

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.

- (1) *Applicant.* Any person seeking approval to take action under this article.
- (2) *Boundary tree.* A tree with a critical root zone that crosses a property line.
- (3) *City.* The City of Atlanta.
- (4) *Buildable area.* 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.
- (5) *Building.* A structure constructed or erected with a fixed location in or on the ground or attached to something having a fixed location in or on the ground.
- (6) *City arboricultural standards.* 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. These standards are to be consistent with International Society of Arboriculture (ISA) and American National Standards Institute, Inc. (ANSI) A300 guidelines.
- (7) *City Arborist.* An agent of the Department of Planning and Community Development responsible for administering and enforcing this article regarding trees on private property.
- (8) *City Forester.* An agent of the Department of Parks, Recreation, and Cultural Affairs responsible for administering and enforcing this article regarding trees on public property and in the public right-of-way; also referred to as City

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Arborist or Parks Arborist. The City Forester is also responsible for preparing and administering the urban forestry master plan.

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~~(8)~~ Cover area – deleted; not referenced in ordinance.

- (9) *Critical root zone (CRZ)*. The area surrounding a tree that is essential to that tree's survival; for the purposes of this ordinance, for a free standing tree with no apparent root restrictions, the critical root zone area shall consist of a circle having a radius of one (1) foot for each one (1) inch of diameter at breast height of the tree. Adjustments to the critical root zone may be made by the City Arborist if justified by specific documented site conditions.
- (10) *Destroy*. To cause any intentional or negligent act or lack of protection that is more likely than not to cause a tree to die within a period of five (5) years, as determined by the City Forester or City Arborist. Such acts include, but are not limited to: performing grade changes (including lowering or filling the grade of soil) that affect more than twenty (20) percent of the critical root zone; trenching of roots; cutting, girdling or inflicting other severe mechanical injury to the trunk, structural root plate, roots, or other vital sections of the tree; removing in excess of twenty (20) percent of the live crown of the tree; inflicting damage upon the root system of a tree by the application of toxic substances, including solvents, oils, gasoline and diesel fuel; causing damage by the operation of heavy machinery; causing damage by the storage of materials; deliberately or negligently burning a tree. In addition, topping, tipping, flush cutting, or any similar improper pruning practices will automatically be deemed destruction of a tree.
- (11) *Diameter at breast height (DBH)*. The diameter of the main stem of a tree or the combined diameters of a multi-stemmed tree as measured four and one-half (4.5) feet above the natural grade at the base. The top diameter of a stump less than four and one-half (4.5) feet tall shall be considered the "DBH" of an illegally destroyed tree for the purpose of calculating recompense.
- (12) *Disease*. Any fungal, bacterial, or viral infection that will likely result in the death of the tree within five (5) years and where treatment will not prevent the death of the tree, as determined by the City Forester or City Arborist.
- (13) *Dying tree*. A tree more likely than not to die within five (5) years, based upon inspection and evaluation of the City Arborist or City Forester.
- (14) *Established recompense value*. The dollar value assigned by the City for the purpose of calculating cash recompense to be paid for removal or destruction of a healthy tree on private property. The established recompense value as of **January 2003** is one hundred dollars (\$100.00) per tree and thirty dollars (\$30.00) per diameter inch. This figure shall be evaluated and adjusted periodically by amendment to this ordinance,

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as proposed by the Tree Conservation Commission in consultation with the City Arborist.

- (15) *Fair or better condition.* A tree that has a relatively sound and solid root, trunk, and canopy structure- and no major insect infestation or other pathological problem, as determined by the City Arborist or City Forester.
- (16) *Flush cutting.* The removal of limbs by cutting immediately adjacent to the trunk, destroying the protective branch collar and exposing the trunk to decay organisms.
- (17) *Fully stocked.* A site occupied by trees at a density of one thousand (1,000) inches DBH/acre (e.g., forty [40] trees averaging twenty-five [25] inches DBH on a one [1] acre site).
- (18) *Hardship.* A unique or otherwise special existing condition that is not addressed by the ordinance.
- (19) *Hazard tree.* 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.
- (20) *Heat island.* 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 rooftops, patios, driveways, and other vehicular maneuvering and/or parking areas.
- (21) *Historic tree.* 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 Tree Conservation Commission or the City Arborist. A complete listing of the location of all historic trees within the City of Atlanta shall be maintained with the Municipal Clerk.

(22) *Illegally removed tree.* Any tree that is removed or destroyed without a permit pursuant to this Article.

(23) *DELETED 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. Deleted because terminology is confusing, especially since conventional use of “impact” means any effect on tree; under provisions of ordinance, trees described here are destroyed unless treated with a prescription before construction begins.

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~~(23)~~(25) *Incursion*. Any occasion of prohibited activity within the area of a tree's critical root zone required to be protected by the provisions of this Article and as reflected by the construction plan stamped by the City Arborist.

~~(24)~~(26) *Injure*. The commission of any intentional or negligent act that damages a tree, including but not limited to injurious tree climbing practices, spiking, trimming, flush cutting, or incursion into a designated critical root zone.

(27) *Lost tree*. Any tree with a critical root zone suffering injury or destruction of over twenty (20) percent, but not more than thirty-three (33) percent. As long as the structural root plate of the tree remains protected and a silvicultural prescription is provided in accordance with the provisions of this ordinance, the "lost" tree may be restored to "saved" status.

~~(25)~~(28) Live stake – check with Watershed (see watershed references).

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~~(26)~~ Master plan. The comprehensive urban forestry master plan for tree preservation and protection for the City of Atlanta. (see urban forestry master plan)-

~~(27)~~(29) *Mechanical injury*. A wound which exposes or destroys the cambium layer of a tree.

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(28) *Mid-canopy tree*. A tree that normally attains a DBH of ten (10) to twenty-five (25) inches, a height of thirty (30) to sixty (60) feet and approximately nine hundred (900) square feet of canopy at maturity. Examples include Georgia oak, Chinquapin oak, Persimmon, American yellowwood, American hornbeam, American hophornbeam, Blackgum, Chalk maple, and others included on the City of Atlanta's Recommended Tree List. (add Latin names)

(29) *Minimum stocking*. A minimum number of DBH or caliper-inches of trees required to remain, or to be planted, on a building site. Minimum requirements are based upon zoning district classification.

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(30) *Neighborhood Planning Unit (NPU)*. The City of Atlanta is divided into twenty-five NPUs, established in 1974, which are citizen advisory councils that make recommendations to the Mayor and City Council on zoning, land use, and other planning issues.

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(31) *New lot of record*. A tract of land that has been newly subdivided and so recorded as a separate buildable property of record with the county land registrar's office.

XX *Nuisance tree*. A dead or diseased tree, or part of a tree, which, by reason of such condition, shall by natural forces more readily fall or blow onto public ways or public property, off the property of the owner, than if such tree or part

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thereof were live or not diseased, and thereby imperil life or property or impede traffic.

(32) *Overstory tree.* A tree that normally attains a DBH in excess of twenty-five (25) inches, a height in excess of sixty (60) feet, and greater than or equal to one thousand six hundred (1,600) feet of canopy at maturity. Examples include White oak, Overcup oak, Nuttall oak, Post oak, Tulip poplar, Pignut hickory, Mockernut hickory, Tulip poplar, American beech, and others included on the City of Atlanta's Recommended Tree List. Add Latin names.

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(33) *Pine.* A tree that is a member of the genus *Pinus* in the family *Pinaceae*, and does not include other needled trees in the family commonly known as cedar, fir, spruce, and hemlock.

(34) *Prescription/silvicultural prescription.* A type-written prescription developed by a private arborist for a site or individual tree, as defined above for the purpose of preserving a tree(s). Prescriptions must include without limitation: 1) the private arborist's name, signature, qualification and contact information; 2) the site address and individually identified trees at issue; 3) any recommended harvesting or stand improvement plan; 4) soil and foliar analysis/treatment; 5) a five-year survivability assessment; and 6) a schedule of recommended treatment including any soil amendments, fertilizer application, pesticide application (with a copy of the pesticide labeling), or pruning. Trimming, topping, tipping or flush cutting of trees will not be accepted as a part of any silvicultural prescription.

