

# City of Atlanta

## DeKalb and Fulton Counties

### Atlanta MSA

2003 Population Estimate 423,019; +0.2% change from 2000 Census.

Tree City USA for 20 years.

Tree Conservation Commission with 15 members;  
regular meetings required by ordinance.

### ARTICLE I. IN GENERAL

### ARTICLE II. TREE PROTECTION

Year first adopted or last revised unknown.

Addresses public and private property.

Includes landscape requirements.

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<b>ARTICLE I. IN GENERAL</b>
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**Sec. 158-1. Official tree.**

The dogwood (*Cornus florida*) shall be the official tree of the city.

(Code 1977, § 10-2036)

**Sec. 158-2. Poison ivy and poison sumac.**

(a) *Nuisance declared.* Toxicodendron or toxicodendron vernix, commonly known as poison ivy and poison sumac, are declared to be nuisances per se, the existing and growing of which constitutes a menace to the health of the citizens of the city and is dangerous to all persons coming in contact therewith.

(b) *Duty of owner, occupant.* It shall be the duty of every person who owns or who is in possession of a lot upon which such plants grow to take such action as will effectively kill and destroy such poisonous plants, and it shall be unlawful for such person to fail to do so.

(c) *Duty, authority of director, bureau of sanitary services.* The director, bureau of sanitary services is authorized and directed to destroy all poison ivy or poison sumac plants growing upon the streets, sidewalks or other property belonging to the city. The director and any employee of that bureau is likewise authorized to enter upon private property for the purpose of destroying those plants when it is necessary to protect the public, provided that the written consent of the owner of the property, the owner's agent or the person in possession thereof shall first be secured.

(Code 1977, § 17-9007)

**Sec. 158-3. Planting of Lombardy poplar or silver maple trees prohibited.**

It shall be unlawful and shall constitute a nuisance per se for any persons to set out or plant Lombardy poplar or silver maple trees on the sidewalks or along the streets or in or upon property of any kind owned or controlled by the city. Such trees shall be deemed a nuisance, and the director, bureau of parks and recreation is authorized and directed to cut down and remove any trees planted in violation of this section.

(Code 1977, § 17-9006)

**Sec. 158-4. Abatement of nuisances arising from the growth of weeds and vegetation.**

(a) *Unlawful growths.* It shall be unlawful for the owner or occupant of any lot, tract, parcel of land or premises in the city to permit the growth thereon of weeds or vegetative overgrowth which endanger the public health, safety or welfare. These growths shall constitute a public nuisance per se.

(b) *Notice to owner or occupant to remedy condition.* Except in urgent circumstances where the public health and safety require an immediate hearing within the municipal

court as set forth in subsection (c) of this section, the commissioner of public works shall give written notice to the owner or the person in possession, charge or control of such property stating that in the opinion of the commissioner the conditions existing upon that property constitute a nuisance, setting forth action to be taken to eliminate the objectionable conditions, and requesting that it be made within the number of days specified in the notice. The notice shall further state that unless objectionable conditions are voluntarily removed within the time specified it will be the duty of the commissioner to cause summons to be issued requiring the party notified to appear in the municipal court to have there determined whether the conditions involved constitute a nuisance and should be abated.

(c) *Court of appearance.* If the commissioner of public works shall determine that conditions constituting a nuisance exist on any property within the city, it shall be the duty of the commissioner to issue summons to the owner of the property, persons in possession, and all parties in interest, to appear before the judge of the municipal court as provided by O.C.G.A. § 41-2-5 to determine whether or not such conditions constitute a nuisance and should be abated.

(d) *Hearing; failure to comply with order to abate.* If, upon a hearing as provided for before the judge of the municipal court, the judge shall find that the conditions set out in this section exist and that those constitute a nuisance, and further orders the person to abate within a specified time, then each ten days that the condition adjudicated to be a nuisance by the judge is maintained subsequent to the expiration of the time fixed in the judgment shall constitute an offense.

