

## Sec. 93-2-14. - Tree conservation.

(a) *Purpose.*

- (1) This section shall be known as the Hapeville Tree Conservation Ordinance. The overall purposes of this section are to promote tree conservation, the increase of tree canopy, and the protection of existing trees in the city. General provisions and regulations contained herein, along with the attached administrative standards and best management practices for Hapeville's urban forest, will guide practices to accomplish this purpose. It is the intent of this section to regulate tree conservation activities as part of the building construction, and land development process, protect landmark trees, and provide public safety within the city.
- (2) Benefits derived from the conservation of trees and increased canopy include:
  - a. Improved air quality;
  - b. Energy conservation;
  - c. Reduced flooding and reduced storm water runoff;
  - d. Reduced soil erosion and improved water quality;
  - e. Improved habitat for desirable wildlife;
  - f. Reduced health risks;
  - g. Community aesthetics and improved quality of life;
  - h. Added economic value.

(b) *Applicability.*

- (1) The terms, provisions and regulations of this section and the administrative standards and best management practices for Hapeville urban forest, Appendix A hereto, shall apply to any real property, public or private, within the corporate limits of the city:
  - a. For all activities which require a land disturbance, building construction, or demolition permit;
  - b. For external renovations of all properties resulting in the increase of total square footage, or the construction of accessory structures, which may impact landmark trees;
  - c. For the purpose of permitting the removal of landmark trees.

- (c) *Definitions.* As used in this section, unless specifically stated otherwise, the following terms shall be defined as indicated and where any definition herein conflicts with another definition in this chapter, the more restrictive definition shall prevail.

*Boundary tree.* A tree on a property adjacent to a permitting property whose critical root zone or canopy extends into the permitting property.

*Buildable area.* The area of a lot within a given zoning district, located within the required setbacks.

*Building permit.* A permit issued by the city department of community services that authorizes the commencement of construction and building construction activity.

*Caliper.* The trunk diameter measurement of nursery stock trees measured at six inches above the ground for trees up to and including four inches caliper size, and measured at 12 inches above the ground for trees larger than four inches caliper size.

*Canopy tree.* A large or medium tree with a crown size and shape that will typically provide significant shade and beneficial effects on temperature, air quality, water quality, and other environmental conditions, at maturity. A canopy tree is also referred to as a shade tree.

*Certified arborist.* An arborist certified by the International Society of Arboriculture as possessing a minimum level of competency required to practice arboriculture.

*Critical root zone.* The minimum rooting volume of a tree necessary to sustain the tree's life, generally defined by the tree's drip line or a radius of one and one-fourth feet for every one inch dbh, whichever is greater, and from the surface to a depth of three feet.

*Damaged tree.* A harmful injury to a tree or any of its parts, including its roots, the root buttress area, the trunk and branches.

*Destroyed tree.* When any part of a tree is damaged to the point where that tree's survival beyond three full growing seasons is questionable, as determined by the city arborist.

*Diameter at breast height (DBH).* The diameter of a tree's trunk measured at four and one-half feet above the ground. For multi-trunk trees, the diameter is measured at the narrowest point beneath the point of attachment of the multiple trunks.

*Ecological compatibility.* The suitability and functionality of a given tree species for its intended growing site, based on its potential size, structural characteristics, growth rate, and growing site attributes such as slope, exposure, soil type, and drainage.

*City arborist.* The individual authorized by the mayor and council of the City of Hapeville to advise the city on the administration of the requirements and standards as established in this section. The city arborist shall have the following minimum qualifications: A BS degree in urban forestry, horticulture or arboriculture with five years experience in development related tree conservation, or a MS degree in urban forestry, arboriculture or horticulture with three years experience in development related tree conservation.

*Hazardous tree or portion of tree.* A tree or part of a tree that is at risk for failure because it is dead or structurally defective, and where that failure could result in personal injury or property damage.

*Land disturbance permit.* A permit issued by the city community services department that authorizes the commencement of alteration of development of a given tract of land or the commencement of any land disturbing activity.

