

ORDINANCE NO. 12619

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, BY DELETING ARTICLE V, SECTIONS 26-101 THROUGH 26-419 AND RENUMBERING AND ADDING SAID SECTIONS TO CHAPTER 32, AS A NEW ARTICLE XIII, SECTIONS 32-300 THROUGH 32-319, RELATIVE TO THE TREE ORDINANCE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE:

SECTION 1. That Chattanooga City Code, Part II, Article V, Sections 26-101 through 26-419 is amended to delete such sections in their entirety.

SECTION 2. That Chattanooga City Code, Part II, Chapter 32, is amended to renumber a revised new Article XIII, Sections 32-300 through 32-319, also known as the Tree Ordinance, as follows:

DIVISION 1. GENERAL

Sec. 32-300. Title.

This article shall be known and may be cited as the Chattanooga Tree Ordinance.

Sec. 32-301. Purpose.

The purpose of this ordinance is to promote the planting, preservation, and proper care and maintenance of trees and plantings within the incorporated city limits of the City of Chattanooga. Trees and plantings constitute an important public asset of the City of Chattanooga, enhancing the attractiveness and environmental health of the City, thereby promoting the general and economic well-being of the City. Urban trees are a fragile public resource and may be damaged or destroyed through malicious, careless, or even well-intentioned actions. This public resource may best be improved and protected by a program of comprehensive management and regulation of planting, maintenance, and removal, administered by an office within municipal government. This program shall be known as the "Urban Forestry Program," or alternatively as the "Tree Program."
(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-302. Definitions.

For the purpose of this Article the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directory.

Caliper – This is a diameter measurement for nursery stock. For trees less than four (4) inches in diameter this measurement is made at six (6) inches above grade. For trees with a diameter above (4) inches in diameter the measurement is equal to DBH. See DBH below.

City - the City of Chattanooga, Tennessee.

City Forester - the City Forester or other qualified designated official of the City of Chattanooga, assigned to carry out the enforcement of this Article.

City Landscape Inspector - assigned to assist in carrying out this Article under the direction of the City Forester.

City Property - all real property which is owned or leased by the City or which is maintained by it, or any part of any public right-of-way.

Critical Root Zone – The soil area below ground and the space above ground defined by the tree canopy's dripline.

City Wide Services - the designated unit of the City under whose jurisdiction city-owned trees fall.

Diameter at Breast Height (DBH) – This is a diameter measurement for existing trees. This standard of measure is made at four and one-half (4.5) feet above the ground for trees greater than four (4) inches in diameter at six (6) inches above grade.

Dripline – The outer edge of the canopy of each individual tree.

Heritage Tree – Any tree thirty-six (36) inches DBH and larger and/or possesses historical or cultural significance as determined by the City Forester.

Highway or Street - the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular or pedestrian traffic.

Park - shall include all public parks having individual names.

Planting Plan - a scaled drawing depicting all plant materials, specifications, and any other information required by the City Forester for the evaluation of permit applications.

Property Line - shall mean the outer edge of the right-of-way of a highway or street.

Property Owner - shall mean the person owning property as shown by the County Assessor's Plat of Hamilton County, Tennessee.

Protected Tree - Any public tree.

Pruning Standards - generally accepted standards for pruning as defined in the current edition of American National Standards Institute ANSI A-300 and the current ISA Companion booklet: Best Management Practices - Tree Pruning.

Public Trees - shall include all shade and ornamental trees now or hereafter growing on any street, park, or other public property.

Private Trees - shall include all proposed or existing shade and ornamental trees now or hereafter growing on private property used to meet any City of Chattanooga Landscape or Zoning ordinance or condition.

Right-of-way - that property located within and adjoining the public streets, roads, highways and public easements within the City, which are owned or maintained by the City.

Streetscape- City of Chattanooga public right-of-way infrastructure, which may include trees, pedestrian lighting, sidewalks, crosswalks, ADA ramps, and/or curb and gutter. City Engineering may require streetscapes to be improved by adjoining property owners as a cost of redevelopment.

Street Trees - trees, shrubs, and all other woody vegetation on land lying between property lines on either side of all streets, avenues, or ways within the City.

Streetyard- Trees required by the Landscape Ordinance to be planted on private property adjoining the City of Chattanooga public right-of-way.

Topping - the severe and/or indiscriminate cutting back of limbs or trunks within the canopy of a tree so as to remove the normal canopy and disfigure the tree.

Tree - for purposes of this article only, trees shall be considered to be plants of woody structure with an anticipated mature height of at least (15) feet.

