecutive terms consistent with general laws regulating service on city boards and commissions. The mayor may recommend removal and replacement of a member of the commission for nonperformance of duty. All members shall serve without compensation. The commission shall select from its members a chairperson to serve for a one-year term.

(b) The council shall appoint four of the 14 members. The president of council shall appoint one member. The council shall appoint three members in the following manner:

(1) Districts 1, 2, 3 and 4 and At-large Post 1

(2) Districts 5, 6, 7 and 8 and At-large Post 2
(3) Districts 9, 10, 11 and 12 and At-large Post 3

(c) In the event that an appointment to fill vacancies by the mayor or council is not made within 60 days of the mayor's or council's request, the president of council can proceed to nominate a person for the position, and the nomination shall be forwarded to the committee on council.

(d) The executive branch shall provide such staff as is required for the efficient operation of the board.

(Code 1977, § 10-2041(b); Ord. No. 2000-17, § 2, 3-29-00)

Sec. 158-63. Functions; powers; duties.

The functions, powers and duties of the tree conservation commission shall be as follows:

(1) Assisting the city arborist in establishing and maintaining a record of historic trees, specimen trees and other unique environmentally significant trees within the city.

(2) Hearing and deciding appeals of decisions of administrative officials as provided in section 158-65.

(3) Establishing educational and other programs to encourage proper management and maintenance of trees on private property in the city.

(4) Reviewing and approving the city arboricultural specifications and standards of practice promulgated by the ***city arborist and*** city forester and required pursuant to this article.

(5) Providing consultation and assistance to the city forester in the preparation of the master plan required pursuant to this article.

(Code 1977, § 10-2041(c))

Sec. 158-64. Meetings; clerk; rules of procedure.

The tree conservation commission shall establish a regular meeting schedule, and all meetings of the commission shall be open to the public. The commission shall have a clerk, designated by the commissioner of the department of planning, development and neighborhood conservation, who shall be a full-time employee of the department. The clerk shall serve as secretary to the commission and shall be responsible for the clerical administration of the appeals process, including the creation and maintenance of files in appeals cases, the filing of documents submitted by the parties to an appeal, and the

maintenance of evidence submitted in connection with appeals cases. The clerk shall also direct and supervise the giving of notices required by the commission and by this article in connection with appeals, and shall certify, when necessary, the actions of the commission in such matters. The clerk shall also be responsible for the maintenance and preservation of all records of the commission. The commission shall adopt rules of procedure for the conduct of meetings, hearings and attendance requirements for members.

(Code 1977, § 10-2041 (d); Ord. No. 2000-21, § 1, 4-12-00; Ord. No. 2000-26, § II, 5-23-00)

Sec. 158-65. Appeals.

(a) *Appeals from the decisions of administrative officials.* Appeals may be taken by any ~~person~~ ***citizen of Atlanta, any owner of property or business in Atlanta, and any civic organization in the neighborhood planning unit structure of Atlanta that is*** aggrieved by any decision of an administrative official, except a decision of the city arborist pursuant to Section 158-101(***h***) of this article, by filing with the clerk of the tree conservation commission a notice of appeal within 15 days after the action appealed was taken. ***A fee of $75 shall be assessed the appellant to defray administrative cost to the city. This fee will be waived in the case of a homeowner appealing the denial of a permit on his own home property who makes an affidavit to the effect that he or she is unable to pay the fee.*** The notice of appeal shall specify with as much particularity as ~~possible~~ ***is known to the appellant*** the decision appealed from, giving the date of such action or decision, ~~and~~ specifying the name of the party who had initiated the action appealed from, ~~and~~ the location or address of the subject property ***and the relevant section of the ordinance, with explanation***. Once an appeal is filed, any activity authorized by the decision appealed from shall be stayed automatically, and despite the authorization given by the decision appealed from, no permits shall be issued, no trees shall be cut, or earth disturbed~~, until the sixth (6th) business day after the date of the Commission's written decision on the appeal, at which time the stay shall expire unless a new stay is entered by the superior court pursuant to subsection (b) of this section.~~ The commission shall fix a reasonable time for the hearing of the appeal and shall give public notice thereof as well as prompt notice in writing to the parties in interest. Public notice shall be given by the clerk of the commission in such manner as shall be provided for in the rules for appeals adopted by the commission, not less than 15 calendar days before the date of the hearing. Upon the hearing, any party may appear in person or by agent or by an attorney. The commission shall decide the appeal within a reasonable time. An appeal shall be sustained upon an express finding that the administrative official's action was based upon an erroneous finding of a material fact or upon an erroneous application of law. ***An appeal may also be sustained or denied by a finding of hardship by a majority of the commission.*** In exercising its powers, the commission may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the administrative official from whom the appeal was taken and may direct the issuance of a permit provided that all requirements imposed by the applicable laws other than this article are met. ***Any person desiring to appeal a decision of the commission under section 158-65(b) shall notify the clerk of the commission in writing of such intent within six working days of the written***

decision of the commission. Barring such notice of intent the stay on the activity appealed from shall be lifted within the constraints imposed by the decision of the commission.

(b) *Appeals from decisions of the tree conservation commission.* Any person aggrieved by a decision of the commission, or any official, bureau, department or board affected by such decision, may appeal from such decision to the superior court of Fulton County by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. ***A notice of intent to file an appeal shall be registered with the clerk of the commission as provided in section 158-65(a).*** Such appeal shall be filed within 30 days after the ***date of the written*** decision of the commission is rendered. Upon such filing, the clerk of the superior court shall give immediate notice thereof to the secretary of the commission. Within the time prescribed by law, the commission shall cause to be filed with such clerk a duly certified copy of the proceedings had before the commission, including a transcript of the evidence heard before it, if any, and the decision of the commission. Thereafter at the next term of the superior court, or in vacation upon ten days notice to the parties, the judge of such court shall proceed to hear and pass upon the appeal. In determining the questions presented by the appeal, the court shall determine whether the decision of the commission is correct as a matter of law. The filing of an appeal in the superior court from any decision of the commission shall not ipso facto act as a supersedeas, but a supersedeas may be granted by the court upon such terms and conditions as may seem reasonable and proper.