*Landmark tree.* Any canopy tree 30 inch dbh or larger, or otherwise designated by the mayor and council as having significance to the community, or any understory tree eight inches dbh or larger, in fair or better condition, having a life expectation of greater than five years.

*Site tree conservation plan (STCP).* A plan documenting the location of all trees, boundary trees, structures, proposed utility locations, site grading and construction proposals, methods of tree protection, proposed tree planting, existing and proposed tree canopy, and associated details, as required in subsection 93-2-14(e).

*Tree.* A self-supporting wood plant capable of reaching a minimum height of 15 feet.

*Tree protection zone.* The area of a lot defined by the minimum required setbacks and the critical root zone of any protected tree.

*Landmark tree removal permit.* A permit issued by the city for the removal of a landmark tree.

*Understory tree.* Smaller growing and shade tolerant tree species which typically grow on sites trees underneath canopy trees.

*Qualified professional.* An individual possessing a degree in forestry, urban forestry, landscape architecture or horticulture, having been qualified by the city to submit plans in the implementation of this section and for tree protection in building construction. The city shall maintain a list of qualified professionals.

(d) *General requirements.*

(1) *Tree removal.*

- a. No trees shall be removed or destroyed prior to issuance of a building construction or land disturbance permit. The issuance of a building construction or land disturbance permit shall constitute compliance with the tree conservation provisions of this section.
- b. No landmark tree shall be removed from any real property within the corporate limits of the city without the issuance of a landmark tree removal permit.

(2) *Protected trees.*

- a. All trees outside the footprint of a proposed building construction or land development project, eight inches dbh or larger, shall be considered protected trees.
- b. No protected trees shall be damaged or destroyed.

(3) *Conditions for removal or destruction of trees.*

- a. The removal or destruction of trees is subject to approval of the city arborist, only if all of the following conditions are met:
  1. Unavoidable site modifications resulting from grading, utility work, and construction activities will result in destroying the tree;
  2. Site plan modifications to prevent irreparable damage to the tree are impossible or not practical, based on cost benefit analysis;

3. Actions are taken to mitigate the removal of trees by way of replacing by meeting overall site canopy requirements.
  - b. Approval of the STCP by the city arborist shall constitute approval to remove protected trees.
  - c. Any decision of the city arborist relating to the removal or destruction of protected trees may be appealed as provided in subsection 93-2-14(i).
- (4) *Trees that present a dangerous condition.*
- a. It shall be unlawful for any person to allow to remain on their property any tree which presents a dangerous condition. Dangerous trees include:
    1. A tree or any part of a tree that is likely to fail (fall) as a result of structural defects, root damage, disease, decay, decline or death; and where failure of a tree or any part of a tree would result in potential property damage or injury.
    2. A tree that by its proximity interferes with traffic or pedestrian sight distance, drainage or utility lines and easements so as to create an unsafe condition on or off the site or easement.
    3. A tree of any species or variety which, because of any other circumstances, poses a danger to public health or safety.
  - b. The city's department of community services (or agent of the department of community services) is authorized and empowered to enter upon any lot or parcel of land in the city for the purpose of inspecting and evaluating any tree which is suspected to present a dangerous condition. It shall be unlawful for any property owner to take any action to prevent or interfere with the inspection and evaluation of potentially dangerous trees.
  - c. The department of community services shall obtain the services of the city arborist for the purpose of inspecting and evaluating suspected dangerous trees.
  - d. If it is determined by the city's department of community services that a tree presents a dangerous condition, the city's department of community services shall serve the owner of record of the lot or parcel of land on which said tree is located, a written notice requiring such owner to take corrective action to remove the tree or its dangerous part(s) to eliminate the dangerous condition. This written notice shall include a time frame to complete the corrective action. When the corrective action includes tree removal, the tree shall be replaced. Replacement shall be based on a canopy replace for canopy lost basis.
  - e. Any notice by the city's department of community services to correct a dangerous condition or remove a tree which presents a dangerous condition may be appealed to the city's planning commission, provided a written notice is submitted no later than five days following receipt of the notice appealed from.
  - f. If a property owner fails, neglects, or refuses to trim or remove such tree within the stated time frame or following an adverse decision on appeal, the city's department of community services may proceed to take the corrective action and assess the resulting costs to the property owner. The amount of costs shall be paid by the owner to the city.
  - g. The assessment of the costs of work done by the city against the property owner shall include the actual cost of work performed, including tree replacement, in addition to the penalties imposed for any violation or noncompliance with any provision of this section, plus administrative fees.
  - h. If the property owner fails to pay the costs assessed by the department of community services, a lien shall be placed on the subject property for the cost of the work performed, penalties, and fees.
- (5) *The removal or destruction of landmark trees.*
- a. The removal or destruction of landmark trees from any property in the city is subject to the approval of the city arborist, and approval may only be granted if one of the following two conditions is met:
    1. The tree threatens the property, safety or health of the property owner or the public.
    2. Actions are taken to mitigate the tree's removal by way of planting a new tree of a comparable species and canopy. Payment may be made into the city tree bank in lieu of planting, calculated on a tree lost/replaced basis.
  - b. The issuance of a tree removal permit constitutes approval to remove a landmark tree.
  - c. Any decision of city arborist relating to the removal or destruction of landmark trees may be appealed as a provided

