

ORDINANCE NO. 23-4567

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

Section 1. That ARTICLE XIX of the CODE OF DECATUR, ALABAMA is hereby amended to read as follows:

“ARTICLE XIX. URBAN FORESTRY ORDINANCE

Sec. 2-421. Purpose.

The mayor and city council find that trees are recognized as a highly valued asset providing a more healthful and beautiful environment in which to live. Healthy trees reduce air pollution and some forms of noise pollution, provide energy-saving shade and cooling, furnish habitat for wildlife, enhance aesthetics and property values, and are an important contributor to community image, pride, and quality of life.

Sec. 2-422. Goals.

This article establishes regulations and goals necessary to ensure that the city will continue to realize the benefits provided by its urban forest and to increase such benefits. The provisions of this article are enacted to:

- (1) Increase and maintain an acceptable amount of tree cover on public lands in the city;
- (2) Provide a stable and sustainable city forest through proper species and age distribution;
- (3) To utilize expertise of ISA certified arborist and other qualified urban forestry professionals;
- (4) Educate the general public in an effort to encourage the accomplishment of the above listed goals on private property;
- (5) Maintaining the trees in a healthy and non-hazardous condition through good arbor-cultural practices.

Sec. 2-423. Definitions.

The words and phrases listed below shall have the meanings respectively ascribed to them by this section.

Board. The Tree Board as established under this Article.

Certified Arborist. An individual who has either obtained certification as an arborist from the International Society of Arboriculture, or who is a member of the American Society of Consulting Arborists.

City. The City of Decatur, Alabama.

City Arborist. A certified individual contracted annually by the City to consult on issues related to the city urban forest, unless a certified arborist is on the city staff.

City Right-of-Way. Land that is not owned by a private individual or company that has been dedicated to the city for a public purpose. As referred to with a road, the area of the road and area adjacent to the road in city ownership.

City tree/shrub. Any tree/shrub on property owned by the city or located in dedicated city right-of-way.

Cutting. Falling or removing a tree, or any procedure that has the natural result of causing the death or substantial destruction of a tree. Cutting does not include normal trimming and pruning.

Damage. Any injury to any part of trees/shrubs including but not limited to improper tree care methods such as topping, tipping, round-over, flush cutting, cavity cleaning, etc.

Dead Tree. A tree that is dead or has been damaged beyond repair or is in an advanced state of decline (where an insufficient amount of live tissue, or number of green leaves, limbs, or branches, exists to sustain life)

and has been determined to be such by an arborist.

Established Tree Free to Grow. This is any wood, perennial, deciduous, evergreen, or coniferous, plant that has a main stem or trunk, and does not require supplemental care and watering. Plants that otherwise meet the above description but are typically grown as shrubs are not considered trees. Some typical examples of these are hazelnut, photinia, and laurel. A shrub is distinguished from a tree by its multiple stems and shorter height, usually less than 15 feet tall. A large number of plants can be either shrubs or trees, depending on the growing conditions they experience.

Forestry program. Those employees of the parks and recreation department and community development department designated by the mayor to enforce this article, or their designees.

Owner or owners of property. Title holder or person having right of possession of real property and includes legal title holder as shown of record in the tax assessor's office, or agent of legal title holder of said property.

Person. Any individual, owner, title holder, agent, firm, corporation, partnership, association, or organization of any kind. It shall include, but not be limited to, any tenant, lessee, manager, operator, occupant, executor, executrix, administrator, guardian, or other person in charge of, care of, possession of, or control of any real or personal property.

Prune. Includes the correct arboricultural method of removing tree limbs at proper locations, but does not include practices such as topping, tipping, round-over, or flush-cutting.

Public Place. Public rights-of-way, streets, lanes, alleys, highways, parks, parkways, parkway strips, playgrounds, and other public grounds.

Shrub. A woody plant, living more than one (1) year, obtaining less than twelve (12) feet in height at maturity, and that is usually branched near the ground.

Street Trees. The trees, shrubs, bushes, and all other woody vegetation on land lying between property lines, in public places, on either side of all the streets, avenues, or ways within the city. *Street Trees* include new plantings that are not authorized by the city.

Tree. A woody plant, living more than one (1) year, obtaining twelve (12) feet or more in height at maturity, and that is unbranched near the ground.

Tree Removal and Replacement Permit Fee. A fee paid for a removal and replacement permit, as established by City Council adoption.

Sec. 2-424. Jurisdiction and homeowner obligation to maintain street trees.