(c) An appeal may be dismissed as frivolous by a vote of the commission in advance of the time that would be set for hearing. In such instances, the members of the Commission may be polled without meeting. An appeal is frivolous if it clearly appears from the face of the notice of the appeal and the justification set forth, that no facts could be brought forth at a hearing which could sustain such an appeal as a matter of law. In the event that an appeal is dismissed as frivolous, all parties shall be notified in writing by the clerk, and the clerk shall also give immediate notice by telephone, e-mail, or facsimile transmission to the appellant, advising the appellant of his or her right to appeal. Any person desiring to appeal a decision of the commission under section 158-65(c) shall notify the clerk of the commission in writing of such intent within three (3) working days of the written decision of the commission. Barring such notice of intent the stay on the activity appealed from shall be lifted.

(Code 1977, § 10-2039; Ord. No. 2000-21, § II, 4-12-00; Ord. No. 2000-26, § III, 5-23-00)

~~Secs. 158-66—158-100. Reserved.~~

Sec. 158-66. Tree trust fund

(a)* Establishment and administration.** ***The tree conservation commission shall establish a tree trust fund for the protection, maintenance, and regeneration of the trees and other forest resources of Atlanta. A maximum of five percent of the fund may be used

for educational materials and programs. The fund shall derive and administer its proceeds independent of the city budget.

(b) Recompense for illegal removal or destruction. *Developers, builders, contractors, homeowners and others who violate the criteria for removal or destruction of Sec. 158-102 shall contribute to the fund the replacement value of the trees illegally removed or destroyed according to the recompense formulas of Sec. 158-34.*

(c) **Recompense for permitted removal or destruction.** *Developers, builders, contractors, homeowners and others who are unable to meet the standards for tree replacement and afforestation of Sec. 158-103 shall contribute to the fund the replacement value of the trees removed in excess of the trees replaced in the course of new construction, landscaping, or other permitted activities according to the recompense formula of Sec. 158-103(b).*

(d) **Interim and permanent structure.** *For a period not to exceed three years from its establishment, the fund shall contract with qualified public agencies and private organizations on a per project basis to plant and maintain trees. Based on at least one year of experience, the tree conservation commission shall evaluate the tree trust fund, define its needs, and establish a permanent structure under this section of the ordinance.*

Secs. 158-67 – 158-100. Reserved.

DIVISION 3. REMOVAL AND RELOCATION

Sec. 158-101. Permit to destroy or remove.

(a) *Required.* No person shall directly or indirectly remove or destroy any tree having a diameter at breast height (DBH) of six inches or more which is located on property subject to the provisions of this article without obtaining a permit as provided in this section. ~~All other provisions of this article notwithstanding, the owner or owners of any single-family or two-family residence shall be granted a permit for the removal of a single tree where such tree poses a hazard to life or to buildings.~~

(b) **Permits for construction, renovation, demolition.** Permits *to remove or destroy trees for construction, renovation or demolition* shall be obtained by making application in a form prescribed by the city to the director of the bureau of buildings.

(c) **Other permits.** *Permits to remove or destroy trees for safety, landscaping, silvicultural or other purposes shall be obtained by making application to the city arborist. All permits shall be posted for public inspection on site.* ~~Each application shall include:~~

(1) ~~A written signed statement citing the necessity for the removal or destruction of any trees~~; *Applications to remove dead, dying, or hazardous trees may be made by phone, fax, mail, or other means. Each application shall include the address of the*

property and the owner's name, phone, and fax number. If applicable, it shall also include the name, phone, and fax number of the tree service proposing to do the work. Each tree shall be identified as to its species, approximate diameter, location and identifying characteristics or added markings. Permits to remove dead, dying, or hazardous trees shall be approved at the determination of the city arborist and are not subject to the notice of preliminary approval of Sec. 158-101(d), the posting requirements of Sec. 158-101(e), the standards for tree replacement or afforestation of Sec. 158-103(a), the recompense formulas of Sec. 158-103(b), or to public appeal. Applicants may appeal a notice of denial to the tree conservation commission as provided in this article.

~~(2) The criteria set forth in section 158-102 that the applicant contends are met; and~~

(2) *Applications to remove or destroy trees for landscaping or other purposes shall be accompanied by a* tree replacement plan meeting all of the requirements of section 158-103. *The work prescribed by an approved tree replacement plan shall be completed within one (1) calendar year. Replacement tree plantings shall be inspected by the city arborist and verified by the dated signature of the city arborist on the approved plan. Applications to remove or destroy trees for landscaping and other purposes shall be subject to the notice of preliminary approval of Sec. 158-101(d), the posting requirements of Sec. 158-101(e), the standards for tree replacement or afforestation of Sec. 158-103(a), and the recompense formulas of Sec. 158-103(b). Applicants may appeal a notice of denial to the tree conservation commission as provided in this article.*

(3) *Applications to remove or destroy trees for thinning or other silvicultural prescription for forest stand improvement shall be approved at the determination of the city arborist, with or without requirement for tree replacement. Applications to remove or destroy trees for silvicultural purposes shall be subject to the notice of preliminary approval of Sec. 158-101(d), the posting requirements of 158-101(e), the standards for tree replacement or afforestation of Sec. 158-103(a), if applicable, and the recompense formulas of Sec. 158-103(b). Applicants may appeal a notice of denial to the tree conservation commission as provided in this article.*

(d) *Application review; notice of preliminary approval or denial of permit to destroy* ***or*** *remove~~, or disturb~~ trees.* Upon receipt of a complete application by the city ***to remove or destroy trees for construction, renovation, demolition, landscaping, silviculture, or other non-safety related purposes***, the city arborist shall review the application pursuant to the requirements of this article. ~~If the application requests a permit which will authorize the destruction, removal or disturbance of any tree subject to this article, the city arborist shall either approve the application as meeting the terms of this article or shall reject the application for failure to meet the terms of this article.~~ The city arborist shall either give a notice of preliminary approval of the application if the application meets the requirements of this article, or shall give a notice of denial of the application if the application fails to meet the requirements of this article. The city arborist shall submit copies of such notices promptly to the clerk. The city arborist may impose conditions to

the issuance of the permit consistent with this article. An applicant may submit a new application at any time after a notice of denial of an application under this chapter. An applicant may appeal the notice of denial to the tree conservation commission as provided in this article. Any person aggrieved by the notice of preliminary approval may also appeal to the tree conservation commission.