Tree Protection Best Management Practices (BMPs) for Contractors and Builders Technical Guide(City of Chattanooga) - the standard for tree protection, care, and maintenance during construction. It is also the standard for replacing and planting new trees.

Tree Survey – A scaled plan or inventory locating existing trees.

Treelawn - that part of a street or highway, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic. AKA: verge, planting strip, utility strip.

Tree work - The act of planting, pruning, trimming, fertilizing, treating, removing, or any other action upon or affecting a tree.

Urban Forestry Program - a proactive program for managing trees within the City as a public resource.

(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-303. Establishment of a Tree Commission.

- (a) There shall be created a commission to be known and designated as the "Chattanooga Tree Commission" composed of nine (9) persons, who shall be residents of the City of Chattanooga or of Hamilton County. Said members shall be appointed by the mayor with approval of the Governing Body of the City and shall have at least five (5) members who are professionally trained in related fields as an Arborist, Landscape Architect, Biologist, Realtor/Developer/Home Builder or General Contractor, and an Engineer/Architect/Surveyor. The City Forester, City Landscape Inspector/Plan Reviewer and other professionals designated by the City Forester shall serve as advisors to the Commission. All members of the Commission shall serve without pay. The members shall be appointed for a term of four (4) years and serve until their successors are duly appointed and approved by the City Council. Successors to those members appointed by the Mayor shall thereafter be appointed for terms of four (4) years. Vacancies caused by death, resignation, or otherwise, shall be filled for the unexpired term in the same manner as original appointments are made.
- (b) *Organization.* Within a reasonable time after the appointment of said Commission and approval of the members thereof, upon call of the Mayor, the Commission shall meet and organize by election of a chairman and a secretary. The Commission shall then provide adoption of rules and procedures and for holding of regular and special meetings as the Commission shall deem advisable and necessary in order to perform the duties set forth.
- (c) *Duties.*
 - (1) The Commission shall study the problems and determine the needs of the City of Chattanooga in connection with its urban forestry program and report from time to time to the Governing Body of the City as to desirable legislation concerning the tree program and related activities for the City.

- (2) The Commission shall recommend to the Administrator of Public Works candidates for the office of City Forester.
- (3) The Commission shall assist the properly constituted officials of the City, as well as the Governing Body and citizens of the City, in the dissemination of news and information regarding the selection, planting, and maintenance of trees within the incorporated city limits, whether they be on private or public property.
- (4) The Commission shall provide prior notice and maintain minutes of all regular and special meetings pursuant to Tennessee law at which the subject of trees, insofar as it relates to the City, may be discussed by the members of the Commission, officers and personnel of the City and its several divisions, and all others interested in the urban forestry program.
- (5) The Commission shall hear and decide appeals from decisions of the City Forester as set forth in Sec. 32-306. Any appeal from the actions of the Commission shall be filed in writing within thirty (30) days of the action of the Tree Commission with the secretary of the Board of Appeals and Variances of the City.

Sec. 32-304. Establishment of the position of City Forester.

- (a) *Appointment.* The City Forester shall be employed by the Governing Body of the City upon recommendation by the Administrator of Public Works after a competitive examination and interview given by the Tree Advisory Commission. He or she shall be a person skilled and trained in the arts and sciences of municipal arboriculture, and shall hold a college degree in urban forestry, arboriculture, ornamental or landscape horticulture, or other closely related field. He or she shall have had at least six (6) years experience in municipal urban forestry work or its equivalent. The office of the City Forester shall be an administrative unit of the Division of City Wide Services of the Department of Public Works. Should the office of City Forester be vacant, the authority of that office shall be transferred to the Director of City Wide Services until such time as the City Forester position is filled.
- (b) *Salary.* The City Forester shall receive a salary commensurate with his or her training and experience as full compensation for all services rendered and in lieu of all fees.
- (c) *Duties and Authority.*
 - (1) *General.* The City Forester shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of trees on streets and other publicly owned property to insure safety or preserve the aesthetics of such public sites. The City Forester shall promulgate the rules and

regulations of the Arboricultural Specifications and Standards of Practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets, parks and other public places in the City, and shall direct, regulate, and control the planting, maintenance and removal of all trees growing now or hereafter in any public area of the City. He or she shall cause the provisions of this Article to be enforced. The City Forester shall coordinate with the City Traffic Engineer in matters concerning trees which may be a hazard to traffic safety. The City Forester shall also coordinate with the City Engineer in matters related to streetscape of public right-of-way.