- (a) *City Jurisdiction.* The city shall have control of all street trees, shrubs, and other plantings now or hereafter in any street, park, public right-of-way, easement, or other public place owned by the city or located in dedicated city right-of-way, and shall have the power to plant, care for, maintain, remove, and replace such trees, shrubs and other plantings, and to regulate the care, maintenance, removal and replacement of these trees.
- (b) *Homeowner obligation to maintain street trees.* Owners of property that abut city rights-of-way where street trees are located within the public right-of-way may not maintain, care for, or prune such street trees. However, when necessary and allowed by a permit duly issued pursuant to this Chapter, such homeowner may remove and replace street trees to the extent authorized in the permit.

Sec. 2-425. Liability disclaimer.

Nothing contained in this section shall be deemed to impose any additional liability upon this city, its officers or employees, nor to create any additional liability for the owner of any private property with regard to the duty to keep any tree, shrub or plant on his property or under his control in such condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, park, boulevard, alley or public place within the city.

Any city tree maintenance is subject to budgetary constraints and the city in nowise guarantees the safety of any tree.

Sec. 2-426. Unlawful interference.

No person, firm or corporation other than duly appointed city officials, shall interfere with the forestry program or persons acting under its authority while engaged in planting, maintaining, or removing any tree, shrub or plant in any street, park, boulevard, alley, or public place owned by the city or located in dedicated city right-of-way.

Sec. 2-427. Appeals.

Any action of the forestry program may be appealed to and heard by tree board. To be effective, an appeal must be filed within fourteen (14) days after the decision of the forestry program. The appeal shall be in writing and shall be filed with the forestry program. The appeal shall clearly specify the reasons for which a hearing is requested.

The forestry program uses the following scale as a guideline for tree removal:

Scale ROW is 1-10 with 10 being the highest priority for removal. Trees go on a cut list at 7 or above. If a tree is rated at a 7 or above and a citizen does not want it cut and removed, they can appeal to the tree board for its determination. If the tree is rated at a 7 or lower and a citizen wants the tree removed for other reasons, they can appeal to the tree board for its determination.

In either case, the tree board if the determination is to remove the tree will also determine what type tree is replanted and the responsibility to pay for such replacement using its discretion based on any available established guidelines.

Sec. 2-428. Penalty for violation.

Any person, partnership, firm, corporation, or other entity who violates any provision of this article is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), or by imprisonment in the city jail for a period not exceeding six (6) months, or both such fine and imprisonment. All such violations which are of a continuing nature shall constitute a separate offense for each day of such continuance. Any violation of this article shall also constitute a public nuisance and may be enjoined and abated as provided by law.

In addition the entity violating this Article shall be responsible and required to pay for the cost of repairs, the replacement of trees or other damages in the right- of- way caused by the violation. If the entity does not promptly pay those required costs, the city will take the necessary action to place a lien against the entity's property.

Sec. 2-429. Enforcement.

The forestry program is hereby charged with the responsibility for the enforcement of this article and may serve notice on any person in violation thereof. Upon notice from the forestry program, or its designees, any cutting, pruning, removal, planting or other activities being done contrary to the provisions of this article or in a dangerous or unsafe manner, shall immediately cease. Such notice shall be in writing, and shall be given 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. In the event the owner or person in charge fails to cease, correct or remove the cause of such violation, then such person shall be guilty of a misdemeanor and subject to prosecution in the municipal court of the city. Where imminent danger exists, the forestry program shall not be required to give written notice to stop the work.

Sec. 2-430. Protection of existing public trees.

Existing public trees shall be protected to the extent that it is possible and feasible. If removed they will be replaced where practical.

Sec. 2-431. Planting, maintenance, and removal of public trees by city departments.

All planting, maintenance, and removal of public trees by city departments or authorized agents shall follow the standards adopted by the forestry program.

Sec. 2-432. Planting, maintenance, and removal of public trees by someone other than the city or its authorized agent.

(a) Planting of Trees and Shrubs

- (1) *Application to plant trees and shrubs.* It shall be unlawful for any person to plant any tree or shrub in any public street or parkway or other public place without first securing written permission from the forestry program. Applications for a permit are available at the parks and recreation maintenance office and shall be submitted to the forestry program. The planting of all trees and shrubs in the public right-of-way shall be performed pursuant to, and in compliance with, the city's adopted design standards.
- (2) *Guidelines for planting.* No shrubs shall be planted to a height that is inappropriate or hazardous to its site. Street trees shall be planted in accordance with their height and spread within a parkway strip of all streets. Species and size of proposed street trees shall be indicated on a landscaping plan to be submitted as part of the tentative subdivision plan if submitted by a subdivider. The planting of trees along street frontages within a public or private right-of-way shall be matched to the site, but may vary depending on landscape design factors and shall conform to the current City of Decatur tree list in the city's adopted design standards. Alternative species may be considered on a case by case basis.
- (3) *Time for planting.* Trees are to be planted during winter and early spring. The City Arborist, or designee, may inspect the trees for correct number planted, type, and health. The planting permit shall include watering at least weekly through either 1 or 2 summers and more often in times of severe heat. All permits shall determine when the trees are established, and thereafter tree maintenance responsibilities shall be in accordance with the Decatur Municipal Code.