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(35) *Private arborist.* Any person who is not employed by the City of Atlanta, and who is a Georgia Registered Forester or a certified member of the International Society of Arboriculture (ISA)

Private Arborist report – deleted bc it is referenced as silvicultural prescription.

(36) *Private property tree.* For purposes of this Article, a tree for which more than fifty (-50) percent of the flare of the tree, where the tree interfaces with the earth, is located on private property.

Protective pruning – deleted because not reference in ordinance except as part of prescription.

(37) *Public property tree.* For purposes of this Article, a tree for which at least fifty (50) percent of the flare of the tree, where the tree interfaces with the earth, is located on public property.

(38) *Pruning.* Pruning performed in accordance with International Society of

Arboriculture (ISA) standards and guidelines of the American National Standards (ANSI) A300. Proper pruning requires that all cuts be made at branch nodes. At no time shall trimming, topping, tipping, or flush cutting of trees be deemed an acceptable form of pruning. In no case shall pruning exceed twenty (20) percent of the live crown of a tree.

- (39) *Public utility.* 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.

SHOULD ADD DEFINITION OF "RECOMPENSE" AND "REPLACEMENT"

- (40) *Required yard area.* The open space on a lot not occupied by a structure, including both buildable area and setbacks not occupied by a structure. (may not need definition, dependent upon other references to this in ordinance).

Root Save Area. Deleted because this is referenced as Critical Root Zone.

- (41) *Sampling.* The employment of statistical survey methods recognized by current forestry standards to count and measure existing trees on a site.
- (42) *Saved tree.* Any tree that is to be protected and not destroyed or injured during construction, as required by this Article. Tree protection fencing must protect eighty (80) percent of a saved tree's critical root zone throughout construction. With a paid-in-full silvicultural contract before construction begins, the tree protection fencing is required to protect only sixty-seven (67) percent of the tree's critical root zone. In addition, the structural root plate of a saved tree must be one hundred (100) percent protected by tree fencing at all times after demolition or construction begins.
- (43) *Severe mechanical injury.* A wound or combination of wounds, measured at the widest extent, which expose or destroy the cambium layer of thirty (30) percent or more of the circumference of the tree, measured at the top of the wounded area.

Silvicultural prescription is deleted (listed under Prescription)

- (44) *Specimen tree.* A tree meeting the following criteria:
- (a) Large hardwoods (e.g., oaks, elms, poplars, etc.) and softwoods (e.g.,

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- pine species) in fair or better condition with a DBH equal to or greater than thirty (30) inches;
- (b) Smaller understory trees (e.g., dogwoods, redbuds, sourwoods, persimmons, etc.) in fair or better condition with a DBH equal to or greater than ten (10) inches; and
 - (c) Lesser-sized trees of rare species, exceptional aesthetic quality, or historical significance as designated by the Tree Conservation Commission.
- (45) *Spiking*. The use of metal spurs or gaffs to climb live trees for any purpose other than tree removal or human rescue.
- (46) *Structural root plate*. The zone of rapid root taper that provides the tree stability against windthrow. The radius of the root plate is a function of the stem diameter/diameter at breast height (DBH) of a tree. [Also referred to as the tree's compression plate.](#) The table below provides examples of root plate radii for upright trees without restricted roots.

TABLE INSET:

Size of Structural Root Plate by DBH of Tree				
Diameter at breast height (DBH)	8 inches	16 inches	32 inches	48 inches
Structural root plate	5.5 feet	8 feet	10.5 feet	12 feet

- (47) *Structure*. [\(see definition in s.o.p. memo or use "building" definition\)](#)
- (48) *Subdivision*. 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 registrar's office.
- (49) *Tipping*. The cutting of a lateral limb of a tree in such a manner as to leave a prominent stub extending beyond a branch node or the trunk.

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- (50) *Topping*. The cutting of a single leader trunk or cutting a co-dominant leader 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.
- (51) *Tree*. Any self-supporting woody, perennial plant that has a trunk diameter of Two (2) inches or more when measured at a point six (6) inches above ground level and which normally attains an overall height of at least fifteen (15) feet at maturity, usually with a single main stem or trunk and many branches.
- (52) *Tree Conservation Commission*. The commission established pursuant to **Section 158-61** of this Article.
- (53) *Tree replacement plan*. A drawing which depicts the location, size, and species of existing and replacement trees on the lot for which a permit is sought, and a table detailing, by species and DBH, the existing trees to be saved, lost or destroyed, and, by species and caliper, the replacement trees to be planted.

Tree Structure – deleted bc not referenced in ordinance

- (54) *Trimming*. Cutting a stem to an indiscriminate length rather than following International Society of Arboriculture (ISA) guidelines for proper tree pruning cuts. Tree trimming is unacceptable under- the provisions of this Article.
- (55) *Understory tree*. A tree that normally attains a DBH of less than ten (10) inches and a height of less than thirty (30) feet, and approximately four hundred (400) square feet at maturity. Examples include Dogwood, Redbud, Sourwood, Sassafras, Serviceberry, Bigleaf magnolia, and others listed on the City’s Recommended Tree List.

Add Latin names

- (56) **Urban forestry master plan**. A management plan for protecting and preserving trees and forest resources in the urban environment; the document outlines an action plan with detailed information, recommendations, and resources to effectively manage and maintain trees in the urban environment.

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Vacant lot. A property of record that has not had a structure on it in the past five (5) years.

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, paragraphs 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.

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, maintain, and protect 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 standards for the planting and maintenance of trees as necessary to improve the economic base of the City by increasing property values, enhancing the visual quality of the City and its neighborhoods, and improving public health by decreasing air pollution and the incidence of flooding;
- (4) Maintain trees in the public right-of-way to minimize hazards and damage to streets and sidewalks and to minimize cost of public right-of-way maintenance;
- (5) Provide for the designation and protection of historic and specimen trees;
- (6) Promote efficient and cost-effective management of the urban forest through the development of a comprehensive long-range urban forest master plan; and
- (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 and to provide for public safety.

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 private or public entities, including public utilities except where superseded by franchise agreements.

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Sec. 158-30. Parking lot requirements.

Comment [p1]: This is an odd location for a section about parking lots.

All surface parking lots with a total of thirty (30) or more parking spaces, whether primary or accessory in use, and whether commercial or noncommercial, shall have a 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. **SEE Watershed comments.**
- (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. **SEE Watershed comments.**
- (3) Where the end of a parking space abuts a landscaped area, wheel stops may be placed in the parking space up to 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 (10) percent of the paved area within such lot. In no case shall a parking lot owner be required to provide landscaped areas that exceed ten (10) percent of the paved area.
- (5) A minimum of one (1) tree per eight (8) 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 (2.5) inches or more in caliper (as measured at a height of fifty-four (54) inches above ground level) shall be considered equivalent to one (1) or more newly planted trees on the basis of one (1) tree for each two and one-half (2.5) 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, plants, mulch and other landscaping materials.
- (7) Shrubs shall be maintained at a maximum height of two and one-half (2.5) 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 (6) feet in width and six (6) feet in length with a minimum area of thirty-six (36) square feet.

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(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 (5) feet in width and shall contain, in addition to ground cover, trees planted a maximum of forty-two and one-half (42.5) feet on center along the entire length.

(10) Newly planted trees shall be a minimum of two and one-half (2.5) inches in caliper as measured at a height six (6) inches above ground level, shall be a minimum of ten (10) feet in height, shall have a forty (40) foot minimum mature height and shall be drought-tolerant. Trees shall be planted at a minimum of thirty (30) inches from any barrier curb so as to prevent injury to trees from vehicle bumpers.

(11) Where a 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 (6) 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 Office of Traffic and Transportation may increase the allowable percentage of compact car spaces from twenty-five (25) percent up to thirty-five (35) percent so as to minimize the loss of parking spaces, but only with the approval of the City Arborist.