(e) **Posting.** Within five business days after the notice of preliminary approval is issued by the city ***and the applicant has marked all trees to be removed,*** the notice of preliminary approval shall be posted in the office of the arborist, ***on the city of Atlanta website*** ( ) and in a prominent manner upon the property affected so that it may be seen and read by passers-by. ***Such notice shall remain posted for a period of 15 consecutive days.*** The notice of preliminary approval shall inform any reader that an appeal may be filed with the clerk of the tree conservation commission within 15 days of the date of posting the notice on the affected property, and that the failure to appeal within that time will result in the issuance of the permit without further right of appeal ***of the preliminary approval***. If the notice of preliminary approval is not posted as required by this section, no permit shall be issued. The commission may provide further by rule for the manner and method of this posting to the extent that such rule is consistent with the requirements of this section.

(f) **Time limits.** If no appeal is filed within 15 days from the date of posting of a notice of preliminary approval upon the affected property, then the permit shall be issued in accordance with the terms of said notice of preliminary approval. In the event that an appeal is filed within 15 days from the date of posting of a notice of preliminary approval upon the affected property, no permit shall be issued until the sixth business day after the date of the Commission's written decision on the appeal, at which time the stay shall expire unless ***a notice of intent to appeal to the superior court is filed with the clerk of the tree conservation commission*** ~~a new stay is entered by the superior court~~ pursuant to Sec. 158-65(b) of this article.

(g) **Finality.** Once a permit has been issued in accordance with the procedures set forth in this section there can be no further appeal ***of the arborist's decision***, except as provided in Section 158-65(b) of this article pertaining to appeals to superior court.

(h) **Minor amendments.** After the time for appeals has expired with respect to any notice of preliminary approval, the city arborist may approve minor amendments to the permit without there being any new right of appeal from such approval, provided that the arborist, in connection with such approval, shall certify in writing to the following, which certification shall be attached to the permitted amendments:

(1) That the amendments do not alter or amend any rulings of the tree conservation commission made in connection with the particular case; and

(2) That the amendments do not affect any trees on the property in question which are eligible under this article to be designated historic or specimen trees; and

(3) ***That the amendments in the aggregate do not increase by more than ten percent either the total number or the total DBH of the trees permitted for removal or destruction.***

(Code 1977, § 10-2037(a) – (c); Ord. No. 2000-4, 1-27-00; Ord. No. 2000-21, §§ III, IV, 4-12-00; Ord. No. 2000-26, § IV, V, 5-23-00.)

Sec. 158-102. Criteria for removal or destruction.

No permit shall be issued for the removal or destruction of any ***living and non-hazardous*** tree unless:

(1) A tree replacement plan meeting the requirements of section 158-103 has been approved;

(2) All other requirements of this article are met; and

(3) One of the following conditions exists:

a. The tree is located within the buildable area of the lot and the applicant has ~~contemporaneously filed an application for~~ ***been granted*** a building, ***landscaping, or other*** permit to make improvements otherwise permissible under all applicable ordinances of the city;

~~b. The tree is located outside of the lot's setback areas set forth in chapter 170, pertaining to zoning, and within an area for which a tree replacement plan is proposed which specifies that the tree will be replaced; or~~

b. The tree is located in that portion of the setback or required yard area of the lot that must be used for vehicular ingress and egress or for the installation of utilities that cannot be accomplished in a manner allowing preservation;

c. The tree is diseased or injured to the extent that death is imminent within two years, ***or*** is in imminent danger of falling, ***or*** is so close to existing or proposed ***buildings*** ~~structures~~ so as to endanger them, ***or*** physically interferes with utility services in a manner that cannot be corrected by anything less than destruction or removal of the tree, or creates unsafe vehicular visual clearance, ***or is otherwise deemed a hazard by the city arborist or city forester***.

(Code 1977, § 10-2037 (d))

Sec. 158-103. Standards for tree replacement and afforestation.

(a) **Mimimal impact on trees; replacement trees.** Each applicant *for a permit to remove or destroy trees* shall, to the maximum extent feasible, minimize the ~~removal of trees from the site~~ *impact on the trees on the site.* The applicant ~~shall calculate the total diameter at breast height (DBH) of the trees to be removed and~~ shall plant replacement trees *on site* which equal the total number *of trees* being removed *or destroyed.* Where construction of improvements or existing dense tree cover precludes the planting of the total replacement number required, the city arborist may approve a plan which results in the planting of the total number of trees which can reasonably be expected to be accommodated in a manner which will allow mature growth of the replacement trees.

(b) **Recompense.** ***The difference between the number of trees removed or destroyed (N_{rem}) and the number of trees replaced (N_{rep}) on a site times the standard tree replacement cost ($375) shall be calculated as partial recompense to the tree trust fund. In addition, the difference between the total diameter at breast height of the trees removed or destroyed ($TDBH_{rem}$)and the total caliper inches of the trees replaced on site (TCI_{rep}), as indicated on the approved tree replacement plan, shall be calculated as partial recompense to the tree trust fund. Total recompense(C) shall be calculated according to the formula***

$$C = \$375(N_{rem} - N_{rep}) + \$22.50(TDBH_{rem} - TCI_{rep}),\ C >= 0$$

(c) **Minimum tree cover.** In any request for a permit for construction in which no trees are proposed to be removed, or in cases where trees are being removed but the total tree cover on the lot is less than ~~20 inches DBH per acre, then~~ ***the minimum tree cover per zoning district,*** the city arborist shall require an afforestation standard such that the ~~total number of trees on the site is equal to not less than 20 inches DBH per acre,~~ ***minimum tree cover per zoning district is satisfied,*** provided that all such trees so planted can reasonably be expected to be accommodated in a manner which will allow mature growth of the new trees.