(b) Tree Removal

(1) *Immediate tree removal.*

- (A) Removal of any tree located on public property or along public streets is prohibited without first being approved by the Tree Board, unless immediate removal or cutting is necessary for the immediate protection of the public or private property under the following circumstances. The following constitute grounds for issuance of a tree removal permit:
 - (i) Dying, becoming severely diseased, infested, or diseased so as to threaten the health of other trees;
 - (ii) Obstructing public rights-of-way, clear view of traffic signs by the motoring public, or intersection sight distance so as to cause a safety hazard;
 - (iii) Interfering with or damaging public or private utilities;
 - (iv) Being defined as a nuisance as per city nuisance abatement codes; or
 - (v) Otherwise becoming a hazard to life or property in the city.
 - (B) If there is sufficient credible evidence that any of these circumstances exist, the Director may administratively authorize the immediate removal of the trees or woodlands and report same to the Tree Board and City Council.
- (2) *Application to remove and replace a tree.* Application for authorization to remove and replace trees or woodlands shall state the reasons and circumstances necessitating the removal or cutting. An application that meets the criteria for removal and replacement shall include a replacement tree from the current City of Decatur, Alabama Tree List in the Decatur Design Standards. The Tree Board shall review and rule upon the request to remove and replace a tree in a duly convened public meeting, and shall determine if sufficient justification exists for the tree's removal. The Board may approve, approve with conditions or deny the tree removal request. If the tree removal request is approved, the Board's decision shall be in writing and include replanting requirements. The written decision shall be issued to the permit applicant, and maintained in city records as per other notices of decisions required by the Decatur Municipal Code. If approved, the permit applicant shall be responsible for all costs of tree removal and replacement, including installation and review by the

City Arborist, and ongoing maintenance.

- (3) *Standards for approving a tree removal permit.* A non-emergency request to remove a tree that is subject to the standards of this chapter shall be granted by the Tree Board if the Tree Board determines there is sufficiently credible evidence of any of the following circumstances:
 - (A) The tree is diseased, damaged or dying to such an extent that a professional arborist concludes it must be removed;
 - (B) The tree poses a significant risk of harm to people or property; or
 - (C) The tree is causing significant property damage in the form of cracked or heaved building foundations, roofs, sidewalks, curbs, underground utilities, or other permanent structures.
- (4) *Right of appeal.* The applicant or any person adversely affected or aggrieved by a Board decision on a tree removal permit may appeal the Board's decision to the City Council by filing an appeal in writing with the City Clerk within 14 days after the Board issues its written decision. The City Council shall conduct a public evidentiary hearing on the question, based on evidence in the record. The Council may allow additional evidence upon good cause shown and shall decide de novo whether to approve, approve with conditions or deny the tree removal request. The Council's decision shall be in writing, with a brief statement justifying the decision, and shall be the city's final decision.

Sec. 2-433. Licensing of private tree care firms for work on public trees.

Any person, firm, or corporation engaged in the business of pruning, trimming, or removing city trees shall carry public liability and property damage insurance in the minimum amount of one million dollars (\$1,000,000.00) unless otherwise stipulated by the city council and policies or certificates thereof shall be filed with the city clerk. Where deemed advisable, the forestry program may require the posting of a performance bond to guarantee the completion of any job in accordance with adopted city standards, rules and regulations. Applicants should also show proof of workman's compensation as provided by law and vehicular liability insurance.

Any person, firm, or corporation engaged in the business of pruning, trimming, or removing city trees shall possess a valid business license. All tree work will be performed under the direct supervision of a qualified arborist and will comply with all city standards and ordinances.

The forestry program may recommend the suspension or revocation of a tree care firm's business license to the city council, when the forestry program determines that the firm has not complied with city tree care standards. The city council will set a hearing to consider such recommendation at its next available council meeting. The decision of the city council may be appealed to circuit court within fourteen (14) days for nonjury trial determination.

Sec. 2-434. Harming public trees forbidden.

