

DRAFT

AN ORDINANCE TO PROVIDE FOR TREE BANKING TO FACILITATE ALTERNATIVE COMPLIANCE WITH THE TREE PROTECTION ORDINANCE

Part 1. Enactment. Chapter 14, Article II, Section 14-39 is hereby amended by inserting in its entirety to read as follows:

Sec. 14-39A. Tree Banking

(a) *Statement of Purpose.*

- (1) The DeKalb County Board of Commissioners hereby finds that tree banking will accomplish the goals and objectives of the Tree Protection Ordinance where the County Arborist has determined that alternative compliance under subsection (m) of the Tree Protection Ordinance is appropriate.
- (2) The DeKalb County Board of Commissioners hereby finds that tree banking will assist DeKalb County in encouraging the preservation of trees, the protection of specimen trees, and the replanting of trees on development sites.
- (3) The DeKalb County Board of Commissioners hereby finds that tree banking will assist in acquiring and maintaining green spaces, obtaining conservation easements, and planting trees, bushes, or grasses.
- (4) The purpose of this ordinance is to provide standards and definitions for tree banking in order to facilitate compliance with subsection (m) of the Tree Protection Ordinance.
- (5) The purpose of this ordinance is to establish a special fund, called the Tree and Green Space Fund, to be managed by the County Commission as advised by the Initiative for a Green DeKalb, an entity established by DeKalb County in the DeKalb County Comprehensive Plan. The purpose of this fund is to make funds available to the County and the public for acquiring and maintaining green spaces, obtaining conservation easements, and planting trees, bushes or grasses.

(b) *General Applicability.*

- (1) The terms and provisions of the Tree Banking Ordinance shall apply to all properties in DeKalb County to which the Tree Protection Ordinance applies.
- (2) The terms and provisions of the Tree Banking Ordinance shall apply when alternative compliance under subsection (m) of the Tree Protection Ordinance becomes applicable.

(c) *Definitions.*

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

- (1) *Applicant* means that person or entity requesting alternative compliance under subsection (m) of the Tree Protection Ordinance.
- (2) *County* means DeKalb County.
- (3) *County Arborist* shall have the same definition as in subsection (d)(3) of the Tree Protection Ordinance.
- (4) *County Commission* means the DeKalb County Commission.
- (5) *Density factor deficit* (“DFD”) means the unit value of trees which the County Arborist has determined cannot be replanted on-site.
- (6) *Department of Public Works* means the DeKalb County Department of Public Works.
- (7) *Existing density factor* (“EDF”) means the number of units, as converted using Chart 1 in the Tree Protection Ordinance, to be preserved on-site based on the number of inches outlined in subsection (g)(1) of the Tree Protection Ordinance. Existing density factor can become the site density factor if the existing density factor is greater than the standard site density factor.
- (8) *Initiative for a Green DeKalb* means a task force composed of County citizens and County staff, charged with planning and implementing a greenways, green space, and open space plan as envisioned in DeKalb County’s Comprehensive Plan.
- (9) *Law Department* means the DeKalb County Law Department.
- (10) *Parks and Recreation Department* means the DeKalb County Parks and Recreation Department.
- (11) *Private group* means a group of two or more DeKalb County citizens.
- (12) *Replacement Density Factor* (“RDF”) means the number of units as determined by the County Arborist that are to be planted on the property to achieve the required site density factor.
- (13) *Site density factor* (“SDF”) means the number of units required to be replanted or preserved based on the requirements in subsection (g)(3) of the Tree Protection Ordinance.

- (14) *Tree and Green Space Fund* means an interest bearing account consisting of all money contributed as alternative compliance under subsection (m) of the Tree Protection Ordinance.
- (15) *Tree Banking* means contributing money to the Tree and Green Space Fund as alternative compliance under subsection (m) of the Tree Protection Ordinance.
- (16) *Tree Protection Ordinance* means the Tree Protection Ordinance at section 14-39 of this Code.
- (17) *Unit* means a measurement of trees as identified in Charts 1, 2, and 3 in the Tree Protection Ordinance.

(d) Procedures.

(1) Contribution to the Tree and Green Space Fund.

a. Written Agreement.

Having made a determination under subsection (m) of the Tree Protection Ordinance that alternative compliance is appropriate, the County Arborist will calculate under subsection (g) of this ordinance the dollar amount that must be contributed to the Tree and Green Space Fund and notify the applicant of the amount. Within 15 days of this notification, the applicant must sign a written contribution agreement to contribute this dollar value to the Tree and Green Space Fund.

b. Payment.

The applicant must make the required contribution to the Tree and Green Space Fund within 30 days of signing the contribution agreement.

c. Penalty.