in subsection 93-2-14(g).

- (6) *The removal or destruction of boundary trees.* No boundary trees shall be damaged, destroyed, or removed. Procedures for the protection of boundary trees are provided in subsection 93-2-14(e)(4).
- (7) *Canopy requirements.*
- a. All properties requiring the issuance of a demolition, building construction, remodeling or land disturbance permit shall meet the minimum canopy requirements as established in the administrative standards and best management practices for Hapeville's urban forest.
  - b. All new parking lots shall meet the minimum canopy requirements as established in the administrative standards and best management practices for Hapeville's urban forest.
  - c. Trees planted to meet canopy requirements shall be ecologically compatible with the intended growing site.
- (8) *Establishment of the city tree bank.*
- a. Where it is determined by the city arborist that it is impractical or impossible to fully meet the canopy requirements on a specific site, the cost for the balance (unmet portion) of the requirement will be paid into the city tree bank, prior to issuance of a demolition, building construction, or land disturbance permit. Calculation of costs shall be established in the administrative standards and best management practices for Hapeville's urban forest.
  - b. Funds in the city tree bank shall be administered by the mayor and council or their designee and shall be used exclusively for increasing, managing, maintaining tree canopy and tree safety in public space, the purchase of open space, and seasonal landscaping in the city. The mayor and council will establish a planned program for administration of these funds.
- (e) *Procedures.*
- (1) *Tree removal permits.*
- a. All properties applying for a permit to remove landmark trees shall submit a permit application to the department of community services, indicating how the tree(s) present a dangerous condition pursuant to subsection 93-2-14(d)(4)a.
    1. For properties requiring the issuance of demolition, building construction, or land disturbance permits, the removal of landmark trees is permitted under the procedures in subsection 93-2-14(e)(3).
    2. The required STCP shall indicate how the how the tree(s) present a dangerous condition pursuant to subsection 93-2-14(d)(4)a.
- (2) *Permits to remodel.*
- a. Permits to remodel owner occupied single family houses shall have tree protection and replacement prescriptions prepared by the city arborist when both the following conditions are met:
    1. The proposed remodeling alters the existing footprint of the house.
    2. The proposed remodeling or construction related activities will encroach upon a landmark tree.
  - b. Replacement prescriptions shall be based on a canopy replace for canopy lost basis, for the loss of landmark trees. Payment may be made into the city tree bank when the city arborist determines that site constraints preclude the replacement of trees.
- (3) *Demolition, building construction, land disturbance permits.*
- a. A site/tree conservation plan (STCP) shall be submitted by a qualified professional for review by the city arborist and approval by the city development department prior to issuance of demolition, building construction or land disturbance permits. (Except for permits to remodel, see subsection 93-2-14(e)(2).)
    1. The SCTP shall document tree species eight inches dbh or greater, including size, dbh, critical root zone and location, the species and caliper size of proposed trees, the location of all proposed site building construction and land development activities, including grading, drainage, proposed utility locations, and all proposed tree protection measures.
    2. All proposed trees for removal must be indicated.
    3. The exact location of any tree must be provided if encroachment is proposed with that tree's critical root zone.

