

ARTICLE II. TREE PROTECTION\*

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

**Cross references:** Environment, ch. 74.

DIVISION 1. GENERALLY

**Sec. 158-26. Definitions.**

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

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

*Boundary tree* means a tree on adjacent property whose root save area intrudes across the property line of the site under consideration.

“*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.

*City arboricultural standards* means the arboricultural specifications and standards of practice, prepared by the city forester and city arborist and approved by the tree conservation commission, which are adopted pursuant to this article.

*City arborist* shall mean an agent of the department of planning and community development responsible for administering this article regarding 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 responsible for preparing and regularly maintaining the arboricultural specifications and standards of practice, for preparing and administering the master plan and for regulating and conserving trees on public land.

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

*Critical root zone* shall mean 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) that affect more than 20 percent of the root save area; trenching of roots; cutting, girdling or inflicting other

severe mechanical injury to the trunk, 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 or setting fire to a tree. In addition, topping, tipping, 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 result in 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. In order for the city forester or city arborist to deem that a tree has a disease, the person requesting such determination must present a lab report identifying and presenting the etiology (the cause and origin) of the fungal, bacterial or viral infection.

*Established recompense value* means the dollar value to the city of a tree on private or public property used for the purpose of calculating cash recompense for removal or destruction. The established recompense value as of January 2003 is \$100.00 per tree and \$30.00 per diameter inch. This figure shall be evaluated and adjusted periodically by amendment to this ordinance, as proposed by the tree conservation commission in consultation with the city arborist.

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

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

*Fully stocked* means a site occupied by trees at a density of 1,000 inches DBH/acre (e.g., 40 trees averaging 25 inches DBH on a one-acre site).

*Hardship* means a unique or otherwise special existing condition that is not addressed by the ordinance.

*Hazard tree* means a tree with uncorrectable defects severe enough to pose present danger to people or buildings under normal conditions, as determined by the city arborist or city forester.

*Heat island* means a ground area covered by an impervious surface that retains solar or other heat energy and thereby contributes to an increase in the average temperature of the ecosystem. An external heat island is one situated outside a site, including but not limited to public streets. An internal heat island is one situated within a site, including but not limited to patios, driveways and other vehicular maneuvering and/or parking areas. Recreational areas including but not limited to swimming pools and game courts are excluded from this definition.

*Historic tree* means a tree that has been designated by the tree conservation commission, upon application by the city arborist or any other interested person, to be of notable historic value and interest because of its age, size or historic association, in accordance with the city arboricultural specifications

and standards of practice. Such designation may occur only by resolution of the commission, and the city arborist shall maintain and file with the municipal clerk a complete listing of the location of each historic tree.

*Illegally removed tree* means any tree that is removed or destroyed without a permit.

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

*Incursion* means any occasion of prohibited activity within an area protected by a tree protection fence.

*Injure* means any intentional or negligent act, including injurious tree climbing practices, spiking, trimming, flush cutting, incursion into a designated root save area.

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

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

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

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

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

*Private arborist* means any person who is not employed by the City of Atlanta, and who is a Georgia Registered Forester, or at a minimum, certified 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.

*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 private property where more than 50 percent of the flair 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 public property where at least 50 percent of the flair of the tree, where the tree interfaces with the earth, is located on public property.

*Protective Pruning* means pruning to elevate 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 International Society of Arboricultural pruning standards and guidelines and American National Safety Institute 300.33. At no time shall trimming, topping, tipping or flush cutting of trees be deemed a form of "Pruning".

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

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

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

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

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

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

*Silvicultural prescription* means any typed site or individual tree prescription developed by a private arborist, as defined above that is aimed at preserving a tree. Prescriptions must include without limitation: the private arborist's name, signature, and contact information; the site address and individually identified trees at issue; a harvesting or stand improvement plan, soil and foliar analysis/treatment, schedule of treatment, fertilizer application, soil amendments, pesticide application with a copy of the pesticide labeling, and pruning. Trimming, topping, tipping or flush cutting of trees will not be accepted as a part of any silvicultural prescription.

*Specimen tree* means a tree that meets the following criteria:

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

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

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

*Structural root plate* means the zone of rapid root taper that provides the tree stability against windthrow. The radius of the root plate is proportional to the stem diameter (DBH) of a tree. The table below provides examples of root plate radii for upright trees without restricted roots.

