

First Read: _____

Second Read: _____

Ord. No. _____

TREE ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF MOUNTAIN PARK, GEORGIA, FOR THE PURPOSE OF **AMENDING THE TREE ORDINANCES OF THE CITY**; AND FOR OTHER PURPOSES AT THE REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 25th DAY OF APRIL, 2016.

WHEREAS, the City currently has a tree ordinance which serves to protect water quality, aesthetics, property values and the physical environment within the City; and

WHEREAS, the Mayor and City Council wish to amend the tree ordinance to better accomplish its purposes, while maintaining and balancing the rights of property owners in the City;

NOW THEREFORE BE IT ORDAINED, AND IT IS HEREBY ORDAINED, by virtue of the authority vested in the City Council of Mountain Park, Georgia, by law, as follows:

SECTION ONE

Article IV, of Chapter 105 of the Code of Mountain Park, Georgia, pertaining to Tree Protection and Preservation, is hereby amended, replaced and restated as follows:

ARTICLE IV. - TREE PROTECTION AND PRESERVATION

Sec. 105-201. - 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:

Administrator means the City Clerk of the City of Mountain Park or designee who shall administer and enforce the provisions of this article.

Buffer means an area required to remain undisturbed pursuant to the zoning regulations, a condition of zoning, state regulations or this article.

Caliper means a standard of trunk diameter measurement for understory or replacement trees. Caliper for new trees is measured at the height of six inches above the ground for trees up to and

including four-inch caliper and 12 inches above the ground for trees larger than four-inch caliper. Caliper for existing trees is measured at four feet six inches above the median grade (also referred to as “breast height”).

Conifer tree means any tree with needle leaves and a woody cone fruit including, but not limited to, pine, juniper and cedar species.

Critical root zone means the minimum area beneath a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The critical root zone (CRZ) will typically be represented by a concentric circle centering on the tree's trunk with a radius equal in feet to 1½ times the number of inches of the trunk diameter. Example: The CRZ radius of a 20-inch diameter is 30 feet.

Development activity means any alteration of the natural environment which requires the approval of a site plan and issuance of a permit. By way of illustration but not limitation, development activity shall also include the thinning or removal of trees from land in conjunction with a forest management program, the removal or destruction of trees incidental to the development of land or to the marketing of land for development, the removal or destruction of trees in conjunction with any grading activity, including the removal or filling (stockpiling) of soil, and logging or the removal of trees not in conjunction with an ongoing forest management program. Nothing in this definition shall be deemed to require or authorize the issuance of a permit for any activity described in this article.

Density factor means a unit of measure used to prescribe the calculated tree coverage on a lot.

Grading activity means altering ground surfaces to specified elevations, dimensions and/or slopes; this includes stripping, cutting, filling, stockpiling and shaping, or any combination thereof, and shall include the land in its cut or filled condition.

Hardwood tree means any tree that is not coniferous (cone bearing). The term "hardwood tree" is based on the colloquialism, and does not necessarily reflect any true qualities of the tree.

Lot means any legal lot of record.

Nondevelopment activity means any alteration of the natural environment which does not require building approval, but which would include the proposed removal or destruction of any tree.

Overstory trees means those trees that compose the top layer or canopy of vegetation and will generally reach a mature height of greater than 40 feet.

Pervious surface means all that area of land that can be landscaped or planted, allows the natural passage of water from the surface into the water table, and is not covered by manmade materials or structures such as buildings or paving.

Planting season means the time period or season during which newly planted trees will have the best opportunity for survival. The planting season generally begins on October 1 and ends on March 1.

Semipervious means hardscape, aggregate or porous paver that allows at least 50 percent of surface water to pass through the manmade material and into the underlying soil.

Specimen tree means trees which qualify for special consideration due to their size and type. The following size and condition criteria are used to identify specimen trees; except as expressly provided herein, both the size and condition criteria must be met for a tree to be considered a specimen tree:

Size criteria:

Pine Trees: 30-inch diameter or larger

Overstory Trees (Excluding Pines): 24-inch diameter or larger

Understory Trees (Excluding Pines): 8-inch diameter or larger

Condition criteria:

Greater than 15 years life expectancy,

Trunk is relatively sound and solid with no extensive decay,

Free of major dead limbs, and free of major insect or pathological problem.

