

ARTICLE II. TREE PROTECTION*

***Editor's note:** Ord. No. 2001-102, § 3, approved Dec. 11, 2001, states that the provisions of article II shall apply to all applications for permits pending at the time it takes effect, unless such application to pending cases should work to deprive an appellant of the right to appeal, in which case former deadlines, if any, should apply.

Cross references: Environment, ch. 74.

DIVISION 1. GENERALLY

Sec. 158-26. Definitions.

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

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

Boundary tree means a tree on adjacent property whose root save area intrudes with a critical root zone that crosses a property line. across the property line of the site under consideration.

City shall mean City of Atlanta.

Buildable area ~~means that~~ area of the lot available for the construction of a dwelling and permissible accessory uses after having provided the required front, side, rear and any other special yards required by part 15 or part 16 of the city code.

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.

City arboricultural standards means the arboricultural specifications and standards of practice, prepared by the City Forester and City Arborist and approved by the Tree Conservation Commission, which are adopted pursuant to this article. These standards are to be consistent with International Society of Arboriculture (ISA) and American National Standards Institute, Inc. (ANSI) A300 guidelines.

City Arborist ~~shall means~~ an agent of the Department of Planning and Community Development responsible for administering and enforcing this article regarding trees on private property, ~~or an agent of the department of parks, recreation and cultural affairs responsible for administering this article regarding public property.~~

City Forester means an agent of the Department of Parks, and Recreation, and Cultural Affairs responsible for preparing and regularly maintaining the arboricultural specifications and standards of practice administering and enforcing this article regarding trees on public property and in the public right-of-way; also referred to as City Arborist or Parks Arborist. The City Forester is also responsible for preparing and administering the urban forestry master plan and for enf. for preparing and administering the master plan and for regulating and conserving trees on public land enforcing this article regarding public property.

City Landscape Architect

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

~~Critical root zone (CRZ) shall mean the area surrounding a tree that is essential to that tree's survival; for the purposes of this ordinance CRZ for a free standing tree with no apparent root restrictions, the root save critical root zone area shall consist of a circle having a radius of one foot for each one inch of diameter at breast height of the tree. Adjustments to the critical root zone root save area may be made by the City Arborist if justified by specific documented site conditions. Root save area, as defined below.~~

~~Destroy means 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 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 20 percent of the critical root zone root save area; 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 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 as destruction of a tree.~~

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

~~Disease means any fungal, bacterial, or viral infection that will likely result in the death of the tree within five years and where treatment will not prevent the death of the tree, as determined by the City Forester or City Arborist. Disease shall also mean any fungal, bacterial or viral infection that has progressed to the point where treatment will not prevent the death of the tree, as determined by the City Forester or City Arborist.~~

~~Dying tree a tree more likely than not to die within five years, based upon inspection and evaluation of the City Arborist or City Forester.~~

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~~Established recompense value means the dollar value assigned by to the City, of a tree on private or public property used for the purpose of calculating cash recompense to be paid for removal or destruction of healthy tree on private property. The established recompense value as of January 2003 is \$100.00 per tree and \$30.00 per diameter inch. This figure shall be evaluated and adjusted periodically by amendment to this ordinance, as proposed by the Tree Conservation Commission in consultation with the City Arborist.~~

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

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

- | *Fully stocked* ~~means~~ a site occupied by trees at a density of 1,000 inches DBH/acre (e.g., 40 trees averaging 25 inches DBH on a one-acre site).
- | *Hardship* ~~means~~ a unique or otherwise special existing condition that is not addressed by the ordinance.
- | *Hazard tree* ~~means~~ a tree with uncorrectable defects severe enough to pose present danger to people or buildings under normal conditions, as determined by the City Arborist or City Forester.
- | *Heat island* ~~means~~ a ground area covered by an impervious surface that retains solar or other heat energy and thereby contributes to an increase in the average temperature of the ecosystem. An external heat island is one situated outside a site, including but not limited to public streets. An internal heat island is one situated within a site, including but not limited to rooftops, patios, driveways, and other vehicular maneuvering and/or parking areas. ~~Recreational areas including but not limited to swimming pools and game courts are excluded from this definition.~~
- | *Historic tree* ~~means~~ a tree that has been designated by the Tree Conservation Commission, upon application by the City Arborist or any other interested person, to be of notable historic value and interest because of its age, size or historic association, in accordance with the city arboricultural specifications and standards of practice. Such designation may occur only by resolution of the Tree Conservation Commission, ~~and~~ or the City Arborist. A complete listing of the location of each historic tree shall be maintained with the Municipal Clerk.
- | *Illegally removed tree* ~~means~~ any tree that is removed or destroyed without a permit.
- | ~~*Impacted tree* means a tree that will suffer injury or destruction of more than 20 percent but not more than 33 percent of its root save area. See Lost Tree~~
- | *Incursion* ~~means~~ any occasion of prohibited activity within the area of the tree's critical root zone required to be protected by a tree protection fence, the provisions of the ordinance and as reflected by the or stamped construction plan stamped by the City Arborist.
- | *Injure* means 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~~root save area~~.
- | ~~*Lost tree* means any tree with whose root save area will a critical root zone suffering injury or destruction of over 20 percent, but not more than 33 percent. As long as the structural root plate of the tree remains protected and a silvicultural prescription is provide in accordance with the the provisions of this ordinance, the "lost" tree may be restored to "saved" status. suffer injury or destruction in excess of 33 percent or is otherwise not protected according to the provisions of this article.~~
- | *Master plan* ~~means~~ the comprehensive urban forestry master plan for tree preservation and protection for the City of Atlanta.
- | *Mechanical injury* a wound which exposes or destroys the cambium layer of a tree.

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Mid-canopy tree means a tree that normally attains a DBH of ten to—25 inches, and a height of 30 to—60 feet at maturity and approximately 900 square feet of canopy at maturity. Examples include Georgia oak, Chinkapin oak, Persimmon, American yellowwood, American hornbeam, American hophornbeam, Blackgum, Chalk maple, and others included on the City of Atlanta’s Recommended Tree List. Southern sugar maple, "October Glory" Red maple, River birch, Deodar cedar, Persimmon, male Ginkgo, American holly, Foster holly, Eastern Red cedar, Blackgum, Sourwood, Chinese pistache, Nuttall oak, Chinese elm, European hornbeam (consider inserting only examples on preferred planting list). (add Latin names)

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 classification.

Neighborhood Planning Unit (NPU) The City of Atlanta is divided into 25 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.

New lot of record means 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.

