

## **ARTICLE VII. TREE PRESERVATION**

### **Sec. 109-189. Definitions.**

- (a) 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:

*Administrative guidelines* means those certain guidelines, including any appendices, existing or as future amended, incorporated by reference into the tree preservation ordinance as set forth in chapter 109 of the Code of the City of Johns Creek, Georgia, article 8 et seq., which have been adopted by the city council of the City of Johns Creek from time to time to provide standards for the protection, preservation and replacement of trees, and which are regulated and enforced by the city arborist in conjunction with the department of community development or its designated agent through development and construction permits and processes. Copies of the same are kept on file in the office of the clerk of the City of Johns Creek and available for public inspection during business hours.

*Agent, designated or authorized*, means an individual or entity authorized to administer and enforce the standards set forth in the City of Johns Creek Tree Preservation Ordinance and Administrative Guidelines, set forth in this chapter.

*Buildable area* means the portion of a parcel of land where a building may be located and which shall contain enough square footage to meet the minimum required by the zoning district. That portion which is not located in the minimum setbacks, utility corridors, driveways, slopes to build streets, tree save areas, landscape strips, specimen tree areas, state water buffer, tributary buffers, zoning buffers, wetlands, storm water and sanitary sewer easements.

*Buffer* means:

- (1) *State waters buffer*. An area along the course of any state waters to be maintained in an undisturbed and natural condition.
- (2) *Tributary buffer*. A protection area adjoining the tributaries of the Chattahoochee River. Tributary buffer specifications are contained in Part D of each prospective land use section of the City of Johns Creek Tree Preservation Ordinance and Administrative Guidelines as set forth in this chapter.
- (3) *Zoning buffer*. A natural undisturbed portion of a lot, except for approved access and utility crossings, which is set aside to achieve a visual barrier between the use on the lot and adjacent lots and/or uses. Buffer is achieved with natural vegetation and must be replanted subject to the approval of the director of the community development department or his/her designated agent when sparsely vegetated. Cleaning of undergrowth from a buffer is prohibited except when accomplished under the supervision of the director of the community development department or his designee.

*Caliper* means the standard for trunk measurements of nursery stocks. Caliper of the trunk shall be taken six inches above the ground for up to and including four-inch caliper size and 12 inches above the ground for larger sizes.

*Cambium* means tissue within the woody portion of trees and shrubs which gives rise to the woody water and nutrient conducting system and the energy substrate transport system in trees. Cambium growth activity results in a tree's radial development, i.e., increase in diameter.

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*Cambial dieback* means the irreparable radial or vertical interruption of a tree's cambium, usually caused by mechanical damage, such as "skinning bark," or from excessive heat.

*Clearcutting* means the removal of all trees from a property, whether by cutting or other means, excluding stream buffer requirements.

*Coniferous* means belonging to the group of cone-bearing evergreen trees or shrubs.

*City arborist* means the agent of the City of Johns Creek assigned to the community development department and having the primary responsibilities of administration and enforcement of the tree preservation ordinance, as set forth in this chapter.

*Critical root zone* means the area of tree roots within the crown dripline. This zone is generally defined as a circle with a radius extending from a tree's trunk to a point no less than the furthest crown dripline. Disturbances within this zone will directly affect a tree's chance for survival.

*Crown drip line* means a vertical line extending down to the ground from the end of a tree's longest branches.

*Deciduous* means not persistent; the shedding of leaves annually.

*DBH* means diameter-at-breast-height is a standard measure of tree size, (for trees existing on site) and is a tree trunk diameter measured in inches at a height of 4½ feet above the ground. If a tree splits into multiple trunks below 4½ feet, refer to chart in appendix I to the ordinance from which this section is derived.

*Density factor for the site (DFS)* means a unit of measure used to prescribe and calculate required tree coverage on a site. Unit measurements are based upon tree size.