(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 (3) 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 Office of Buildings 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 (10) feet of the property line.

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- 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.

Sec. 158-31. Access Agreement for Easements for Private Property Planting by City

The City is hereby authorized, but not required, to enter into agreements with private property owners within the City of Atlanta for the purpose of planting trees within fifteen (15) feet of the public right-of-way or public property line. Such easements access agreements shall not exceed two (2) years in duration. Private property owners shall acquire ownership of such trees and shall agree to maintain the trees planted thereon for at least two (2) years and shall also agree to hold the City harmless for any liability attributable to the planting or presence of the trees on private property.

Sec. 158-32. Conservation Easements

The Mayor is hereby authorized, but not required, 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 such easements is to preserve land in its natural scenic landscape or in a forest use. Such easements must be perpetual in duration and shall contain such other terms and provisions as the mayor or his/her designee shall deem appropriate. In addition, the Mayor is authorized, but not required, to accept fee simple donations of land, the purpose of which is to preserve the land in its natural scenic landscape or in a forest use. Such donation shall contain the terms and provisions deemed appropriate by the Mayor or his/her designee.

The Office of Parks and the Arborist Division are authorized, but not required, to reduce the amount of recompense based upon donation of qualified fee simple land donations, as described in Section 158-103(c)7 of this article. (Code 1977, § 10-2044; Ord. No. 2001-102, § 2, 12-11-01; Ord. No. 2003-03, §§1, 2, 1-13-03)

Comment [LU2]: Establish details in S.O. P.s.

Sec. 158-33. Enforcement.

The Office of Parks and the Office of Buildings shall be charged with the enforcement of this Article. The City Forester and the City Arborist have police power to perform 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

Comment [LU3]: Establish time limits for compliance or payment of fines/fees before issuing citation after issuance of Notice of Violation

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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- pursuant to Section XXX

Sec. 158-34. Penalties.

(a1) *Violations.*

Any person found in violation of any of the provisions of this Article shall be deemed guilty of an offense and shall be subject to fines and fees as defined in this Article or may be punishable as provided in Section 1-8 of the Atlanta Code of Ordinances, which describes misdemeanor offenses. The City Arborist, City Forester, and the Tree Conservation Commission shall have the authority to determine when a person or entity has violated any of the provisions of this Article and shall have the authority to impose and enforce the fines described herein.

(a) Where the City authority is able to determine the exact number and DBH of trees upon which a Tree Protection Ordinance violation occurred, a fine imposed for the first violation shall be no less than five hundred dollars (\$500), and the fine imposed for each subsequent violation shall be one thousand dollars (\$1,000). Each tree upon which a violation occurred may be deemed a separate violation of the Tree Protection Ordinance.

(b) Where the City authority is unable to determine the exact number of trees upon which a Tree Protection Ordinance violation occurred, the City authority shall assume a density of one thousand (1,000) inches DBH of trees per acre, and shall impose a fine of sixty thousand dollars (\$60,000) per acre of land where the offenses occurred. Where the subject area is smaller than one (1) acre, the fine shall be prorated.

(a)(c) 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 of this article shall be guilty of a separate offense

Comment [p4]: Can the City Arborist and City Forester "impose" fines or merely issue citations? [Question of authority granted; see above section] The citation relates to a schedule of fines; technically the fines are not "imposed" by City employees.

Comment [p5]: Not sure this fully makes sense in the context of the ordinance and doesn't necessarily lead into what follows.

Comment [LU6]: Define policy regarding whether one or all parties (owner, plumber, contractor) are notified of violation/fines and issued citations (S.O.P.'s as well as here)

(b2) *Recompense and replacement.*

In addition to paying the penalties set forth in Subsection (1) above, any tree of six (6) inches or larger DBH that is removed or destroyed in violation of this article shall be replaced or recompensed by the violator, as set forth in Section 158-103. If the number of trees is known by the City authority, but the DBH of the trees is unknown and stumps do not remain, the City Arborist shall calculate fines based on the assumptions of Section 158-34 (a) and each tree shall be assumed to be sixteen and two-thirds (16.67) inches DBH for the purpose of calculating recompense.

(3e) *Tree protection.*

Fences surrounding critical root zones must be erected before the commencement of any land disturbance, demolition or construction. Fences must comply with the provisions of the Tree Protection Ordinance and stamped site plans. More substantial wood or steel fencing may be required by the arborist [where risk of damage to the tree's critical root zone is significant, per the Arborist's evaluation](#). 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 construction is complete and final landscaping of a site requires their removal. The arborist may assess recompense against the violator if tree protection fencing does not protect a minimum of sixty-seven (67) percent of the critical root zone of each tree on site.

(4d) *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.

DIVISION 2. TREE CONSERVATION COMMISSION*

Charter references: Boards and commissions, § 3-401

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

Sec. 158-~~6135~~. 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 fifteen (15) members, eight (8) of which shall be appointed by the Mayor and seven (7) by the City Council. All members shall be confirmed by the City Council. Each of the members shall have specialized knowledge about trees, the Tree Protection Ordinance, and/or the impact of construction activities on trees. The membership shall consist of the following:

- (1) One member shall be a landscape architect, appointed by the Mayor.
- (2) One member shall be either a botanist, forester, horticulturist or nursery worker, appointed by the Mayor.

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Comment [p7]: In Georgia?

- (3) One member shall be a registered architect, appointed by the Mayor.
- (4) One member shall be a member of an environmental organization, appointed by the Mayor.
- (5) One member shall be a real estate professional, appointed by the Mayor.
- (6) One member shall be a private arborist, appointed by the Mayor.
- (7) Two members shall be lay citizens interested in environmental protection, appointed by the Mayor.
- (8) One member shall be a residential builder, appointed by the Council.
- (9) One member shall be a residential developer, appointed by the Council.
- (10) One member shall be a commercial or industrial developer, appointed by Council.
- (11) Three members shall be citizens appointed by the paired districts in consultation with the at-large Council member.
- (12) One member shall be an urban planner or an environmental resource planner, appointed by the president of the Council.

Cod 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. 3003-03, §§ 1, 2, 1-13-03

Sec. 158-6236. Terms; vacancies; compensation.

- (1) The initial Tree Conservation Commission membership shall include three (3) members appointed for a term of one (1) year and four (4) members appointed for a term of two (2) years. Thereafter, all subsequent appointments shall be for a term of two (2) 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 or Commission may recommend removal and replacement of a member of the Commission for nonperformance of duty. Each member shall receive a seventy-five dollar (\$75.00) per month honorarium, but only if the member attends at least two (2) of the hearings and/or business meetings (or at least one [1] of each) per month. The Commission shall select from its members a chairperson to serve for a one (1) year term.
- (2) The Council shall appoint seven (7) of the fifteen (15) Tree Conservation Commission members as described in Subsection 158-61. With regard to the citizens appointed by the paired districts, pursuant to Subsection 158-61(11), the Council shall appoint the three (3) members in the following manner:

- (a) Districts 1, 2, 3 and 4 and at-large post 1.
- (b) Districts 5, 6, 7 and 8 and at-large post 2.
- (c) Districts 9, 10, 11 and 12 and at-large post 3.
- (d) In the event that an appointment to fill vacancies by the Mayor or Council is not made within sixty (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.
- (e) If a Tree Conservation Commission position becomes vacant and a member is not appointed pursuant to **Section 158-61** within six (6) months, the Tree Conservation Commission, by a majority vote of the remaining members, may temporarily appoint someone to the missing category until such time that a permanent member is appointed as described in **Section 158-61**. The person appointed by the Tree Conservation Commission need not meet the specific requirements of the vacant position, but must have specialized knowledge about trees, the Tree Protection Ordinance, and/or the impact of construction activities on trees.
- (e) The **Executive Branch (define)** shall provide such staff as is required for the efficient operation of the Commission.

Sec. 158-~~63~~37. Functions; powers; duties.