Overstory tree means a tree that normally attains a DBH in excess of 25 inches, a height in excess of 60 feet, and greater than or equal to 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)

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

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.

Private arborist means any person who is not employed by the City of Atlanta, and who is a Georgia Registered Forester or, or at a minimum, a certified member by the International Society of Arboriculture (ISA) as an arborist and a member in good standing of the ISA.

Private arborist report means a typed report that is submitted and signed by a private arborist, as defined above, and that a minimum clearly states the arborist’s name, contact information and qualifications, and identifies the site address and each individual tree to be considered by the City Forester or City Arborist, provides a 5 year survivability assessment and tree care plan for trees in question.

Private property tree means for purposes of this article, ~~where reference is made to a tree being on "private property", the tree shall be deemed to be on a~~ private property ~~tree is one for which~~ where more than 50 percent of the ~~flare~~ flare of the tree, where the tree interfaces with the earth, is located on private property.

Public property tree means for purposes of this article, ~~where reference is made to a tree being on "public property", the tree shall be deemed to be on a~~ public property ~~tree is one for which~~ where at least 50 percent of the ~~flare~~ flare of the tree, where the tree interfaces with the earth, is located on public property.

Protective Pruning means pruning to elevate limbs that are likely to be damaged by construction activities. Pruning must not exceed 20% of the live crown. ~~Protective pruning is not an ISA term.~~

~~"Pruning means that definition of the term as set forth in both the most recent Acceptable pruning, per this ordinance, is pruning performed in accordance with International Society of Arboriculture (ISA) at pruning standards and guidelines and of the American National Standards Institute (ANSI) A300-Institute 300.33. 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 "pPruning". In no case shall pruning exceed 20% of the live crown of a tree.~~

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

Overstory tree means a tree that normally attains a DBH in excess of 25 inches, and a height in excess of 60 feet at maturity, and greater than or equal to 1,600 feet of canopy at maturity. ~~Examples include Red maple, Pecan, Hickory, American Bbeech, ash sp., Tulip Ppoplar, Southern magnolia, White oak, Water oak, Southern Red Oak, Shumard Oak, Bald cypress, Elm sp. (consider inserting only examples on preferred planting list). Substitute this: Oaks such as White oak, Northern Red Oak, Southern Red Oak, Black Oak, Nuttall Oak, Overcup Oak, Chestnut Oak and others; Hickories such as Bitternut, Mockernut, Pignut, Sand, and Shagbark; American Elm and Slippery Elm; Southern Sugar Maple; Sweetgum (fruitless varieties); and Tulip Poplar.~~

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

Sampling means the employment of recognized statistical survey methods recognized by current forestry standards to count and measure existing trees on a site.

Saved tree means any tree that is to be protected and not destroyed or injured during construction as required by this article. Tree protection fencing must protect 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 67 percent of the tree’s critical root zone. In addition, the structural root plate of a saved tree must be 100 percent protected by tree fencing at all times after demolition or construction begins.

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

Silvicultural prescription means any type written site or individual tree prescription developed by a private arborist for a site or individual tree, as defined above for the purpose of that is aimed at preserving a tree(s). Prescriptions must include without limitation: 1) the private arborist's name, signature, 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; and 5) a schedule of recommended treatment including any soil amendments, fertilizer application, soil amendments, pesticide application (with a copy of the pesticide labeling), or and pruning. Trimming, topping, tipping or flush-cutting of trees will not be accepted as a part of any silvicultural prescription.

Specimen tree trees means a tree that meet the following criteria are specimen trees:

- (1) Large hardwoods (eg. oaks, elms, poplars, etc.) and softwoods (eg. pine species-) in fair or better condition with a DBH equal to or greater than 30 inches;
- (2) Smaller understory trees (dogwoods, redbuds, sourwoods, persimmons, etc.) in fair or better condition with a DBH equal to or greater than ten inches; and
- (3) Lesser-sized trees of rare species, exceptional aesthetic quality, or historical significance as designated by the Tree Conservation Commission.

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

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

Structural root plate means the zone of rapid root taper that provides the tree stability against windthrow. The radius of the root plate is a function of proportional to the stem diameter/diameter at breast height (DBH) of a tree. 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)–DBH (inches)	8 inches	16 inches	32 inches	48 inches
Structural rRoot plate (feet)	5.5 feet	8 feet	10.5 feet	12 feet

Structure (see s.o.p. memo)

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

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

Topping ~~means~~ 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.

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

Tree Conservation Commission ~~means~~ the commission established pursuant to section 158-61 of this article.

Tree replacement plan ~~means~~ a drawing which depicts the location, size, and species of existing and replacement trees on the lot for which a permit is sought, and a table detailing, by species and DBH, the existing trees to be saved, lost or destroyed, and, by species and caliper, the replacement trees to be planted.

~~Tree structure means branch and trunk architecture that result in a canopy structure that resists failure.~~

Trimming ~~means~~ cutting a stem to an indiscriminate length rather than following ISA guidelines for proper tree pruning cuts, as determined by the ~~City Forester or City Arborist~~. While trimming is unacceptable, pruning the act of cutting stems at nodes is permissible. Tree trimming is unacceptable under the provisions of the tree ordinance.

Understory tree ~~means~~ a tree that normally attains a DBH of less than ten inches and a height of less than 30 feet, and approximately 400 square feet at maturity. Examples include Dogwood, Redbud, Sourwood, Sassafras, Serviceberry, Bigleaf magnolia, Trident maple, Serviceberry, American hornbeam, Redbud, Fringetree, Dogwood, Smoketree, Burford holly, Nellie R. Stevens holly, treeform Crape myrtle, Little gem magnolia, Golden raintree, cherry sp. and others listed on the City's Recommended Tree List. Add Latin names

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Vacant lot ~~means~~ a property of record that has not had a structure on it in the past five 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, ¶¶ 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 Ceity 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 Ceity will continue to enjoy the benefits provided by its urban forest. The provisions of this article are enacted to:

- (1) Establish ~~and~~ maintain, and protect the maximum amount of tree cover on public and private lands in the Ceity by prohibiting the destruction and removal of trees except in accordance with the standards set forth in this article;
- (2) Maintain trees in the city in a healthy and nonhazardous condition through professionally accepted arboricultural practices;
- (3) Establish and revise ~~as necessary~~ standards for the planting and maintenance of trees as necessary so as to improve the economic base of the Ceity by ~~increasing~~improving property values, ~~to~~enhance the visual quality of the Ceity and its neighborhoods, and ~~to~~improve public health by ~~decreasing~~lessening air pollution and the incidence of flooding;
- (4) Maintain trees in the public right-of-way to mMinimize hazards and damage to streets and sidewalks and to minimizelessen public rights of way cost of public right-of-way maintenance costs;
- (5) Provide for the designation and protection of historic and specimen trees; ~~and~~
- (6) Promote efficient and cost-effective management of the urban forest through the development of a comprehensive long-range urban forest master plan; ~~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 Ceity regulation, including all public school property, public housing property, parks, rights-of-way, ~~and~~ and easements granted to ~~other~~ private or public entities, including public utilities, except where superseded by franchise agreements.