(e) *Action of commissioner upon failure to abate nuisance within specified time.* Upon the adjudication by the judge of the municipal court that a nuisance exists, and notwithstanding the provisions set out in this section, if the owner or the person in possession of the property has not abated the nuisance after the expiration of five days from the date of the adjudication by the judge of the municipal court, then the commissioner of public works shall cause the nuisance to be abated and the objectionable conditions to be removed from the property. The commissioner of public works shall be authorized to cause the weeds and vegetation to be cut and removed from the property and to charge the cost and expense thereof to the owner or the person in possession.

(f) *Service of summons issued by public officers; return as evidence of service.*

(1) Summons or complaints issued in accordance with subsection (c) of this section shall, in all cases, be served upon persons in possession of such property, owners and parties in interest, and the return of service signed by the public officer or agent or an affidavit of service executed by a duly authorized citizen of this state reciting that a copy of such complaint or orders was served upon persons in possession of such property, owners and parties of interest personally or by leaving such copy at the place of residence shall be sufficient evidence as to the service of such person in possession, owners and parties in interest.

(2) If any of the owners and parties in interest shall reside out of the city, service shall be perfected by causing a copy of such summons or complaint to be served upon such party by the sheriff or any lawful deputy of the county of the residence of such party or such service may be made by any citizen; and the return of such sheriff or lawful deputy or the affidavit of such citizen that such party was served either personally or by leaving a copy of the complaint or orders at the residence, shall be conclusive as to such service.

(3) Nonresidents of this state shall be served by causing a copy of the complaints or summons to be posted in a conspicuous place on the property

affected by the complaint or summons. Where the address of such nonresident is known, such as the address on file with the tax assessor, a copy of such complaint or order shall be mailed to such person by registered or certified mail. A copy of such complaint or summons will also be filed in the proper office or offices for the filing of lis pendens notices in the county in which the property is located, and such filing of the summons or complaint shall have the same force and effect as other lis pendens notices provided by law.

(4) If either the owner or any party in interest is a minor or an insane person or person laboring under disabilities and the guardian or personal representative resides outside the city or is a nonresident, such person shall be served as provided in this section in such cases. If such minor or insane person or person laboring under disabilities has no guardian or personal representative or if such minor or insane person lives outside of the city or is a nonresident, service shall be perfected by serving such minor or insane person personally or by leaving a copy at the place of such person's residence, which shall be sufficient evidence as to the service of such person. In the case of other persons who live outside of the city or who are nonresidents, service shall be perfected by serving the judge of the probate court of the county wherein such property is located, who shall stand in the place of and protect the rights of such minor or insane person or appoint a guardian ad litem for such person.

(5) If the whereabouts of any owner or party in interest are unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to the effect, then the service of such complaint or summons upon such persons shall be made in the same manner as provided for nonresidents of the state as set out in this section, or service may be perfected upon any person holding itself out as an agent for the property involved.

(Code 1977, § 17-9014)

Secs. 158-5--158-25. Reserved.

## ARTICLE II. TREE PROTECTION\*

**\*Editor's note:** Ord. No. 2001-102, § 3, approved Dec. 11, 2001, states that the provisions of article II 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 former deadlines, if any, should apply.

**Cross references:** 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 root 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.

*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 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 or lack of protection that will cause a tree to die within a period of five years, as determined by the city forester or city arborist. Such acts include, but are not limited to, cut or fill grade changes that affect more than 20 percent of the root save area; severing or exposing of the roots in more than 20 percent of the root 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 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.

*Established recompense value* means the dollar value to the city of a tree on private or public property used for the purpose of calculating cash recompense for removal or destruction. The established recompense value as of January 2003 is \$100.00 per tree and \$30.00 per diameter inch. 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.

*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 1,000 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 that 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.

*Impacted tree* means a tree that will suffer injury or destruction of more than 20 percent but not more than 33 percent of its root save area.

*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 whose root save area will suffer injury or destruction in excess of 33 percent or is otherwise not protected according to the provisions of this article.

**Master plan** means the comprehensive urban forest master plan.

**Mid-canopy tree** means a tree that normally attains a DBH of ten--25 inches and a height of 30--60 feet at maturity. Examples include Southern sugar maple, "October Glory" Red maple, River birch, Deodar cedar, Persimmon, Ginkgo, American holly, Foster holly, Eastern Red cedar, Blackgum, Sourwood, Chinese pistasche, Nuttall oak, Chinese elm, European hornbeam.