- (1) Site acreage multiplied by (15) for Agricultural Districts = DFS.
- (2) Site acreage multiplied by (20) for Single Family Residential Districts = DFS.
- (3) Site acreage multiplied by (30) for Commercial Districts and all other Non-Single Family Districts = (DFS).

*Director* means director of City of Johns Creek community development department.

*Erosion and sedimentation control ordinance* means the ordinance adopted by the city that regulates soil erosion and its transportation to the city's lakes, rivers and streams (latest revision).

*Improvement setback* means an area adjacent to a zoning buffer in which no improvements and/or structures shall be constructed. No development activity such as tree removal, stump removal or grinding, land disturbance or grading is permitted without the approval of the director of the community development department or his designee.

*Land-disturbing activity* means any activity which may result in soil erosion from water or wind and movement of sediments into state water or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting and filling of land but not including agricultural practices as described in the City of Johns Creek Soil Erosion and Sedimentation Control Ordinance.

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

*Landscape plan* means a plan that identifies areas of tree preservation and methods of tree protection within the protected zone, as well as all areas of replanting. Within replanting areas, the common and botanical names of the proposed species, the number of plants of each species, the size of all plant materials, the proposed location of all plant materials and any unique features of the plant materials shall be indicated.

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*Landscape strip* means an area required by this article, by the zoning ordinance of the city or any condition of zoning, use permit or variance approval, which is reserved for the installation and/or maintenance of plant materials.

*Minimum setback* means the minimum yards as specified in the regulations related to the zoning districts or use permit categories. A minimum required space between a property line and a structure. An area identified by a building line.

*Protected zone* means includes, but is not limited to, the following:

- (1) Critical root zone plus an additional three feet; all areas of a parcel required to remain in open space;
- (2) All areas required as landscape strips and/or buffers (including zoning buffers, state water buffers and tributary buffers); and
- (3) Tree save areas according to provisions of the zoning ordinance of the city, conditions of zoning, use permit or variance approval and/or chapter 109 (tree preservation).

*Revegetation* means the replacement of trees and landscape plant materials to satisfy the minimum tree density and landscape requirements, as determined by the zoning ordinance of the city, condition of zoning, use permit or variance approval, or chapter 109 (tree preservation).

*Roots.*

- (1) *Feeder roots* means a complex system of small annual roots growing outward and predominantly upward from the system of "transport roots." These roots branch four or more times to form fans or mats of thousands of fine, short, non-woody tips. Many of these small roots and their multiple tips are 0.2 to one mm or less in diameter and less than one to two mm long. These roots constitute the major fraction of a tree's root system surface area and are the primary sites of absorption of water and nutrients.
- (2) *Major woody roots* means first order tree roots originating at the "root collar" and growing horizontally in the soil to a distance of between three and 15 feet from the tree's trunk. These roots branch and decrease in diameter to give rise to "rope roots." The primary functions of major woody roots include anchorage, structural support, the storage of food reserves and the transport of minerals and nutrients.
- (3) *Rope roots* means an extensive network of woody second order roots arising from major woody roots, occurring within the surface 12 to 18 inches of local soils, and with an average size ranging from 0.25 to one inch in diameter. The primary function of rope roots is the transport of water and nutrients and the storage of food reserves.
- (4) *Transport roots* means the system or framework of tree roots comprised of major woody roots and rope roots.

*Root collar* means the point of attachment of major woody roots to the tree trunk, usually at or near the groundline and associated with a marked swelling of the tree trunk.

*Root respiration* means an active process occurring throughout the feeder root system of trees and involving the consumption of oxygen and sugars with the release of energy and carbon dioxide. Root respiration facilitates the uptake and transport of minerals and nutrients essential for tree survival.

*Setback* means a space between a property line and the line to which a building or specified structure may be constructed.