Sec. 158-30. Parking lot requirements.

~~The owner of any~~ All surface parking lots ~~that is being built and/or resurfaced, and that will have with~~ a total of 30 or more parking spaces, whether primary or accessory in use, and whether commercial or noncommercial, ~~must present a plan to the city arborist for approval, indicating that the parking lot will meet the~~ 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~~~~barrier curbs~~ may be placed in the parking space ~~up to at a maximum of~~ two feet from the end of the parking space. This two-foot wide area may have the pavement removed and be developed as part of the required landscaped area.

(4) Surface parking lots shall have a minimum landscaped area equal to at least 10 percent of the paved area within such lot. In no case shall a parking lot owner be required to provide landscaped areas that exceeds 10 percent of the paved area. The Director of the Bureau of Buildings, in consultation with the City Arborist, shall have the authority to grant a variance from the requirements of this subsection if: the parking lot existed prior to 1977; and the Director of the Bureau of Buildings finds that the applicant's circumstances meet the requirements set forth in subsection 158-30(15); and the Director of the Bureau of Buildings finds that it is impossible to achieve the minimum landscaping requirement. For surface parking lots with fewer than thirty spaces, this variance may reduce or completely eliminate the amount of landscaped area required. For surface parking lots with thirty or greater spaces, this variance may reduce the landscaping requirement, but in no event shall the parking lot be permitted to have landscaped area that is less than 10% of the paved area.

(5) A minimum of one tree per eight parking spaces shall be included in the required landscaped areas. For the purpose of satisfying this requirement, existing trees that are two and one-half inches or more in caliper (~~as measured at a height of 36-54 inches above ground level~~) shall be considered ~~to be~~ equivalent to one or more newly planted trees on the basis of one tree for each two and one-half inches of caliper.

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

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

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

(9) Continuous landscaped buffer strips shall be constructed along sidewalks and public rights-of-way where surface parking lots are adjacent to such sidewalks or public rights-of-way except at points of ingress and egress into the facility. Such landscaped buffer strips shall be a minimum of five feet in width and shall contain, in addition to ground cover, trees planted a maximum of 42 1/2 feet on center along the entire length.

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

(11) Where 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 months so as to meet all requirements of this section and to allow for planting in the appropriate planting season.

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

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

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

Sec. 158-31. "Conservation Easements and Fee Simple Donations." Easements for Private Property Planting by City

~~The mayor is hereby authorized, but not required, to enter into agreements with the owners of private property located within the City for the purpose of acquiring easements to plant trees on such property, in consideration for which such private property owner shall acquire ownership of such trees as the City may plant. Provided, however, that any such agreement shall limit the duration of the easement to a time period of two years and shall limit the property interest acquired by the City to that distance sufficient to allow the planting of trees, in no case to exceed a maximum of a 15-foot setback from the property line or right of way held by the city. Provided further, that under such agreement the private property owner shall agree to maintain the trees planted thereon (how long?) and shall also agree to hold the City harmless for any liability attributable to the planting or presence of the trees on the private property.~~

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 15 feet of the public right-of-way or public property line. Such easements shall not exceed two 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 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~~which easements ~~is~~are 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. Tree recompense credit may be offset by donation of land 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)

Sec. 158-33. Enforcement.

The ~~Office~~Bureau of ~~P~~Parks and the ~~Office~~Bureau of ~~B~~Buildings shall be charged with the enforcement of this article. The ~~City~~Forester and the ~~City~~Arborist have police power to ~~perform~~do all acts necessary to ensure that the provisions of this article are not violated, including, but not limited to, the issuance of citations for the violation of any provision of this article. In instances in which an individual or firm is found cutting or otherwise destroying a tree without a permit to do so in their possession, the Atlanta Police Department shall require such person or persons to cease such operations until a permit is obtained.

Sec. 158-34. Penalties.

"(a) Legal Violations. Any person violating any of the provisions of this article shall be deemed guilty of an offense and ~~upon conviction thereof~~ 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 has violated any of the provisions of this article and shall have the authority to impose and enforce the fines described herein. Where the City authority~~Tree Conservation Commission~~ 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 \$500, and the fine imposed for each subsequent violation shall be \$1,000. Each tree upon which a violation occurred ~~may~~shall be deemed a separate violation of the tree protection ordinance. Where the City authority~~Tree Conservation Commission~~ is unable to determine the exact number of trees upon which a tree protection ordinance violation occurred, the ~~commission~~Commission City authority shall assume a density of 1,000 inches DBH of trees per acre, and shall impose a fine of \$60,000 per acre of land where the offenses occurred. Where the subject area~~property~~ is smaller than one acre, the fine shall be pro-rated. 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. (Policy regarding issuing penalty to all parties – e.g. contractor, plumber, etc. as well as property owner)

(b) *Recompense and replacement.* In addition to paying the penalties set forth in subsection (a) above, any tree of six inches or larger DBH ~~except (be sure no conflict for pines) pines, or any pine tree of 12 inches DBH or larger,~~ that is removed, ~~lost,~~ 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 Sec. 158-34 (a) and each tree shall be assumed to be 16.67 inches DBH for the purpose of calculating recompense.

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(c) *Tree protection.* Fences surrounding ~~critical root zones~~root save areas 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, City of Atlanta arboricultural standards. More substantial wood or steel fencing may be required by the arborist ~~on commercial or other heavy construction sites or upon multiple violations.~~ No activity, including construction material storage, shall occur in areas protected by tree fences. Tree protection fences must remain in place and upright until such time as construction is complete (?) and final landscaping of a site requires their removal. The arborist may assess recompense against the violator if, ~~in the arborist's opinion, tree protection fencing does not protect a minimum of 67 percent of the critical root zone of each tree on site.~~

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

DIVISION 2. TREE CONSERVATION COMMISSION*

Charter references: Boards and commissions, § 3-401

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

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

There is established a Tree Conservation Commission of the Ceity, referred to in this article as the Ceommission. The Ceommission shall consist of 15 members, eight of which shall be appointed by the Mayor and seven by the City Council. All members shall be confirmed by the Ceity Ceouncil. Each of the members shall ~~have contain~~ 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 ~~appointed by the mayor who is a registered~~ landscape architect, appointed by the mayor.
- (2) One member shall be ~~appointed by the mayor who is~~ either a botanist, forester, horticulturist or nursery worker, appointed by the mayor.
- (3) One member shall be ~~appointed by the mayor who is~~ a registered architect, appointed by the mayor.