Tree means any living, self-supporting woody or fibrous plant which normally attains a caliper of at least three inches and typically has one main stem or trunk and many branches.

Tree planting list means the recommended species of trees listed in Appendix A to this article.

Tree protection area means an area encompassing the critical root zone of a tree.

Tree removal and removal of trees mean any act which causes a tree to die within two years after commission of the act including, but not limited to, damage inflicted upon the root system in the critical root zone or trunk as the result of:

- (1) The improper use of machinery on the trees;
- (2) The storage of materials in or around the trees;
- (3) Soil compaction;
- (4) Altering the natural grade to expose the roots or to cover the tree's root system with more than four inches of soil;
- (5) Causing the infection or infestation of the tree by pests, fungus or harmful bacteria;
- (6) Pruning judged to be excessive by the administrator or not in accordance with the standards set forth by the International Society of Arboriculture (ISA); and
- (7) Paving with concrete, asphalt or other impervious surface within such proximity as to be harmful to the tree or its root system.

Tree save area means an area designated for the purpose of meeting tree density requirements, saving natural trees, and/or preserving natural buffers.

Understory tree means those trees that compose the lower layer or canopy of vegetation and will generally reach a mature height of less than 30 feet.

Sec. 105-202. - Purpose and intent of article.

The city deems it necessary and desirable in the interest of public health, safety and welfare to enact an ordinance for the conservation, planting and replacement of trees and to prevent the

indiscriminate removal of trees in the city without denying the reasonable use and enjoyment of real property. The importance of trees is recognized for their shade, cooling, noise and wind reduction, soil erosion prevention, oxygen production, dust filtration, carbon dioxide absorption, aesthetic and economic enhancement of all real property, and their contribution to the general well-being and quality of life of the citizens of the city. Consistent with the expressed purpose of this article, all persons shall make reasonable efforts to preserve and retain existing, self-supporting trees. It is also the intent of this article that all applicable lots within the city maintain or obtain a minimum tree density.

Sec. 105-203. - Exemptions.

- (a) The following shall be exempt from the provisions of this article:
 - (1) The removal of trees with a four-inch caliper or less, provided that the removal does not reduce the tree density of the lot below the minimum specified in section 105-206.
 - (2) The necessary removal of trees within dedicated utility easements by the utility company having the easement.
 - (3) The removal of trees on public rights-of-way (and adjacent areas within the construction limits of rights-of-way) conducted by, on behalf of, or any activity pursuant to work to be dedicated to, a federal, state, county, municipal or other governmental agency in pursuance of its lawful activities or functions in the construction or improvement of public rights-of-way.
 - (4) The removal of trees from lakes and drainage easements.
 - (5) The removal of any tree which has become or threatens to become a danger to human life or property.
- (b) Notwithstanding the provisions of subsection (a) of this section, all reasonable efforts shall be made to save specimen trees.

Sec. 105-204. - Approval letter required for nondevelopment activity (activity which does not require a building permit).

- (a) Except for routine or seasonal pruning or transplanting of trees, and except as exempted in section 105-203, no person shall engage in any nondevelopment activity without first obtaining an approval letter. The request for an approval letter shall be submitted to the city and shall be, unless waived by the city clerk, in the form of a brief, written narrative stating the reason for the proposed work and include either a site sketch or photograph of the tree proposed to be removed, identifying such tree by size and species. If the application is complete, complies with this article, and requests tree removal for one of the purposes identified in subsection (b) of this section, the city shall issue an approval letter not later than 30 working days from receipt of a complete request, and shall inform the applicant if replanting will be required. If the application is incomplete or denied, the city shall notify the applicant in writing regarding the specific reason for denial.
- (b) The city shall allow submittal of dated photographs instead of an approval letter for the following if a letter of approval or denial has not been issued within 30 working days:
 - (1) The removal of dead, substantially injured, damaged or diseased trees; and

- (2) The removal of trees occupied within ten feet to the side, front or rear of an existing authorized structure, provided that the applicable minimum tree density requirement is maintained.