*Soil compaction* means a change in soil physical properties which includes an increase in soil weight per unit volume and a decrease in soil pore space. Soil compaction is caused by repeated vibrations, frequent traffic and

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weight. As related to tree roots, compacted soil can cause physical root damage, a decrease in soil oxygen levels with an increase in toxic gasses and can be impervious to new root development.

*State waters* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership or corporation.

*Thinning* means selective cutting or removal of timber. The basal unit of (30) units per acre for commercial districts and all other non single-family districts; (20) units per acre for single-family residential districts; (15) units per acre for agricultural districts shall be maintained after selective cutting, or removal of timber has occurred.

*Timber harvesting* means the felling of timber products (pulp wood, etc). The term "timber harvesting" may include both clearcutting and thinning of timber.

*Tree.*

- (1) *Tree* means any self-supporting woody perennial plant which has a trunk diameter of two inches or more measured at a point two inches above the ground level and which normally obtains a height of at least ten feet at maturity, usually with one main stem or trunk and many branches.
- (2) *Heritage tree* means a tree which is designated upon approval by the director of the community development department or his designee to be of notable historical value or interest because of its age, size or historical association.
- (3) *Specimen tree* means any tree which has been determined by the city arborist to be of high value because of its type, size, age or other professional criteria, and has been so designated according to administrative standards established by the community development department.
- (4) *Stand of specimen trees* means a contiguous grouping of trees which has been determined to be of value by the director of the community development department or authorized designee.
  - a. A relatively mature even-aged stand.
  - b. A stand with purity of species composition or of a rare or unusual nature.
  - c. A stand of historical significance.
  - d. A stand with exceptional aesthetic quality.

*Tree bank* means a site such as a school or public park where the owner/developer shall donate and plant the required trees when it is not feasible to plant the required trees within their site's project area.

*Tree preservation ordinance* means this article as approved and adopted by the city council of the City of Johns Creek to provide standards for the protection, preservation and replacement of trees regulated and enforced by the city arborist in conjunction with the department of community development or designated agent through development and construction permits and processes.

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

*Tributary* means any perennial stream (or portion thereof) within the affected area that is portrayed as a solid blue line on the United States Geological Survey 7.5 Quadrangle Maps, 1968 edition, or other perennial streams as identified by the City of Johns Creek.

*Wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bog and similar areas.

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*Zoning regulations* means the zoning ordinance of the City of Johns Creek, as amended, or such regulations subsequently adopted by the city council inclusive of conditions of zoning, use permit or variance approval established pursuant thereto.

- (b) *All other terms.* All other words or phrases as appropriate to the context of their uses shall be interpreted as defined in the zoning regulations.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 3, 12-19-2006)

### **Sec. 109-190. Fines and penalties.**

Any person violating any of the provisions of this article shall be punished as provided in section 1-7. Each owner of any property wherein a violation exists shall be jointly and severally responsible for said violations.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 13, 12-19-2006)

### **Sec. 109-191. Purpose.**

- (a) The purpose of this article is to cultivate and encourage a high level of tree preservation, to promote the general provisions within this article and to develop detailed provisions within the administrative guidelines in order to implement the regulations set forth to preserve, maintain and replant trees within the City of Johns Creek, Georgia. The intent of the ordinance from which this article is derived and administrative guidelines is to provide standards for the preservation of trees as part of the land development, building construction and timber harvest processes. It is not the intent of this article to regulate individual properties where activities do not require a land disturbance, building construction or timber harvest permit.
- (b) Benefits to citizens derived from tree protection and replanting include:
- (1) Improved control of soil erosion;
  - (2) Moderation of storm water runoff and improved water quality;
  - (3) Interception of airborne particulate matter and the reduction of some air pollutants;
  - (4) Enhanced habitat for desirable wildlife;
  - (5) Reduction of noise and glare;
  - (6) Climate moderation;
  - (7) Aesthetics and scenic amenity; and
  - (8) Increased property value.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 1, 12-19-2006)

### **Sec. 109-192. Authority and applicability.**

- (a) The administrative guidelines referenced in this article are hereby adopted by the City of Johns Creek, copies have been, and are now on file in the office of the clerk of the City of Johns Creek, and the same are incorporated herein as if set out in full, and the provisions of the same shall be controlling.
- (b) Terms and provisions of the tree preservation ordinance and the administrative guidelines established herein, shall apply to all activity which requires the issuance of a land disturbance permit on any real property within the City of Johns Creek. No land disturbance permit shall be issued by the City of Johns Creek

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community development department or any successor to that department, without it being determined that the proposed development is in conformance with the provisions of these regulations.