If the applicant fails to sign the contribution agreement or make the payment within the required time period, the Department of Public Works will withhold the land disturbance permit until the agreement is signed or the funds are paid. If tree banking becomes necessary after the commencement of construction, and the applicant fails to sign the contribution agreement or make the payment within the required time period, the Department of Public Works will withhold the certificate of occupancy until the funds are paid.

d. Method of Payment.

Contributions to the Tree and Green Space Fund may be made by either certified check or money order and made payable to the Tree and Green Space Fund. All contributions to the Tree and Green Space Fund will be sent to the County Arborist.

(2) Utilization of Money in the Tree and Green Space Fund.

a. Application.

Any Private Group or division of DeKalb County wishing to utilize money from the Tree and Green Space Fund must submit a written application to the Initiative for a Green DeKalb.

1. County Applications.

Any division of the County may apply to the Tree and Green Space Fund for the following projects: the purchase of green space, the creation of conservation easements, and the purchase and planting of trees, bushes and grasses. The applications regarding planting trees, bushes, and grasses must have as their primary focus the planting of trees. The division's application must contain:

- i. the name of the division requesting money;
- ii. the reason the division is requesting the money;
- iii. the amount of money requested and an accounting of how the money will be spent, including amounts for the purchase price of the trees, greenspace, or conservation easement, amounts required for maintenance, and amounts for any associated expenses;
- iv. if trees, bushes, and grasses are to be planted, the type and size of trees, bushes, and grasses to be purchased, the location where the trees, bushes, and grasses will be planted, the approximate date the trees, bushes, and grasses will be planted, and a brief explanation of the division's plan to maintain the trees, bushes, and grasses;
- v. if green space or a conservation easement is to be acquired, the location and size of the green space or conservation easement, and the date the green space or conservation easement will be acquired.

2. Applications from Private Groups.

Private groups may apply to the Tree and Green Space Fund for the following projects: the purchase, planting and maintaining of trees, bushes, and grasses on public property within the County. All applications must have as their primary purpose the planting of trees. A private group's application must contain:

- i. the name or names of the private group or individuals requesting the money;
- ii. the amount of money requested;
- iii. the purchase price of the trees, bushes, and grasses;
- iv. the reason the private group wants the trees, bushes and grasses;
- v. the type and size of trees, bushes and grasses to be purchased;

- vi. the location where the purchased trees, bushes, and grasses will be planted;
- vii. the approximate date the trees, bushes, and grasses will be planted; and
- viii. a brief explanation of the group's plan to maintain the trees, bushes, and grasses.

b. Application Review.

The Initiative for a Green DeKalb will begin review of an application to the Tree and Green Space Fund within 30 days of receiving an application meeting the requirements of this section. The Initiative for a Green DeKalb will make a recommendation regarding approval of an application to the County Commission within 45 days of receiving the application. The County Commission will make the final decision by majority vote regarding approval of an application.

c. Payments out of Tree and Green Space Fund.

1. Payment to the County.

No later than 30 days after the County Commission approves an application by a division of the County, that division must submit a request for payment to its account from the Tree and Green Space Fund. No later than 60 days after the division has completed the project, the division shall provide proof of all expenses for which it received payment. If the division's demonstrated expenses show that \$250 or more of the original payment was not spent, the division shall transfer any remaining amount back to the Tree and Green Space Fund.

2. Payment to Private Groups.

If a project has been approved by the County Commission, no later than 60 days after completion of the project, the private group must submit a request for reimbursement from the Tree and Green Space Fund. In order to receive reimbursement from the Tree and Green Space Fund, the private group must provide proof of all expenses for which it seeks reimbursement.

Reimbursement from the Tree and Green Space Fund may be less than, but shall not exceed, the amount originally approved by the County Commission.

(e) Tree and Green Space Fund Administration.

a. Management.

The Tree and Green Space Fund will be administered by the Initiative for a Green DeKalb. The Initiative For a Green DeKalb, only as authorized by the County Commission, may expend money held in the Tree and Green Space Fund in furtherance of the express purposes provided for in this ordinance.

b. Funding To Be Kept Separate From the DeKalb County General Fund.