4. Standard details for tree protection and tree planting shall conform to the administrative standards and best management practices for Hapeville's urban forest.
  5. The following note shall be provided on the STCP in large letters: TREE PROTECTION FENCING SHALL BE MAINTAINED DURING THE ENTIRE PROJECT PERIOD.
  6. The STCP shall include emergency 24-hour contact information.
  7. The STCP shall document compliance with the canopy, parking, and landscape requirements established in the administrative standards and best management practices for Hapeville's urban forest, in addition to the city landscape requirements for vehicular use areas.
- b. The STCP shall also include the location of landmark trees.
1. The removal or destruction of landmark trees will be permitted only if the city arborist determines that no alternative construction or mitigating site or cultural practices will prevent destruction of the tree.
  2. Replacement of landmark trees shall be of comparable species with the size potential of the landmark tree, and shall be ecologically compatible with the intended growing site.
  3. Trees planted to replace a landmark tree shall have the grow out potential to fully mitigate loss of the entire measured canopy of the landmark tree.
  4. Canopy mitigation for loss of a landmark tree shall be in addition to the overall site canopy requirements.
- (4) *Boundary trees.*
- a. The STCP shall provide for the protection of boundary trees.
  - b. When building construction or land disturbance activities occur within the critical root zone of boundary tree(s) and the city arborist determines that the survival of the tree(s) is/are doubtful as a result of the proposed disturbance activities, a performance bond shall be established regarding the subject boundary tree(s). The bond amount shall cover the removal and replacement costs of the subject boundary tree(s) and the arborist fee for determination of the trees' survival at the end of the escrow period, and shall be approved by the city arborist.
    1. In establishing the bond amount, replacement trees specified shall be of comparable species and size potential to the subject boundary tree, shall be ecologically compatible with the intended growing site at maturity, and shall fully mitigate the lost canopy area of the subject boundary tree.
    2. Canopy credit will be granted to a permittee for the entire canopy area of successfully protected boundary trees, except for those trees located on public rights-of-way.
    3. The department of community services will administer the bonding of boundary trees through the department of finance.
  - c. Prior to a determination authorizing the return of the performance bond to the permittee, any property owner whose property contains an at risk boundary tree(s) for which the bond was held, may petition the department of community services for payment for the removal and replacement of the subject boundary tree(s), should any of the subject boundary tree(s) fail to survive or is determined to be in an irreversible decline as a result of the permitted disturbance activities, as determined by the city arborist.
    1. The permittee shall have the right to petition the mayor and council or their designee for the return of all escrow funds should the subject trees survive for a period of three full growing seasons, as determined by the city arborist. If the subject tree(s) has/have failed to survive or is in a reversible or irreversible decline as a result of the permitted disturbances, the escrow funds shall be paid pursuant to subsection 93-2-14(e)(4)b., for removal and replacement of the subject tree(s), or for arboricultural practices to reverse the decline as determined and prescribed by the city arborist.
    2. Any funds not collected by either an affected property owner or the permittee within a period of five years, or any interest accrued therein, shall be deposited in the city tree bank.
- (5) *Field verification.*
- a. The qualified professional preparing the STCP shall verify its accuracy with the city arborist prior to submittal.
  - b. The city arborist shall verify successful compliance to the STCP prior to issuance of a permit, and shall verify final field compliance prior to issuance of a certificate of occupancy.