The functions, powers, and duties of the Tree Conservation Commission shall be as follows:

- (1) Hearing and deciding appeals of decisions of administrative officials and appeals of financial and other hardship as related to this Article, **Section 158-65**.
- (2) Establishing educational and other programs to encourage proper management and maintenance of trees on private property in the City.
- (3) The Tree Conservation Commission serves as a citizen review panel for administration and enforcement of the Tree Protection Ordinance.
- (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.

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

(7) Providing review of and recommendations to City Administrators and City Council ~~of~~ proposed expenditures from the Tree Trust Fund.

Comment [p8]: To whom?

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Sec. 158-6438. 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 and Community Development, 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 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 appeal hearings of the Tree Conservation Commission shall be recorded by a court reporter contracted 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.

Sec. 158-6539. Appeals.

~~a)~~(1) *Appeals of the decisions of administrative officials.*

(1a) *Who may appeal*

~~(A1)~~ *Appeals related to trees on private property.* Decisions of City officials based upon the Tree Protection Ordinance and relating to trees on private property, may be appealed by any person who is aggrieved by the decision including the property owner and who resides or owns property or a business within the same neighborhood planning unit (NPU) as the property or within five hundred (500) feet of the property on which the tree(s) are located.

Comment [p9]: Is "officials" accurate?

~~(2)~~ *Appeals related to trees on public property.* Decisions by City officials based on the Tree Protection Ordinance and relating to trees on public property may be appealed by any person who is

Comment [p10]: Is "officials" accurate?

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aggrieved by the decision and who resides or owns property or a business in Atlanta or any civic association within the City, except that appeals may not be made for decisions pursuant to sSubsection 158-101(h) of this aArticle (issuance of a permit to remove a dead, dying, or hazardous tree).

Comment [p11]: This may belong in an "exceptions" subsection.

(b2) *Timing of appeal*

(A1) *Appeals related to trees on owner's private property. Appeals submitted by a property owner regarding trees on his/her property must be filed within 30 days of the issuance of the decision being appeal; these appeals may include, but are not limited to, denial of permits to remove trees as dead, dying, or hazardous, denial of landscaping permits, and requirements for tree preservation plans associated with construciton.*

Comment [LU12]: Currently, internal policy is 15 days; this is a proposed change to allow property owners more time to file an appeal.

Appeals related to trees on private property other than owner's.

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For appeals of plans to remove or destroy trees on private property in association with construction or landscaping permits, appeals must be submitted during the period of public notice. This five (5)-day period begins after a City Arborist gives preliminary approval to remove trees. A this time, a Notice of Preliminary Approval to Remove Trees is posted on the site for five (5) business days, during which time members of the public may review the site plan and file appeals. At the time that a permit application is filed with the City Arborist regarding tree(s) on private property, the City Arborist shall post the property on which the tree(s) are located for a minimum of ten (10) calendar days prior to making a preliminary decision. The pre-posting shall indicate to the public that a permit application has been filed. If and when the City Arborist grants preliminary approval of the permit application, s/he shall post the property for five working days with a final posting, indicating to the public that preliminary approval has been granted.

Comment [p13]: How does this relate to an appeal if it is prior to a preliminary decision?

Comment [p14]: This seems redundant, given the first sentence.

(B2) *Appeals relating to trees on public property. Appeals must be filed within fifteen(15) calendar days after the posting of the City Forester's preliminary decision.*

——(C3) *Appeals of fines and/or correction notices. Appeals of decisions _____ made by City officials to issue fines or correction notices for violations to the Tree Protection Ordinance pursuant to Section X must be filed within fifteen (15)*

Comment [p15]: Is "officials" accurate?

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Comment [p16]: Business days? Calendar days?

days of receipt of the notice.

(3c) *Appeal requirements*

(A1) All appeals must be filed with the clerk of the Tree Conservation Commission.

(B2) An appeal shall not be deemed filed until the clerk receives a completed notice of appeal, along with either a seventy-five dollar (\$75.00) administrative fee used to help defray the administrative costs of the appeal or a hardship letter relating to this fee. [For appeals during the period signified by a Notice of Preliminary Approval, the appeal](#) fee may be accepted with a postmark on or before the ending date for appeal [postings](#). A hardship letter must explain in detail why the appellant is unable to pay the fee and must be signed by the appellant. At its earliest convenience, but in no event later than at the appeal hearing, the Tree Conservation Commission shall determine whether to waive the seventy-five dollar (\$75.00) fee.

Comment [p17]: This phrasing seems odd because it leads to the conclusion that the appeal can go forward without actually being deemed filed. Is the status of "filed" related to the receipt of notice of appeal only?

(E3) The notice of appeal shall state at a minimum, the name, address, phone number, and email address (if any) of the appellant and whether the appellant is a resident of Atlanta. If the appellant is not a resident of Atlanta, the address of a property or business owned by the appellant within the City of Atlanta shall be included. If the appeal is for a tree(s) on private property, the appeal shall state whether the appellant resides or owns property within the same Neighborhood Planning Unit (NPU) or within five hundred (500) feet of the property of concern. The appeal also shall include the address of the subject property and, if known, the name of the person(s) who filed a permit application for the property about which the appeal is being made.

(D4) Appeals may be made only if the appeal specifies the section(s) of the Tree Protection Ordinance that the appellant believes was misinterpreted or misapplied by the City administrative official and the way in which the appellant believes the section should be interpreted or applied; and/or any facts material to the City administrative official's decision that the appellant believes were misinterpreted or misunderstood.

Comment [p18]: Same as before. "Official"?

Comment [p19]:

(5E) An appeal may challenge the decisions regarding one property only.

(4d) *After the appeal is filed*

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(A~~1~~) Once an appeal is filed, any activity authorized by the decision appealed shall be stayed automatically. Despite the authorization given by the decision appealed, no permits shall be issued, no trees cut, nor earth disturbed.

(B~~2~~) The Tree Conservation Commission shall fix a reasonable time for the hearing of the appeal and shall give public notice thereof as well as prompt notice to the parties in interest. Public notice shall be given by the clerk of the Tree Conservation Commission in such a manner as shall be provided for in the rules for appeals adopted by the Tree Conservation Commission, but in no event shall such notice be given less than fifteen (15) calendar days before the date of the hearing.

Comment [p20]: Should a period be specified to give assurance that the appeal will be heard within a few months?

(C~~3~~) Each party shall submit all documentary evidence supporting its arguments at least one (1) week prior to the hearing. Submissions of evidence relating to issues not declared in the appeal package will not be accepted or considered after this deadline by the Tree Conservation Commission unless a the party submitting the information demonstrates, and the Tree Conservation Commission accepts, that the evidence was not available one (1) week prior to the hearing.

Comment [LU21]: Can we generate an automatic posting of appeals to Arb. Div. website (grab Hearing Date); this could eliminate the need for the Fulton Co. Daily report notice and lengthen public notice without further delaying building permits under appeal. If this cannot be done, the notice of appeal hearing should be shortened to 10 days.

(S~~1~~) *The appeal hearing*

(A~~1~~) At the hearing, any party may appear in person or be represented by an agent or by an attorney.

(B~~2~~) At least three (3) members of the Tree Conservation Commission must preside over each hearing. The decision on any appeal shall be determined by a majority vote of the Tree Conservation Commission members present and voting on the particular appeal.

(C~~3~~) The Tree Conservation Commission shall decide the appeal within a reasonable time. All appeals to the Tree Conservation Commission must be concluded or resolved within sixty (60) calendar days of the initial hearing. If the appeal is not concluded or resolved within that time, the Tree Conservation Commission will issue an "appeal approved" or "appeal denied" final ruling no later than the sixty-day deadline unless available evidence is not sufficient in which case the Tree Commission may exercise its. The Tree Commission may also have the authority to defer a decision to allow for the submission of additional evidence.

Comment [p22]: Seems unnecessary given the following sentence.

Comment [p23]: Will ruling include findings?

Comment [p24]: This is very open ended and seems to cut against the policy expressed in the earlier sentences.

