

City of Decatur Tree Conservation Ordinance



May 19, 2008

City of Decatur

Tree Conservation Ordinance

A. Purpose

1. The overall purposes of this ordinance are to promote tree conservation, the increase of tree canopy, and the protection of existing trees in the City of Decatur. General provisions and regulations contained herein, along with the attached Administrative Standards and Best Management Practices for Decatur's urban forest, will guide practices to accomplish this purpose. It is the intent of this ordinance to regulate tree conservation activities as part of the building construction and land development process, and to protect landmark trees within the City of Decatur.
2. Benefits derived from the conservation of trees and increased canopy include:
 - i. Improved air quality,
 - ii. Energy conservation,
 - iii. Reduced flooding and reduced storm water runoff,
 - iv. Reduced soil erosion and improved water quality,
 - v. Improved habitat for desirable wildlife,
 - vi. Reduced health risks,
 - vii. Community aesthetics and improved quality of life,
 - viii. Added economic value.

B. Applicability

1. The terms, provisions and regulations of the Tree Conservation Ordinance and the *Administrative Standards and Best Management Practices for Decatur Urban Forest* shall apply to any real property, public or private, within the corporate limits of the City of Decatur:
 - a. For all activities which require a land disturbance, building construction, or demolition permit;
 - b. For the construction of new single family and two family residences, including building additions, and external renovations or alterations to existing single family detached or two family residences;
 - c. For the purpose of permitting the removal of Landmark Trees,
 - d. For improvements to developed sites and/or existing structures.

C. Definitions

1. Boundary tree

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

2. Buildable Area

The area of a lot within a given zoning district, located outside the required minimum yards.

3. Building Permit

A permit issued by the Decatur Development Department that authorizes the commencement of construction and building construction activity.

4. Caliper

The trunk diameter measurement of nursery stock trees measured at 6 inches above the ground for trees up to and including 4 inches caliper size, and measured at 12 inches above the ground for trees larger than 4 inches caliper size.

5. Canopy Tree

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

6. Certified Arborist

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

7. Critical Root Zone

The minimum rooting volume of a tree necessary to sustain the tree's life, generally defined by the tree's drip line or a radius of 1.25 feet for every 1 inch dbh, whichever is greater, and from the surface to a depth of 3 feet.

8. Damaged Tree

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

9. Decatur Arborist

The individual authorized by the Decatur City Manager to advise the City of Decatur on the administration of the requirements and standards as established in the Decatur Tree Conservation Ordinance. The Decatur Arborist shall have the following minimum qualifications: A BS degree in urban forestry, horticulture or arboriculture with 5 years experience in development related tree conservation, or a MS degree in urban forestry,

arboriculture or horticulture with 3 years experience in development related tree conservation.

10. Destroyed Tree

When any part of a tree is damaged to the point where that tree's survival beyond 3 full growing seasons is questionable, as determined by the Decatur Arborist.

11. Diameter at Breast Height (Dbh)

The diameter of a tree's trunk measured at 4.5 feet above the ground. For multi-trunk trees, the diameter is measured at the narrowest point beneath the point of attachment of the multiple trunks.

12. Ecological Compatibility

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

13. Hazardous Tree or Portion of Tree

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

14. Historic Tree

Any tree having documented historic significance or historic designation, as determined by the Decatur Historic Preservation Commission

15. Land Disturbance Permit

A permit issued by the Decatur Development Department that authorizes the commencement of alteration of development of a given tract of land or the commencement of any land disturbing activity.

16. Landmark Tree

Any canopy tree 30 inch dbh or larger or any understory tree 8 inches dbh or larger, in fair or better condition, having a life expectation of greater than 5 years and which sits on a property undergoing activities to which the terms and provision of the Decatur Tree Conservation Ordinance applies.

17. Protected Tree

Any tree 8 inches dbh or larger, in fair or better condition, having a life expectancy of 5 years or longer, which sits on a property undergoing activities to which the terms and provisions of the Decatur Tree Conservation ordinance.

18. Site-Tree Conservation Plan (STCP)

A plan documenting the location of all trees, boundary trees, structures, proposed utility locations, site grading and construction proposals, methods of tree protection, proposed tree planting, existing and proposed tree canopy, and associated details, as required in Section E. Procedures.