- c. Performance bonds may be accepted by the department of community services in lieu of required tree planting and landscape maintenance if weather conditions are inappropriate for the establishment and survival of plant material.
1. The bond amount shall be one and one-fourth times the amount of the documented landscape cost, including plant materials and installation.
  2. The period of the bond shall be mutually agreed upon by the permittee and the department of community services.
  3. The bond shall be returned when all of the landscape requirements are met, or cashed by the city when the bond period expired. The bond period may be extended if determined appropriate by the department of community services.
- (f) *Enforcement.*
- (1) *Authority.* The department of community services or their designee has the responsibility to issue permits in conformance with and enforce compliance with this section.
  - (2) *Responsibility and inspection.*
    - a. Neither the issuance of a tree permit nor compliance with the conditions thereof, nor with the provisions of this section shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose any liability upon city, its officers or employees, for injury or damage to persons or property.
    - b. The department of community services may cause periodic inspections of the work under permit in accordance with this section and shall make a final inspection following completion of the work. The permittee shall assist the city arborist or his designee in making such inspections. Agents of the permitting authority shall have the authority to conduct such investigations as he/she may reasonably deem necessary to carry-out his/her duties as prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area. No person shall refuse entry or access to any authorized representative or agent of the department of community services who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his/her official duties.
    - c. Where it is deemed necessary, the department of community services or their designee shall require performance bonds to assure compliance to the terms, conditions, and standards of this section.
  - (3) *Violations and penalties.*
    - a. Any action or inaction which violates the provisions of this section or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.
      1. *Notice of violation.* If the director community services determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this section, a written notice of violation shall be issued by code enforcement to such applicant or other responsible person. Where a person is engaged in activity covered by this section without having first secured the appropriate permit, code enforcement shall be serve a notice of violation on the owner or the responsible person in charge of the activity being conducted on the site.  
The notice of violation shall contain:
        - A. The name and address of the owner or the applicant or the responsible person;
        - B. The address or other description of the site upon which the violation is occurring;
        - C. A statement specifying the nature of the violation;
        - D. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this section and the date for the completion of such remedial action;
        - E. A statement of the penalty or penalties that may be assessed against the person to whom the notice of

violation is directed; and

F. A statement that the determination of violation may be appealed to the board of zoning appeals by filing a written notice of appeal within 15 days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient).

2. *Penalties.* In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the director community services shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that in the event the violation constitutes an immediate danger to public health or public safety, as determined by the director of community services, 24 hours notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the city arborist may take any one or more of the following actions or impose any one or more of the following penalties.

- A. *Stop work order.* The director of community services may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation or violations.
- B. *Withhold certificate of occupancy.* The director of community services may refuse to authorize a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- C. *Suspension, revocation or modification of permit.* The director of community services works may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the director of community services may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- D. *Penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days (or such greater period as the city arborist shall deem appropriate) (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) after the city arborist has taken one or more of the actions described above, the city's designated code enforcement agent may issue a citation to the applicant or other responsible person, requiring such person to appear in municipal court to answer charges for such violation. Any violation of this article is punishable, upon conviction, according to the provisions the City Code. Each day any violation of this section shall continue shall constitute a separate offense.

(g) *Administrative appeal and judicial review.*

(1) *Administrative appeal.*

- a. *Administrative appeal.* Any person aggrieved by a decision or order of the city arborist may appeal in writing within 15 days after the issuance of such decision or order to the board of zoning appeals of the city and shall be entitled to a hearing before the board of zoning appeals of the city within 60 days of receipt of the written appeal.
  - 1. The board of zoning appeals shall hear and decide appeals when it is alleged an error in any requirement, interpretation, decision, or determination is made by the city arborist in the enforcement or administration of this section.

2. The board of zoning appeals shall consider the testimony of the city arborist, who shall be present at such hearing technical evaluations, relevant factors, field conditions, and all standards specified in this and other relevant sections.
3. The board of zoning appeals after conducting a public hearing may affirm or reverse the decision or order by the city arborist.

(2) *Judicial review.* Any person aggrieved by a decision or order of the city arborist after exhausting all administrative remedies, shall have the right to appeal de novo to the Superior Court of Fulton County.

(Ord. No. 2010-08, § 1, 7-20-2010)

**Editor's note**— Ord. No. 2010-08, § 1, adopted July 20, 2010, amended section 93-2-14 in its entirety to read as herein set out. Formerly, section 93-2-14 pertained to tree preservation and derived from Ord. No. 2001-04, § 1(8-5-27), adopted April 3, 2001.

The administrative standards and best management practices (Appendix A) referenced in this section are not set out at length herein, but are on file in the offices of the city.