Sec. 105-205. - Application requirements.

- (a) When a person applies for a permit, such person shall also file an application providing the following information:
 - (1) A complete tree survey and inventory, as described in section 105-207;
 - (2) An integrated site plan showing specimen trees, the trees to be saved and those to be removed, utilities to be installed, grading, the approximate location of all structures, driveways and curb cuts, and proposed tree planting and other landscaping;
 - (3) A detailed plan to protect and preserve trees before, during and for a period of two years after construction, which plan shall contain the following information:
 - a. Calculations showing compliance with the required lot density factor, using existing trees and replacement trees. Existing trees to be saved must be located on the same lot as the trees to be removed;
 - b. Locations of all existing and proposed utility lines or easements;
 - c. Locations of all specimen trees and indications whether they are to be removed or preserved;
 - d. Locations of all tree protection devices, materials to be used in each location and details;
 - e. A delineation of tree save areas in which trees have been inventoried for density calculations; and
 - f. Additional information as may be requested on a case-by-case basis.
- (b) The items in subsection (a) of this section may be integrated into the normal permit application requirements and submittals.

Sec. 105-206. - Minimum tree density requirements.

- (a) All lots within the city shall maintain a minimum tree density of 400 caliper inches per acre. The density requirement must be met whether or not a lot had trees prior to development. The density may be achieved by counting existing trees to be preserved, planting new trees in accordance with the minimum standards of this article, or some combination of the two. Minimum tree density shall be calculated and established pursuant to the following formula and analysis: LDF-EDF equals RDF.

Where: LDF (lot density factor)—The minimum tree density required to be maintained on a lot (400 inches per acre).

EDF (existing density factor)—Density of existing trees to be preserved on a lot.

RDF (replacement density factor)—Density of new trees to be planted on a lot.

The SDF is calculated by multiplying the number of lot acres by 400. Example: A 0.5-acre lot has a LDF of 0.5×400 equals 200 inches.

The RDF is calculated by subtracting the EDF from the LDF. Example: RDF equals 200 minus 15 (five three-inch caliper trees to remain) equals 185 (185 inches of replacement trees required).

- (b) All newly constructed single-family residential lots in the city shall maintain a minimum tree density based upon 400 caliper inches per acre. The developer shall base its density calculations on the net lot area, excluding the acreage for required buffers and infrastructure improvements (utility lines and easements). Trees located in required buffers are not to be counted toward the minimum density requirement.
- (c) The density may be achieved by counting existing trees to be preserved, including, but not limited to, those in the undisturbed buffer, planting new trees according to the minimum standards of this article, or some combination of the two.
 - (1) No more than 30 percent of any one genus may be included in any replanting plan.
 - (2) All trees to be planted to meet required replacement densities must be at least one-inch caliper and greater than or equal to six feet tall.
 - (3) Specimen tree replacement/recompense trees must be at least four-inch caliper.
 - (4) All trees must have a minimum of 200 square feet of pervious root zone.
 - (5) A minimum of two trees must be located in the front yard of all properties, and two additional trees in the street side yard of corner lots.
 - (6) Existing overstory trees less than four-inch caliper shall not be counted toward the replacement requirement.
- (d) Notwithstanding the preceding provisions of this section, it is required that all reasonable efforts be made to save specimen trees. Reasonable efforts shall include, but not be limited to, alternate building design, building location, parking area layout, driveway location, and the like. If a specimen tree is to be removed, a plan or written document indicating the reason for the removal must be submitted to the administrator.
 - (1) Specimen trees that cannot be saved must be replaced with trees having a total density equal to three times the value in inches of the tree removed with a minimum four-inch tree caliper. Specimen trees removed without prior approval shall be replaced with trees equal to five times the value in inches, with a minimum four-inch tree caliper. If the administrator determines that replacement trees cannot be planted on the same lot from which the tree(s) were removed, the administrator may approve an alternate public location(s) for replacement tree planting.
 - (2) Size alone will determine whether a tree was of specimen quality if the tree is removed without approval, and there is no evidence of its condition.
 - (3) In order to encourage the conservation of specimen trees and the incorporation of these trees into the design of projects, additional density credit will be given for specimen trees which are successfully saved by a design feature specifically designated for such purpose. Credit for any specimen tree thus saved would be two (2) times the assigned unit value. The critical root zone of specimen trees will be protected with hog-back/wire-back tree save fencing with metal support poles.