TABLE INSET:

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

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

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

*Topping* means the cutting of a leader trunk in such manner as to leave a prominent stub extending beyond the node (crotch) of another leader trunk or major branch that may become a leader trunk.

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

*Tree conservation commission* means the commission established pursuant to section 158-61.

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

*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, as determined by the city forester or city arborist. While trimming is unacceptable, pruning-the act of cutting stems at nodes-is permissible.

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

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

**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 city that there shall be no net loss of trees within the boundaries of the city. The purpose of this article is to establish the standards necessary to assure that this policy will be realized and that the city will continue to enjoy the benefits provided by its urban forest. The provisions of this article are enacted to:

- (1) Establish and maintain the maximum amount of tree cover on public and private lands in the city by prohibiting the destruction and removal of trees except in accordance with the standards set forth in this article;
- (2) Maintain trees in the city in a healthy and nonhazardous condition through professionally accepted arboricultural practices;
- (3) Establish and revise as necessary standards for the planting and maintenance of trees so as to improve the economic base of the city by improving property values, to enhance the visual quality of the city and its neighborhoods and to improve public health by lessening air pollution and the incidence of flooding;
- (4) Minimize hazards and damage to streets and sidewalks and lessen public rights-of-way maintenance costs;
- (5) Provide for the designation of historic and specimen trees; and
- (6) Promote efficient and cost-effective management of the urban forest through the development of a comprehensive long-range urban forest master plan.
- (7) Provide latitude in the interpretation and application of city administrative rules, standards and guidelines when reasonable and necessary to minimize the destruction of trees.

**Sec. 158-29. Scope.**

The terms and provisions of this article shall apply to all private property and all public property subject to city regulation, including all public school property, public housing property, parks, rights-of-way, and easements granted to other private or public entities, including public utilities, except where superseded by franchise agreements.

**Sec. 158-30. Parking lot requirements.**

The owner of any surface parking lot that is being built and/or resurfaced, and that will have 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 minimum barrier curb and landscaping requirements as follows:

- (1) Barrier curbs shall be installed around the perimeter of the parking lot and around landscaped areas that are required in this article, except where the perimeter abuts an adjacent building or structure and at

points of ingress and egress into the facility, so as to prevent encroachment of vehicles onto adjacent property, rights-of-way and landscaped areas.

(2) Barrier curbs shall be a minimum of six inches in height and a minimum of eight inches in width and permanent in nature. Barrier curbs shall be concrete or stone. Such curbs shall be securely installed and maintained in good condition.

(3) Where the end of a parking space abuts a landscaped area, barrier curbs may be placed in the parking space at a maximum of two feet from the end of the parking space. This two-foot wide area may have the pavement removed and be developed as part of the required landscaped area.

(4) 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 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, lirioppe, pine bark mulch and other similar landscaping materials.

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

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

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

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

(11) Where landscaped area is located adjacent to vehicle overhangs, the trees shall be planted in line with the side stripes between parking spaces in order to avoid injury to trees by vehicle bumpers.

(12) All landscaped areas, including trees located in the public right-of-way that are counted in the fulfillment of this requirement, shall be properly maintained in accordance with approved landscape plans. If a tree or any plant material dies, it shall be replaced within six months so as to meet all requirements of this section and to allow for planting in the appropriate planting season.

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

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 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.

### **Sec. 158-32. Conservation Easements**

The mayor is hereby authorized to accept conservation easements created pursuant to the provisions of the Georgia Uniform Conservation Easement Act, O.C.G.A. § 44-10-1 et seq., as amended from time to time, or any successor provision of law, the purpose of which easements are to preserve land in its natural scenic landscape or in a forest use. Such easements 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.

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

The bureau of parks and the bureau of buildings shall be charged with the enforcement of this article. The city forester and the city arborist have police power to do all acts necessary to ensure that the provisions of this article are not violated, including, but not limited to, the issuance of citations for the violation of any provision of this article. In instances in which an individual or firm is found cutting or otherwise destroying a tree without a permit to do so in their possession, the Atlanta Police Department shall require such person or persons to cease such operations until a permit is obtained.

**Sec. 158-34. Penalties.**

"(a) *Legal.* Any person violating any of the provisions of this article shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in section 1-8 of the Atlanta Code of Ordinances. 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 tree conservation commission is able to determine the exact number 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 shall be deemed a separate violation of the tree protection ordinance. Where the tree conservation commission is unable to determine the exact number of trees upon which a tree protection ordinance violation occurred, the commission 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 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.

