

AN ORDINANCE TO AMEND ARTICLE IV OF CHAPTER 17 OF THE CODE OF THE CITY OF AUBURN TO ESTABLISH METHODS FOR MAINTENANCE, PROTECTION, REMOVAL AND REPLACEMENT OF TREES ON PUBLIC PROPERTY AND TO PROVIDE PENALTIES FOR THE VIOLATION THEREOF

BE IT ORDAINED by the City Council of the City of Auburn, Alabama as follows:

Section 1: That Article IV of Chapter 17 from The Code of the City of Auburn is hereby amended to read as follows:

ARTICLE IV. MUNICIPAL TREE ORDINANCE

Section 17-61. Title.

This article shall be known as the Municipal Tree Ordinance of the City of Auburn, Alabama.

Section 17-62. Value of urban trees.

Trees are recognized as a valid asset providing a more healthful and beautiful environment in which to live, providing oxygen, shade, aesthetics, and a priceless psychological counterpoint to the urban setting. Trees are economically beneficial in attracting new industry and residents by enhancing the value and marketability of property and promoting the stability of desirable neighborhoods.

Section 17-63. Definitions

For the purpose of this article, the following terms, works and their derivations shall have the following meanings given herein:

1. **City Official:** Person or persons designated by the City Manager to carry out the provisions of this Ordinance.
2. **Park:** A tract of land set-aside for public use and owned by the City of Auburn.
3. **Protective Measures:** Any steps taken to safeguard the appearance, health, condition, or continued viability of a protected tree. Typical examples are: physical structures limiting access to a protected tree, pruning to allow access to a site, supplemental watering or fertilization, washing of canopy to remove dust or other residues, berms or grading to prevent erosion or silting in a protected root zone, signage indicating protected status of trees or other methods as deemed necessary at time of permitting.
4. **Protected Tree:** Any tree located on public property within the City of Auburn.
5. **Public Property:** Any right-of-way, park, or other ground owned by the City of Auburn.

6. Replacement Tree(s): Trees required to be planted as compensation for the removal of viable, non-hazard trees.
7. Tree: A woody plant which at maturity is 13 feet or more in height with a single trunk at least 3 inches in diameter, unbranched for at least several feet above the ground and having a more or less definite crown.
8. Tree Commission: Composed of members appointed per City Ordinance Nos. 1170 and 1172 (Code Section 2-111 et seq.), plus the Beautification and Urban Forestry Supervisor.
9. Tree Trust: The National Tree Trust is a public foundation created through a one-time appropriation from Congress. Other funding comes from outside sources, mainly gifts and donations. It is the purpose of the Tree Trust to plant and/or preserve as many trees as possible on public land through volunteerism.
10. Tree Maintenance: Measures performed to promote the desirable growth and health of a tree such as, but not limited to, watering, fertilizing, mulching, weeding, pest management, and physical protection.

Section 17-64. Tree maintenance and protection.

1. City departments shall seek the counsel and recommendations of the City Official prior to the removal and/or alteration of any tree on public property or right-of-way unless the tree(s) poses immediate danger to the public.
2. The City Official may cause to be removed any tree or part thereof which is in an unsafe condition or is infested with any disease, injurious fungus, insect or other pest.
3. Trees severely damaged by storms or other natural causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this ordinance.
4. It shall be unlawful for any person, business or other entity, without first obtaining a permit as herein provided, to remove, cause to be removed, relocate, alter, damage or destroy any tree on public property, including public rights-of-way.
5. No person shall engage in the pruning or topping of trees on any public property except in conformance with the most current practices of the International Society of Arboriculture, the National Arborist Association Standards, and the National Electric Safety Code.
6. No new curb cuts, which shall endanger protected trees, shall be allowed without the express permission of the City.
7. To protect the longevity of protected trees, the appropriate City departments shall review all applications for construction permits, including clearing and grading permits. Protective measures may be prescribed by the City to safeguard the health, appearance, condition and viability of protected trees. The cost and responsibility for implementing and maintaining all prescribed protective measures shall be born solely by the applicant. Any deviation from the measures prescribed by the City to protect said trees shall constitute a violation of this Ordinance.

Section 17-65. Permit for removal, relocation or alteration of trees on public property.

Application shall be made to the appropriate City department for the removal, relocation or alteration of any protected tree. When reviewing applications, the City shall consider the following criteria:

1. The condition of the tree(s) identified in the application and that of the trees in the immediate proximity with respect to health, structural integrity, potential hazard, location to existing and proposed structures, paving, and utilities.
2. The absolute necessity of the removal, relocation or alteration for the reasonable use of the property.
3. The impact upon the area tree canopy of the proposed removal, relocation or alteration.
4. The applicant's consent to abide by all specified protection and replacement measures.