(6g) *Tree Conservation Commission's Ruling*

- (A1) The Tree Conservation Commission shall sustain an appeal 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 or upon a finding of hardship. If no such finding is made, the Tree Conservation Commission shall deny the appeal. The Tree Conservation Commission shall have the authority to reverse, affirm, wholly or partly, or modify the administrative official's decision being appealed, and to that end shall have all of the powers of the administrative official. These powers shall include, where applicable, the power to direct the issuance of a permit, provided that all requirements imposed by this article and all other applicable laws are met.
- (B2) In the event that the Tree Conservation Commission rules that recompense and/or a fine should be assessed, but also finds that the amount of recompense owed or fine assessed cannot be paid as a result of financial hardship, the Commission shall have the authority to reduce the fine or recompense. The Commission shall create written guidelines by which to determine whether and to what extent financial hardship exists. These guidelines shall include a requirement that the person requesting a finding of financial hardship make a written request and provide documentary evidence of such hardship. The specific documents to be provided shall be determined by the Commission and listed in the guidelines. The Commission shall apply these guidelines consistently any time that a financial hardship request is made. Where the Commission finds, based upon the hardship request, the supporting documentation, and the guidelines, that a financial hardship exists, the Commission shall have the authority to reduce or completely eliminate the amount of recompense and/or fine owed, as long as said decision is consistent with the guidelines. The Commission shall issue a written decision regarding the financial hardship request and shall provide in writing the basis for that decision.
- (E3) Any person desiring to appeal a decision of the Tree Conservation Commission under **Subsection 158-65(b)** shall notify the clerk of the Commission, in writing, of such intent within six (6) working days of the date of the written decision of the Commission. Barring such notice of intent, the stay on the activity that was the basis for the decision appealed shall be lifted, within the constraints imposed by the Commission's ruling.

(b2) *Appeals from decisions of the Tree Conservation Commission.* Any person aggrieved by a decision of the Tree Conservation Commission, or any City official, bureau, office, department or board affected by such decision, may appeal such decision through a writ of certiorari to the Superior Court of Fulton County, pursuant to the procedures set forth by Georgia 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 the City shall abide by any supersedeas granted by Fulton County Superior Court.

(3e) *Invalid -appeals.* An appeal may be dismissed as invalid 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 invalid 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 invalid, 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. An appellant 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 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.

(d4) *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 City of Atlanta until such time as the appeal is decided. If recompense relief is granted and the City has received recompense in excess of the amount decided by the Tree Commission, the City shall surrender the check or money order or issue a reimbursement check to the appellant.

Sec. 158-6640. Tree Trust Fund.

(a1) *Establishment and administration.* The City of Atlanta shall maintain a Tree Trust Fund for the protection, maintenance, and regeneration of trees and other forest resources of Atlanta. Records of the balance of the Tree Trust Fund shall be provided by the Department of Planning and Community Development to the Tree Conservation Commission on a quarterly basis.

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(a) *Educational expenditures.* During any given fiscal year, a maximum of five percent of the funds received by the Tree Trust Fund during the immediately preceding fiscal year or one hundred thousand dollars (\$100,000), whichever is greater, may be used for educational materials, educational programs, and an Administrative Analyst whose primary responsibility shall be education, outreach, and representation of the Tree Conservation Commission.

Comment [LU25]: INSERT NEW language from 2008 ordinance re: rollover of funds

(b) *Administration of Tree Protection Ordinance.* A maximum of fifty thousand dollars (\$50,000.00) per fiscal 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, the cost of court reporter services at Tree Commission hearings, and honoraria for Tree Conservation Commission members, as described in **Subsection 158-62(a)**.

(c) *Funds for City staff positions.* A maximum of one hundred and ten thousand dollars (\$110,000.00) per year of the fund may be used for the annual salary and benefits of two (2) arborist positions in the Department of Planning and Community Development. In the event that the costs of the salary and benefits of these positions exceed one hundred and ten thousand dollars (\$110,000.00), the remainder of the cost shall be assumed by the General Fund budget in the Department of Planning and Community Development.

~~(2b)~~ *Recompense for tree removal or destruction to be paid to Tree Trust Fund.*

(a) *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)**.

~~(b) (c)~~ *Recompense for ~~illegal~~ removal or destruction.* Developers, builders, contractors, homeowners and others who violate the criteria for removal or destruction of trees **contained in (Section- 158-102)** shall pay recompense to the Trust Fund for trees illegally removed and destroyed according to the recompense formulas of ~~s~~Section 158-34, in addition to fines assessed in accordance with Section X of this Article.

DIVISION 3. **TREE REMOVAL PERMITS**

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

Comment [p26]: This section is about more than permits.

No person shall directly or indirectly remove, destroy, or injure any tree located on public property that is subject to the provisions of this [Article](#), or any tree having a diameter at breast height (DBH) of six inches or more which is located on private property subject to the provisions of this [Article](#), without obtaining a permit as provided in this section.

(1) *Permits for construction, renovation, demolition.* Requests for permits to remove, destroy, or impact the critical root zones of trees for construction, renovation or demolition shall be submitted to the Office of Buildings in the form prescribed by the City. All permits shall be available for public inspection on site. Any tree with a critical root zone impact over 20 percent is considered destroyed.

A tree with a critical root zone impact of more than 20 percent will not be considered destroyed and will not be charged recompense *only* if all the following conditions are met:

(a) Tree save fencing is established and maintained throughout construction to protect at least 67 percent of the critical root zone, and the structural root plate is not disturbed.

(b) 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.

(c) The prescription of the retained arborist is approved by the City Arborist or City Forester in advance of construction and a paid-in-full receipt for implementation is provided..

(d) 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 destroyed tree shall be charged recompense regardless of whether or not it is removed from the site.

(2) *Other permits.* Requests for permits to remove or destroy trees for safety, landscaping, silvicultural or other purposes shall be submitted to the City Arborist. All permits shall be available for public inspection on site.

~~(a)~~ *Permits for removal of dead, dying, and hazardous trees.*

(1) *Submittal requirements.* Applications to remove dead, dying, diseased, or hazardous trees may be submitted to the Arborist Division by email, phone, fax, or other means. Each application

Comment [p27]: These items do not belong in this section. They relate to recompense, not permits for removal. This detail only serves to distract from the purpose of the section, which is to detail the types of required permits.

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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, its diameter within two inches of the actual diameter, location, and identifying characteristics or added markings. Permits to remove dead, dying, diseased, 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 158-103c(1), the recompense formulas of Subsection 158-103(b) and (c)2, or to public appeal.

(2) *Permit approval.* Permits to remove dead, dying, diseased, or hazardous trees shall be approved at the determination of the City Arborist. The permit shall be valid for six (6) months from the date of its issuance, though the City Arborist may extend the expiration date of the permit by no more than six (6) additional months based upon extenuating circumstances, as determined by the City Arborist.

(3) *Appeals.* Applicants may appeal a notice of denial to the Tree Conservation Commission as provided in this Article.

(4) *Permits exempt from other sections of this Article.* 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 158-103c(1), the recompense formulas of Subsection 158-103(b) and (c)2, or to public appeal.

Comment [p28]: What about appeals of conditions (i.e., if a permit was conditionally approved)?

(b) *Permits for removal of trees for landscaping improvements.*

Applications to remove, destroy, or injure trees for landscaping improvements or other purposes shall be accompanied by a tree replacement plan meeting all of the requirements of Section 158-103. Plantings meeting the requirements of this Article are eligible for credit toward recompense; fees are held from the time of Arborist plan approval until planting is completed for up to one 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, destroy, or injure 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

Comment [LU29]: consider - Implement special review of specimen trees affected by "landscape improvements" See 158-104...

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appeal a notice of denial to the Tree Conservation Commission as provided in this Article.

