

CITY OF ATLANTA – TREE ORDINANCE “MINI-UPDATE”

The Atlanta Department of City Planning has been working on a multi-year update to the current Tree Ordinance in the City of Atlanta. This first iteration, the “mini-update,” was presented to the Atlanta Technical Advisory Committee (TAC), of which the Council for Quality Growth has a statutorily appointed member, at its meeting on May 9, 2018.

According to the City Arborist and Commissioner Tim Keane, this mini-update is still in its very early stages, so feedback and critiques are welcome as the ordinance update moves forward. Please send your comments and feedback to Taylor Morison at tm@councilforqualitygrowth.org or James Touchton at jt@councilforqualitygrowth.org for inclusion in the Council’s formal comments to be submitted at a later date.

Please see below for a full breakdown of the Tree Ordinance “mini-update.”

Atlanta Tree Ordinance – “Mini-Update”

Vacant Lots

- **Current Ordinance:** Section 158-26 – Vacant lot means a property of record that has not had a structure on it in the past five years.
- **Issue:** This definition includes “structure” which isn’t defined in the Tree Ordinance and can cause confusion. The definition the Arborist Division has worked with is “[t]hat which is built” which is inconsistent with other departments.
- **Proposed Rewrite:** Vacant lot – a property of record that has not had a building, driveway, pavement, road, wall, or other structure (excluding mailboxes and fences) on it in the past ten years, or had a demolition permit issued in the last ten years.
- The City of Atlanta believes that this definition provides clarity to the term “vacant lot” in the tree ordinance and removes perceived inconsistency among departments.

“Five-Foot Rule”

- **Current Ordinance:** Section 158-101 (i) – Permit for Periodic Tree Removal based upon location 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. 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 article, subject to the following: 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.
 - This subsection continues through Section 158-101 (i) (12) The City Arborist shall not issue a permit of the tree at issue is located on property that was the subject of a violation of the tree protection ordinance within one year of the filing of the permit application.
 - Please see Tree Ordinance for entire subsection.
- **Issue:** This subsection is unnecessary because any tree that cracks a foundation or other negative impact, etc. can be approved under the dead, dying, hazardous application process. If a tree is affecting the structure it may be approved on the spot if the foundation is obviously impacted. If impact is not obvious, a report from a structural engineer is requested to verify the impact. This method of assessment worked well prior to the introduction of the “five-foot rule.”
- **Proposed Rewrite:** Remove this subsection.
- The City believes that removing this subsection simplifies the Tree Ordinance without hindering a property owner’s ability to remove a tree causing structural damage to a house.

TREE ORDINANCE MINI-UPDATE

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- “Five-Foot Rule”
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Undesirable Tree Species (1)

- **Current Ordinance:** Section 158-102 (b) – The following species of trees, if 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 his/her property without posting, replacing the tree or paying recompense: Mimosa; Tree of Heaven; White Mulberry; Paper Mulberry; Chinaberry; Princess Tree; Carolina Cherry Laurel; Bradford Pear; Leyland Cypress.
 - This subsection continues through (3) A tree survey including but not limited to location, quantity, types and DBH, prepared by ISA certified arborists or landscape architects.
 - Please see Tree Ordinance for this subsection in its entirety.
- **Issue:** Additional trees should be added to this list and no recompense or posting ought to be required for the removal of any species on this list regardless of the size.
- **Proposed Rewrite:** The following species of trees 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 his/her property without posting, replacing the tree, or paying recompense: Mimosa; Tree of Heaven; Cryptomeria; Chinese Hollies including hybrids; Ligustrum; White Mulberry; Paper Mulberry; Chinaberry; Princess Tree; Redtip Photinia; Carolina Cherry Laurel; Bradford Pear; Arborvitae; Chinese Tallowtree; Leyland Cypress; Chinese Elm; Siberian Elm.
 - Removal of trees listed above that are six inches DBH or larger, requires the property owner or his/her representative to apply for and receive a permit from the Office of Buildings, and said application must be made either by requesting an inspection by a City Arborist using the Dead, Dying, Hazardous application or provide the following via email or hardcopy:
 - At least two pictures of the tree at issue that allows the City Arborist to clearly identify the species of tree; and
 - A completed Dead, Dying, Hazardous application.
- The City believes that this change will unburden property owners by not requiring recompense or posting to maintain or help protect a healthy native tree canopy. The only request is to obtain a permit to verify the species.