- (4) One member shall be ~~appointed by the mayor who is~~ a member of an environmental organization, appointed by the mayor.
- (5) One member shall be ~~appointed by the mayor who is~~ a real estate professional, appointed by the mayor.
- (6) One member shall be ~~appointed by the mayor who is~~ a private arborist, appointed by the mayor.
- (7) Two members shall be lay citizens interested in environmental protection. ~~appointed by the mayor.~~ ~~interested in environmental protection.~~
- (8) One member shall be ~~appointed by the council who is~~ a residential builder, appointed by the council.
- (9) One member shall be ~~appointed by the council who is~~ a residential developer, appointed by the council.
- (10) One member shall be ~~appointed by the council who is~~ 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 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. 158-62. Terms; vacancies; compensation.

- (a) The initial ~~T~~ree ~~C~~onservation ~~C~~ommission membership shall ~~contain~~ include three members appointed for a term of one year and four members appointed for a term of two years. Thereafter, all subsequent appointments shall be for a term of two years. Members of the ~~T~~ree ~~C~~onservation ~~C~~ommission may be appointed for consecutive terms consistent with general laws regulating service on ~~C~~ity boards and commissions. The ~~M~~ayor or Commission may recommend removal and replacement of a member of the ~~C~~ommission for nonperformance of duty. Each member shall receive a \$75 per month honorarium, but only if the member attends at least two of the hearings and/or business meetings (or at least one of each) per month. The ~~C~~ommission shall select from its members a chairperson to serve for a one-year term.
- (b) The ~~C~~ouncil shall appoint seven of the fifteen ~~T~~ree ~~C~~onservation ~~C~~ommission members as described in subsection 158-61. With regard to the citizens appointed by the paired districts, pursuant to subsection 158-61(11), the ~~C~~ouncil shall appoint the three members in the following manner:
 - (1) Districts 1, 2, 3 and 4 and at-large post 1.
 - (2) Districts 5, 6, 7 and 8 and at-large post 2.
 - (3) Districts 9, 10, 11 and 12 and at-large post 3.

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

"(d) If a Tree Conservation Commission ~~board~~ position becomes vacant and a member is not appointed pursuant to section 158-61 within six 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 ~~board~~ 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 contain~~ 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~~board~~.

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

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

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

(~~1~~) Hearing and deciding appeals of decisions of administrative officials as provided in Section 158-65.

(~~2~~) Establishing educational and other programs to encourage proper management and maintenance of trees on private property in the Ceity.

(4) Reviewing and approving the Ceity arboricultural specifications and standards of practice promulgated by the Ceity Arborist and Ceity Forester and required pursuant to this article.

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

(36) The Tree Conservation Commission serves as a citizen review panel for administration and enforcement of the Tree Protection Ordinance.

(7) Providing review and recommendations of proposed expenditures from the Tree Trust Fund.

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

The Tree Conservation Commission shall establish a regular meeting schedule, and all meetings of the Commission shall be open to the public. The Commission shall have a clerk, designated by the Commissioner of the Department of Planning and Community Development ~~and neighborhood conservation~~, who shall be a full-time employee of the department. The clerk shall serve as secretary to the Commission and shall be responsible for the 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 meetings of the Tree Conservation Commission shall be recorded by a court reporter contracted ~~for~~ by the City and paid for by the City from the proceeds of the Tree Trust Fund. The Commission shall adopt rules of procedure for the conduct of meetings, hearings, and attendance requirements for members.

Sec. 158-65. Appeals.

"(a) Appeals from the decisions of administrative officials.

(1) Who may appeal

- (A) ~~For a decision by a City administrative official based on the Tree Protection Ordinance regarding tree(s) on private property, an appeal may be made by any person who is aggrieved by the decision and who resides or owns property or a business either within 3500 feet or within the Neighborhood Planning Unit (NPU) of property on which the tree(s) at issue are located, except that appeals may not be made for decisions made by the city arborist pursuant to subsection 158-101(h) of this article. From here to end is redundant and should go in 158-65 (3)(c). The appeal may be made only if the appellant is able to identify on the notice of appeal (as described in subsection 158-65 (3)(C) the specific section 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.~~

Replace above (A) with:

For an appeal of a d~~Decisions of by a~~ 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 and who resides or owns property or a business within the same neighborhood planning unit (NPU) as the property or within 500 feet of the property on which the tree(s) are located may file an appeal.

- (B) ~~For a decision by a City administrative official based on the Tree Protection Ordinance regarding tree(s) on public property, an appeal may be made by any citizen of Atlanta, any owner of property or a business in Atlanta, and/or any civic association in the Neighborhood Planning Unit (NPU) in which the tree(s) at issue are located, who is aggrieved by the decision, except that appeals may not be made for decisions made by the City Arborist pursuant to subsection 158-101(h) of this article. The appeal may be made only if the appellant is able to identify on the notice of appeal (as described in subsection 158-65 (3)(C)) the specific section 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.~~

Replace above (B) with:

For an appeal of a d~~Decisions by a~~ City officials based on the Tree Protection Ordinance and relating to

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

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(2) Timing of appeal

- (A) Appeals regarding tree(s) plans on private property must be filed within five business calendar days of the posting of the Ceity Arborist's preliminary decision regarding the issue. At the time that a permit application is filed with the Ceity Arborist regarding tree(s) on private property, the Ceity Arborist shall post the property on which the tree(s) are located for a minimum of ten 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 Ceity Arborist grants preliminary approval of the permit application, s/he shall post the property for five working days with a Final pPosting, indicating to the public that preliminary approval has been granted.-
- (B) Appeals regarding tree(s) on public property must be filed within fifteen calendar day posting period after the days of the Ceity arborist'sForester's preliminary decision regarding the tree(s) at issue.

Add: (C) Appeals of decisions made by City officials to issue fines or correction notices issued for violations to the Tree Protection Ordinance must be filed within 15 days of receipt of the notice.