(b) ~~(e)~~ *Permits for removal of trees for silvicultural improvements.*

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Applications to remove, destroy, or injure 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. Each application shall include a Silvicultural Prescription that is prepared by a private arborist. Payment of recompense for tree(s) on private property, and tree replacement for tree(s) on public property, is required for trees included in any Silvicultural Prescription that includes timber harvesting or stand improvement, except in cases where the intended harvesting or stand improvement is to reduce or prevent the spread of pests or disease. Applications to remove, destroy, or injure 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) and (c)(2)**. Applicants may appeal a notice of denial to the Tree Conservation Commission as provided in this Article.

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3-(3) Permit review and approval process

- (a) *Application review; notice of preliminary approval or denial of permit to remove or destroy trees.* Upon receipt by the City of a complete application 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 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 is issued. 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.

Comment [p30]: Any timeframe associated with this?

Comment [p31]: Can conditions be appealed?

- 4-(b) *Posting of trees on private property.* Once a building plan has been submitted to the Arborist Division for review and the applicant has

marked all trees to be removed or destroyed a Notice of Plan Submittal shall be posted on the City of Atlanta website (www.atlantaga.gov) 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 minimum of ten (10) consecutive calendar days, during which time any member of the public may review the proposed plan on file with the Arborist Division. Once the plans receive preliminary approval by the City Arborist, the property shall be posted in the same prominent manner with a Notice of Preliminary Approval for a minimum of five (5) consecutive working 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 five (5) business days of the date of posting on the affected property. 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.

~~5~~(c) *Posting of trees on public property.* Once a plan has been submitted to the Office of Parks for review and the applicant has marked all trees to be removed, destroyed, or impacted, a Notice of Preliminary Approval shall be posted on the City of Atlanta website (www.atlantaga.gov) 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 minimum of 15 consecutive days and 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 on the affected property. 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.

~~6~~(d) *Time limits for plan approval.* For tree(s) on public property, if no appeal is filed within fifteen (15) calendar 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. For tree(s) on private property, if no appeal is filed within five (5) working 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 fifteen (15) calendar days for tree(s) on public property, or five (5) working days for tree(s) on private property, from the date of posting of a Notice of Preliminary Approval upon the affected property, no permit shall be issued until the sixth (6th) business day after the date of the Tree Conservation Commission's written decision on the appeal, or until the appeal is voluntarily dismissed, whichever is earlier. At that time, the stay shall expire, unless a notice of intent to appeal the Tree Conservation Commission's decision (if any) to the Superior Court is filed with the clerk of the Tree Conservation Commission pursuant to **Subsection 158-65(a)**.

~~7~~(e) *-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 the Superior Court.

~~8~~(f) *Minor amendments to permit*. 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 City Arborist shall certify in writing to the following and such certification shall be attached to the permitted amendments:

(a~~1~~) That the amendments do not alter or amend any rulings of the Tree Conservation Commission made in connection with the particular case; and

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

(c~~3~~) That the amendments in the aggregate do not increase by more than ten (10) percent either the total number or the total DBH of the trees permitted for removal or destruction.

~~9~~(4) *Permit for removal of healthy non-hazardous tree based upon proximity to house*. The provisions set forth in **Subsections 158-101 (b) through 158-101(h)** shall not apply to permits issued pursuant to this **Subsection 158-101(i)**. The provisions provided below in this Subsection shall pertain to this Subsection 158-101(i) only (**make numbers match**). The City Arborist may issue a permit to remove any tree located on private property within five (5) feet of the structural foundation of an existing single family residential dwelling structure or duplex located on property subject to the provisions of this ~~A~~article and subject to the

following:

- (a) The owner of the property on which the subject tree is located has submitted an application to the City Arborist in a form prescribed by the City Arborist.
- (b) The application is not for the removal of a boundary tree unless the adjoining property owner is a co-applicant for the permit.
- (c) The application is not for the removal of a right-of-way tree or any other public tree. For the purpose of this section a right-of-way tree is a tree deemed by the Arborist to have at least 50 percent of the flare of the tree, where the tree interfaces with the earth, located on public property.
- (d) There has been no removal of a tree pursuant to this subsection (158-101(i) for five years from the date of an application previously approved pursuant to this subsection, unless the tree(s) previously permitted and removed was leaning by greater than twenty (20) degrees, as measured at breast height of the tree, toward an existing single family residential dwelling structure or duplex located on the subject property. The five- year time period between a previously approved application and a new application shall apply to the property and shall not be affected by any change of ownership or reconfiguration of the property boundaries. Any property which is combined with any part of any other property which has already utilized the five year removal privilege shall be considered to have used the five year removal privilege. In the event that a lot with reconfigured property lines has received more than one approval under this subsection, the latest approved application shall be considered for deciding when a new application may be received.
- ~~(5e)~~ The tree is not being removed in association with a demolition permit. If a demolition permit is requested within one year of issuance of the removal permit, full recompense shall be paid.
- ~~(6f)~~ When determining the distance of the tree from the dwelling structure, the tree shall be measured at the base of the tree trunk on the side of the tree that is closest to the structure at issue.
- ~~(7g)~~ When determining the location of the foundation of the structure at issue, any portion of the structure constructed on piers or pilings shall not be deemed to be part of the foundation.
- ~~(h8)~~ No posting of the property is required prior to the issuance of a

permit pursuant to this subsection.

- (i9) Only the property owner shall have appeal rights associated with the permit. Such appeal rights shall be as set forth in **Section 158-65 of this Article**.
- (40j) Where a permit is issued, the property owner shall not be required to replace the tree or pay recompense, except that where removal of the tree will result in the loss of ten percent (10%) or more of the tree canopy on the subject property, as determined by the City Arborist. In this case, issuance of the permit shall be contingent upon the property owner's planting a replacement tree on the subject property pursuant to the criteria set forth in this Article.
- (44k) Where a tree is removed without a permit, recompense, and fines shall be calculated and owed as prescribed throughout the Tree Protection Ordinance, even if the property would have been eligible for a tree removal permit pursuant to this Subsection.
- (l) The City Arborist shall not issue a permit if the tree at issue is located on property that was the subject of a violation of the Tree Protection Ordinance within one (1) year of the filing of the permit application.

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

(1) No permit shall be issued for the removal or destruction of any living-and non-hazardous tree unless the plan meets all three of the following requirements and at least one requirement of subsection (3):

- (4a) A tree replacement plan meeting the requirements of **Section 158-103** has been approved;
- (2b) All other requirements of the Tree Protection Ordinance are met;
and
- (3c) One of the following conditions exists:
 - (a1) 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, and such improvements necessitate an impact on the tree(s) in question;

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(b2) The tree is located in that portion of the setback 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, or construction plans cannot be adjusted to allow for the preservation of the setback tree(s);

3)e. The tree removal qualifies for a permit pursuant to Section 158-101(i).

(b2) The following species of trees, if twelve (12) inches or smaller DBH and located on private property, are exempt from the posting, replacement, and recompense portions of this Article, and from Section 158-102(a)(3) of this Article whereby a property owner may remove the tree located on her/his property without posting, replacing the tree, or paying recompense: Mimosa - (~~*Albizia julibrissin*~~); Tree of heaven - (~~*Ailanthus altissima*~~); White mulberry - (~~*Morus alba*~~); Paper mulberry - (~~*Broussonetia papyrifera*~~); Chinaberry - (~~*Melia azedarach*~~); Princess tree - (~~*Paulownia tomentosa*~~); Carolina cherry laurel - (~~*Prunus caroliniana*~~); Bradford Pear - (~~*Pyrus calleryana*~~); Leyland cypress - ~~(*Cupressocyparis leylandii*)~~.

Comment [LU32]: Consider: privet, honey locust, and arbor vitae.]

(3) Where such species of tree is larger than twelve (12) inches DBH and located on private property, the property owner need not post the tree, and need only replace the tree or pay recompense if the tree cover on the lot from which the tree is removed is less than the minimum required tree cover per zoning district, as set forth in Section 158-103(g). Removal of trees of one of the above-listed species, where the tree is six (6) inches DBH or larger, requires the homeowner to apply for and receive a permit from the Office of Buildings, and said application must include:

- (a) At least two (2) pictures of the tree at issue that identify the species of tree; and
- (b) A site plan showing the appropriate zoning information of the property; and
- (c) A tree survey including but not limited to location, quantity, species, and DBH, prepared by an ISA-certified arborist or landscape architect.