Undesirable Tree Species (2)

- **Current Ordinance:** Section 158-103 (2) – The following species of trees may not be used as replacement trees: Mimosa; Tree of Heaven; White Mulberry; Paper Mulberry; Chinaberry; Princess Tree; Carolina Cherry Laurel; Bradford Pear; Leyland Cypress. In addition, no recompense credit shall be provided for the planting of said species of trees.
- **Issue:** This section could be simplified by omitting the list of tree species, but reference the list in Section 158-102(b), and say they are not to be used as a replacement tree for credit. This reduces the chance of confusion, possible typo, or accidental omission when updating the Tree Ordinance.
- **Proposed Rewrite:** The species of trees listed in Section 158-102(b) may not be used as a replacement tree for credit.
- The City believes that removing the list and referring to the previous section simplifies the Tree Ordinance.

Tree Planting List

- **Current Ordinance:** Section 158-103(a)(1) – Where appropriate site conditions exist, replacement trees shall be over story or mid-canopy species. Understory trees shall be permitted where site conditions do not allow the planting of over story or mid-canopy trees. Over story trees shall be planted at a minimum 35 feet on center. Mid-canopy trees shall be planted at a minimum 25 feet on center. Understory trees shall be planted at a minimum 15 feet on center. Certain columnar species used primarily for screening may be accepted for partial recompense in accord with the planting distance established for understory trees.
- **Issue:** Currently, any tree, except for undesirable species per Section 158-103(2), can technically be approved as a replacement tree. To promote and maintain a native tree canopy the recommendation is to move to a tree replacement plan using native trees, and where non-native trees are considered on a case-by-case basis.
- **Proposed Rewrite:** Where appropriate site conditions exist, trees receiving recompense credit shall be over story or mid-canopy species from the City of Atlanta Tree Planting List. Understory trees shall be permitted only where site conditions do not allow the planting of over story or mid-canopy trees. Over story trees shall be planted at a

minimum 35 feet on center. Mid-canopy trees shall be planted at a minimum 25 feet on center. Understory trees shall be planted at a minimum 15 feet on center. Non-native trees may be considered by the City Arborist on a case-by-case basis.

- The City believes that promoting the replanting of native trees encourages the replacement of the City's native trees lost due to construction and removal of trees approved as dead, dying, or hazardous.

Planting Guidelines

- **Current Ordinance:** N/A
- **Issue:** Introduce a proposed guideline when new trees are to be planted. The guideline is meant to reduce the risk of catastrophic tree loss due to pests. It also serves to prevent a monoculture of tree plantings.
- **Proposed Rewrite:** Trees receiving recompense credit must adhere to the following distribution for proposed trees: When ten to twenty trees are proposed to be planted, at least four species shall be protected; When twenty-one to twenty-nine trees are proposed for replanting at least five species are to be planted. When thirty or more trees are proposed to be planted, no more than 10% of overall trees planted on a lot shall be of the same species, no more than 20% shall be of the same genus, and no more than 30% shall be of the same family. Red Maple trees shall not be planted in parking lots. Species selection is subject to the City Arborist's approval based upon site conditions.
- The City believes that the 10-20-30 percent rule is a guideline meant to reduce the risk of catastrophic tree loss due to pests. It also serves to prevent monoculture tree plantings, and to support diverse populations of wildlife, birds, pollinators, and beneficial insects.

Columnar Trees

- **Current Ordinance:** Section 158-103(a)(1) – Where appropriate site conditions exist, replacement trees shall be over story or mid-canopy species. Understory trees shall be permitted where site conditions do not allow the planting of over story or mid-canopy trees. Over story trees shall be planted at a minimum of 35 feet on center. Mid-canopy trees shall be planted at a minimum 25 feet on center. Understory trees shall be planted at a minimum 15 feet on center. Certain columnar species used primarily for screening may be accepted for partial recompense in accord with the planting distance established for understory trees.
- **Issue:** Columnar trees have a very small canopy. They vary in size from 10 feet to 15 feet wide and between 15 feet to 30 feet tall. Typically, these species are planted for privacy. They do not contribute to the canopy and ecology of the city because of their limited size, and many are non-native.
- **Proposed Rewrite:** Strike the last sentence from this subsection (“Certain columnar species used primarily for screening may be accepted for partial recompense in accord with the planting distance established for understory trees”).
- The City believes that this change encourages a diverse planting of trees.