Section 17-66. Replacement of trees and planting of new trees on or near public property.

1. Should permission be granted for the removal of any protected tree(s), the applicant shall bear the responsibility and full cost for the replacement of said tree(s).
2. The City shall specify the species, planting time and planting location of all replacement trees, along with any additional conditions or protective measures to be implemented by the applicant.
3. Under no circumstances shall new trees be planted within 10 feet of utilities, curbs, gutters, and sidewalks on City right-of-ways unless otherwise approved by the City.
4. Should any replacement tree die or substantially decline, in the opinion of the City Official, within a period of two (2) years after planting, the responsibility for replacement of said tree shall be solely that of the original applicant.

Section 17-67. Operation and duties of the tree commission.

The tree commission shall conduct regular monthly meetings and other called meetings as needed. It shall make its own rules of order, keep records of its proceedings, and annually elect from its voting members a chairman, vice-chairman, secretary, and treasurer and such other officers as it may need. A majority of its voting members shall constitute a quorum for the transaction of business.

The tree commission may:

- a) Increase public awareness of and develop public support for tree preservation.
- b) Cooperate and coordinate its activities with the City staff and City Council in the protection, maintenance, planning, planting, and removal of trees on public lands.

- c) Increase urban tree inventory through annual recommendations of appropriate trees along streets, in parks, and other public places.
- d) Identify, and recommend removal of dead, dying, diseased, or insect-infested trees on public property.
- e) Encourage the preservation of trees by developers and landowners.
- f) Plan and coordinate an annual Arbor Week observance.
- g) Inventory the City's tree population, determine needs, and periodically prepare a City tree plan.
- h) Report annually to the City Council, summarizing goals, projects, and expenses.
- i) Solicit and expend Auburn Tree Trust funds for the purpose of increasing tree inventory.
- j) Promote standards of tree maintenance to foster the tree population.

Section 17-68. Policies and procedures

Policies and procedures for carrying out the provisions of this Ordinance are set out in *The Municipal Tree Ordinance Implementation Guidelines*, a copy of which shall be on file with the City Official and available to all City departments, which guidelines may be amended from time to time by the City Council of the City of Auburn.

Section 17-69. Penalty for violation.

Any person violating any provision of this Ordinance or *The Municipal Tree Ordinance Implementation Guidelines* shall upon conviction, be punished under the provisions of Section 1-9 of The Code of the City of Auburn.

In addition, the Municipal Judge shall have the authority to require those convicted of violating any provisions of this Ordinance or *The Municipal Tree Ordinance Implementation Guidelines* to replace trees damaged or destroyed. The Judge shall consider the recommendations of the Beautification and Urban Forestry Superintendent regarding the species and sizes of replacement trees.

Section 2: Severability. The provisions of this Ordinance are severable. If any section, subsection, schedule, or provision of this Ordinance be for any reason declared void or invalid, such invalidity shall not effect any other section, subsection, schedule, or provision of this Ordinance.

Section 3: Effective Date. This Ordinance shall be effective immediately upon its approval by the City Council, or upon its otherwise becoming law, but shall, nonetheless, be published as required by law.

ADOPTED AND APPROVED by the City Council of the City of Auburn, Alabama, this the ____ day of _____, 1999.

Mayor

ATTEST:

The Municipal Tree Ordinance

Implementation Guidelines

Section I. Purpose and Intent

The Council declares that the purpose and intent of this document is to:

- (a) support Article IV of Chapter 17 of the City Code of the City of Auburn entitled "Municipal Tree Ordinance," in the preservation, replacement and indiscriminate removal of trees on public property, and to establish procedures and practices for handling these purposes.
- (b) establish a system for ensuring the purpose and intent of said Ordinance is responsibly implemented.
- (c) identify and empower qualified personnel to educate and cooperate with Auburn's citizens and business interests to protect and enhance Auburn's tree canopy assets.
- (d) establish penalties for violation of its provisions.
- (e) establish guidelines for City removal of or planting of trees on public property.

Section II. Definitions

City Official. Person or persons designated by the City Manager to carry out the provisions of the Municipal Tree Ordinance (henceforth known as the Ordinance).

Destroy/Deface. Any intentional or negligent act, which damages or kills a tree, or effectively destroys the aesthetic appearance of a tree. Said acts include, but are not limited to, damage inflicted upon the root system of a tree by the application of toxic substances; the operation of heavy machinery; changing the natural grade by excavation or filling around the

trunk of a tree; trenching; paving with concrete, asphalt or other impervious materials; and damage from injury or from fire inflicted on trees. Cutting, bulldozing, and excessive pruning that results in the death of a tree is also considered destruction.

Drip Line. A vertical line running through the outermost portion of a tree crown extending to the ground.

Ordinance. Municipal Tree Ordinance # _____, and its amendments, as adopted by the Auburn City Council.