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

- (1) *Minimal impact on 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.

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(a) *Replacement trees, private property.* When healthy trees are removed from private property in association with construction or other improvements, the applicant shall plant replacement trees on site equaling the total number of trees being removed or destroyed unless conditions do not permit. In all circumstances, minimum restocking requirements must be met unless site conditions do not permit. In such cases, a combination of off-site planting or recompense may be approved. The City Arborist shall determine the maximum number of trees which reasonably can be accommodated in a manner which will allow mature growth of the replacement trees.

Comment [p33]: What does this mean? An "including, but not limited to," phrase might be useful here to establish general parameters. Does it relate to the "construction or existing dense tree cover" described in Subsection B?

(b) *Offsite plantings for recompense credit.* Where construction or existing dense tree cover preclude replacing the total number of trees on site, the City Arborist may approve a plan which includes off-site planting. Off-site plantings 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 (1) mile of the NPU boundary. Final plan approval will not be given unless approved location for any required off-site plantings is attached to submitted plan.

(c) *Replacement trees, public property.* When healthy trees are permitted for removal or destruction on public property, the cumulative DBH of the replacement trees shall be equal to or greater than the cumulative DBH of the trees removed or destroyed.

Comment [LU34]: [May consider requiring only replacement of trees on public property rather than inch-for-inch (but no monetary recompense) in accordance with standard recompense replacement formula.]

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(d) *Type of replacement trees required.* Where appropriate site conditions exist, replacement trees shall be overstory or mid-canopy species. Understory trees shall be permitted only where site conditions do not allow the planting of overstory or mid-canopy trees. *Overstory trees shall be planted at a minimum thirty-five (35) feet on center. Mid-canopy trees shall be planted at a minimum twenty-five (25) feet on center. Understory trees shall be planted at a minimum fifteen (15) feet on center. If minimum stocking requirements have been met, certain columnar species used primarily for screening may be accepted for recompense in accord with the planting distances established for understory trees.*

(e) *Prohibited replacement trees.* The following species of trees may not be used as replacement trees: Mimosa - (*Albizia julibrissin*); Tree of heaven - (*Ailanthus altissima*); White mulberry - (*Morus alba*); Paper mulberry - (*Broussonetia papyrifera*); Chinaberry - (*Melia azederach*); Princess tree - (*Paulownia tomentosa*); Carolina cherry laurel - (*Prunus caroliniana*); Bradford Pear - (*Pyrus calleryana*); Leyland cypress - (*Cupressocyparis leylandii*). In addition, no recompense credit shall be provided for the planting of said species of trees. This list may be amended and recorded in Arborist Division Standards and Practices.

Comment [LU35]: [consider addition of privet, honey locust, arbor vitae, etc.]

- (2) *Recompense*. Recompense is based upon the difference between the number of trees removed or destroyed (Nrem) and the number of trees replaced (Nrep) on a site, as well as the difference between the total diameter inches (DBH) removed or destroyed (TDBHrem) and the total caliper inches of the trees replaced on site (TCIrep). The total recompense (R) shall be calculated according to the following formula:

$$R = \$100.00 (Nrem - Nrep) + \$30.00 (TDBHrem - TCIrep)$$

When the recompense amount (R) is greater than zero, this amount is paid to the Tree Trust Fund.

Look for incentives to encourage planting. On the one hand, if it costs us more to plant and maintain a tree than is covered by recompense, we're losing trees; on the other, if the builder/property owner gets too small an amount, he won't replant. Keep in mind that the property owner receives benefit of trees and their enhancement. Initially the credit was based on this - 50/50 of "costs" of tree on private property could be underwritten by owner/City. The cap (maximum recompense) was developed initially to deal with oldfields pine plantations in south of City so that development did not become cost prohibitive.

Consider: credits when saved trees exceed multiples of minimum stocking. (For example, no recompense for up to x number of trees removed as long as a multiple of the minimum stocking for that zoning category remains saved).

(a) *Limits and adjustments to recompense.*

(1) For recompense purposes of this section, all trees except pines with a minimum DBH of six (6) inches shall be included in the formula. Pines with a minimum DBH of 12 (twelve) inches shall be included in the formula.

(2) *New subdivisions, new lots of record, and vacant lots.* 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 (1) tree per four hundred (400) square feet and are planted in accordance with minimum spacing standards of Section 158-103(a)(1).

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Review these minimums of DBH required (consider reviewing samples of submitted plans); minimum retention may need to be raised or they may need to be based on the retention of a multiple of the minimum stocking requirement for each category.

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%* min DBH retained per lot basis	\$5,000.00
O & I, C (1-5), I (1&2)	10% 20%	\$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

*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.

Comment [LU36]: Consider omitting this category.

**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:

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

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

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(3) *Maximum recompense qualifications.* 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) *Affordable housing.* For housing unit sales 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 maximum recompense owed may be reduced to 50 percent of the above percentage values in accordance with the applicable zoning district.

Comment [p37]: How are housing sales prices related to median family income (and HUD doesn't determine median family income)? Shouldn't it be a combination of unit price in relation to median value and household income in relation to area median income (AMI)?

(5) *Affordable housing.* For housing unit sales 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 maximum recompensed owed may be reduced to 75 percent of the above percentage values in accordance with the applicable zoning district.

Comment [p38]: Same as above. An affordable unit's sales price might easily be more than 1.5 times median family income.

(6) *Streets and infrastructure.* For trees removed in the required construction of streets and related infrastructure in new subdivisions or other residential planned developments, a maximum shall be set on recompense at \$5,000.00 per acre, pro rated, provided that trees are replanted at a minimum of one (1) tree per fifty (50) linear feet. Each credited tree must be planted in a planting strip which is a minimum of four (4) feet in width and twenty-five (25) feet and in accordance with minimal spacing standards set forth in Section 158-103(a). For infrastructure development that requires disturbance of one (1) 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.

Comment [p39]: What about planned mixed-use developments that have a residential component?

(7) *Conservation easements.* Conservation easements granted pursuant to Section 158-32 that result in the preservation of wooded lands (minimum of ___ DBH per acre), or newly created wooded parkland afforested to one hundred (100) caliper inches per acre, and that are perpetual in duration, may receive a credit of twenty thousand dollars (\$20,000.00) per acre, prorated, against recompense fees. Natural water detention areas established in lieu of the construction of detention ponds

Comment [LU40]: Determine minimum level of forestation that should be required.

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shall qualify as conservation easements if so deeded as a conservation easement.

(8) Fee simple donation of land for conservation purposes. In addition, a fee simple donation of land that is afforested to one hundred (100) inches DBH per acre, and that is accepted by the City, will receive a credit of twenty thousand dollars (\$20,000) per acre, pro rated, against recompense fees, but only if the City dedicates the land for a use that will preserve the land in its natural scenic landscape or in a forest use.

More credit for placing wooded land which includes specimen trees or extremely well-stocked woodland into easement? \$30K? Also, see guidelines developed by Green Team/Parks/Watershed Departments.

(9) Affordable rental housing. For rental housing units that have at least twenty (20) percent of the total number of residential units constructed dedicated to households whose annual incomes do not exceed sixty (60) percent of the median family income for the Atlanta metropolitan statistical area, the maximum recompense owed may be reduced to fifty (50) percent of the above percentage values in accordance with the applicable zoning district.

~~(#3)~~ The City Arborist and the City Forester 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 the total number and caliper inches of trees replanted during the preceding quarter in each of the following categories: standard recompense associated with building permits, maximum recompense associated with building permits, dead/dying/diseased/hazardous permits, landscaping permits, silvicultural permits, , parking lot removals, illegal removals, public property and off-site planting, and 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.

Comment [p41]: This section seems out of place, as it falls between recompense requirements and replacement requirements.

~~(g4)~~ *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 requirements, the City Arborist shall require an afforestation standard such that the minimum tree cover per zoning district (below) 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.