Tree replacements per zoning district and the minimum required tree coverage (TDBH + TCI) on a site, regardless of any loss of trees, are as follows:

R-5 and R-4-A districts: 35 inches per acre
R-3, R-3-A, and R-4 districts: 40 inches per acre
R-2 and R-2-A districts: 100 inches per acre
R-1 districts: 150 inches per acre
RG, PD and all other districts: 90 inches per acre

Replacement trees shall be a minimum of two and one-half inches in caliper. Regardless of caliper or diameter at breast height, replacement trees shall not subsequently be removed or destroyed without a permit from the city arborist.

(d) **Planting priority.** ***The location of tree plantings required by this section normally shall be prioritized as follows:***

(b) *Heat islands. Streets and other external heat islands shall be shaded by new or existing trees at a spacing not to exceed 35 feet on center on average, with a minimum of two trees per lot when feasible. Street trees shall be planted as close to the street as is practicable. Internal heat islands shall be shaded at a minimum rate of one tree per 750 square feet of heat island area.*

(2) *Soil stabilization. Replacement trees shall next be planted on steep slopes and other erodible areas and on the banks of wetlands and waterways.*

(3) *Following satisfaction of priorities (1) and (2), the applicant shall have discretion to satisfy additional tree planting requirements either by planting on the subject site, on another location approved by the city arborist, or by contributing the appropriate amount to the tree trust fund.*

(Code 1977, § 10-2037 (e))

Sec. 158-104. ~~**Minimal disturbance of single-family and two-family residential lots**~~ ***Maximum protection of mature trees.***

~~With respect to lots which are zoned R-1, R-2, R-2A, R-3, R-3A, R-4, R-4A, R-4B and R-5, t~~ *[T]*he city arborist shall require that improvements be located so as to result in ~~minimal disturbance to the natural topography of the site and~~ the protection of the maximum number of mature trees on the site. It is the specific intent of this section to require that damage to mature trees located within the setback and required yard areas and to trees located on abutting properties owned by others be minimized to the greatest degree possible under the particular circumstances, as determined by the city arborist ~~in the city arborist's discretion.~~ ***according to the following guidelines:***

(1) On lots and subdivisions of one acre or more, the applicant shall identify environmentally sensitive areas as part of the site plan required in Sec. 158-105 below. Such areas shall include wetlands, floodplains, permanent and intermittent streams, mature stands of trees and other significant aspects of the natural environment on site. Limits of disturbance to these areas shall be established and detailed on the site plan. In order to protect the more environmentally sensitive areas, development shall be confined to the minimum portion of the lot required for the intended construction.

(2) On lots and subdivisions of less than one acre, tree save areas shall be established in the setback and required yard areas to preserve mature trees in those areas. Grading, trenching, or other land disturbance in these areas shall be limited to necessary hydrologic and erosion control measures and access corridors to streets, utility connections, or other features required by code. In order to protect the mature trees in the setback and required yard areas, building shall be confined to the minimum portion of the lot required for the intended construction.

(3) ***A maximum of ten percent of the trees in a designated wetland or 100-year floodplain may be approved for removal or destruction. Recompense to the tree trust fund for trees removed or destroyed from designated wetlands or floodplains shall be calculated separately and multiplied by a factor of five before being added to the recompense for other areas of the site.***

(Code 1977, § 10-2037 (f))

Sec. 158-105. Site plan required

(a) **General requirements.** The site plan shall include a tree survey. ~~Such tree survey shall identify~~ ***identifying*** the size, species and location of all ~~specimen trees on the site and all other~~ trees having a diameter at breast height (DBH) of six inches or greater. Such site plan shall contain topographic information at two-foot contour intervals and shall show all existing and proposed buildings and structures, driveways and parking areas, drainage structures, water detention areas, utilities, ***construction material staging grounds*** and all areas of required cut and fill. Such plan shall denote each tree to be ~~removed~~ ***saved, lost or destroyed, required tree protection fences for trees to be saved,*** and the proposed tree replacement plan. A construction limit line shall be delineated on each site plan submitted for a building permit. Within the construction limit line, the tree replacement requirements of this article shall be shown. Outside this limit line, no tree survey shall be required, and the applicant shall be required to leave undisturbed all areas of trees.

(b) **Boundary trees.** ***Boundary trees shall be included in the site plan. The on-site portion of the tree save area of a boundary tree shall be enclosed in a tree protection fence according to established arboricultural standards. In consultation with the owner or owner's representative of a boundary tree, the city arborist may prescribe and the applicant shall institute additional protective measures to limit impact on the tree during construction, including but not limited to watering regimes, root treatments, mulching, deadwood removal and protective pruning.***

(Code 1977, § 10-2037 (g)) §

Sec. 158-106. Preconstruction conference.

Upon approval of any permit for grading, ***demolition*** or construction, no work shall commence, no grading shall be undertaken and no trees shall be removed prior to a preconstruction conference on the site between the city arborist and the applicant or their designees. The city arborist shall inspect the site to assure the accuracy of permit application data and shall inspect tree protection fences and other protective devices which have been installed to protect trees. After the inspection is complete, the city arborist shall notify the director, and thereupon ***demolition,*** grading and construction may proceed. It is further provided that for any permit for an addition to a one-family or two-family residence, the city arborist may rely on data submitted in the application and certified by the applicant for the building permit in lieu of a preconstruction conference on the site.

1977, § 10-2037(h)

Sec. 158-107. Certificates of occupancy.

No certificate of occupancy shall be issued by the director, bureau of buildings with respect to any permit unless and until the city arborist shall have inspected such site and confirmed that all replacement trees have been planted in accordance with this article.

(Code 1977, § 10-2037(i)

Sec. 158-108. Maintenance of trees.