(b) In addition to paying the penalties set forth in subsection (a) above, any tree of six inches or larger DBH except pines, or any pine tree of 12 inches DBH or larger, that is removed or destroyed in violation of this article shall be replaced or recompensed by the violator, as set forth in section 158-103.

(c) *Tree protection.* Fences surrounding root save areas must be erected before the commencement of any land disturbance, demolition or construction. Fences must comply with City of Atlanta arboricultural standards. More substantial wood or steel fencing may be required by the arborist on commercial or other heavy construction sites or upon multiple violations. No activity, including construction material storage, shall occur in areas protected by tree fences. Tree protection fences must remain in place and upright until such time as final landscaping of a site requires their removal. The arborist may assess recompense against the violator if, in the arborist's opinion, the incursion has converted trees from the status of saved trees to the status of injured, lost, or destroyed trees, as set forth in this section above.

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

## 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 city, referred to in this article as the commission. The commission shall consist of 15 members, eight of which shall be appointed by the mayor and seven by the council. All members shall be confirmed by the city council. Each of the members shall 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.
- (2) One member shall be appointed by the mayor who is either a botanist, forester, horticulturist or nursery worker.
- (3) One member shall be appointed by the mayor who is a registered architect.
- (4) One member shall be appointed by the mayor who is a member of an environmental organization.
- (5) One member shall be appointed by the mayor who is a real estate professional.
- (6) One member shall be appointed by the mayor who is a private arborist.
- (7) Two members shall be lay citizens appointed by the mayor interested in environmental protection.
- (8) One member shall be appointed by the council who is a residential builder.
- (9) One member shall be appointed by the council who is a residential developer.
- (10) One member shall be appointed by the council who is a commercial or industrial developer.
- (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 tree conservation commission membership shall contain three members appointed for a term of one year and four members appointed for a term of two years. Thereafter, all subsequent appointments shall be for a term of two years. Members of the tree conservation commission may be appointed for consecutive terms consistent with general laws regulating service on city boards and

commissions. The mayor may recommend removal and replacement of a member of the commission for nonperformance of duty. 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 commission shall select from its members a chairperson to serve for a one-year term.

(b) The council shall appoint seven of the fifteen tree conservation commission members as described in subsection 158-61. With regard to the citizens appointed by the paired districts, pursuant to subsection 158-61(11), the council shall appoint the three 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 contain specialized knowledge about trees, the Tree Protection Ordinance, and/or the impact of construction activities on trees.

(e) The executive branch shall provide such staff as is required for the efficient operation of the board.

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

The functions, powers and duties of the tree conservation commission shall be as follows:

- (1) Assisting the city arborist in establishing and maintaining a record of historic trees, specimen trees and other unique environmentally significant trees within the city.
- (2) Hearing and deciding appeals of decisions of administrative officials as provided in section 158-65.
- (3) Establishing educational and other programs to encourage proper management and maintenance of trees on private property in the city.
- (4) Reviewing and approving the city arboricultural specifications and standards of practice promulgated by the city arborist and city forester and required pursuant to this article.
- (5) Providing consultation and assistance to the city forester in the preparation of the master plan required pursuant to this article.

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

The tree conservation commission shall establish a regular meeting schedule, and all meetings of the commission shall be open to the public. The commission shall have a clerk, designated by the commissioner of the department of planning, development and neighborhood conservation, who shall be a full-time employee of the department. The clerk shall serve as secretary to the commission and shall be responsible for the clerical administration of the appeals process, including the creation and maintenance of files in appeals cases, the filing of documents submitted by the parties to an appeal, and the maintenance of evidence submitted in connection with appeals cases. The clerk shall also direct and supervise the giving of notices required by the commission and by this article in connection with appeals, and shall certify, when necessary, the actions of the commission in such matters. The clerk shall also be responsible for the maintenance and preservation of all records of the commission. The meetings of the tree conservation commission shall be recorded by a court reporter contracted for by the city and paid for by the city from the proceeds of the tree trust fund. The commission shall adopt rules of procedure for the conduct of meetings, hearings and attendance requirements for members.

### **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 300 feet or within the 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. 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.
- (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 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.