- (c) The terms and provisions of these regulations shall also apply to construction of new single-family detached and duplex dwellings, including additions, renovations and/or alterations to existing single-family detached and duplex dwellings.
- (d) The terms and provisions of these regulations shall also apply to timber harvesting activities.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 2, 12-19-2006)

#### **Sec. 109-193. Permit procedures.**

- (a) All applications for a land disturbance permit shall provide a landscape plan and other documentation as required and as applicable for all areas of the tract of land within a protected zone. All applications and required supplemental information shall be submitted to the director of the community development department.
- (b) All landscape plans and related documentation shall be reviewed by the city arborist for conformance to the provisions of these regulations and either approved, returned for revisions, or denied within 30 days of receipt. If denied or returned for revisions the reasons for denial or revision shall be annotated on the landscape plan or stated in writing.
- (c) Issuance of a valid land disturbance permit shall constitute an approval of the required landscape plan and shall indicate conformance to the provisions of these regulations.
- (d) For issuance of any residential building permit, applicant must sign and agree to abide by the Residential Erosion & Sedimentation Control Tree Protection Agreement, (see Appendix H. to the Administrative Guidelines). This shall also apply to parcels upon which a land disturbance permit has been previously issued with a tree protection plan approved by the city arborist. The director of the community development department or his designee is authorized to execute such agreements on behalf of the City of Johns Creek.
- (e) For issuance of a timber harvesting permit, applicant agrees to maintain a 25-foot undisturbed buffer along the entire perimeter of the property. This buffer must be maintained for the duration of the timber harvesting activity.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 4, 12-19-2006)

#### **Sec. 109-194. Removal of trees.**

- (a) If the owner/developer proposes to remove any tree in the protected zone, then the owner/developer must document a hardship such as but not limited to economic or zoning restrictions and submit it as part of the application for a land disturbance permit. The application shall be subject to the approval of the director of the community development department, or his designee before any trees are to be removed from the site. Nothing in these regulations shall be construed to allow the removal of vegetation in a natural, undisturbed buffer required by the zoning ordinance.
- (b) When no trees are present in the protected zone or when disturbance of any portion of the protected zone is approved, it shall be the responsibility of the owner/developer to revegetate said areas (in which improvements are not constructed) with trees or other plant materials subject to zoning regulations or, in lieu thereof, administrative standards established by the community development department.
- (c) Notwithstanding any of the other requirements of these regulations, it shall be unlawful to remove a specimen tree without the express written permission of the city arborist or authorized agent. Administrative

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standards have been established by the director of the community development department for the identification, preservation and protection of specimen trees.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 5, 12-19-2006)

### **Sec. 109-195. Violations.**

Citations for any of the following violations by authorized City of Johns Creek enforcement agent may constitute issuance of an immediate stop work order:

- (1) Land disturbance and/or tree removal within state water, tributary or zoning buffer;
- (2) Land disturbance and/or tree removal within tree save area;
- (3) Illegal removal or disturbance of specimen tree, heritage tree or stand of trees;
- (4) Improper installation of tree fencing; or
- (5) Other violations of any provision of this article or the administrative guidelines established pursuant thereto, including appendices.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 6, 12-19-2006))