- (e) For each removal request of more than four trees within a five-year period, it shall be demonstrated that at least 40 percent of the property area shall remain undisturbed after the requested removal.

Sec. 105-207. - Tree survey plan and inventory.

- (a) The tree survey, as required in section 105-205, shall be in the form of a site plan prepared and sealed by a registered surveyor or registered engineer, noting the location of all specimen trees (as described in subsection (b) of this section) within the area to be modified from its natural state and 25 feet beyond in each direction or to the property line, whichever is less.
- (b) All specimen trees and all trees that are to be counted toward meeting density requirements must be shown on the survey and inventoried by size in inches and species.

Sec. 105-208. - Tree survey inspection.

Following the receipt of the completed site plan application and supporting data, the administrator shall conduct an inspection of the proposed development site. Following inspection, the administrator shall advise the applicant of any recommended changes in the applicant's proposed tree removal, protection or replanting plans necessary to make the plans comply with the provisions of this article.

Sec. 105-209. - Tree removal approval applications.

- (a) The administrator shall review all applications and supporting data and take one of the following actions: approve, approve with conditions, or disapprove. Applications which meet the requirements of this article shall be approved.
- (b) Tree removal and replacement shall begin no later than 30 days after issuance of the permit, and shall be completed no later than one year after the issuance of the permit.
- (c) If a specimen tree is to be removed, a plan or written documentation indicating the reason for the removal must be submitted to the city clerk.

Sec. 105-210. - Tree conservation standards.

Prior to any tree removal or commencement of construction on a lot and continuing until a final plat has been recorded, or a certificate of occupancy has been issued, the following system shall be used:

- (1) Location and types of tree protection devices.
 - a. Tree protection devices are to be installed as shown on the plan or otherwise completely surrounding the critical root zone.
 - b. Active protection (see subsection (2) of this section) is required where tree save areas are located in proximity to construction activity.
 - c. The locations of all tree protection devices will be verified prior to the issuance of the construction permit for clearing and/or grading.
 - d. The critical root zone of specimen trees will be protected with a minimum four-foot tall chainlink or rail fence.

- (2) Materials. Active tree protection shall consist of chainlink, orange laminated plastic, wooden post and rail fencing or other equivalent restraining material placed at the edge of the critical root zone.
- (3) Sequence of installation and removal. All tree protection devices shall be installed prior to any clearing, grubbing or grading. The administrator must inspect the installation of tree protection and erosion and sedimentation control devices prior to land disturbance. Tree protection must remain in functioning condition until the certificate of occupancy is issued.

Sec. 105-211. - Tree protection.

- (a) The cleaning of equipment, storage of materials or dirt, disposal of waste material, such as paint, oil solvents or other harmful substances, or any other such act which may be harmful to the continued vitality of the tree within the tree protection area is prohibited.
- (b) All buffers of state waters shall remain undisturbed except for approved driveway crossing points.
- (c) All tree and brush debris shall be chipped and returned to the lot or removed from the lot to reduce the possibility of insect infestation. Burial is not allowed.

Sec. 105-212. - Tree damage.

Any tree designated in the plan to be saved that is damaged during construction, or as a result of such construction, shall be replaced with a tree equal to the value in inches of the tree removed. However, any specimen tree damaged as described in this section shall be replaced with a tree five times the unit value of the tree removed with a minimum four-inch tree caliper. If the administrator determines that replacement trees cannot be planted on the same lot as the damaged tree(s), the administrator may approve an alternate public location(s) for replacement tree planting. If a damaged specimen tree must be removed, the location occupied by the tree's critical root zone must remain in an impervious state, with no structures or buildings placed in this area, and violations shall be subject to the applicable penalties as described in section 105-219.