Nuisance Tree

- **Current Ordinance:** Section 158-110(2) – Notice to owner to remedy conditions; failure to comply. The director, bureau of buildings shall give written notice to the owner or the person in possession, charge or control of the property where a tree nuisance 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 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 summons to be issued requiring the party notified to appear in the municipal court to have there determined whether the tree or part of a tree involved constitute a nuisance and should be abated. If the tree is not removed within the time specified by the director, the director may cause the owner of such tree, or the person in possession, charge or control thereof, to be summoned to appear before the judge of the municipal court to determine whether or not the tree or part of a tree involved constitutes a nuisance.
- **Issue:** The allotted time of ten working days isn't enough time to have a tree removed. Several situations where the property owner has understandable difficulty either with pulling the resources to pay for the mitigation, or being able to schedule a tree company within the ten allotted days to remove the tree. In most cases, ten days isn't enough time to work out the logistics.
- **Proposed Rewrite:** “In no event shall such reasonable time exceed 30 days.”

- The City believes that this change provides a realistic timeframe to property owners to find a tree company, obtain quotes, and schedule tree(s) to be removed. Increasing to thirty days allows the Arborist Division to work with property owners and stay in compliance with the Tree Ordinance.

Maximum Recompense

- **Current Ordinance:** Section 158-103 – “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.”
- **Issue:** Currently, the maximum recompense formula (cap per acre) applies to new subdivisions, new lots of record, and vacant lots. New lots of record and subdivisions, even if not vacant, can qualify for this recompense formula. This formula creates unfair recompense fees when qualifying properties are compared to occupied properties that may only be adding an addition where the standard recompense formula applies.
- **Proposed Rewrite:** Section 158-103 – “For vacant lots, a maximum shall be set on recompense for lots three acres or greater in size 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 site.
- The City believes that this change makes recompense more fair, for example, between property owners that are adding onto their own property and those doing new construction. Maintains the maximum recompense formulas on larger properties.

Boundary Trees and Prescriptions

- **Current Ordinance:** Section 158-105(b) – Boundary trees. Boundary trees shall be included in the site plan. The on-site portion of the root save area of a boundary tree shall be enclosed in a tree protection fence according to established arboricultural standards. In consultation with the owner or owner’s representative of a boundary tree, the City Arborist may prescribe and the applicant shall institute additional protective measures to limit impact on the tree during construction, including but not limited to watering regimes, root treatments, mulching, deadwood removal, and protective pruning.
- **Issue:** The current ordinance is unclear when a prescription may be required based on the percent impact to the critical root zone. A prescription may be required when the percent impact is more than 20 percent, but not more than 33 percent.
- **Proposed Rewrite:** Section 158-105(b) – Boundary trees. Boundary trees shall be included on the site plan. The portion of the root save area of a boundary tree on the site of the proposed construction shall be enclosed in a tree protection fence (metal or other sturdy material) according to established arboricultural standards. Prior to issuing preliminary approval, the City Arborist shall obtain a boundary agreement signed by the owner and co-owner of each impacted boundary tree. The City Arborist may require a prescription to be obtained by the owner or owner’s representative if the proposed impact to the critical root zone is greater than 20 percent but not more than 33 percent. The City Arborist may require that prescription include additional protective measures to limit impact on the tree during construction, including but not limited to watering regimes, root treatments, mulching, deadwood removal, and protective pruning.
- The City believes that this change provides clarity to the requirements when a prescription is required and codifies the boundary agreement which has been a standard operating procedure in the Arborist Division.

Posting Requirements

- **Current Ordinance:** Section 158-101 (e)(1) – Posting. For trees located on private property, two postings shall be required. The first posting shall remain for a minimum of ten calendar and shall notify the public that an application to remove the designated tree(s) was filed with the City. The City will not accept any appeals filed within this ten day notice period. The second posting, providing notice of preliminary approval, shall be made if and when the City issues preliminary approval of the application to remove the designated tree(s) from private property. This second posting shall remain in place for five business days, during which time the City will accept appeals.
- **Issues:** The time period of ten calendar days and five business days extends the time to permitting.

- **Proposed Rewrite:** Section 158-101(e)(1) – Posting. For trees located on private property, one posting shall be required. The posting shall provide notice of preliminary approval and shall be posted if and when the City issues preliminary approval of the application to remove the designated tree(s) from private property. This posting shall remain in place for 10 business days, during which time the City will accept appeals.
- The City believes that reducing the number of postings to one will streamline the permitting process, reduce workload in the Arborist Division, and reduce cost of posting signs.