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(3) Appeal requirements

- (A) All appeals must be filed with the clerk of the Tree Conservation Commission.
- (B) An appeal shall not be deemed filed until the clerk receives a completed notice of appeal, along with either a \$75.00 administrative fee used to help defray the administrative costs of the appeal or a hardship letter. The fee may also may be accepted with a postmark on or before the ending date for the appeal. The 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 \$75 fee.
- (C) 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 an Atlanta citizen; if the tree(s) at issue are located on public property and the appellant is not an Atlanta citizen, whether the appellant owns property or a business in Atlanta (also would need to know this on private property if not a resident), and if so, the address; if the at issue are located on public property, whether the appellant is a civic association in the neighborhood planning unit in which the tree(s) at issue are located don't need to know this; if the tree(s) at issue are located on private property, whether the appellant owns and/or resides on property or owns a business on property located within the NPU or within 5300 feet of from the property on which the tree(s) at issue are located; the date of the decision being appealed often not known; the name of the person(s), if known, who filed the permit application about which the appeal is made (if relevant); the address of

~~the subject property; the specific section 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 any facts material to the city administrative official's decision that the appellant believes were misinterpreted or misunderstood.~~

Replace above paragraph with the following:

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The notice of appeal shall state at a minimum: ~~t~~The name, address, phone number, and email address (if any) of the appellant and whether the appellant is a resident of Atlanta. ~~I~~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~~if the appeal is for 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 500 feet of the property of concern. ~~Th~~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 shall also be included in the appeal.

(D) 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.

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

(4) After the appeal is filed

- (A) 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) 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 ~~in writing~~ 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 calendar days before the date of the hearing.

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.

~~(C) At least two weeks prior to the appeal hearing, each party shall submit to the clerk of the Tree Conservation Commission and the other parties in interest a written summary of their argument and a copy of all documentary evidence supporting their argument. This requirement shall apply to any property owner or resident, on which the subject located, that is not a party to the appeal, and any other person wishing to present evidence at the hearing. The parties shall submit to the Tree Conservation Commission and the other~~

~~parties in interest all rebuttal arguments and rebuttal documentary evidence at least one week prior to the hearing. Each party shall submit all documentary evidence supporting their arguments at least one week prior to the hearing. Submissions of new evidence relating to issues not declared in the appeal package at the appeal hearing will not be accepted or considered after this deadline by the Tree Conservation Commission unless a the party submitting the information demonstrates, showing can be made and the Tree Conservation Commission accepts, finds that the evidence was not available one week prior to the hearing.~~

[The intent of above is to eliminate "surprise" evidence at the hearings, but does not provide enough time for review of appeals and preparation of rebuttal. Also would result in cutting out public participation if all parties wishing to speak have who are not parties to the appeal (neighbors, business owners, etc. who see notice).]

(5) The appeal hearing

- (A) At the hearing, any party may appear in person or be represented by an agent or by an attorney.
- (B) At least three 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) 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 two months 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 two month deadline. The Tree Commission may also have the authority to defer a decision to allow for the submission of additional evidence.

(6) Tree Conservation Commission's Ruling

- (A) 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.
- (B) 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.

- (C) 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 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.

(b) *Appeals from decisions of the ~~T~~ree ~~C~~onservation ~~C~~ommission.* 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.

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

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

Sec. 158-66. Tree ~~T~~rust ~~F~~und.

(a) *Establishment and administration.* The City of Atlanta shall maintain Tree Conservation Commission shall establish a Tree Trust Fund for the protection, maintenance, and regeneration of the 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.

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 \$100,000, whichever is greater, may be used for educational materials, educational programs, and an Administrative Analyst whose primary responsibility shall be education.

INSERT NEW language re: rollover.

~~A maximum of \$50,000.00 per year of the fund may be used for costs arising directly from administering and enforcing the tree protection ordinance that would not have arisen in the absence of the tree protection ordinance, including but not limited to the cost of posting trees to be removed, the cost of advertising Tree Commission hearings, and the cost of court reporter services at Tree Commission hearings, and. The honoraria for Tree Conservation Commission members, as described in subsection 158-62(a), may also be paid from the fund.~~

A maximum of \$110,000.00 per year of the fund may be used ~~for to fund~~ the annual salary and benefits of ~~the~~ two arborist positions in the Department of Planning and Community Development. In the event that the costs of the salary and benefits of these positions exceeds \$110,000.00, the remainder of the cost shall be assumed by the general fund budget in the Department of Planning and Community Development.

(b) Recompense for 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).

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~~(c)~~ (b) *Recompense for illegal removal or destruction.* Developers, builders, contractors, homeowners and others who violate the criteria for removal or destruction of trees- (Section, 158-102) shall pay recompense to the Trust Fund for contribute trees illegally removed and destroyed to the fund the replacement value of the trees illegally removed or destroyed according to the recompense formulas of section 158-34 in addition to fines assessed in accordance with the ordinance (Sec. 158-34 (a)).

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~~(above – suggest changing order of b and c to order shown above). (c) – Recompense for permitted removal or destruction. Developers, builders, contractors, homeowners and others who are unable to meet the standards for tree replacement and afforestation of section 158-103 shall contribute to the fund the replacement value of the trees removed in excess of the trees replaced in the course of new construction, landscaping, or other permitted activities according to the recompense formulas of subsections 158-103 (b) and (c).~~

DIVISION 3. REMOVAL AND RELOCATION TREE REMOVAL PERMITS

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

(a) *Required* –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.”

~~(b) 1.~~ *Permits for construction, renovation, demolition.* Requests for ~~P~~permits to remove, destroy, or impact the critical root zones of ~~n~~jure trees for construction, renovation or demolition shall be submitted- obtained by making application to the Office of Buildings in thea form prescribed by the Ceity, to the Ddirector of the Bbureau of Bbuildings. 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:

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(1) 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.

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

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

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

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

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~~(e) 2.~~ *Other permits.* Requests for ~~p~~Permits to remove, ~~or~~ -destroy, ~~or~~ -injure trees for safety, landscaping, silvicultural or other purposes shall be submitted obtained by making application to the ~~C~~eity ~~A~~arborist. All permits shall be available posted for public inspection on site.

~~(4) a.~~ *Permits for removal of dDead, dying, and hazardous trees.* Applications to remove dead, dying, diseased, or hazardous trees may be submitted to the Arborist Division made by email, phone, fax, ~~mail~~, or other means. Each application shall include the address of the property and the owner's name, phone, and fax number. If applicable, it shall also include the name, phone, and fax number of the tree service proposing to do the work. Each tree shall be identified as to its species, its diameter within two inches of the actual diameter, location, and identifying characteristics or added markings. Permits to remove dead, dying, diseased, or hazardous shall be approved at the determination of the ~~C~~eity ~~A~~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. The permit shall be valid for six months from the date of its issuance, though the city arborist may extend the expiration date of the permit by no more than six additional months based upon extenuating

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circumstances, as determined by the Ceity Aarborist. Applicants may appeal a notice of denial to the Tree Ceonservation Ceommission as provided in this article.