19. Tree

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

20. Tree Protection Zone

The area of a lot defined by the minimum required yards and the critical root zone of any protected tree.

21. Tree Removal Permit

A permit issued by the Decatur Arborist for the removal of a landmark canopy tree.

22. Understory Tree

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

23. Qualified Professional

An individual possessing a degree in forestry, urban forestry, landscape architecture or horticulture, having been qualified by the City of Decatur to submit plans in the implementation of this ordinance and for tree protection in building construction. The Decatur Arborist shall certify and maintain a list of qualified professionals.

D. General Requirements

1. Tree Removal

- a. No trees shall be removed or destroyed prior to issuance of a building construction or land disturbance permit. The issuance of a building construction or land disturbance permit shall constitute compliance with the tree conservation provisions of this ordinance.
- b. No landmark canopy tree shall be removed from any real property within the corporate limits of the City of Decatur without the issuance of a Tree Removal Permit.

2. Protected Trees

- a. All trees outside the buildable area of a property 8 inches dbh or larger shall be considered protected trees.
- b. No protected trees shall be damaged or destroyed.

3. Conditions for Removal or Destruction of Protected Trees

- a. The removal or destruction of protected trees is subject to approval of the Decatur Arborist, only if all of the following conditions are met:
 - i. Unavoidable site modifications resulting from grading, utility work, and construction activities will result in destroying the tree;
 - ii. Site plan modifications to prevent irreparable damage to the tree are impossible or not practical, based on cost benefit analysis;
 - iii. There is no historic significance to the tree;
 - iv. Actions are taken to mitigate the removal of the protected tree by way of replacing its canopy in addition to the overall site canopy requirements.
- b. Approval of the SCTP by the Decatur Arborist shall constitute approval to remove protected trees.
- c. Any decision of the City Arborist relating to the removal or destruction of protected trees may be appealed as provided in Section I. Appeals.

4. The Removal or Destruction of Landmark Trees

- a. The removal or destruction of landmark trees from any property in the City of Decatur is subject to the approval of the Decatur Arborist, only if the following conditions are met.
 - i. There is no historic significance to the tree;
 - ii. The tree threatens the property, safety or health of the property owner or the public.
 - iii. Actions are taken to mitigate the tree's removal by way of planting a new tree of a comparable species and canopy. Payment may be made into the Decatur Tree Bank in lieu of planting, calculated on a tree lost/replaced basis.
- b. The issuance of a tree removal permit constitutes approval to remove a landmark tree. Removal of a landmark tree without the expressed written permission of the City Arborist will result in the canopy value assessment figures at two (2) times the normal canopy replacement value.
- c. Any decision of Decatur Arborist relating to the removal or destruction of landmark trees may be appealed as a provided in Section G. Administrative Appeal and Judicial Review

5. The Removal or Destruction of Boundary Trees

- a. No boundary trees shall be damaged, destroyed, or removed. Procedures for the protection of boundary trees are provided in Section E.4

6. Canopy Requirements

- a. All properties requiring the issuance of a demolition, building construction, remodeling or land disturbance permit shall meet the minimum canopy requirements as established in the *Administrative Standards and Best Management Practices for Decatur's Urban Forest*, attached to this ordinance.
- b. All new or remodeled parking lots shall meet the minimum canopy requirements as established in the *Administrative Standards and Best Management Practices for Decatur's Urban Forest*.
- c. Trees planted to meet canopy requirements shall be ecologically compatible with the intended growing site.

7. Establishment of the Decatur Tree Bank

- a. Where it is determined by the Decatur Arborist that it is impractical or impossible to fully meet the canopy requirements on a specific site, the cost for the balance (unmet portion) of the requirement will be paid into the Decatur Tree Bank, prior to issuance of a demolition, building construction, or land disturbance permit. Calculation of costs shall be established in the *Administrative Standards and Best Management Practices for Decatur's Urban Forest*.
- b. Funds in the Decatur Tree Bank shall be administered by the Decatur City Manager or his/her designee and shall be used exclusively for increasing, managing, maintaining tree canopy and tree safety in public space, and the purchase of openspace in the City of Decatur. The City Commission will establish a planned program for administration of these funds.