**New lot of record** means a tract of land that has been newly subdivided and so recorded as a separate property of record with the county land registrars office.

**Pine** means only a member of the genus Pinus, and does not include other needled trees commonly known as cedar, fir, spruce, hemlock, or any other members of the family Pinaceae.

**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, storm water 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.

**Overstory tree** means a tree that normally attains a DBH in excess of 25 inches and a height in excess of 60 feet at maturity. Examples include Red maple, Pecan, Hickory, American beech, ash sp., Tulip poplar, Southern magnolia, White oak, Water oak, Southern red oak, Shumard oak, Baldcypress, elm sp.

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

**Root save area** means the area surrounding a tree that is essential to that tree's health and survival. For a free-standing tree with no apparent root restrictions the root save area shall consist of a circle having a radius of one foot for each one inch of diameter at breast height of the tree. Adjustments to the root save area may be made by the city arborist if justified by specific documented site conditions.

**Sampling** means the employment of recognized statistical survey methods to count and measure existing trees on a site.

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

**Specimen tree** means a 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 inches;
- (2) Smaller understory trees (dogwoods, redbuds, sourwoods, persimmons, etc.) in fair or better condition with a DBH equal to or greater than ten inches; 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.

**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 the 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.

TABLE INSET:

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

*Subdivision means* a tract of land that has been newly subdivided in accordance with the Subdivision Ordinance and so recorded as a separate property of record with the county land registrars office.

*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 that 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 at 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.

*Understory tree means* a tree that normally attains a DBH of less than ten inches and a height of less than 30 feet at maturity. Examples include Trident maple, Serviceberry, American hornbeam, Redbud, Fringetree, Dogwood, Smoketree, Burford holly, Nellie R. Stevens holly, treeform Crape myrtle, Little gem magnolia, Golden raintree, cherry sp.

*Vacant lot means* a property of record that has not had a structure on it in the past five years.

(Code 1977, § 10-2035; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

**Cross references:** 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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

**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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **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, 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.

(Code 1977, § 10-2034; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **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.

(5) 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 two and one-half 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 two and one-half 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, liriop, pine bark mulch and other similar landscaping materials.

(7) Shrubs shall be maintained at a maximum height of two and one-half 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 1/2 feet on center along the entire length.

(10) Newly planted trees shall be a minimum of two and one-half 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 is 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.

(15) 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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **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 seq., 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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **Sec. 158-33. Enforcement.**

The bureau of parks and the bureau of buildings shall be charged with the enforcement of this article. The city forester and the city arborist have 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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

### 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. For a first offense, the minimum fine shall be \$500.00 per violation. For subsequent offenses, the minimum fine shall be \$1,000.00 per violation. Each tree removed, destroyed or injured or each incursion into a designated root 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, or for new subdivisions, new lots of record, vacant lots, and vacant land tracts, any tree except pines of six inches or greater DBH or any pine of 12 inches or more 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 subsection 158-103(f) and in addition to any pre-approved tree replacement plan. 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:

a. Recompense (IR) for trees of known number removed (Nrem) and known total diameter removed (TDBHrem) shall be calculated according to the formula:

$$IR = \$200.00(Nrem) + \$60.00(TDBHrem)$$

b. Recompense for trees of known number removed but unknown total diameter shall be calculated according to the formula:

$$IR = \$1,500.00Nrem$$

c. 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:

$$IR = \$30,000.00/acre$$

d. Recompense for specimen and historic trees shall be one and one-half times the calculated dollar cost IR.

e. 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 subsection 158-101(e) and the tree replacement calculations of subsections 158-103(a) and (b), shall be assessed a double dollar cost IR.

(c) *Tree protection.* Fences surrounding root save areas must be erected before the commencement of any land disturbance, demolition or construction. 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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

Secs. 158-35--158-60. Reserved.

## **DIVISION 2. TREE CONSERVATION COMMISSION\***

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\*Charter references: Boards and commissions, § 3-401.

Cross references: Boards, councils, commissions and authorities, § 2-1851 et seq.