### **Sec. 109-196. Enforcement.**

- (a) It shall be the duty of the director of the department of community development and designated agent to enforce this article and administrative guidelines. The department of community development and designated agent shall have the authority to modify, revoke, suspend or void any land disturbance permit and shall have the authority to suspend all work on a site or any portion thereof.
- (b) The director of the community development department and designated agent shall serve as the issuing authority and shall have the power to withhold all permits, including, but not limited to, final certificates of occupancy, building permits and all permits on the subject site until it is determined by the issuing authority that the site complies with this article and the provisions of the formal plan approved by the city.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 7, 12-19-2006)

### **Sec. 109-197. Inspections.**

- (a) The community development department is the issuing authority and may cause inspection of compliance to be made periodically by its designated agent during the course of the project and shall make a final inspection following the completion of the work. Applicants shall cooperate with the issuing authority in conducting such inspections.
- (b) The community development department shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this article and administrative guidelines, including, but not limited to, the power to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing or tree removal activities.
- (c) The director of the community development department is authorized to design and implement an inspection program involving private inspectors acceptable to the department.
- (d) No person shall refuse entry or access to any authorized representative or agent who requests entry for the purpose of inspection and who presents appropriate identification, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

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(Ord. No. O2006-12-27, ch. 14, art. 8, § 8, 12-19-2006)

**Sec. 109-198. Notice of violation.**

- (a) If, through inspection, it is determined that a person, firm, or corporation has:
- (1) Engaged in land disturbing or other activities, which have resulted in the removal of trees; or
  - (2) Failed to comply with the terms and conditions of a validly issued permit;

then a written notice of violation shall be served upon the property owner or the agent of record.

- (b) Where a person, firm or corporation has engaged in land-disturbing or tree removal activities without having first secured a permit therefore in violation of this article and administrative guidelines, notices under the provisions of this section may be served upon the person in charge or any person representing the person in charge on the site. All construction and land disturbance activity shall be discontinued until the necessary measures to achieve compliance have been fulfilled.
- (c) The notice shall set forth the measures necessary to achieve compliance with the permit and shall state the time within which such measures must be completed.
- (d) If the person, firm or corporation engaged in land disturbing activity fails to comply within the time specified, he/she shall be subject to citation for violation of this article and administrative guidelines.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 9, 12-19-2006)

**Sec. 109-199. Stop work orders.**

- (a) Upon notice from the director of the community development department, work on any project that is being done contrary to the provisions of this article and administrative guidelines shall be immediately stopped, until such time that the violation has been remedied to the satisfaction of the director of the community development department. Prior to remediation a plan shall be submitted to and approved by the city arborist.
- (b) Such notice:
- (1) Shall be in writing;
  - (2) Shall state the specific violation;
  - (3) Shall be given to the applicant, owner, the authorized agent of either or the person in charge, or any person representing the person in charge of the activity on the subject property;
  - (4) Shall state the conditions under which work may be resumed;
  - (5) Where an emergency exists, no written notice shall be required; and
  - (6) Shall allow only erosion control work to continue while stop work is in effect.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 10, 12-19-2006)

**Sec. 109-200. Modification, revocation, suspension, voidance of permit.**

A land disturbance permit and/or other permit required by this article and administrative guidelines may be modified, revoked, suspended or voided by the director of the community development department upon finding that the holder is in violation of the terms of the permit or any portion of this article and administrative guidelines.



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(Ord. No. O2006-12-27, ch. 14, art. 8, § 11, 12-19-2006)