Sec. 105-213. - Tree replanting standards.

- (a) Unless otherwise approved by the city, trees selected for replanting must be on the tree planting list. Trees selected for planting must be free from injury, pests, disease, nutritional disorders or root defects, and must be of good vigor in order to ensure a reasonable expectation of survivability. Standards for transplanting shall be in keeping with those established in the International Society of Arboriculture publication, Tree and Shrub Transplanting Manual or similar publication. Reference the American Association of Nurserymen Publication, American Standard for Nursery Stock (ANSI Z60, 1973) for plant material quality specifications. Reference the "Manual of Woody Landscape Plants" (Michael Dirr, 1983, Castle Books) or similar publication for information on tree species site requirements.
- (b) It is desirable that replanted trees be ecologically compatible with the lot and neighboring lots. Accordingly, the replanted trees shall be of the same or similar species as those removed, when practical.

Sec. 105-214. - Tree removal compliance inspection.

Following the issuance of a building permit, the administrator shall from time to time inspect the lot for the purpose of certifying compliance with the requirements of the tree removal. In the

event of noncompliance, the code compliance officer or city arborist may revoke or modify the city permit. No certificate of occupancy shall be issued until actual compliance is obtained. After development is complete, the code compliance officer or city arborist shall continue to make random inspections to ensure that required trees are maintained. Replacement shall be required or bond/letter of credit posted within 30 days of notice by the administrator should any of these trees die, be removed or be destroyed within two years after completion of development.

Sec. 105-215. - Enforcement; appeals and variances.

- (a) Enforcement. The code compliance officer shall be primarily responsible for the administration and enforcement of the provisions of this article. All requests for approval letters and all applications for tree removal shall be submitted to and reviewed by the city.
- (b) Appeals. Requests for appeal of any administrative decision must be submitted to the city clerk in writing within 30 days of the date of such decision. Such written appeal shall be made in the form of a letter, which outlines the grounds of the appeal.

The appeal shall be heard by the mayor and city council.
- (c) Variances. Requests for the variance of the strict requirements of this article may be granted by the mayor and city council when the following conditions are found to exist:
 - (1) The strict enforcement of this article will result in an unreasonable hardship not of the applicant's own making; and
 - (2) The grant of the variance will not compromise the purposes of this article.
- (d) Hearings. Public hearings before the mayor and city council shall be held for appeals and variance requests. The hearing shall be recorded. The applicant shall be given notice of the time and place of the hearing, and the opportunity to present his or her request. Interested parties may also be allowed to address the mayor and council, but in all cases, the applicant shall be allowed equal time to opponents of the application and the opportunity to cross-examine the opposing speakers.
- (e) Appeal to the Superior Court. Decisions on appeal and variance requests may be appealed to the Superior Court of the county in which the subject property lies within 30 days of the mayor and city council's decision.

Sec. 105-216. - Tree conservation.

Every property owner or occupant shall be responsible for the normal care of trees located on such property. Willful injury or disfigurement of any tree growing within the city shall be a violation of this article. No person shall:

- (1) Attach any sign, notice or other object to any tree or fasten any wires, cables, nails or screws to any tree in a manner that could prove harmful to the tree, except as necessary in conjunction with activities in the public interest.
- (2) Pour any material on any tree or on nearby ground which could be harmful to the tree.
- (3) Cause or encourage any unnecessary fire or burning near or around any tree.
- (4) Construct a concrete, asphalt or brick pavement, significantly compact the soil, place fill material, or create other impervious surfaces around any tree so as to cut off air, light or water from the roots of the tree, so as to adversely impact the tree's root system.

(5) Pile building material or equipment around any tree so as to cause injury thereto.

Sec. 105-217. - Applicability of article provisions.

The terms and provisions of this article shall apply to all property within the corporate limits. The terms and provisions of this article shall be consistent with any requirements imposed by state law.

Sec. 105-218. - Nonliability of city.

Nothing in this article shall be deemed to impose any liability on the city or upon any of its officers or employees, or to relieve the owner and occupant of any private property from the duty to keep trees and shrubs upon private property or under his control in a safe condition.