Park. A tract of land set-aside for public use and owned by the City of Auburn.

Protective Barrier. A physical structure limiting access to a protected tree, composed of wood or other suitable materials which assures compliance with the intent of the Ordinance.

Protective Measures. Any steps taken to safeguard the appearance, health, condition, or continued viability of a protected tree. Typical examples are: physical structures limiting access to a protected tree, pruning to allow access to a site, supplemental watering or fertilization, washing of canopy to remove dust or other residues, berms or grading to prevent erosion or silting in a protected root zone, signage indicating protected status of trees or other methods as deemed necessary at time of permitting.

Protected Tree. Any tree located on public property.

Public Property. Any right-of-way, park, or other land owned by the City of Auburn.

(Note: For clarification of right-of-way contact City Engineering Office).

Rare or Heritage Tree. Any healthy tree that:

- (1) has a trunk diameter at breast height (DBH) of 36 inches or more; or

- (2) has a trunk diameter of 18 inches or more in case of the following genera: Ilex (Holly); Magnolia; Carpinus (Hornbeam); Ostrya (Hophornbeam); Tsuga (Hemlock); Halesia (Silverbell); Cladrastus (Yellowwood);
- (3) is listed as a State or National Champion by the Alabama Forestry Commission or the American Forestry Association;
- (4) provides a unique habitat for any endangered or threatened wildlife species protected by Federal law;
- (5) has been cited by the City Council as being historically significant; or
- (6) represents an uncommon species, such as Sequoia Redwood; Stewartia; Cotinus obovatus (Smoke tree); Styrax (Snowbell); Nyssa ogheche (ogheche tupelo); that the City Official considers to be desirable and not to pose a threat to the local ecological balance.

Replacement Tree(s). Tree(s) required to be planted as compensation for the removal of protected trees.

Tree. A woody plant which at maturity is 13 feet or more in height with a single trunk at least 3 inches in diameter, unbranched for at least several feet above the ground and having a more or less definite crown.

Tree Commission. Composed of members appointed per City Ordinance Nos. 1170 and 1172 [Code section 2-111 et seq.], plus the Superintendent of Beautification & Urban Forestry.

Tree Trust. The National Tree Trust is a public foundation created through a one-time appropriation from Congress. Other funding comes from outside sources, mainly gifts and

donations. It is the purpose of the Tree Trust to plant and/ or preserve as many trees as possible on public land through the efforts of volunteers.

Tree Maintenance. Measures performed to promote the desirable growth and health of a tree such as, but not limited to, watering, fertilizing, mulching, weeding, pest management, and physical protection.

Tree Removal. The displacement, removal, relocation, alteration or effective removal as a result of damaging or destroying any protected tree.

Section III. Application of the Provisions

These provisions shall apply to protected trees.

It shall be the responsibility of the City Official to carry out the provisions of the Ordinance.

Section IV. Required Permits

(a) **Tree Removal.** It shall be unlawful for any person, firm, corporation or other legal entity, to remove, cause to be removed, relocate, substantially alter, effectively remove as a result of damaging, or destroying any protected tree. It shall be unlawful for any licensed tree surgeon, service company, or general contractor to remove, cause to be removed, relocate, substantially alter, or effectively remove as a result of damaging or destroying any tree covered by the terms and provision of the Ordinance without first having the proper permit(s). Violation of the terms and provisions of the Ordinance by any licensed tree surgeon, service company, general

contractor, public official or private citizen shall, after investigation by the City Official, will be subject to penalties as outlined in Section 17-69 of the Ordinance.

(b) Site Plans for Development or Redevelopment. It shall be the function of the City Official in reviewing site plans to assure that protected trees are preserved and retained, and the image and vested economic interests of the citizens of Auburn are preserved.

Agreed upon protection measures shall be submitted in writing and signed by the applicant and the City Official. A permit is required for any work on or affecting trees covered by the provisions of the Ordinance. The City Official shall specify the work to be done, and is authorized to inspect the property and work in progress at any time. Said Official is also empowered to make a final inspection of the property upon completion of the work.

(c) Moving Building Permits. The City Official, along with any other affected city departments, shall review and approve or disapprove all applications for moving building permits to ensure that such movement will not endanger any tree specified in the Ordinance or any other ordinances pertaining to trees in the City of Auburn.

Section V. Application for Permit

Any person wishing to obtain a permit to remove a protected, specimen, rare or heritage tree shall make a written application to the City Official with a filing fee of fifty dollars (\$50). Where an application, as required by the Ordinance, is required, no permit shall be issued until a tree site protection plan for the lot or parcel has been submitted by the applicant to the City Official and reviewed and approved by same. Upon a proper showing by the applicant of extreme

hardship, due to causes unrelated to the acts or omissions of the applicant, the City Official, in his discretion, may waive all or part of the requirements for the tree site plan submission.