The owner shall be responsible for maintaining the health of all replacement trees for a period of one year from the date of planting. The owner shall replace any tree which dies during this time period. ***Subsequent applicants for a building permit entailing no additional loss of trees on a site that has been certified as compliant by the city arborist and which has maintained that compliance shall not be required to provide additional tree replacement except as required by subsequent law.***

(Code 1977, § 10-2037 (j))

Sec. 158-109. Exemptions.

The following are exempted from the terms of this article:

(1) When the parks arboricultural manager or city arborist finds any tree to present hazard or danger to the health, safety and welfare of the public, such tree may be removed immediately by the owner or the owner's agent upon verbal authorization by the parks arboricultural manager or city arborist. No permit is required.

(2) During the period of any emergency, such as a tornado, ice storm, flood or an other act of nature, the requirements of this article may be waived by the mayor and the mayor's designee.

(3) All licensed plant or tree nurseries and tree farms shall be exempt from the terms and provisions of this article only in relation to those trees which are planted and are being grown for sale or intended sale to the general public in the ordinary course of business, or for some public purpose. All licensed tree museums or public botanical gardens which employ a full-time arborist or horticulturist, and which are located upon property owned by the city and leased to such tree museums or botanical gardens and are growing for display to the public in furtherance of the museums and botanical gardens, or for some other public purpose.

(Code 1977, § 10-2040)

Sec. 158-110. Dead or diseased trees; nuisances.

The provisions of this section shall apply to all property in the city, as follows:

(1) *Generally.* Any dead or diseased tree or part of a tree is a nuisance when, by reason of such condition, natural forces may, more readily than if such tree or part thereof were live or not diseased, fell or blow such tree or part thereof onto public ways or public property, off of the property of the owner of such tree, and thereby imperil life or property or impede traffic. When a dead or diseased tree which is alleged to constitute a nuisance is brought to the attention of the parks arboricultural manager or city arborist, the parks arboricultural manager or city arborist, in their discretion, may submit through the director, bureau of parks a written opinion to the director, bureau of buildings. Upon receiving a written opinion from the director, bureau of parks that any tree or part thereof is a nuisance as defined in this section, the director, bureau of buildings shall commence nuisance abatement proceedings.

(2) *Notice to owner to remedy conditions; failure to comply.* The director, bureau of buildings shall give written notice to the owner or the person in possession, charge or control of the property where a tree nuisance as defined in this section exists, stating that in the city arborist's opinion the tree or part of a tree does constitute a nuisance that shall be removed, and requesting that such removal be done within a reasonable time to be specified in such notice. Such notice shall further state that unless the tree or part thereof is voluntarily removed within the time specified, the director may cause summons to be issued requiring the party notified to appear in the municipal court to have there determined whether the tree or part of a tree involved constitute a nuisance and should be abated. If the tree is not removed within the time specified by the director, the director may cause the owner of such tree, or the person in possession, charge or control thereof, to be summoned to appear before the judge of the municipal court to determine whether or not the tree or part of a tree involved constitutes a nuisance.

(3) *Hearing; failure to comply with order to abate.* If upon such a hearing as provided for before the judge of the municipal court, the judge shall find that the tree or part of a tree constitutes a nuisance and orders the defendant to abate the same within a specified time, then each ten days that the conditions adjudicated to be a nuisance by the judge are maintained subsequent to the expiration of the time fixed in the judgement of the judge for the same to be abated shall constitute an offense.

(4) *Emergencies.* Such nuisance trees pose immediate hazards and, because of the imminence of danger, are too great a risk to leave standing while standard procedures for giving notice take place. In such cases where danger to the

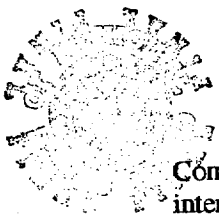
public is imminent, the director, bureau of parks shall have the right, but not the obligation, to enter the property and abate the nuisance.

(Code 1977, § 10-2042)

Chapters 159-161. RESERVED

01-O-1175 **Revised "Tree Protection Ordinance"**

APAB Presentation – June 16, 2001
Work Session – June 19, 2001
1st reading – August 1, 2001
NPU review – July-Sept, 2001
Public Hearing – October 10, 2001



Summary of Proposed Changes to the Atlanta Tree Ordinance (City Code Chapter 158, Article II: Tree Protection)

The task force created by the Atlanta City Council and the Atlanta Tree Conservation Commission proposes certain minor and major changes to Chapter 158 of the City Code. The intent of these changes is summarized below.

- Sec. 158-26 clarifies and adds to the definitions of key words and concepts employed in the ordinance. Most of the substantive changes and additions are technical in nature, translating arboricultural concepts into a legal framework.

- Sec. 158-28 adds a policy statement recognizing that tree preservation may require adjustments in other rules and regulations when feasible.

- Sec. 158-29 expands the purview of the ordinance to include non-residential private property and all public property subject to city regulation.

- Sec. 158-33 clarifies the responsibilities of the parks department and the bureau of buildings.

- Sec. 158-34 clarifies the meaning of unlawful action with regard to trees and establishes formulae to calculate both in-kind replacement requirements and cash recompense for trees illegally removed, destroyed or injured.

- Sec. 158-65 establishes an appeal fee to help defray administrative costs. It establishes the right of the commission to declare an appeal frivolous by majority vote. It expands the permissible action of the commission by the addition of a hardship clause that may be invoked in cases that require remedy that is unanticipated by the ordinance.

- Sec. 158-66 is new. It enables the establishment of a Tree Trust Fund to (1) collect funds generated from both lawful and unlawful activities that result in the removal or destruction of or injury to trees, and (2) disperse those funds for the purpose of preserving and regenerating the urban forest of Atlanta.

- Sec. 158-101 clarifies the requirement for a permit to remove or destroy any tree in the city. It expands the permissible activities to include proposals for landscaping and prescriptions for silviculture. It clarifies the application review and the appeal processes of the ordinance.