(2) Timing of appeal

- (A) Appeals regarding tree(s) on private property must be filed within five calendar days of the city arborist's preliminary decision regarding the issue. At the time that a permit

application is filed with the city arborist regarding tree(s) on private property, the city arborist shall post the property on which the tree(s) are located for a minimum of ten calendar days prior to making a preliminary decision. The pre-posting shall indicate to the public that a permit application has been filed. If and when the city arborist grants preliminary approval of the permit application, s/he shall post the property for five working days with a Final Posting, indicating to the public that preliminary approval has been granted.

(B) Appeals regarding tree(s) on public property must be filed within fifteen calendar days of the city arborist's preliminary decision regarding the tree(s) at issue.

(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 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, 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; 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 300 feet from the property on which the tree(s) at issue are located; the date of the decision being appealed; the name of the person(s) who filed the permit application about which the appeal is made; 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.

(D) 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.

- (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. Submissions of new evidence at the appeal hearing will not be accepted or considered by the Tree Conservation Commission unless a showing can be made and the Tree Conservation Commission finds that the evidence was not available one week prior to the hearing.

(5) The appeal hearing

- (A) At the hearing, any party may appear in person or 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.

(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. 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 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 tree conservation commission.* Any person aggrieved by a decision of the Tree Conservation Commission, or any City official, bureau, office, department or board affected by such decision, may appeal such decision through a writ of certiorari to the Superior Court of Fulton County, pursuant to the procedures set forth by Georgia law. The filing of an appeal in the superior court from any decision of the Commission shall not ipso facto act as a supersedeas, but the City shall abide by any supersedeas granted by Fulton County Superior Court.

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

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

#### **Sec. 158-66. Tree trust fund.**

(a) *Establishment and administration.* The tree conservation commission shall establish a tree trust fund for the protection, maintenance, and regeneration of the trees and other forest resources of Atlanta. 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 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. 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 to fund the annual salary and benefits of the two arborist positions. In the event that the costs of the salary and benefits positions exceeds \$110,000.00, the remainder of the cost shall be assumed by the general fund budget in the department of planning and community development.

(b) *Recompense for illegal removal or destruction.* Developers, builders, contractors, homeowners and others who violate the criteria for removal or destruction of section 158-102 shall contribute to the fund the replacement value of the trees illegally removed or destroyed according to the recompense formulas of section 158-34.

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

### DIVISION 3. REMOVAL AND RELOCATION

#### **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) *Permits for construction, renovation, demolition.* Permits to remove, destroy, or injure trees for construction, renovation or demolition shall be obtained by making application in a form prescribed by the city to the director of the bureau of buildings.

(c) *Other permits.* Permits to remove, destroy, or injure trees for safety, landscaping, silvicultural or other purposes shall be obtained by making application to the city arborist. All permits shall be posted for public inspection on site.

(1) Applications to remove dead, dying, diseased, or hazardous trees may be made by phone, fax, mail, or other means. Each application shall include the address of the property and the owner's name, phone, and fax number. If applicable, it shall also include the name, phone, and fax number of the tree service proposing to do the work. Each tree shall be identified as to its species, 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 city arborist. Such permits are not subject to the notice of preliminary approval of subsection 158-101(d), the posting requirements of subsection 158-101(e), the standards for tree replacement or afforestation of subsection 158-103(1), the recompense formulas of subsection 158-103(b), or to public appeal. 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 circumstances, as determined by the city arborist. Applicants may appeal a notice of denial to the tree conservation commission as provided in this article.

(2) 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. Replacement tree plantings shall be inspected by the city arborist and verified by the dated signature of the city arborist on the approved plan. Applications to remove, destroy, or injure trees-for landscaping and other purposes shall be subject to the notice of preliminary approval of subsection 158-101(d), the posting requirements of subsection 158-101(e), the standards for tree replacement or afforestation of subsection 158-103(a), and the recompense formulas of subsection 158-103(b). Applicants may appeal a notice of denial to the tree conservation commission as provided in this article.

(3) Applications to remove, destroy, or injure trees-for thinning or other silvicultural prescription for forest stand improvement shall be approved at the determination of the city arborist, with or without requirement for tree replacement. Each application shall include a Silvicultural Prescription that is prepared by a private arborist. Payment of recompense for tree(s) on private property, and tree replacement for tree(s) on public property, is required for trees included in any Silvicultural Prescription that includes timber harvesting or stand improvement, except in cases where the intended harvesting or stand improvement is to reduce or prevent the spread of pests or disease. Applications to remove, destroy, or injure for silvicultural purposes shall be subject to the notice of preliminary approval of subsection 158-101(d), the posting requirements of subsection 158-101(e), the standards for tree replacement or afforestation of subsection 158-103(a), if applicable, and the recompense formulas of subsection 158-103(b). Applicants may appeal a notice of denial to the tree conservation commission as provided in this article.