~~(2)~~b. *Permits for removal of trees for ~~l~~-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. ~~The work prescribed by an approved tree replacement plan shall be completed within one calendar year~~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 Ceity Aarborist and verified by the dated signature of the Ceity Aarborist 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 appeal a notice of denial to the Tree Ceonservation Ceommission as provided in this article. [consider - Implement special review of specimen trees affected by “landscape improvements”] See 158-104...

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~~(3)~~c. *Permis for removal of trees for ~~s~~Silvicultural improvements plans.* 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 Ceity Aarborist, 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 Ceonservation Ceommission as provided in this article.

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~~(d)~~3. *Application review; notice of preliminary approval or denial of permit to remove ~~or~~, destroy, ~~or~~ injure trees.* Upon receipt by the City of a complete application by the city to remove ~~or~~, destroy, ~~or~~ injure trees for construction, renovation, demolition, landscaping, silviculture, or other non-safety related purposes, the Ceity Aarborist shall review the application pursuant to the requirements of this article. The Ceity Aarborist shall either give a notice of preliminary approval of the application if the application meets the requirements of this article, or shall give a notice of denial of the application if the application fails to meet the requirements of this article. ~~The city arborist shall submit copies of such notices promptly to the clerk.~~The Ceity Aarborist 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 Ceonservation Ceommission as provided in this article. Any person aggrieved by the notice of preliminary approval may also appeal to the Tree Ceonservation Ceommission.

Rework (e)

~~(e) Posting.~~ Within five business days after the notice of preliminary approval is issued by the city and the applicant has marked all trees to be removed, destroyed, or impacted/injured, the notice of preliminary approval shall be posted in the office of the arborist, on the City of Atlanta website

(WWW.CI.ATLANTA.GA.US) and in a prominent manner upon the property affected so that it may be seen and read by passers-by. Such notice shall remain posted for a period of 15 consecutive days. The notice of preliminary approval shall inform any reader that an appeal may be filed with the clerk of the Tree Conservation Commission within 15 days of the date of posting the notice on the affected property, and that the failure to appeal within that time will result in the issuance of the permit without further right of appeal of the preliminary approval. If the notice of preliminary approval is not posted as required by this section, no permit shall be issued. The Commission may provide further by rule for the manner and method of this posting to the extent that such rule is consistent with the requirements of this section.

Replace (e) above with new code:

4.e. 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, or impacted,~~ 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 10 consecutive 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 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 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.

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5.f. Posting of trees on public property. Once a plan has been submitted to the Office of Parks Department 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. (fg) Time limits for plan approval. For tree(s) on public property, if no appeal is filed within 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 ~~N~~notice of ~~P~~preliminary ~~A~~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 ~~N~~notice of ~~P~~preliminary ~~A~~approval. In the event that an appeal is filed within 15 calendar days for tree(s) on public property, or five working days for tree(s) on private property, from the date of posting of a ~~N~~notice of ~~P~~preliminary ~~A~~approval upon the affected property, no permit shall be issued until the sixth business day after the date of the ~~T~~ree ~~C~~onservation ~~C~~ommission'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 ~~T~~ree ~~C~~onservation

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

~~8.(hi)~~ *Minor amendments.* After the time for appeals has expired with respect to any Notice of Preliminary Approval, the City Arborist may approve minor amendments to the permit without there being any new right of appeal from such approval, provided that the arborist, ~~in connection with such approval,~~ shall certify in writing to the following ~~and, which such~~ certification shall be attached to the permitted amendments:

~~(a)(4)~~ 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 article to be designated historic or specimen trees; and

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

~~9.(i)~~ *Permit for Periodic Tree Removal of healthy non-hazardous tree based upon proximity 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 ~~(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 article ~~and;~~ subject to the following:

- (1) 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.
- (2) The application is not for the removal of a boundary tree unless the adjoining property owner is a co-applicant for the permit.
- (3) 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, majority of its root system in the public right-of-way.
- (4) 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.

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- ~~(5) No lot of record which is not developed with a single family residential structure or duplex within this property lines shall be granted a permit to remove a tree pursuant to this subsection regardless of whether the zoning of the property will only allow the development of single family residences or duplexes on the property.~~
- (6) When determining the distance of the tree from the dwelling structure, the tree shall be measured at the base of the tree, ~~where the trunk of the tree meets the ground,~~ on the side of the tree that is closest to the structure at issue.
- (7) 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.
- (8) No posting of the property is required prior to the issuance of a permit pursuant to this subsection.
- (9) 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.
- (10) 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 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~~(s)~~ on the subject property pursuant to the criteria set forth in this Article.
- (11) 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 158-101(i).
- (12) 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 year of the filing of the permit application.²²

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

(a) No permit shall be issued for the removal or, destruction, ~~or injury~~ 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):

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

_____ (2) All other requirements of ~~the Tree Protection Ordinance~~this article are met; and

_____ (3) One of the following conditions exists:

_____ a. The tree is located within the buildable area of the lot and the applicant has been _____ granted a building, landscaping, or other permit to make improvements otherwise _____ permissible under all applicable ordinances of the City, and such improvements necessitate an impact on the tree(s) in question and are otherwise permissible under all applicable ordinances of the City;

_____ b. The tree is located in that portion of the setback ~~area or required yard area of the lot 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);

Setback trees:

Trees in the setback area of the lot must be preserved unless:

They must be removed to allow for vehicular ingress and egress that cannot be accomplished in another manner.

They must be removed to allow for the installation of utilities that cannot be accomplished in another manner; or

They must be removed to allow for the completion of construction that cannot be accomplished in another manner.

~~e. The tree is diseased or injured to the extent that death is imminent within two years, or is in imminent danger of falling, or is so close to existing or proposed buildings so as to endanger them, or physically interferes with utility services in a manner that cannot be corrected by anything less than destruction or removal of the tree, or creates unsafe vehicular visual clearance, or is otherwise deemed a hazard by the city arborist or city forester. (delete, (tentatively per R. Shahar), since Section 158-102 applies to living and non-hazardous trees.)~~

_____ ~~cd.~~ The tree removal qualifies for a permit pursuant to section 158- 101(i).

(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 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 azederach; Princess tree - Paulownia tomentosa; Carolina cherry laurel - Prunus caroliniana; Bradford Pear - Pyrus calleryana; Leyland cypress - x Cupressocyparis leylandii.
Consider: privet, honey locust, and arbor vitae.]