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### **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 15 members, eight of which shall be appointed by the mayor and seven 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) One member shall be appointed by the mayor who is a real estate professional.
- (6) Two members shall be lay citizens appointed by the mayor interested in environmental protection.
- (7) One member shall be appointed by the council who is a residential builder.
- (8) One member shall be appointed by the council who is a residential developer.
- (9) One member shall be appointed by the council who is a commercial or industrial developer.
- (10) Three members shall be citizens appointed by the paired districts in consultation with the at-large council member.
- (11) One member shall be an urban planner or an environmental resource planner appointed by the president of council.

(Code 1977, § 10-2041(a); Ord. No. 1998-65, § 1, 9-23-98; Ord. No. 2000-17, § 1, 3-29-00; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **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 15 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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **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); Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **Sec. 158-64. Meetings; clerk; court reporter; 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 meetings of the tree conservation commission shall be recorded by a court reporter contracted for by the city and paid for by the city from the proceeds of the tree trust fund. 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, § I, 4-12-00; Ord. No. 2000-26, § II, 5-23-00; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03; Ord. No. 2003-113, § 1, 12-10-03)

#### **Sec. 158-65. Appeals.**

- (a) *Appeals from the decisions of administrative officials.* Appeals may be taken by any 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 subsection 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 \$75.00 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 is known to the appellant the decision appealed from, giving the date of such action or decision,

specifying the name of the party who had initiated the action appealed from, 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. 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 subsection 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 subsection 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) *Frivolous appeals.* 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 that 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 subsection 158-65(c) shall notify the clerk of the commission in writing of such intent within three working days of the written decision of the commission. Barring such notice

of intent the stay on the activity appealed from shall be lifted.

(d) *Appeals of cash recompense.* An appeal whose sole purpose is to request an adjustment in cash recompense shall not prohibit the issuance of the arborist's final approval of a plan if the appellant submits with the appeal, a bank certified check, or a money order payable to the City of Atlanta in the amount of the calculated recompense that occasions the appeal. The check or money order shall be retained by the clerk of the tree conservation commission until such time as the appeal is decided. If recompense relief is granted and the arborist has receipt of recompense paid to the City of Atlanta in the recompense amount determined by the appeal, the clerk shall surrender the check or money order to the appellant.

(Code 1977, § 10-2039; Ord. No. 2000-21, § II, 4-12-00; Ord. No. 2000-26, § III, 5-23-00; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

### **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. A maximum of \$50,000.00 per year of the fund may be used for costs arising directly from administering and enforcing the tree protection ordinance that would not have arisen in the absence of the tree protection ordinance, including but not limited to the cost of posting trees to be removed, the cost of advertising tree commission hearings, and the cost of court reporter services at tree commission hearings.

A maximum of \$110,000.00 per year of the fund may be used to fund the annual salary and benefits of the two arborist positions. In the event that the costs of the salary and benefits positions exceeds \$110,000.00, the remainder of the cost shall be assumed by the general fund budget in the department of planning and community development.

(b) *Recompense for illegal removal or destruction.* Developers, builders, contractors, homeowners and others who violate the criteria for removal or destruction of section 158-102 shall contribute to the fund the replacement value of the trees illegally removed or destroyed according to the recompense formulas of section 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 section 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 formulas of subsections 158-103 (b) and (c).

(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.

(Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03; Ord. No. 2003-113, § 2, 12-10-03)

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. For new subdivisions, new lots of record, vacant lots, and vacant land tracts, pines of less than 12 inches DBH are exempt from the requirement for a permit.

(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.

(1) 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. Such permits are not subject to the notice of preliminary approval of subsection 158-101(d), the posting requirements of subsection 158-101(e), the standards for tree replacement or afforestation of subsection 158-103(1), the recompense formulas of subsection 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) Applications to remove or destroy trees for landscaping improvements 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 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 subsection 158-101(d), the posting requirements of subsection 158-101(e), the standards for tree replacement or afforestation of subsection 158-103(a), and the recompense formulas of subsection 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 subsection 158-101(d), the posting requirements of subsection 158-101(e), the standards for tree replacement or afforestation of subsection 158-103(a), if applicable, and the recompense formulas of subsection 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 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. 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 (WWW.CI.ATLANTA.GA.US) 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 pursuant to subsection 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 subsection 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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

### **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 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 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 of the tree;
  - 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 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); Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

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

(a) *Minimal impact on trees; replacement trees.* Each applicant for a permit to remove or destroy trees shall, to the maximum extent feasible, minimize the impact on the trees on the site. The applicant shall plant replacement trees on site that 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 number of replacement trees required on the site, the city arborist may approve a plan which results in the planting of the number of trees on the site which can reasonably be expected to be accommodated in a manner which will allow mature growth of the replacement trees. The remainder of the total number of trees may be planted in a local park, on public lands, or along right-of-ways, subject to approval of the City of Atlanta Parks Department, provided such plantings are within the same NPU district or within one mile of the NPU boundary.