(d) *Application review; notice of preliminary approval or denial of permit to remove, destroy, or injure trees.* Upon receipt of a complete application by the city to remove, destroy, or injure trees-for construction, renovation, demolition, landscaping, silviculture, or other non-safety related purposes, the city arborist shall review the application pursuant to the requirements of this article. The city arborist shall either give a notice of preliminary approval of the application if the application meets the requirements of this article, or shall give a notice of denial of the application if the application fails to meet the requirements of this article. The city arborist shall submit copies of such notices promptly to the clerk. The city arborist may impose conditions to the issuance of the permit consistent with this article. An applicant may submit a new application at any time after a notice of denial of an application under this chapter. An applicant may appeal the notice of denial to the tree conservation commission as provided in this article. Any person aggrieved by the notice of preliminary approval may also appeal to the tree conservation commission.

(e) *Posting.* Within five business days after the notice of preliminary approval is issued by the city and the applicant has marked all trees to be removed, destroyed, or 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](http://WWW.CI.ATLANTA.GA.US)) and in a prominent manner upon the property affected so that it may be seen and read by passers-by. Such notice shall remain posted for a period of 15 consecutive days. The notice of preliminary approval shall inform any reader that an appeal may be filed with the clerk of the tree conservation commission within 15 days of the date of posting the notice on the affected property, and that the failure to appeal within that time will result in the issuance of the permit without further right of appeal of the preliminary approval. If the notice of preliminary approval is not posted as required by this section, no permit shall be issued. The commission may provide further by rule for the

manner and method of this posting to the extent that such rule is consistent with the requirements of this section.

(f) *Time limits.* 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 notice of preliminary approval. For tree(s) on private property, if no appeal is filed within 5 working days from the date of posting of a notice of preliminary approval upon the affected property, then the shall be issued in accordance with the terms of said notice of preliminary 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 notice of preliminary approval upon the affected property, no permit shall be issued until the sixth business day after the date of the tree conservation commission's written decision on the appeal, or until the appeal is voluntarily dismissed, whichever is earlier. At that time, the stay shall expire, unless a notice of intent to appeal the tree conservation commission's decision (if any) to the superior court is filed with the clerk of the Tree Conservation Commission pursuant to subsection 158-65(a).

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

(h) *Minor amendments.* After the time for appeals has expired with respect to any notice of preliminary approval, the city arborist may approve minor amendments to the permit without there being any new right of appeal from such approval, provided that the arborist, in connection with such approval, shall certify in writing to the following, which certification shall be attached to the permitted amendments:

- (1) That the amendments do not alter or amend any rulings of the tree conservation commission made in connection with the particular case; and
- (2) That the amendments do not affect any trees on the property in question which are eligible under this article to be designated historic or specimen trees; and
- (3) That the amendments in the aggregate do not increase by more than ten percent either the total number or the total DBH of the trees permitted for removal or destruction.

(i) *Permit for Periodic Tree Removal based upon location to house:* The provisions set forth in subsections 158-101 (b) through 158-101(h) shall not apply to permits issued pursuant to this subsection 158-101(i). The provisions provided below in this subsection shall pertain to this subsection 158-101(i) only. The City Arborist may issue a permit to remove any tree located on private property within five (5) feet of the structural foundation of an existing single family residential dwelling structure or duplex located on property subject to the provisions of this article, subject to the following:

- (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

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.
- (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 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.
- (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, 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.”

**Sec. 158-102. Criteria for removal, destruction or injure**

(a) No permit shall be issued for the removal, destruction, or injury of any living-and non-hazardous tree unless:

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

(2) All other requirements of this article are met; and

(3) One of the following conditions exists:

a. The tree is located within the buildable area of the lot and the applicant has been granted a building, landscaping, or other permit to make improvements otherwise permissible under all applicable ordinances of the city;

b. The tree is located in that portion of the setback or required yard area of the lot that must be used for vehicular ingress and egress or for the installation of utilities that cannot be accomplished in a manner allowing preservation of the tree;

c. The tree is diseased or injured to the extent that death is imminent within two years, or is in imminent danger of falling, or is so close to existing or proposed buildings so as to endanger them, or physically interferes with utility services in a manner that cannot be corrected by anything less than destruction or removal of the tree, or creates unsafe vehicular visual clearance, or is otherwise deemed a hazard by the city arborist or city forester.

d. 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 - Meliaazederach; Princess tree - Paulownia tomentosa; Carolina cherry laurel - Prunus caroliniana; Bradford Pear - Pyrus calleryana; Leyland cypress -x Cupressocyparis leylandii.