### **Sec. 109-201. Bonding.**

- (a) The director of the community development department will evaluate all development projects (excluding timber harvesting) requesting property clearcutting. If upon completion of the site evaluation, the community development department deems it appropriate to allow property clearcutting activities, a bond will be required. The bond will be required by the City of Johns Creek as a mechanism to cover any potential cost associated with revegetation of the clearcut property in the event of property abandonment.
- (b) The required bond amount will be 125 percent of the total cost for replanting trees to satisfy the density standards for the project site. A tree replacement cost obtained from a plant nursery will be provided to director of the community development department with the clearcut request and the bond amount will be based on the tree replacement cost. The director of the community development department reserves the right to request additional replacement cost if deemed appropriate. The director of the community development department will hold the bond until the project activity, including tree replacement to satisfy the site density requirements, is completed. If upon issuing the land disturbance permit, the property is clearcut and there are no construction or development activities conducted within six months. The director of the community development department will attempt to contact the property owner (via certified mail) for a project update. Should the property owner not respond within 30 days of receipt of the status request, the bond will be used to revegetate the project site.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 12, 12-19-2006)

### **Sec. 109-202. Appeals.**

- (a) Any person aggrieved or affected by any decision of the city arborist relating to the application of these regulations may file an appeal within 30 days of the decision with the director of the community development department for relief or reconsideration.
- (b) Any person aggrieved or affected by any decision of the director of the department of community development relating to the application of these regulations may file an appeal within 30 days of the decision with the board of zoning appeals . The appeal shall be made through the director of community development.
- (c) Appeals shall only be granted for errors of interpretation or where the unique natural features of the site are such that application of these regulations would create an undue hardship to the property owner, and in other instances where an undue hardship is created for the owner of the property.

(Ord. No. O2006-12-27, ch. 14, art. 8, § 14, 12-19-2006)

### **Sec. 109-203. Care of Public Trees**

- (a) **Purpose.** It is the purpose of this section to provide for the regulation of the planting, maintenance, and removal of trees, shrubs, and other plants on public property, including City parks, facilities, and rights-of-way.
- (b) **Definitions.** In this section only, the following words and phrases shall have the meanings indicated:
  - (1) *Public property* – all grounds and rights-of-way (ROWs) owned or maintained by the City.
  - (2) *Public tree* – any tree or woody vegetation on city-owned or city-maintained property or rights-of-way.

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- (3) *Top or Topping* – the non-standard practice of cutting back of limbs to stubs within a tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree.
- (c) **Delegation of authority and responsibility.** The director of the department of community development and/or their designee shall oversee tree care regulations and protections for trees on public property. Implementation of tree care and protections shall be executed by the departments as delineated below.
- (1) **Trees on City streets and rights-of-way.** The director of the public works department and/or their designee, shall have full authority and responsibility to plant, prune, maintain and remove trees and woody plants growing in or upon all municipal streets and rights-of-ways. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.
  - (2) **Trees in City parks or at City facilities.** The director of the recreation and parks department and/or their designee shall have full authority and responsibility to plant, prune, maintain and remove trees and woody plants growing in or upon all city parks and other public property. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.
  - (3) **Interdepartmental Coordination.** All city departments will coordinate as necessary with the director of the department of community development and will provide services as required to ensure compliance with this Ordinance as it relates to rights-of-way, parks and other public properties.
  - (4) **Interference.** No person shall hinder, prevent, delay, or interfere with the director of the department of community development or their agents while engaged in carrying out the execution or enforcement of this section.
- (d) **Applicability.** The regulations and care standards outlined in this ordinance shall be effective at all times upon adoption by City Council.
- (e) **Tree planting and care standards.**
- (1) **Standards.** All planting and maintenance of public trees shall conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and shall follow all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.
  - (2) **Preferred Species List.** The director of the department of community development shall maintain a list of preferred species for public property. Native trees, shrubbery, and plants are preferred.
  - (3) **Planting distances.** The director of the department of community development shall develop and maintain an official set of spacing requirements for the planting of trees on public property. No tree may be planted within the visibility triangle of a street intersection or within 10 feet of a fire hydrant.
  - (4) **Planting trees under electric utility lines.** Only trees listed as Ornamental trees on the official city tree species list may be planted under or within 15 lateral feet of any overhead utility wire.
  - (5) **Topping.** It shall be unlawful as a normal practice for any city department to top any street tree, park tree, or other tree on public property.