- (1) Where appropriate site conditions exist, replacement trees shall be overstory or mid-canopy species. Understory trees shall be permitted where site conditions do not allow the planting of overstory or mid-canopy trees. Overstory trees shall be planted at a minimum 35 feet on center. Mid-canopy trees shall be planted at a minimum 25 feet on center. Understory trees shall be planted at a minimum 15 feet on center. Certain columnar species used primarily for

screening may be accepted for partial recompense in accord with the planting distance established for understory trees.

(b) *Recompense.* The difference between the number of trees removed or destroyed (Nrem) and the number of trees replaced (Nrep) on a site times the established recompense value 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 (TDBHrem) and the total caliper inches of the trees replaced on site (TCIrep), as indicated on the approved tree replacement plan, shall be calculated as partial recompense to the tree trust fund. Total recompense(R) shall be calculated according to the formula

$$R = \$100.00 (Nrem - Nrep) + \$30.00 (TDBHrem - TCIrep), C \geq 0$$

(c) *Limits and adjustments.*

(1) For recompense purposes of this section, all trees except pines with a minimum DBH of six inches shall be included in the formula. Pines with a minimum DBH of 12 inches shall be included in the formula.

(2) For new subdivisions, new lots of record, and vacant lots, a maximum shall be set on recompense at a pro rated per acre basis by zoning classification as tabulated below, provided that no less than the specified minimum of existing trees, by total DBH inches, are retained on a site. Credit based on the established recompense value formula will be given for trees planted. This credit may be subtracted from maximum recompense per acre, provided trees are spaced at no more than one tree per 400 square feet.

Table 158-103

TABLE INSET:

Zoning	Minimum Trees Retained (Total DBH Inches)	Maximum Recompense Per Acre
R-1	45%	\$10,000.00
R-2	40%	\$10,000.00
R-2A	40%	\$7,500.00
R-3, R-3A	35%	\$7,500.00
R-4, R-4A, R-G, R-LC	30%	\$5,000.00
RG-4, RG-5	10%/20%*	\$10,000.00
R-4B	10%/20%*	\$5,000.00
R-5	10%/30%*	\$5,000.00
O & I, C (1-5), I (1&2)	10%	\$10,000.00

PD, PD-H, PD-MU, PD-OC, PD-BP, SPI Districts, Landmark Districts, and other special zoning categories**	Treat according to underlying zoning categories	Treat according to underlying zoning categories
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\*Vacant lots shall be based upon the lower Minimum Trees Retained total DBH inches, new subdivisions and new lots of record shall be based upon the higher Minimum Trees Retained total DBH inches.

\*\*Where an underlying zoning category does not apply, the Minimum Trees Retained (MTR) for planned developments shall be derived by multiplying the required percentage of the site required to be retained in pervious area by a factor of .60 which will establish the Minimum Trees Retained percentage (MTR%). This amount shall be calculated according to the formula:

$$\text{Required Pervious Area (K) x .60 = MTR\%}$$

$$\text{Maximum Recompense Per Acre} = \$10,000.00$$

(3) Provided that no less than the specified minimum of existing trees, by total DBH, are retained on a site in accordance with Table 158-103 then the maximum recompense per acre may be further reduced by the replanting of new trees. Adjusted maximum recompense per acre (AMRPA) shall be calculated according to the formula:

$$\text{Reduction from MRPA} = \$100.00 (\text{Nrep}) + \$30.00 (\text{TCIrep})$$

$$\text{AMRPA} = \text{MRPA} - \text{Reduction from MRPA}$$

(4) For sales housing units which have a pro-forma sales price equal to or less than 1.5 times median family income as defined by the United States Department of Housing and Urban Development, the percent of minimum trees retained may be reduced to 50 percent of the above percentage values in order to qualify for maximum recompense per acre.