- Sec. 158-103 establishes tree density requirements on variously zoned lots, and creates formulae for recompense to the Tree Trust Fund for trees legally permitted to be removed or destroyed on sites undergoing construction or landscape changes.

- Sec. 158-104 establishes requirements for documentation to be used by the developer and the city arborist as guidelines in the plan review and permitting process and it establishes limits on the removal or destruction of existing trees in wetlands and flood plain areas.

- Sec. 158-105 expands the requirement that the developers identify and protect trees on property adjacent to the proposed building site.

- Sec. 158-108 adds a protection clause for developers whose finished projects have been deemed compliant with the ordinance by the city arborist.

Response to Public Comments from the October 10, 2001
City Council Committee Public Hearing

The following issues where raised by interested parties during the Public Hearing on October 10, 2001. The Task force has assembled on three occasions to review concerns raised and evaluate any changes as may be needed to address those items. The following are the Task Force recommendations:

Public Comments:
(Greg Levine, Peter Fanning, Earl Williamson, Jean Zweifel, Henry Swab, Roberta Sellers, Sheldon Schlegman, Bill Fuller, Chuck Palmer, Gordon Certain, Randall White, Marcia Bansley)

1. **Lower Appeals fee** (Section 158-65 (a));
    a. The task force has previously recommended an appeals fee of $75.00. We acknowledge that various members believe a fee between $25.00 and $250.00 is appropriate.
    b. The Task Force recommends leaving the appeals fee at $75.00 and look to the Council Members to make any appropriate adjustment.

2. **Designate certain trees as "Trash Trees" and lower or eliminate recompense for such trees** (Section 158-103 (b));
    a. The task force explored the idea of "Trash Trees" and finds this to be a subjective designation, for one a Mulberry tree is trash, to another it's a treasure, to another all Pine Trees must go, to another they are a blessing to the southern forest.
    b. The Task Force recommends no change to the ordinance.

3. **Change units of measure from diameter at breast height to caliper inches** (Section 158-103(a));
    a. The existing ordinance is based upon diameter at breast height. An argument can be made for both units of measurement. Our charge as a Task Force was to improve the existing ordinance, to reduce ambiguities, to make it more quantifiable and to be less subjective than the current ordinance. To change from the current system for units of measurement would require a more complete rewrite of the ordinance than time allowed.
    b. The Task Force recommends no change to the ordinance.

4. **Require commercial tree cutters to post permit to cut trees in a visible location prior to commencement of cutting** (158-101 (d);
    a. The existing ordinance and the proposed revisions to the ordinance require posting of permits prior to cutting.
    b. The Task Force recommends no change to the ordinance.

5. The recompense of $150.00 per caliper inch **is inadequate, rate should be in line with the formulas published in the I.G.A.C** (Section 158-26);
   a. The Task Force worked diligently to establish a value for tree replacement which is fair to the average home owner, while at the same time high enough to encourage developers to endeavor to retain trees and yet not be a figure which would just be seen as a minor additional cost to the development and not preserve trees. Many meetings and formulas were worked to arrive at this figure, we believe it fulfills the above goals and provides a value for which a tree can reasonable be planted. The I.G.A.C. standards are used to establish the "value" of a living tree and would be unreasonable onerous on both homeowners and developers alike.

   b. The Task Force recommends no change to the ordinance regarding standard replacement cost.

   c. While reviewing this issue, the Task Force found a side issue which we believe to be vague and wish to amend, the Task Force recommend the following change be incorporated;

"*Standard replacement cost* means the dollar value for the purchase, planting, and maintenance for one year of a good quality, two and one-half (2.5) caliper inch hardwood shade tree. The January ***2002*** baseline is $150 per caliper inch, for a standard replacement cost of $375. This figure shall be evaluated and adjusted periodically ***by amendment to this ordinance, as proposed by*** the tree conservation commission in consultation with the city arborist."

6. **Establish a standard replacement cost for specimen trees which is higher than the rates imposed for average trees** (Section 158-26);
   a. The proposed ordinance in effect already imposes a higher rate for specimen trees by being tied to the Diameter at Breast Height, which calculates replacement cost based upon the DBH of the trees. Thus a larger tree or specimen tree is more costly to remove than a smaller tree.
   b. The Task Force recommends no change to the ordinance regarding standard replacement cost.

7. **Delete the frivolous appeals provisions** (Section 158-65 (c));
   a. The provision to dismiss an appeal as frivolous is in place to prohibit the ordinance from being used to unjustly delay a project solely to impede construction with no bases on fact or law.
   b. The Task Force recommends no change to the ordinance.

8. Administrative Guidelines should be issued which clarify the workings and application of the new ordinance by arborist staff.
   a. Administrative guidelines are generally prepared for staff use in interpreting the ordinance.
   b. The Task Force recommends that staff prepare administrative guidelines for the ordinance within 90 days of the passing of the revised Tree Ordinance.

9. **The City should fund a tree study to inventory the existing resources. The study should also address regional resources and conservation measures.** (Section 158-63 (1));

   a. A provision exists in the current ordinance to record historic and specimen trees.
   b. The Task Force recommends funding an inventory study.

10. **Funding for educational programs should be included to foster efforts to raise public awareness of tree issues and the existence of a Tree Ordinance.** (Section 158-63 (3));
    a. A provision exists in the current ordinance to establish educational and other programs.
    b. The Task Force recommends the following change be incorporated;

Establishment and administration. The tree conservation commission shall establish a tree trust fund for the protection, maintenance, and regeneration of the trees and other forest resources of Atlanta. ***A maximum of five percent of the fund may be used for educational materials and programs.*** The fund shall derive and administer its proceeds independent of the city budget.