[Evaluate minimums below; consider factors needed for “full stocking” of mature trees. See maximum lot coverage charts for each zoning category.]
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:

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R-5, R-4-A and R-4-B districts: 35 inches per acre **consider requiring front yard tree required**

R-3, R-3-A and R-4 districts: 40 inches per acre **ditto**

R-2 and R-2-A districts: 100 inches per acre **ditto**

R-1 districts: 150 inches per acre **ditto**

RG, PD and all other districts: 90 inches per acre **ditto**

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(5) Tree replacement.

(a) *Size and quality of replacement trees.* Replacement trees shall be a minimum of two and one-half (2.5) inches in caliper and must be of - nursery stock quality. Regardless of caliper or diameter-at-breast-height, replacement trees shall not subsequently be removed or destroyed without a permit from the City Arborist.

(b) *Planting priority.* The location of replacement 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 which may be accomplished with front yard or right-of-way plantings. For every fifty (50) linear feet of street frontage, there shall be at least one (1) tree planted. Where conditions allow, plantings shall be overstory or mid-canopy shade trees. Where there are constraints to planting shade trees in the right-of-way, such as overhead utilities, overstory and mid-canopy trees shall be planted in the front yard. Where conditions do not allow for planting shade trees in either location, understory trees shall be planted in the front yard or the right-of-way. Street trees shall be planted as close to the street as is practicable. Internal heat islands shall be shaded to the extent practicable when planting to meet minimum stocking requirements or replanting requirements.

(2) *Soil stabilization.* Replacement trees shall next be planted on- slopes with a grade between 2:1 and 3:1 and other erodible areas and on the banks of wetlands and waterways. Where site conditions on such slopes and stream buffers necessitate, the City Arborist may accept replacement trees in five (5) gallon containers and credit recompense proportionally. (For example, credit for ten [10] five [5] gallon trees shall equal fifteen inch [15"] caliper or seven [7] trees).

(3) *Other plantings.* Following satisfaction of priorities (1) and (2) and meeting minimum stocking requirements, 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.

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Sec. 158-104. Protection of trees during construction.

(a) The City Arborist shall require that improvements be located so as to result in the protection of the trees on the site as well as trees located on abutting properties owned by others. Impact to trees shall be minimized to the greatest degree possible under the particular circumstances, as determined by the City Arborist according to the following guidelines:

(1) *Wetlands, floodplains, environmentally sensitive areas on sites greater than one (1) acre.* On lots and subdivisions of one (1) 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, 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) *Wetlands, floodplains, environmentally sensitive areas on sites less than one (1) acre.* For subdivisions of less than one (1) acre with environmentally sensitive areas, land disturbance shall be confined to the area necessary for construction. Grading, trenching, and other land disturbance shall be allowed only to implement hydrologic and erosion control measures, access corridors to streets and utility connections, and to meet other code requirements.

Comment [p42]: Does this need to be defined again (as above)?

Sec. 158-105. Site plan required.

(1) *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 (6) inches or greater. Such site plan shall contain topographic information at two (2)-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 six (6) inches or larger to be saved or destroyed, the percentage of critical root zone that will be impacted, the required tree protection fences for trees to be saved, and the proposed tree replacement plan. The proposed

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tree replacement plan shall set forth the manner in which the newly planted trees will be watered. (For example, manually, by drip irrigation, with watering bags, etc.) In addition, a copy of a paid maintenance plan shall be attached if applicable. Pines less than twelve (12) inches DBH are exempted from the requirement to include them 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, only trees with a critical root zone entirely outside the work limit shall be exempt from the site plan.

If site plan shows no trees impacted, photos and affidavit by property owner or contractor are required (now in S.O.P.s; needs to be included in ordinance).

(b2) *Boundary trees.* Boundary trees shall be included in the site plan. The portion of the critical root zone of all boundary trees that overlap the work limit area 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 to a boundary tree during construction, including but not limited to watering regimes, root treatments, mulching, deadwood removal, and protective pruning.

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 of the Office of Buildings, and thereupon demolition, grading and construction may proceed.

Waiver of preconstruction conference. For any permit for an addition to a one-family or two-family residence, the City Arborist may elect to 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.

Site inspections during construction. (Trigger for sites above certain dollar amount or number of saved trees known to be on-site or presence of boundary trees; also trigger for inspection of “no trees impacted”; e.g. by random in Accela computer system.)

Comment [p43]: Designate when/what shall trigger site inspection during construction, especially if preconstruction conference is waived.

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Sec. 158-107. Certificates of occupancy.

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No certificate of occupancy shall be issued by the Director of the Office of Buildings with respect to any permit unless and until the City Arborist has inspected such site and confirmed that all replacement trees have been planted in accordance with this Article, all trees shown to be saved on the Arborist-approved site plan have been saved in accordance with the provisions of this [Article](#), and all fines and fees associated with illegal destruction or removal of trees have been paid in full

Sec. 158-108. Maintenance of trees.

The owner shall be responsible for maintaining the health of all replacement trees for a period of two (2) years 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.

Sec. 158-109. Exemptions.

The following circumstances are exempted from the terms of this [Article](#):

(1) *Imminent hazard.* When the Parks Forester, Arboricultural Manager, or City Arborist finds a tree to present a 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 Forester, Arboricultural Manager or City Arborist. Any property owner or resident who reasonably believes and can demonstrate that a tree on his/her, property presents imminent hazard or danger to the health, safety, and welfare of the public, may contact the City Arborist or his/her designee by [email](#) or [phone](#) to inform the City Arborist of the emergency. Based upon the information provided by [email](#) or [phone](#), the City Arborist or his/her designee may give verbal approval of the tree's removal. Within five working days of said approval, the owner, resident, or his/her agent must provide to the Arborist Division photos of the tree at issue along with a tree removal application. Failure to follow these procedures may result in an assessment of recompense and fines. In addition, should the photos and application, and any other information obtained by the City Arborist, cause the City Arborist to find that the tree did not present imminent hazard or danger, the City Arborist shall assess recompense and may impose a fine on the property owner or responsible party. Should the emergency be identified by the property owner or resident during non-working hours, s/he may remove the tree immediately, but must contact the City Arborist or his/her designee during the next working day to discuss the emergency, and must submit the information described above within five working days of the tree's removal. The owner and/or resident may be subject to recompense and fines under the circumstances described above in this subsection.

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

(3) *Nurseries and tree farms.* 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, shall also be exempt per these provisions.

Comment [p44]: Given that these are both exemptions from the entire article, should they be placed in Division 1 (General Requirements)? Yes.

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, fall 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 Forester, Arboricultural Manager, or City arborist, the official, in his or her discretion, may submit, through the Director of the Office of Parks, a written opinion to the Director of the Office of Buildings. Upon receiving a written opinion from the Office of Parks that any tree or part thereof is a nuisance as defined in this section, the Director of the Office of Buildings shall commence nuisance abatement proceedings.

(2) *Notice to owner to remedy conditions; failure to comply.* The Director of the Office of Buildings shall give written notice to the owner or the person in possession of the property, 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. In no event shall such reasonable time exceed ten (10) working days. Such notice shall further state that unless the tree or part thereof is voluntarily removed within the time specified, the Director may cause a 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 constitutes 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.

Comment [p45]: Should this be "and"? OR should this be given only to the owner or the owner's authorized representative? Shall City be able to provide permit to complaining party if non-owner?

(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 (10) 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~~ Emergency provisions apply to trees designated as a nuisance trees by the City Arborist which pose immediate hazards and, because of the imminence of danger, ~~pose~~ pose a too great a risk to leave standing while standard procedures for giving notice take place. In such cases where danger to the public or public property is imminent, the Director of the Office of Parks shall have the right, but not the obligation, to enter the property and abate the nuisance. The reasonable costs of such work, as documented by the Office of Parks, shall be reimbursed by the Department of Planning and Community Development. The Department of Planning and Community Development shall have the authority to obtain reimbursement from the property owner.