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 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, types and DBH, prepared by ISA certified arborists or landscape architects.

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

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

(1) Where appropriate site conditions exist, replacement trees shall be overstory or mid-canopy species. Understory trees shall be permitted where site conditions do not allow the planting of overstory or mid-canopy trees. Overstory trees shall be planted at a minimum 35 feet on center. Mid-canopy trees shall be planted at a minimum 25 feet on center. Understory trees shall be planted at a minimum 15 feet on center. Certain columnar species used primarily for screening may be accepted for partial recompense inaccord with the planting distance 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 -x Cupressocyparis leylandii. In addition, no recompense credit shall be provided for the planting of said species of trees.

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

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

(c) *Limits and adjustments.*

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

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

Table 158-103

TABLE INSET:

Zoning	Minimum Trees Retained (Total DBH Inches)	Maximum Recompense Per Acre
R-1	45%	\$10,000.00
R-2	40%	\$10,000.00
R-2A	40%	\$7,500.00
R-3, R-3A	35%	\$7,500.00
R-4, R-4A, R-G, R-LC	30%	\$5,000.00
RG-4, RG-5	10%/20%*	\$10,000.00
R-4B	10%/20%*	\$5,000.00
R-5	10%/30%*	\$5,000.00
O & I, C (1-5), I (1&2)	10%	\$10,000.00
PD, PD-H, PD-MU, PD-OC, PD-BP, SPI Districts, Landmark Districts, and other special zoning categories**	Treat according to underlying zoning categories	Treat according to underlying zoning categories

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) *Minimum tree cover.* In any request for a permit for construction in which no trees are proposed to be removed, or in cases where trees are being removed but the total tree cover on the lot is less than the minimum tree cover per zoning district, the city arborist shall require an afforestation standard such that the minimum tree cover per zoning district is satisfied, provided that all such trees so planted can reasonably be expected to be accommodated in a manner which will allow mature growth of the new trees.

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

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

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

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

R-1 districts: 150 inches per acre

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

Replacement trees shall be a minimum of two and one-half inches in caliper. Regardless of caliper or diameter at breast height, replacement trees shall not subsequently be removed or destroyed without a permit from the city arborist.

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

(1) Heat islands. Streets and other external heat islands shall be shaded by new or existing trees at a spacing not to exceed 35 feet on center on average, with a minimum of two trees per lot when feasible. Street trees shall be planted as close to the street as is practicable. Internal heat islands shall be shaded at a minimum rate of one tree per 750 square feet of heat island area.

(2) Soil stabilization. Replacement trees shall next be planted on steep slopes and other erodible areas and on the banks of wetlands and waterways.

(3) Following satisfaction of priorities (1) and (2), the applicant shall have discretion to satisfy additional tree planting requirements either by planting on the subject site, on another location approved by the city arborist, or by contributing the appropriate amount to the tree trust fund.

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

(a) The city arborist shall require that improvements be located so as to result 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 trees located on abutting properties owned by others be minimized to the greatest degree possible under the particular circumstances, as determined by the city arborist according to the following guidelines:

(1) On lots and subdivisions of one acre or more, the applicant shall identify environmentally sensitive areas as part of the site plan required in section 158-105 below. Such areas shall include wetlands, floodplains, permanent and intermittent streams, stands of trees and other significant aspects of the natural environment on site. Limits of disturbance to these areas shall be established and detailed on the site plan. In order to protect the more environmentally sensitive areas, development shall be confined to the portion of the lot required for the intended construction.

(2) On lots and subdivisions of less than one acre, root save areas shall be established in the setback and required yard areas to preserve 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.