11. **Public Utilities should exempt from the provisions of this ordinance in regards to tree trimming and tree replacement. Inclusion of public utilities violates the home rule provisions of the city charter.** (Section 158-29)
    a. The provision to include "Public Utilities" may conflict with some franchise agreements the utilities have with the city.
    b. The Task Force recommends the following change be incorporated;

The terms and provisions of this article shall apply to all private property and all public property subject to city regulation, including all public school property, public housing property, parks, rights-of-way, and easements granted to other private or public entities, including public utilities, ***except where superceded by franchise agreements.***

12. Trees required to be planted along public right-of-ways should be restricted to trees which mature at a height of 20-30 feet (Section 158-30 (10)):
    a. The provision to plant trees, which mature at a minimum height of 40', is intended to over canopy roadways, thus reducing the "heat island" effect.
    b. The Task Force recommends no change to the ordinance
13. **Consideration of the Public Benefit of trees must be taken into account when considering granting tree removal** (Section 158-28);
    a. A provision exists in the current ordinance, which states this intent for the ordinance.
    b. The Task Force recommends no change to the ordinance.

14. **Tree cutting companies doing business within the City should be licensed.**
    a. The proposal to license Tree Cutters doing business within the City is an interesting proposal.
    b. The Task Force does not believe that the Tree Ordinance is the appropriate place to create this provision and therefore, recommends no change to the ordinance.

15. **The parking lot ordinance should not be revised in any manner, the current ordinance has been challenged to the State Supreme Court and been upheld. Any revision would invite a new challenged** (Section 158-30);
    a. The Task Force concurs.
    b. The Task Force recommends no change to the ordinance.

16. **The penalties section which address legal violations of the ordinance which references the city code section 1-8 is vague** (Sec. 158-34(a)):
    a. The current language is vauge.
    b. The Task Force recommends the following change be incorporated;

Legal. Any person violating any of the provisions of this article shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in section 1-8 **of the Atlanta Code of Ordinances**. Each tree removed, destroyed or injured or each incursion into a designated tree save area in violation of this article is a separate offense. Injurious tree climbing practices, in particular spiking, and tree pruning practices, in particular topping, tipping, and flush cutting, shall be considered punishable offenses. Each day's continuance of a violation may be considered a separate offense. The owner of any building, structure or site, or part thereof, where anything in violation of this article exists, and any architect, builder, contractor or agent of the owner, or any tenant who commits or assists in the commission of any violation shall be guilty of a separate offense.

Staff Comments:
(Cleta Winslow, Mable Thomas, Frank Mobley, Norman Koplon)

1. **The definition of a Hazard tree should be revised to allow an otherwise healthy living trees, which is damaging driveways, walkways or other incidental structures to be removed as a Hazard Tree.** (Section 158-26);
   a. To allow the removal of trees which are damaging driveways and walkways as a hazardous tree would circumvent the posting and appeals process. Trees that fall within this category will be allowed to be removed for silvicultural purposes and are subject to the posting and appeals provisions.
   b. The Task Force recommends no change to the ordinance.

17. **Public awareness of ordinance is inadequate and must be made a priority.** (Section 158-63 (3));
   a. A provision exists in the current ordinance to establish educational and other programs.
   b. The Task Force recommends the following change be incorporated;

Establishment and administration. The tree conservation commission shall establish a tree trust fund for the protection, maintenance, and regeneration of the trees and other forest resources of Atlanta. ***A maximum of five percent of the fund may be used for educational materials and programs***. The fund shall derive and administer its proceeds independent of the city budget.

18. **The City Arborist staff is inadequate now and must be increased. Even more staff will be needed when the new ordinance takes effect.**
   a. The arborist staff is in need of additional people and will be further taxed upon implementation of the ordinance revisions.
   b. The Task Force recommends consideration is given to additional staffing for the Arborist.

19. **The proposed ordinance would require that Public Works be subject to the provisions of the Tree Ordinance and would expose the department to possible appeals. Compensation is granted to the property owners at such a time as an easement is granted, that should absolve the City of any additional obligations to the property owners.**
   a. The Department of Public Works does not currently comply with the Tree Ordinance. Corporation between City Departments and observance of the rules for which all the citizens are required to follow are good practices for the city to follow.
   b. The Task Force recommends no change to the ordinance.

20. The parking lot ordinance should be revised to require appropriate trees be **planted along public right-of-ways and should be restricted to trees which mature at a height of 20-30 feet.** (Section 158-30 (10));
    a. The provision to plant trees, which mature at a minimum height of 40', is intended to over canopy roadways, thus reducing the "heat island" effect.
    b. The Task Force recommends no change to the ordinance.

21. **The parking lot ordinance allows for the reduction of the required number of parking spaces up to 3% of total. This provision is onerous on business and property owners and is in conflict with provisions of the zoning ordinance** and other city ordinances
    a. Conflicts between various ordinances need to be address by the department staff. Provisions of this and other ordinance must be viewed for their intent and conflicts be resolved by the appropriate staff. The Hardship clause may be used to grant relieve through the appeals process or a zoning variance may be sought to mitigate such conflicts.
    b. The Task Force recommends no change to the ordinance.

End of Meeting Minutes

COUNCIL PRESIDENT PROTEM MICHAEL BOND PRESIDEI

RCS# 3311
12/03/01
4:01 PM

Atlanta City Council

Regular Session

CONSENT

Pages 1 through 9

YEAS:	14
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	2
EXCUSED:	0
ABSENT	0

SEE ATTACHED LISTING OF ITEMS ADOPTED/ADVERSED ON CONSENT AGENDA

Y McCarty	NV Dorsey	Y Moore	Y Thomas	ITEM (S) REMOVED FROM
Y Starnes	Y Woolard	Y Martin	Y Emmons	CONSENT AGENDA
Y Bond	Y Morris	Y Maddox	Y Alexander	01-O-1464
Y Winslow	Y Muller	Y Boazman	NV Pitts	**01-O-1997**

CONSENT

ITEMS ADOPTED ON CONSENT AGENDA

1. 01-O-1452
2. 01-O-1827
3. 01-O-1645
4. 01-O-1867
5. 01-O-2009
6. 01-O-2010
7. 01-O-1857
8. 01-O-1928
9. 01-O-1929
10. 01-O-1979
11. 01-O-1983
12. 01-O-1992
13. 01-O-1996
14. 01-O-1998
15. 01-O-1999
16. 01-O-2000
17. 01-O-1985
18. 01-O-1986
19. 01-O-2011
20. 01-O-2020
21. 01-O-1801
22. 01-O-1938
23. 01-O-1939
24. 01-O-2017
25. 01-O-1175