Section VI. Issuance of Permit

Criteria for Issuance of Permit. At the time an application is filed, the City Official shall consider the following criteria in the approval or denial of a permit for the removal, relocation, or substantial alteration of a protected tree:

- (1) The condition of the tree or trees proposed to be removed with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures, interference with utility services, and danger to persons or property.
- (2) The necessity of removing the tree or trees in order to construct the proposed improvements or structures to allow reasonable economic use of the property.
- (3) The effect of removal on erosion, soil moisture retention, flow of surface waters and coordination with the drainage system plan of the City of Auburn.
- (4) The number and density of trees in the area and the effect of tree removal on property values of the neighborhood and other existing vegetation.
- (5) Whether any tree proposed to be removed is worthy of preservation.
- (6) Impact upon the urban and natural environment.

Section VII. Installation & Maintenance of Replacement and Other Type Trees

Any tree which is placed, either as a replacement tree or voluntarily by the developer, on public property shall be approved (in terms of condition, variety, and placement) by the City Official prior to installation.

Should any replacement tree die within a period of two (2) years after planting, the party responsible for its planting is required to replace the tree with a tree deemed appropriate by the City Official.

Section VIII. Construction Near Trees

It shall be unlawful for any person involved with the construction of any structures or other improvements to place solvents, material, construction machinery, or temporary soil deposits within the drip line of any protected tree without approval of the City Official.

The developer shall be required to protect all trees on public property that are in proximity to construction or service work. Before development, land clearing, filling or any land alteration, the developer shall be required to erect suitable protective barriers. In addition, no attachments or wires shall be affixed to any protected trees during construction.

Said developer shall also be responsible for the actions of all subcontractors, vendors, delivery personnel, and others as they work on or visit the site. The intent of these protective measures is to prevent the damaging or killing of protected trees.

Except for sidewalks, driveways, and streets, no person shall pave with concrete, asphalt or other impervious material within eight (8) inches per one (1) inch of DBH of any remaining

protected tree. The City Official shall have the discretion to waive this requirement.

Necessary protective measures will be determined or approved by the City Official.

Protective measures will be determined prior to site plan approval and/or commencement of work. The developer will be responsible for execution of the measures immediately upon commencement of work and will continuously maintain these measures until completion of work.

If during construction, it is observed, by the City Official, that additional or different measures are required, the contractor will be required to make these changes as instructed by the City Official. The contractor will be held responsible for damage to any public trees resulting from his project, regardless of protective measures employed.

Section IX. Temporary Waiver Following Disaster

The provisions of the Ordinance are waived during an emergency period if compliance would hamper the rescue of life or property from immediate danger or the repair of utilities in the event of emergencies such as wind storms, ice storms, or other disasters. Any emergency work shall follow as closely as possible the standards outlined in the ordinance. This shall not be interpreted as license to circumvent the intent of this ordinance.

Section X. Removal, Abuse or Mutilation of Protected Trees.

Without prior approval by the City and the obtaining of a proper permit, no person shall damage, cut, carve, transplant, mutilate, abuse or remove any protected tree; attach any rope, wire, nails, advertising posters, or other contrivance to any protected tree; allow any gaseous,

liquid, or solid substance which is harmful to such trees to come in contact with any such trees, including roots damaged during curb cuts, sidewalk and driveway installation and repair.

- Utility line clearing in conformance with the most current practices of the International Society of Arboriculture, National Arborist Association Standards and the National Electrical Safety Code does not constitute tree abuse.
- No curb cuts, which involve protected trees, shall be allowed without prior approval by the City Official.
- No action in removing trees due to lightning, hurricanes, or other natural disasters shall be considered tree abuse.

Section XI. Enforcement of Article

The City Official shall be charged with the enforcement of the Ordinance and these Guidelines by the City Manager. Said Official shall have full authority to inspect all locations where said Ordinance and these Guidelines apply, issue stop work orders, and notices of non-compliance. Further, the City Official shall issue citations to those violating said Ordinance or Guidelines which shall be prosecuted through the Auburn Municipal Court.

Section XII. Interference with the City Official.

No person shall hinder, prevent, delay, or interfere with the City Official engaged in the enforcement of the Ordinance. Actions by an individual pursuing relief through a court of competent jurisdiction shall in no way be construed as interfering with the City Official.

Section XIII. Penalties

It shall be unlawful for any person, firm, organization or society to violate the provisions of the Ordinance. The removal or destruction of each protected tree shall constitute a separate offense under the Ordinance, and said violation shall be subject to a penalty to be assessed by the Municipal Judge of Auburn, Alabama. The City Official shall provide the Municipal Judge with documentation of the incident and recommendations for fines and/or replacement costs.