E. Procedures

1. Tree Removal Permits

- a. All properties applying for a permit to remove landmark trees shall submit a permit application indicating how the conditions are met as required in Section D.4.a.
 - i. For properties requiring the issuance of demolition, building construction, or land disturbance permits, the removal of landmark trees is permitted under the procedures in Section E.3.
 - ii. The required STCP will indicate how the conditions are met as required in Section D.4.a

2. Permits to Remodel

- a. Permits to remodel owner occupied single family houses shall have tree protection and replacement prescriptions prepared by the Decatur Arborist when both the following conditions are met:
 - i. The proposed remodeling alters the existing footprint of the house.

- ii. The proposed remodeling or construction related activities will encroach upon a protected tree, boundary tree, or landmark tree.
- b. Replacement prescriptions shall be based on a canopy replace for canopy lost basis. Payment may be made into the City of Decatur Tree Bank with the Decatur Arborist determines that site constraints preclude the replacement of trees.

3. Demolition, Building Construction, Land Disturbance Permits

- a. A Site/Tree Conservation Plan (STCP) shall be submitted by a qualified professional for review by the Decatur Arborist and approval by the Decatur Development Department prior to issuance of demolition, building construction or land disturbance permits. (Except for permits to remodel, see paragraph E.2 above).
 - i. The SCTP shall document tree species 8" dbh or greater, including size, dbh, critical root zone and location, the species and caliper size of proposed trees, the location of all proposed site building construction and land development activities, including; grading, drainage, proposed utility locations, and all proposed tree protection measures.
 - ii. All proposed trees for removal must be indicated.
 - iii. The exact location of any tree must be provided if encroachment is proposed with that tree's critical root zone.
 - iv. Standard details for tree protection and tree planting shall conform to the *Administrative Standards and Best Management Practices for Decatur's Urban Forest*.
 - v. The following note shall be provided on the STCP in large letters: TREE PROTECTION FENCING SHALL BE MAINTAINED DURING THE ENTIRE PROJECT PERIOD.
 - vi. The STCP shall include emergency 24 hour contact information.
 - vii. The STCP shall document compliance with the canopy, parking, and landscape requirements established in the *Administrative Standards and Best Management Practices for Decatur's Urban Forest*.
- b. The STCP shall also include the location of landmark trees.
 - i. The removal or destruction of landmark trees will be permitted only if the tree is located within the buildable area of a lot, or if outside the buildable area of a lot and the Decatur Arborist determines that no alternative construction or mitigating site or cultural practices will prevent destruction of the tree.
 - ii. Replacement of landmark trees shall be of comparable species with the size potential and to landmark tree, and shall be ecologically compatible with the intended growing site.

- iii. Trees planted to replace a landmark tree shall fully mitigate loss of the entire measured canopy of the landmark tree.
- iv. Canopy mitigation for loss of a landmark tree shall be in addition to the overall site canopy requirements.

4. Boundary Trees

- a. The STCP shall provide for the protection of boundary trees.
- b. When building construction or land disturbance activities occur within the critical root zone of boundary tree(s) and the Decatur Arborist determines that the survival of the tree(s) is/are doubtful as a result of the proposed disturbance activities, an escrow account shall be established regarding the subject boundary tree(s). Funds shall be deposited into this account in an amount approved by the by the Decatur Arborist, to cover the removal and replacement costs of the subject boundary tree(s) and the arborist fee for determination of the trees' survival at the end of the escrow period.
 - I. In establishing the escrow account, replacement trees specified shall be of comparable species and size potential to the subject boundary tree, shall be ecologically compatible with the intended growing site at maturity, and shall fully mitigate the lost canopy area of the subject boundary tree.
 - II. Canopy credit will be granted to a permittee for the entire canopy area of successfully protected boundary trees, except for those trees located on public right-of-ways.
- c. Prior to a determination authorizing the return of escrow funds to the permittee, any property owner whose property contains an at risk boundary tree(s) for which escrow funds were held, may petition the City Manager or his/her designee for payment of escrow funds for the removal and replacement of the subject boundary tree(s), should any of the subject boundary tree(s) fail to survive or is determined to be in an irreversible decline as a result of the permitted disturbance activities, as determined by the Decatur Arborist.
 - I. The permittee shall have the right to petition the City Manager or his/her designee for the return of all escrow funds should the subject trees survive for a period of three full growing seasons, as determined by the Decatur City Arborist. If the subject tree(s) has/have failed to survive or is in a reversible or irreversible decline as a result of the permitted disturbances, the escrow funds shall be paid pursuant to paragraph c. above, for removal and replacement of the subject tree(s), or for arboricultural practices to reverse the decline as determined and prescribed by the Decatur Arborist.