ITEMS ADOPTED ON CONSENT AGENDA

26. 01-R-1873
27. 01-R-1957
28. 01-R-1989
29. 01-R-2005
30. 01-R-2006
31. 01-R-2032
32. 01-R-2033
33. 01-R-1954
34. 01-R-1956
35. 01-R-1990
36. 01-R-1943
37. 01-R-1974
38. 01-R-1975
39. 01-R-2030
40. 01-R-2031

01- 0 -1175

(Do Not Write Above This Line)

AN ORDINANCE

BY COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE REPEALING ARTICLE II OF CHAPTER 158 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA, GEORGIA (1995), ENTITLED "TREE PROTECTION", AND ENACTING IN LIEU THEREOF A NEW TREE PROTECTION ORDINANCE, ALSO DESIGNATED AS ARTICLE II OF CHAPTER 158 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA, GEORGIA (1995); AND FOR OTHER PURPOSES.

ADOPTED BY

DEC 03 2001

COUNCIL

- ☒ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred 8/6/01

Referred To: Community Development/Human Resources

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee CD/HR

Date 8/15/01

Chair

Referred to CD/HR

Committee	Committee
CD/HR	
Date 8/15/01	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other:
Members 9/12/01 9/26/01 10/10/01 11/14/01 (Subst)	Members
Refer To	Refer To

Committee	Committee
CD/HR	
Date 11/28/01	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other: Do Substitute	Action: Fav, Adv, Hold (see rev. side) Other:
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☑ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☑ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

CERTIFIED

DEC 03 2001

COUNCIL PRESIDENT PROTEM

CERTIFIED

DEC 03 2001

MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

DEC 11 2001

MAYOR

RCS# 3550
3/04/02
1:31 PM

Atlanta City Council

Regular Session

CONSENT I Pgs.1-12;Except02-R-0348;02-R-0350;0380
02-R-0387;02-R-0347;02-O-0364;02-O-0249
ADOPT

YEAS:	15
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	1
EXCUSED:	0
ABSENT	0

SEE ATTACHED LISTING OF ITEMS ADOPTED/ADVERSED ON CONSENT AGENDA

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	NV Woolard

ITEM (S) REMOVED FROM CONSENT AGENDA
02-O-0364
02-O-0380
02-O-0249

ITEMS ADOPTED ON CONSENT AGENDA

1. 02-O-0370
2. 02-O-0155
3. 02-O-0200
4. 02-O-0243
5. 02-O-0374
6. 02-O-0371
7. 02-O-0372
8. 02-R-0348
9. 02-R-0350
10. 02-R-0387
11. 02-R-0199
12. 02-R-0209
13. 02-R-0353
14. 02-R-0367
15. 02-R-0383
16. 02-R-0386
17. 02-R-0327
18. 02-R-0328
19. 02-R-0329
20. 02-R-0330
21. 02-R-0331
22. 02-R-0333
23. 02-R-0334
24. 02-R-0339
25. 02-R-0325
26. 02-R-0326
27. 02-R-0345

ITEMS ADOPTED ON CONSENT AGENDA

28. 02-R-0203
29. 02-R-0365
30. 02-R-0315
31. 02-R-0316
32. 02-R-0317
33. 02-R-0318
34. 02-R-0319
35. 02-R-0320
36. 02-R-0321
37. 02-R-0322
38. 02-R-0323
39. 02-R-0284
40. 02-R-0285
41. 02-R-0286
42. 02-R-0287

ITEMS ADVERSED ON CONSENT AGENDA

43. 02-R-0288
44. 02-R-0289
45. 02-R-0290
46. 02-R-0291
47. 02-R-0292
48. 02-R-0293
49. 02-R-0294
50. 02-R-0295
51. 02-R-0296
52. 02-R-0297
53. 02-R-0298
54. 02-R-0299
55. 02-R-0301
56. 02-R-0302
57. 02-R-0303
58. 02-R-0304
59. 02-R-0305
60. 02-R-0306
61. 02-R-0307
62. 02-R-0308
63. 02-R-0309
64. 02-R-0310
65. 02-R-0311
66. 02-R-0312
67. 02-R-0313
68. 02-R-0314

02-R-0353

(Do Not Write Above This Line)

A RESOLUTION

BY FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION TO AUTHORIZE THE ACCEPTANCE OF MONIES FROM CITIZENS AND DEVELOPERS REMOVING TREES IN THE CITY OF ATLANTA AS A MEANS TO RECOMPENSE FOR THE LOSS OF SAID TREES WHEN REPLACING TREES ON PROPERTY IS NOT FEASIBLE; AND TO AUTHORIZE THE CHIEF FINANCIAL OFFICER TO ESTABLISH A TREE TRUST FUND TO WHICH SAID CONTRIBUTIONS SHALL BE DEPOSITED; AND FOR OTHER PURPOSES.

ADOPTED BY

MAR 04 2002

COUNCIL

☐ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Committee: Fin/Exec
Date: 2/27/02
Chair: Felicia A. Moore
Action: (Fav), Adv, Held (see rev. side)
Other:
Members: C.T. Martin, Felicia A. Moore, Debi M. Starnes, Mary Norwood
Refer To

Committee
Date
Chair
Action: Fav, Adv, Held (see rev. side)
Other:
Members
Refer To

Committee
Date
Chair
Action: Fav, Adv, Held (see rev. side)
Other:
Members
Refer To

Committee
Date
Chair
Action: Fav, Adv, Held (see rev. side)
Other:
Members
Refer To

COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☐ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

CERTIFIED
MAR 04 2002
ATLANTA CITY COUNCIL PRESIDENT
Cathey W. Woolard

CERTIFIED
MAR 04 2002
MUNICIPAL CLERK

MAYOR'S ACTION

Shirley Franklin
MAR 12 2002