(5) For sales housing units which have a pro-forma sales price greater than one and one-half times median family income but not exceeding two and one-half times median family income as defined by the United States Department of Housing and Urban Development, the percent of minimum trees retained may be reduced to 75 percent of the above percentage values in order to qualify for maximum recompense per acre.

(6) For trees removed in the required construction of streets and related infrastructure in new subdivisions or other planned developments, a maximum shall be set on-recompense at \$5,000.00 per acre, pro rated. Credit based on the established recompense value formula shall be given for trees planted. This credit may be subtracted from maximum recompense per acre, provided trees are spaced at no more than one tree per 400 square feet. For infrastructure development that requires disturbance of one acre or more, a recognized sampling technique performed and certified by a registered forester may be substituted for an actual count of the trees to be removed. All specimen trees must be identified by species and location regardless of the counting procedure adopted.

(7) Conservation easements (section 158-32) that result in the preservation of wooded lands, or newly created wooded parkland afforested to 100 inches DBH per acre, and that are perpetual in duration shall receive a credit of \$20,000.00 per acre, pro rated, against recompense fees. Natural water detention areas established in lieu of the construction of detention ponds shall qualify as conservation easements if so deeded as a conservation easement.

(8) For rental housing units that have at least 20 percent of the total number of residential units constructed being within the ability to pay of those households

whose annual incomes do not exceed 60 percent of the median family income for the Atlanta metropolitan statistical area, the percent of minimum trees retained may be reduced to 50 percent of the above percentage values in order to qualify for maximum recompense per acre.

(d) An impacted tree will not be considered destroyed and will not be charged recompense only if all the following are met:

(1) Tree save fencing is established and maintained to protect at least 67 percent of the root save area, and the structural root plate is not disturbed.

(2) An ISA certified arborist or registered forester is retained to prescribe and monitor the implementation of measures to maximize the survival and protection of the tree, including but not limited to root pruning, canopy pruning, mulching, watering, fertilization, and enhanced protective fencing.

(3) The prescription of the retained arborist is approved by the city arborist or city forester in advance of construction.

(4) A report on the effectiveness of the prescribed measures is submitted by the retained arborist to the city arborist or city forester prior to issuance of a certificate of occupancy.

(e) A lost tree shall be charged recompense regardless of whether or not it is removed from the site.

(f) The city arborist shall prepare a quarterly report to be presented to the tree conservation commission. The report shall include the total number and DBH of trees removed and/or the total number and DBH of trees replanted during the preceding quarter in each of the following categories: maximum recompense per acre, dead/dying/hazardous removal, landscaping permit, silvicultural removal, buildable area removal, parking lots, illegal removal, off-site planting, or any other permit or penalty category not listed. The report shall also include acreage, total number of trees and total DBH for any newly created conservation easements or newly created parklands.

(g) *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 the minimum tree cover per zoning district, the city arborist shall require an afforestation standard such that the 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, R-4-A and R-4-B 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.

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

(1) 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); Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03; Ord. No. 2004-02, 1-12-04)

### **Sec. 158-104. Protection of mature trees.**

(a) The city arborist shall require that improvements be located so as to result the protection of the 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 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 section 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 portion of the lot required for the intended construction.

(2) On lots and subdivisions of less than one acre, root 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 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.

(Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

### **Sec. 158-105. Site plan required.**

(a) *General requirements.* The site plan shall include a tree survey identifying the size, species and location of all 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. Single family lots of record may be exempt from the requirement of the topographic survey provided that no grading or cut or fill or other changes in topography will occur. Such plan shall denote each tree to be saved, lost or destroyed, required tree protection fences for trees to be saved, and the proposed tree replacement plan. For new subdivisions, new lots of record, vacant lots, and vacant land tracts, pines of less than 12 inches DBH are exempted from being denoted on the tree survey. 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 root 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); Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **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.

(Code 1977, § 10-2037(h); Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **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); Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

#### **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); Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

### **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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)

### **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 judgment of the judge 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; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§ 1, 2, 1-13-03)