The Tree and Green Space Fund shall be deposited in an interest-bearing account identifying the fund and shall be carried forward each year so that no part of the fund may be deposited in DeKalb County's general fund.

c. **Funding Supplemental.**

Contributions to the Tree and Green Space Fund shall be deemed supplemental to and shall in no way supplant funding that would otherwise be appropriated for these purposes.

d. **Annual Report.**

The Initiative for a Green DeKalb shall prepare, by February 1 of each year, an accounting of the funds received by and expended from the Tree and Green Space Fund. The report shall include the types of trees, bushes and grasses purchased and the location at which trees, bushes, and grasses were planted, the location and size of green spaces acquired, and the location and size of all conservation easements obtained through the Tree and Green Space Fund. The report shall be made available to the members of the County Commission and to members of the public on request.

e. **Administrative Costs.**

The amount of Tree and Green Space Fund money used for administrative costs shall not exceed \$5,000 per year. If, in any tax year, the administrative costs for collecting contributions pursuant to this ordinance exceed the sum of such contributions, the administrative costs that the Initiative for a Green DeKalb is authorized to withhold from such contributions shall not exceed the sum of such contributions.

(f) ***The Initiative for a Green DeKalb.***

Members of the Initiative for Green DeKalb shall be appointed by the County Commission. At least five members of the Initiative for a Green DeKalb shall be lay citizens who have a demonstrable interest in and knowledge of environmental conservation and preservation, at least one member shall be the County Arborist or his designee, and at least one member shall be an employee from the Department of Parks and Recreation. Members shall serve for 2 year terms and may be re-appointed. Members shall serve without compensation and meet as necessary, but not less than four times a year. All meetings must be open to the public.

(g) ***Determining Contributions to the Tree and Green Space Fund.***

The dollar value of tree units to be tree banked will be determined by the County Arborist according to the following methods:

- (1) Under subsection (m) of the Tree Protection Ordinance, where there is a density factor deficit, the County Arborist will utilize this method:
 - a. Determine Site Density Factor. SDF is 30 units per acre for multi-family and non-residential property and 15 units per acre for residential property.

- b. Determine Existing Density Factor. EDF is the number of units that are to remain on the property. EDF becomes SDF when EDF totals more than required 30 units per acre for multi-family and non-residential and 15 units per acre for residential property.
- c. Determine Replacement Density Factor. The County Arborist, in his discretion, determines RDF based on the size of the property, the amount of space on the property necessary to maintain the long-term health and life of the trees to be replanted, and the standards and requirements set forth in the Tree Protection Ordinance.
- d. Calculate Density Factor Deficit. DFD is calculated by subtracting the sum of the EDF and RDF from SDF ($DFD = SDF - (EDF + RDF)$).
- e. Convert DFD to the appropriate number of trees by dividing DFD by either .4 (the unit value of a 2 inch caliper replacement tree). See Chart 3 of the Tree Protection Ordinance.
- f. Convert to contribution dollars by multiplying the number of trees by either \$250 (the amount determined necessary to purchase, plant, and maintain a 2 inch tree).

EXAMPLE

A 5.85 acre commercially zoned property where SDF is 30 units per acre.

- (1) Determine SDF:
 - SDF = 5.86 * 30 units
 - SDF = 175.8 units.
- (2) Determine EDF by referring to Chart 1 of the Tree Protection Ordinance. In this example, it is assumed EDF is as follows:
 - Ten 10 inch Trees = 32 units
 - Five 20 inch Trees = 27 units
 - Two 33 inch Trees = 23.6 units
 - Total EDF = 82.6 units
- (3) Determine RDF. In this example, it is assumed that the developer can replant the following number of trees:
 - 60 2 inch Trees = 24 units
- (4) Determine DFD ($DFD = SDF - (EDF + RDF)$)
 - DFD = 175.8 - (82.6 + 24)
 - DFD = 175.8 - 106.6
 - DFD = 69.2 units
- (5) Convert to number of trees using Chart 3 of the Tree Protection Ordinance.
 - 69.2 / .4 = 173 two inch trees
- (6) Convert to dollars.

$173 * \$250 = \$43,250.00$. This amount is to be contributed to the Tree and Green Space Fund.

- (2) Under subsection (g)(8)e of the Tree Protection Ordinance, where a specimen tree is removed prior to construction, the County Arborist will utilize this method:
- a. Determine the unit value of the specimen tree removed using Chart 1 of the Tree Protection Ordinance.
 - b. Multiply the unit value by 1.5.
 - c. Convert the unit value to the number of trees by dividing by .4 (the unit value of a 2 inch caliper replacement tree). See Chart 3 of the Tree Protection Ordinance.
 - d. Convert to contribution dollars by multiplying the number of trees by \$250 (the amount determined necessary to purchase, plant, and maintain a 2 inch tree).

EXAMPLE

A 44 inch tree is removed prior to construction.