It shall be a violation of the provisions of this article for any person to abuse, destroy or mutilate any city owned tree, plant or shrub. Examples of such damage may include but are not limited to: Attachment or placement of any rope, wire (other than one used to support a young or broken tree), sign, poster, handbill, or other things to or on any city tree; or to cause or permit any wire charged with electricity to be placed or attached to any such tree; or allow any gaseous, liquid or solid substance which is harmful to such trees to come in contact with their roots, trunks, or leaves.

Sec. 2-435. Resolution of conflicts between trees and structures.

Where sidewalk or curb damage due to tree roots occurs, every effort shall be made to correct the problem without removing or damaging the tree. The Parks and Recreation Department or other designated department shall be responsible for developing or approving corrective measures in consultation with the forestry program.

Sec. 2-436. Situations which are declared to be public nuisances.

Any tree, shrub or ground cover, growing or standing on private property in such a manner that any portion thereof interferes with any public street, sidewalk, alley or restricts the flow of traffic or visibility of such street,

traffic signs or visibility, sidewalk, alley or intersection thereof to or the use by any person or persons lawfully using such streets, sidewalks, alleys or intersections shall constitute a public nuisance.

Sec. 2-437. Abatement of hazards and public nuisances.

The city may remove or trim such tree, may permit any public utility to do so, or may require the property owner to remove or trim such tree on private property. The failure of the property owner, or his duly authorized agent, to remove such tree after fifteen (15) days' notice shall be deemed a violation of the provisions of this article, and the forestry program may then remove or trim such tree and assess the cost thereof against the property.

Sec. 2-438. Establishment of Board.

This article establishes the Tree Board for the purpose of advising and making recommendations to the City Council on matters related to the trees on city property, in and adjacent to public ways.

Sec. 2-439. Membership of Board.

- (a) The Board shall be composed of 5 members, who shall be appointed by the City Council. The City Arborist, if one exists, shall serve as staff advisor to the Board. Whenever possible, persons will be appointed who have demonstrated interest, experience, or expertise in some areas of horticulture or trees. To be eligible to serve, members must be residents of the City of Decatur, Alabama, Morgan County, Alabama or Limestone County, Alabama.
- (b) The 5 positions shall continue and be replaced and refilled in accordance with this section. Persons appointed to the Tree Board shall serve a 2-year term.
- (c) Each Board member serves at the pleasure of the City Council and may be removed by majority vote of the Council before the end of the Board member's term for any reason.
- (d) The City Council shall appoint an eligible person to fill any vacancy on the Board to complete the unexpired term of an open position.
- (e) No Board member shall receive compensation or incur expenses of any kind unless the expenses or expenditures have first been approved by the City Council.

Sec. 2-440. Duties of Board.

The Board shall be responsible for but not limited to the following:

- (a) Assist city staff by:
 - (1) Studying, investigating, planning, advising, and recommending action the Board determines to be necessary or advisable for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs and other landscaping in public parks, on public land and along public ways;
 - (2) Undertaking an ongoing program of public outreach and education to promote public understanding of the city's urban forest and public adherence to the standards and procedures established under this subchapter.
- (b) Advise the City Council on matters pertaining to the health, welfare, care and management of the city's trees.

Sec. 2-441. Meetings.

- (a) The Board shall convene when necessary to discharge its duties but not less than 4 times each

calendar year.

- (b) A majority of voting Board members shall constitute a quorum, not less than a quorum of the Board may transact any business or conduct proceedings before the Board.
- (c) The Board may adopt rules and regulations to govern its actions.
- (d) All meetings are open to the public and shall be subject to the requirements of the Alabama Public Meetings Law.
- (e) The Board shall prepare minutes of each meeting in coordination with the City Recorder.

Sec. 2-442. Officers.

- (a) The Board shall elect a chair and vice chair from among its members at its first meeting each year to preside over its meetings. The Board shall also appoint or designate a person to serve as Secretary to the Board who shall take minutes of all meetings, prepare and issue notices and manage correspondence and the records of the Board.
- (b) When the chair is absent, the vice chair shall assume the responsibilities of the chair as chair pro tem. If the office of the chair becomes vacant, the vice chair shall become the chair and shall call an election of the remaining Board members to fill the balance of the vice chair's unexpired term.

Sec. 2-443. Annual Report.

No later than February 1 of each year, the Board shall file an annual report with the City Council containing sufficient details of the Board's activities during the preceding year, recommendations to the City Council related to the city's trees and any other matter the Board deems appropriate.

Secs. 2-444—2-449. Reserved."

SECTION 2. This Ordinance shall become effective October 1, 2023.

Adopted this 18th day of September, 2023.

APPROVED this 21st day of September, 2023.

Tab Bowling, Mayor

ATTEST:

Stephanie Simon, City Clerk