- (2) Permit Authority. The Land Development Office shall administer the Tree Permit. The City Forester shall have the authority to approve or deny permits for planting, maintenance, and/or removal of public trees. It shall also be his or her duty to supervise or inspect all work done under a permit issued in accordance with the terms of this Article.
- (3) Master Street Tree Plan. The City Forester shall have the authority to formulate a Master Street Tree Plan as needed, perform and maintain an inventory, and create other relevant documents with the advice and approval of the Tree Advisory Commission. The Master Street Tree Plan shall specify the species of trees to be planted on each of the streets or other public sites of the City. From and after the effective date of the Master Street Tree Plan, or any amendment thereof, all planting of Public Trees shall conform thereto. The City Forester shall consider all existing and future traffic, utility and environmental factors and urban design criteria when recommending a specific species for each of the streets and other public sites of the City.

Sec. 32-305. Interference with City Forester.

No person shall hinder, prevent, delay, or interfere with the City Forester or any of his assistants while engaged in carrying out the execution or enforcement of this Article; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the City.
(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-306. Right to appeal decision of City Forester.

Any aggrieved party shall have a right to appeal any decision of the City Forester and/or Landscape Inspector to the Tree Commission. If a party wishes to contest a decision he shall, within ten (10) days from the date of receipt of such decision, request in writing a hearing before the Tree Commission for a review and/or hearing on said decision. Any decision of the Tree Commission shall be final, subject to an appeal filed in writing within thirty (30) days of the action of the Tree Commission with the secretary of the Board of Appeals and Variances of the City. The Board of Appeals and Variances shall

make a final decision on all requests for review of any action taken by the City Forester and/or Landscape Inspector and the Tree Commission except as otherwise provided by Tennessee law.
(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-307. Legality of article and parts thereof.

Should any section, clause, or provisions of this Article be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Article as a whole, or parts thereof, other than the part so declared to be invalid.
(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-308-32-309. Reserved.

DIVISION 2. PUBLIC PROPERTY

Sec. 32-310. Public tree care.

- (a) City authority on public grounds and streets. The City shall have the right to plant, prune, maintain and remove trees, plants, branches and shrubs within the property lines of all streets, alleys, avenues, lanes, boulevards, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.
- (b) Private planting on public grounds. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of said trees is in accordance with Sections 32-311 and 32-312 of this Article.
- (c) Damage. Unless specifically authorized by the City Forester, no person, firm, or city department shall intentionally damage, cut, carve, transplant, or remove any public tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree; allow any gaseous, liquid, or solid substance which is harmful to trees to come in contact with any public tree.
- (d) Topping. It shall be unlawful for any person, firm or city department to top any street tree, park tree, or other tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this provision by agreement of the City Forester.
- (e) Tree maintenance practices. Any pruning, and other tree maintenance practices performed on a public tree shall conform to the current edition of American National Standards Institute ANSI A-300 and the current ISA Companion booklet: Best Management Practices - Tree Pruning.

- (f) Stumps. All stumps of removed City owned trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.
- (g) Construction protection.
 - (1) Tree protection shall be installed for all trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work. Tree protection shall also be installed for all private trees used to meet any ordinance or zoning condition near any excavation or construction of any building, structure, or street work. Tree trunks shall be guarded with 1" x 4" plank trunk protection no less than four (4) feet high. In addition the City Forester may require that a Critical Root Zone be established by the installation of a fence or frame at the dripline of a specific tree(s). All equipment and building material, vehicles, dirt, or other debris shall be kept outside the Critical Root Zone. Upon good cause shown, the City Forester may alter or waive the foregoing requirements at his/her discretion.
 - (2) No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of twenty (20) feet from any public tree without first obtaining a written permit from the City Forester. The exact minimum trenching distance varies according to the diameter of the tree but can be found in the "Tree Protection BMP Guide for Contractors and Builders".
 - (3) No person, firm, or City department shall deposit, place, store, or maintain upon any public place of the city any stone, brick, sand, concrete, vehicles, equipment, or other materials which may impeded the free passage of water, air, and fertilizer or other nutrients in the Critical Root Zone of any tree growing therein, except by written permit of the City Forester.
 - (4) The "Tree Protection BMP Guide for Contractors and Builders" shall be considered the primary reference for protective actions regarding activities that may potentially impact trees on City owned and managed property.
(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-311. Obstructions--minimum clearances.