- (1) Determine unit value.
Unit value of 44' tree = 21.2
- (2) Multiply by 1.5
 $21.2 * 1.5 = 31.8$
- (3) Convert to number of trees
 $31.8 / .4 = 79.5$ two inch trees
- (4) Convert to contribution dollars
 $79.5 * \$250 = \$19,875$. This amount is to be contributed to the Tree and Green Space Fund.

- (3) Under subsection (g)(9)d of the Tree Protection Ordinance, where a non-specimen tree, that is designated in the plan to be saved, is fatally damaged during construction, the County Arborist will utilize this method:
- a. Determine the unit value of the tree, using Chart 1 of the Tree Protection Ordinance.
 - b. Convert the unit value to the number of trees by dividing unit value by .7 (the unit value of a 4 inch caliper replacement tree). See Chart 3 of the Tree Protection Ordinance.
 - c. Convert to contribution dollars by multiplying the number of trees by \$450 (the amount determined necessary to purchase, plant, and maintain a 4 inch tree).

EXAMPLE

A 9 inch tree is designated in the plan to be saved and is fatally damaged during construction.

- (1) Determine the unit value.
Unit value of a 9' tree = 2.4
- (2) Convert unit value to number of trees.
 $2.4 / .7 = 3.42$ four inch trees
- (3) Convert to contribution dollars.
 $3.42 * \$450 = \$1,539$. This amount is to be contributed to the Tree and Green Space Fund.

(4) Under subsection (p)(2) or (g)(9)d of the Tree Protection Ordinance, where a specimen tree is removed in violation of the Tree Protection Ordinance or is fatally damaged during construction, the County Arborist will utilize this method:

- a. Determine the unit value of the specimen tree, using chart 1 of the Tree Protection Ordinance.
- b. Multiply the unit value by 1.5.
- c. Convert the unit value to the number of trees by dividing by .7 (the unit value of a 4 inch caliper replacement tree). See Chart 3 of the Tree Protection Ordinance.
- d. Convert to contribution dollars by multiplying the number of trees by \$450 (the amount determined necessary to purchase, plant, and maintain a 4 inch tree).

EXAMPLE

A 44 inch specimen tree is designated in the plan to be saved and is fatally damaged during construction.

- (1) Determine unit value.
Unit value of a 44' tree = 21.2
- (2) Multiply unit value by 1.5.
 $21.2 * 1.5 = 31.8$
- (3) Convert to number of trees.
 $31.8 / .7 = 45.4$ four inch trees.
- (4) Convert to contribution dollars.
 $45.4 * \$450 = \$20,430$. This amount is to be contributed to the Tree and Green Space Fund.

(5) Under subsection (p)(2) of the Tree Protection Ordinance, where any tree eight inches and over has been removed in violation of the Tree Protection Ordinance, the County Arborist will utilize this method:

- a. Determine the unit value of the tree removed, using Chart 1 of the Tree Protection Ordinance.
- b. Convert the unit value to the number of trees by dividing unit value by .7 (the unit value of a 4 inch caliper replacement tree). See Chart 3 of the Tree Protection Ordinance.

- c. Convert to contribution dollars by multiplying the number of trees by \$450 (the amount determined necessary to purchase, plant, and maintain a 4 inch tree).

EXAMPLE

A 9 inch tree is removed in violation of the Tree Protection Ordinance.

- (1) Determine the unit value.
Unit value of a 9' tree = 2.4
- (2) Convert unit value to number of trees.
 $2.4 / .7 = 3.42$ four inch trees
- (3) Convert to contribution dollars.
 $3.42 * \$450 = \$1,539$. This amount is to be contributed to the Tree and Green Space Fund.

- (6) Where a density factor deficit develops during the course of construction due to the destruction or removal of a specimen tree, the County Arborist will first determine the units required to replace the destroyed or removed tree. The County Arborist will next apply the appropriate number of tree units to satisfy the site density factor and then determine the dollar value of any surplus tree units to be tree banked, utilizing the appropriate method, as described above.

(h) Additional Legal Remedies.

If the applicant fails to make the required contribution to the Tree and Green Space Fund after 30 days of signing the contribution agreement, the Department of Law is hereby authorized to institute appropriate judicial or administrative actions or proceedings to enforce the written contribution agreement and to collect the amount to be contributed to the Tree and Green Space Fund.

Part 2. Severability.

Should any section, subsection, clause, or provision of this Section 14-39A be declared by a court of competent jurisdiction invalid, such decision shall not affect the validity of Section 14-39A in whole or any part thereof other than the part so declared to be invalid.

Part 3. Repeal of Conflicting Ordinances.

All other conflicting ordinances or resolutions are hereby repealed.

Part 4. Effective Date.

This Section 14-39A shall become effective upon its adoption by the County Commission and approval by the Chief Executive Officer.