- II. Any funds not collected by either an affected property owner or the permittee within a period of five years shall be deposited in the Decatur Tree Bank.
- III. No party hereunder shall be entitled to receive interest on any escrow funds required in this provision.

5. Field Verification

- a. The qualified professional submitting the STCP shall verify their accuracy with the Decatur Arborist prior to submittal.
- b. The Decatur Arborist shall verify successful compliance to the STCP prior to issuance of a permit, and shall verify final field compliance prior to issuance of a certificate of occupancy.

F. Enforcement

1. Authority.

- a. The City Manager or his/her designee, such as the City Arborist, has the responsibility to issue permits in conformance with and enforce compliance to this ordinance.

2. Responsibility and Inspection

- a. Neither the issuance of a tree permit nor compliance with the conditions thereof, nor with the provisions of this article shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose any liability upon city, its officers or employees, for injury or damage to persons or property. (Ord. No. O-04-09, 3-15-04).
- b. The city arborist may cause inspections of the work in the buffer or setback to be made periodically during the course thereof and shall make a final inspection following completion of the work. The permittee shall assist the city arborist or his designee in making such inspections. The city arborist shall have the authority to conduct such investigations as he/she may reasonably deem necessary to carry out his/her duties as prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area.

No person shall refuse entry or access to any authorized representative or agent of the city arborist who requests entry for purposes of

inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his/her official duties. (Ord. No. O-04-09, 3-15-04).

- c. Where it is deemed necessary, the City Manager or his/her designee shall require sureties to assure compliance to the terms, conditions, and standards of this ordinance.

3. Violations and Penalties

- a. Any action or inaction which violates the provisions of this article or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

(1) *Notice of violation.* If the city arborist determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this article, he/she shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this article without having first secured the appropriate permit therefore, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site.

The notice of violation shall contain:

- a. The name and address of the owner or the applicant or the responsible person;
- b. The address or other description of the site upon which the violation is occurring;
- c. A statement specifying the nature of the violation;
- d. A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this article and the date for the completion of such remedial action;
- e. A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,

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

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

a. *Stop work order.* The city arborist may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation or violations.

b. *Withhold certificate of occupancy.* The city arborist may refuse to authorize a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

c. *Suspension, revocation or modification of permit.* The city arborist may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the city arborist may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

d. *Penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days (or such greater period as the city arborist shall deem appropriate) (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient) after the city arborist has taken one or more of the actions described above, the city arborist may issue a citation to the applicant or other responsible person, requiring such person to appear in municipal court to answer charges for such violation. Any violation of this article is punishable, upon conviction, according to the provisions of section 1-12 of the City Code. Each day any violation of this article shall continue shall constitute a separate defense. (Ord. No. O-04-09, 3-15-04)

G. Administrative Appeal and Judicial Review

1. Administrative Appeal

a) *Administrative appeal.* Any person aggrieved by a decision or order of the city arborist may appeal in writing within 15 days after the issuance of such decision or order to the zoning board of appeals of the city and shall be entitled to a hearing before the zoning board of appeals of the city within 30 days of receipt of the written appeal.

(1) The zoning board of appeals shall hear and decide appeals when it is alleged an error in any requirement, interpretation, decision, or determination is made by the city arborist in the enforcement or administration of this article.

(2) The zoning board of appeals shall consider the testimony of the city arborist, who shall be present at such hearings, and may consider all technical evaluations, relevant factors, field conditions, and all standards specified in this and other relevant sections of this article.

(3) The zoning board of appeals after conducting a public hearing may affirm or dismiss the decision or order by the city arborist.

2. Judicial Review

a. Any person aggrieved by a decision or order of the city arborist after exhausting all administrative remedies, shall have the right to appeal de novo to the Superior Court of DeKalb County.
(Ord. No. O-04-09, 3-15-04).

H. Severability and Conflicts

1. Invalid Provisions

a. If any article, section, subsection, paragraph, clause, phrase or provision of this article shall be adjudged invalid or held unconstitutional, such decision shall not affect or invalidate the remaining portions of this article.(Ord. No. O-04-09, 3-15-04).

I. Effective Date