**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) *General requirements.* The site plan shall include a tree survey identifying the size, species and location of all trees having a diameter at breast height (DBH) of six inches or greater. Such site plan shall contain topographic information at two-foot contour intervals and shall show all existing and proposed buildings and structures, driveways and parking areas, drainage structures, water detention areas, utilities, construction material staging grounds and all areas of required cut and fill. Single family lots of record may be exempt from the requirement of the topographic survey provided that no grading or cut or fill or other changes in topography will occur. Such plan shall denote each tree to be saved, lost or destroyed, 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. Pines of less than 12 inches DBH are exempted from being denoted on the tree survey. A construction limit line shall be delineated

on each site plan submitted for a building permit. Within the construction limit line, the tree replacement requirements of this article shall be shown. Outside this limit line, no tree survey shall be required, and the applicant shall be required to leave undisturbed all areas of trees.

(b) *Boundary trees.* Boundary trees shall be included in the site plan. The on-site portion of the root save area of a boundary tree shall be enclosed in a tree protection fence according to established arboricultural standards. In consultation with the owner or owner's representative of a boundary tree, the city arborist may prescribe and the applicant shall institute additional protective measures to limit impact on the tree during construction, including but not limited to watering regimes, root treatments, mulching, deadwood removal and protective pruning.

**Sec. 158-106. Preconstruction conference.**

Upon approval of any permit for grading, demolition or construction, no work shall commence, no grading shall be undertaken and no trees shall be removed prior to a preconstruction conference on the site between the city arborist and the applicant or their designees. The city arborist shall inspect the site to assure the accuracy of permit application data and shall inspect tree protection fences and other protective devices which have been installed to protect trees. After the inspection is complete, the city arborist shall notify the director, and thereupon demolition, grading and construction may proceed. It is further provided that for any permit for an addition to a one-family or two-family residence, the city arborist may rely on data submitted in the application and certified by the applicant for the building permit in lieu of a preconstruction conference on the site.

**Sec. 158-107. Certificates of occupancy.**

No certificate of occupancy shall be issued by the director, bureau of buildings with respect to any permit unless and until the city arborist shall have inspected such site and confirmed that all replacement trees have been planted in accordance with this article.

**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 city arborist and which has maintained that compliance shall not be required to provide additional tree replacement except as required by subsequent law.

**Sec. 158-109. Exemptions.**

The following are exempted from the terms of this article:

(1) When the parks arboricultural manager or city arborist finds any tree to present hazard or danger to the health, safety and welfare of the public, such tree may be removed immediately by the owner or the owner's agent upon verbal authorization by the parks arboricultural manager or city arborist. 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.

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

(3) 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.

#### **Sec. 158-110. Dead or diseased trees; nuisances.**

The provisions of this section shall apply to all property in the city, as follows:

(1) *Generally.* Any dead or diseased tree or part of a tree is a nuisance when, by reason of such condition, natural forces may, more readily than if such tree or part thereof were live or not diseased, fell or blow such tree or part thereof onto public ways or public property, off of the property of the owner of such tree, and thereby imperil life or property or impede traffic. When a dead or diseased tree which is alleged to constitute a nuisance is brought to the attention of the parks arboricultural manager or city arborist, the parks arboricultural manager or city arborist, in their discretion, may submit through the director, bureau of parks a written opinion to the director, bureau of buildings. Upon receiving a written opinion from the director, bureau of parks that any tree or part thereof is a nuisance as defined in this section, the director, bureau of buildings shall commence nuisance abatement proceedings.

(2) *Notice to owner to remedy conditions; failure to comply.* The director, bureau of buildings shall give written notice to the owner or the person in possession, charge or control of the property where a tree nuisance as defined in this section exists, stating that in the city arborist's opinion the tree or part of a tree does constitute a nuisance that shall be removed, and requesting that such removal be done within a reasonable time to be specified in such notice. In no event shall such reasonable time exceed ten working days. Such notice shall further state that unless the tree or part thereof is voluntarily removed within the time specified, the director may cause summons to be issued requiring the party notified to appear in the municipal court to have there determined whether the tree or part of a tree involved constitute a nuisance and should be abated. If the tree is not removed within the time specified by the director, the director may cause the owner of such tree, or the person in possession, charge or control thereof, to be summoned to appear before the judge of the municipal court to determine whether or not the tree or part of a tree involved constitutes a nuisance.

(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 the reasonable costs of such work, as documented by the Office of Parks, shall be reimbursed by the Department of Planning and Community Development. The Department of Planning and Community Development shall have the authority to obtain reimbursement from the property owner.”