Where such species of tree is larger than 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

inches DBH or larger, requires the homeowner to apply for and receive a permit from the Office of Buildings, and said application must include:

- _____ (1) At least two pictures of the tree at issue that identify the species of tree; and
- _____ (2) A site plan showing the appropriate zoning information of the property; and
- _____ (3) A tree survey including but not limited to location, quantity, species types and DBH, prepared by an ISA-certified arborists or landscape architects.

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

SEE SEPARATE DOCUMENT for new language of 158-103.

~~—Minimal impact on trees; replacement trees. Each applicant for a permit to remove or, destroy trees, shall, impact, or injure trees shall, to the maximum extent feasible, minimize the impact on the trees on the site. When healthy trees are removed, (The applicant shall plant replacement trees on site that equaling the total number of trees being removed, or destroyed, or injured or impacted, provided that where the removed or, destroyed or injured or impacted trees were located on public property, the cumulative DBH of the replacement trees shall be equal to or greater than the cumulative DBH of the trees removed, destroyed or injured. Where construction of improvements or existing dense tree cover precludes the planting of the total number of replacement trees required on the site, the City Arborist may approve a plan which results in the planting of the maximum number of trees on the site which can reasonably be expected to be accommodated in a manner which will allow mature growth of the replacement trees. The remainder of the total number of trees may be planted in a local park, on public lands, or along right of ways, subject to approval of the City of Atlanta Parks Department, provided such plantings are within the same NPU district or within one mile of the NPU boundary. Final approval will not be given unless approved location for any off site plantings is attached to approved plan.~~

~~(1) 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 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. If minimum stocking requirements have been met, cCertain columnar species used primarily for screening may be accepted for partial recompense in accord with the planting distances established for understory trees.~~

~~(2) 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.~~

INSERT here and 158 102 (b) consider addition of honey locust and arbor vitae.

a. (b) —Recompense. ~~Recompense is based upon the d~~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)

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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:

~~times the established recompense value shall be calculated as partial recompense to the tree trust fund. In addition, the difference between the total diameter at breast height of the trees removed or destroyed (TDBHrem) and the total caliper inches of the trees replaced on site (TCIrep), as indicated on the approved tree replacement plan, shall be calculated as partial recompense to the tree trust fund. Total recompense (R) shall be calculated according to the formula-~~

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$$R = \$100.00 (Nrem - Nrep) + \$30.00 (TDBHrem - TCIrep), \underline{CR} \geq 0$$

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. Max recompense initially to deal with oldfields pine plantations in south of City.

Consider credits when saved trees for 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).

(c) *Limits and adjustments to recompense.*

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

(2) *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 tree per 400 square feet and are planted in accordance with minimum spacing standards of Section 158-103(a)(1).

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Review these min. DBH required (pull some plans)

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

**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:

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

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

(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 ~~sales~~ 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 percent of minimum trees retained~~ may be reduced to 50 percent of the above percentage values ~~in accordance with the applicable Zoning district in order to qualify for maximum recompense per acre.~~

(5) Affordable housing. For ~~sales~~ housing units ~~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 percent of minimum trees retained~~ may be reduced to 75 percent of the above

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percentage values in accordance with the applicable Zoning district, ~~in order to qualify for maximum recompense per acre.~~

(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 tree per 50 linear feet. Each credited tree must be planted in a planting strip which is a minimum of four feet in width and 25 feet and in accordance with minimal spacing standards set forth in Sec. 158-103(a). ~~Credit based on the established recompense value formula shall be given for trees planted. This credit may be subtracted from maximum recompense per acre, provided trees are spaced at no more than one tree per 400 square feet and in accordance with minimal spacing standards set forth in 158-103(a)(1).~~ For infrastructure development that requires disturbance of one acre or more, a recognized sampling technique performed and certified by a registered forester may be substituted for an actual count of the trees to be removed. All specimen trees must be identified by species and location regardless of the counting procedure adopted.

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(7) *Conservation easements.* Conservation easements (section 158-32) that result in the preservation of wooded lands (minimum of DBH per acre), or newly created wooded parkland afforested to 100 caliper inches DBH per acre, and that are perpetual in duration, may shall receive a credit of \$20,000.00 per acre, pro-rated, against recompense fees. Natural water detention areas established in lieu of the construction of detention ponds shall qualify as conservation easements if so deeded as a conservation easement. In addition, a fee simple donation of land that is afforested to 100 inches DBH per acre, and that is accepted by the City, will receive a credit of \$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?

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(8) *Affordable rental housing.* For rental housing units that have at least 20 percent of the total number of residential units constructed dedicated to being within the ability to pay of those households whose annual incomes do not exceed 60 percent of the median family income for the Atlanta metropolitan statistical area, the percent of minimum trees retained the maximum recompense owed may be reduced to 50 percent of the above percentage values in accordance with applicable Zoning, ~~in order to qualify for maximum recompense per acre.~~

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Section below was moved

Correct placement?(d) An tree with a root zone impact of 20 percent or more impacted tree will not be considered destroyed and will not be charged recompense only if all the following are met:

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

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

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

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

~~(e) A lost tree shall be charged recompense regardless of whether or not it is removed from the site. Consider: Five years after issuance of a Certificate of Occupancy, a property owner may submit copy of the stamped approved tree plan showing any tree(s) with "lost" status and a receipt for payment of recompense. If tree is determined by City Arborist to be in fair or better condition, owner is eligible for a full refund of recompense paid for lost tree.~~

(f) 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/or the total number and caliper inches DBH 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 per acre, dead/dying/diseased/hazardous permits removal, landscaping permits, silvicultural permits removal, buildable area removal, parking lot removals, illegal removals, public property and off-site planting, ~~or 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.

(g) *Minimum tree cover.* In any request for a permit for construction in which no trees are proposed to be removed, or in cases where trees are being removed but the total tree cover on the lot is less than the minimum tree cover per zoning district 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

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

R-5, R-4-A and R-4-B districts: 35 inches per acre (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

() Size and quality of replacement trees. Replacement trees shall be a minimum of two-and one-half inches in caliper and must be of stock 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.

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(h) *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 50 linear feet of street frontage, there shall be at least one 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

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~~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. at a spacing not to exceed 35 feet on center on average, with a minimum of two trees per lot when feasible. Street trees shall be planted as close to the street as is practicable. Internal heat islands shall be shaded to the extent practicable when planting to meet minimum stocking requirements or replanting requirements. Internal heat islands shall be shaded at a minimum rate of one tree per 750 square feet of heat island area. Recreational areas including but not limited to swimming pools and game courts may be exempted from this requirement.~~

(2) *Soil stabilization.* Replacement trees shall next be planted on ~~steep~~ 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 5-gallon containers and credit recompense proportionally. For example, credit for ten 5-gal. trees shall equal 15" DBH caliper (or 75 trees).~~

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(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 ~~Ceity~~ Arborist, or by contributing the appropriate amount to the ~~T~~ree ~~T~~rust fund.