Sec. 105-219. - Penalties for violation of article; stop work order

- (a) A violation of this article shall constitute a misdemeanor punishable by a fine of up to \$1,000.00 and/or a sentence of up to 30 days incarceration per day, per occurrence. Nothing in this section shall prevent the city from taking such other lawful action as necessary to prevent or remedy any violations. Replacement shall also be required as provided herein.
- (b) Upon notice from the code compliance officer, work on any development that is being done contrary to the provisions of this article shall immediately cease. The stop work notice shall be in writing and shall go to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed. When an emergency exists, the code compliance officer shall not be required to give written notice prior to stopping the work. Further, if work on any development is being done contrary to the provisions of this article, the code compliance officer may revoke any permit previously issued by the city pertaining to the activity for which the building permit has been issued, and may refuse to issue any further permit, until at the discretion of the code compliance officer, the work on the development is brought into compliance with the provisions of this article.

Secs. 105-220—105-300. - Reserved.

APPENDIX A. - RECOMMENDED TREE LIST

(a) Recommended Species List of Overstory Trees

Scientific Name – Common Name

Acer barbatum – Southern Sugar Maple

Acer rubrum – Red Maple

Acer saccharum – Sugar Maple

Betula nigra – River Birch

Carya illinoensis – Pecan

Carya ovata – Shagbark Hickory
Fagus grandifolia – American Beech
Fraxinas pennsylvanica – Green Ash
Juniperus virginiana – Eastern Red Cedar
Liquidambar styraciflua – Sweetgum
Liriodendron tulipifera – Yellow-poplar
Magnolia grandiflora – Southern Magnolia
Nyssa aquatica – Swamp Tupelo
Nyssa sylvatica – Black Gum
Quercus accutissima – Sawtooth Oak
Quercus alba – White Oak
Quercus coccinea – Scarlet Oak
Quercus falcate – Southern Red Oak
Quercus lyrata – Overcup Oak
Quercus nuttalli – Nuttall Oak
Quercus nigra – Water Oak
Quercus phellos – Willow Oak
Quercus palustris – Pin Oak
Quercus shumardi – Shumard Oak
Taxodium ascendens – Pond Cypress
Taxodium disticum – Bald Cypress

(b) Recommended Species List of Understory Trees

Scientific Name – Common Name
Amelanchier arborea – Serviceberry

Carpinus caroliniana – American Hornbeam, Musclewood

Cedrus deodora – Deodora Cedar

Cercis canadensis – Eastern Redbud

Cercis chinensis – Chinese Redbud

Chionanthus virginicus – Fringe tree, Grancy Graybeard

Cladastris kentukea – Yellowwood

Continus coggygria – Common Smoketree

Halesia carolinia – Silverbell

***Ilex x attenuata* – Savannah Holly

Ilex decidua – Decidious Holly

***Ilex hybrids* – Large growing Holly

***Ilex opaca* – American Holly

***Ilex vomitoria* – Yaupon Holly

Maclura pomifera – Osage-orange

Magnolia virginiana – Sweetbay Magnolia

***Myrica cerifera* – Waxmyrtle

Ostrya virginia – Ironwood, Carolina Hornbeam

Oxydendrum aboreum – Sourwood

Sassafras albidum – Sassafrass

** Indicates species suitable for screening and buffers.

SECTION TWO

a. All other Ordinances and Resolutions, or parts of said Ordinances or Resolutions, in conflict herewith are hereby repealed, except to the extent said Ordinances are more restrictive than this Ordinance.

b. This Ordinance amendment shall take effect immediately upon adoption, the public welfare demanding.

c. The provisions of this Ordinance are severable; in the event that a court of competent jurisdiction finds that any provision of this Ordinance is unlawful or unconstitutional, it is the express intent of the City Council that such provision be severed and the remaining provisions of this Ordinance remain in force as if adopted separately from the severed portion.

SO ADOPTED THIS THE _____ DAY OF APRIL, 2016.

MOUNTAIN PARK, GEORGIA

Jim Still, Mayor

ATTEST:

Karen Segars, City Clerk