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

(a) The ~~Ceity~~ Arborist shall require that improvements be located so as to result in the protection of the trees on the site. ~~It is the specific intent of this section to require that damage to trees located within the setback and required yard areas and to 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 ~~Ceity~~ Arborist according to the following guidelines:

(1) ~~Wetlands, floodplains, environmentally sensitive areas on sites greater than one acre.~~ On lots and subdivisions of one acre or more, the applicant shall identify environmentally sensitive areas as part of the site plan required in section 158-105 below. Such areas shall include wetlands, floodplains, permanent and intermittent streams, 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.

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(2) ~~Wetlands, floodplains, environmentally sensitive areas on sites less than one acre. On lots~~For and subdivisions of less than one 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;

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~~the critical root zones of tree(s) root save areas shall be established in the setback and required yard areas to preserve trees in those areas. Grading, trenching, or other land disturbance in these areas shall be limited to necessary hydrologic and erosion control measures and access corridors to streets, utility~~

connections, or other features required by code. In order to protect the trees in the setback and required yard areas, building shall be confined to the portion of ~~the lot required for the intended construction.~~

~~(3) A maximum of ten percent of the trees in a designated wetland or 100 year floodplain may be approved for removal or destruction. note in SOPs that if wetland crosses property lines, no more than 10%~~

Section 14: ~~The Site Plan section of the Tree Protection Ordinance, section and specifically the subsection addressing the general requirements of the site plan, subsection shall be modified by deleting the following sentence: "Such plan shall denote each tree to be saved, lost or destroyed, required tree protection fences for trees to be saved, and the proposed tree replacement plan." The sentence shall be replaced with the following three sentences:-~~

~~"Such plan shall denote each tree to be saved, lost or destroyed, the percentage of root save area that will be impacted, the required tree protection fences for trees to be saved, and the proposed tree replacement plan. The proposed tree replacement plan shall set forth the manner in which the newly planted trees will be watered, for example, manually, drip irrigation, Gator bags, etc. In addition, the proposed tree replacement plan shall have attached a copy of a paid maintenance contract if applicable."~~

Sec. 158-105. Site plan required.

~~(a)~~ (a) ~~General requirements.~~ The site plan shall include a tree survey identifying the size, species and location of all trees having a diameter at breast height (DBH) of six inches or greater. Such site plan shall contain topographic information at two-foot contour intervals and shall show all existing and proposed buildings and structures, driveways and parking areas, drainage structures, water detention areas, utilities, construction material staging grounds and all areas of required cut and fill. Single family lots of record may be exempt from the requirement of the topographic survey provided that no grading or cut or fill or other changes in topography will occur.

Such plan shall denote each tree six inches or larger to be saved, ~~lost~~ or destroyed, the percentage of ~~root save area~~ 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 tree replacement plan shall set forth the manner in which the newly planted trees will be watered. F, ~~for~~ example, manually, by drip irrigation, with Gator watering bags, etc. In addition, a copy of a paid maintenance plan shall be attached if applicable. ~~the proposed tree replacement plan shall have attached a copy of a paid maintenance contract if applicable. (be sure no conflict for pines)~~ Pines of less than 12 inches DBH are exempted from being the requirement of include them on denoted on the tree survey. A construction limit line shall be delineated on each site plan submitted for a building permit. Within the construction limit line,

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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.~~no tree survey shall be required, and the applicant shall be required to leave undisturbed all areas of trees.~~

If site plan shows no trees impacted, photos and affidavit by property owner or contractor are required.

(b) *Boundary trees.* Boundary trees shall be included in the site plan. The ~~on-site portion of the portion of the critical root zone save area~~ 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 Ceity Arborist may prescribe and the applicant shall institute additional protective measures to limit impact to a boundary on the 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 Ceity Arborist and the applicant or their designees. The Ceity 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 Ceity Arborist shall notify the Director of the Office of Buildings, and thereupon demolition, grading and construction may proceed. It is further provided that for any permit for an addition to a one-family or two-family residence, the Ceity Arborist may rely on data submitted in the application and certified by the applicant for the building permit in lieu of a preconstruction conference on the site.

INSPECTION OF SITE During construction (especially if preconstruction conference is waived)

Sec. 158-107. Certificates of occupancy.

No certificate of occupancy shall be issued by the Director, Office of Buildings with respect to any permit unless and until the Ceity Arborist shall have 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 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 Ceity 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.

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The following circumstances are exempted from the terms of this article:

(1) Imminent hazard. When the Parks Forester, Arboricultural Manager, or City Arborist finds any 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 phone to inform the City Arborist of the emergency. Based upon the information provided by 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 Department of Planning and Community Development's 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. 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.

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(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.

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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 arboricultural manager or City arborist, the official, parks arboricultural manager or city arborist, in their discretion, may submit, through the Director of the, bureau of parks Office of Parks, a written opinion to the Director of the, Office of Bureau of buildings. Upon receiving a written opinion from the director, Office bureau of Parks that any tree or part thereof is a nuisance as defined in this section, the Director of the, Office bureau of Buildings shall commence nuisance abatement proceedings.

(2) *Notice to owner to remedy conditions; failure to comply.* The ~~D~~irector ~~of the Office of Buildings-~~
~~bureau of buildings~~ shall give written notice to the owner or the person in possession, charge or control
of the property where a tree nuisance as defined in this section exists, stating that in the ~~C~~eity ~~A~~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 working days. Such notice shall further state that unless the tree or part
thereof is voluntarily removed within the time specified, the ~~D~~irector 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 constitute a nuisance and should be abated. If the tree is not removed
within the time specified by the ~~D~~irector, the ~~D~~irector may cause the owner of such tree, or the person
in possession, charge or control thereof, to be summoned to appear before the judge of the municipal
court to determine whether or not the tree or part of a tree involved constitutes a nuisance.

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

(4) *Emergencies.* Such nuisance trees pose immediate hazards and, because of the imminence of
danger, are too great a risk to leave standing while standard procedures for giving notice take place. In
such cases where danger to the public is imminent, the Director of the Office of Parks shall have the
right, but not the obligation, to enter the property and abate the nuisance, ~~and T~~he 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.²²