It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, obstruct the view of any street or alley intersection, or otherwise endanger the public. The minimum clearance of any overhanging portion thereof shall be eight (8) feet over sidewalks, and twelve (12) feet over all streets and vehicular use areas except truck thoroughfares which shall have a minimum clearance of fourteen (14) feet. No street trees shall be planted closer than ten

(10) feet to any fire equipment to include fire hydrants, post indicator valves, and gongs. No street trees shall be planted closer than twenty (20) feet to any overhead electrical or telephone wires unless specifically approved by the Municipal Forester as a low growth variety suitable for such location. Property owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public.

(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-312. Permits required.

(a) General.

- (1) Except as provided herein, no person, firm, or city department shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or conduct ground-disturbing activities within the drip line of, or otherwise disturb any tree on any street or city-owned property without first filing an application and procuring a written permit from the Land Development Office on forms furnished by the City Forester. The person receiving the permit shall abide by the Standards of Practice adopted by the Forester and by other reasonable conditions imposed by the City Forester.
- (2) Applications for permits will be available at the Land Development Office. The permit must be approved and signed by the City Forester not less than seventy-two (72) hours in advance of the time the work is to be done. A permit fee of \$50.00 and any administrative and technological fees approved by the City Council shall be charged and the permit filed with the Land Development Office.
- (3) The Land Development Office shall issue the permit provided for herein if, the City Forester certifies that the proposed work and the proposed method and workmanship thereof are in compliance with the provisions of this Article. Any permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit and in the manner as therein described. Any permit shall be void if its terms are violated.
- (4) Notice of completion shall be given within five (5) days to the City Forester for his inspection. Such notice shall include whatever form of identification as may be specified by the City Forester.
- (5) General permits may be approved for public and private utility companies which shall install overhead and underground utilities (including CATV installations and water and sewer installations by or at the direction of the city); provided that, the company's written pruning and trenching specifications have been annually approved by the City Forester and the Chattanooga Tree Commission; provided, however, that removal of any

tree shall have been specifically approved in advance by the City Forester. Such general permits may be revoked upon written notice to the permit holder from the City Forester in the event the permit holder fails to comply with the provisions of this Article or with the conditions of the permit.

(b) Planting.

- (1) Application Data. The application required herein shall state the number of trees to be set out; the location, grade, species, cultivar or variety of each tree; the method of planting; and such other information as the City Forester shall find reasonably necessary to make a fair determination of whether a permit should be issued. A Planting Plan shall be required for any planting operation unless specifically waived by the City Forester.
- (2) Improper Planting. Any tree planted in a manner in conflict with the provisions of this section shall be subject to removal as provided in Division 4 of this Article.

(c) Maintenance. The application required herein shall state the number and kinds of trees to be sprayed, fertilized, pruned, or otherwise maintained; the kind of treatment to be administered; the composition of the spray material to be applied; and such other information as the City Forester shall find reasonably necessary to a fair determination of whether a permit should be issued.

(d) Removal, replanting and replacements.

- (1) Wherever it is necessary for the city to remove a tree or trees from a tree lawn in connection with the paving of a sidewalk, or the paving or widening of the portion of a street or highway used for vehicular traffic, the city may replant such trees or replace them. Provided that if conditions prevent planting on tree lawns, this requirement will be satisfied if any equivalent number of trees of the same size and species as provided for in the Master Street Tree Plan are planted in an attractive manner on the adjoining property with the approval of the property owner(s).
- (2) No person or property owner shall remove a tree from the tree lawn for any reason without first filing an application and procuring a permit from the City Forester. The person or property owner shall bear the cost of removal and replacement of all trees removed.

(Ord. No. 9315, § 1, 1-30-90)

Secs. 32-313. Reimbursement to the City

Any person found to be in violation of this article through the action of removing a tree on city property (Sec. 32-310c) shall be responsible for reimbursement to the city for the

value of the tree as described in the latest published edition of the Guide for Plant Appraisal by The Council Of Tree & Landscape Appraisers and as interpreted by the City Forester. In addition, any person found to be in violation of this article shall be responsible for the actual cost incurred by the City for replacing any removed tree. The replacement tree and location for planting shall be approved by the City Forester.

DIVISION 3. PRIVATE PROPERTY

Sec. 32-314. Utility responsibility on private property.

Public and private utilities which install overhead and underground utilities (including CATV installations and water and sewer installations by or at the direction of the city Department of Public Works), shall be required to accomplish all work on property subject to this Article in accordance with the company's written pruning and trenching specifications, or as mutually agreeable to the property owner and the utility. Written specifications shall have been first approved by the City Forester and reviewed by the Tree Advisory Commission.

(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-315. Dead or diseased tree removal on private property.

(a) The city shall have the right to order or cause the removal of any trees that are dead or diseased on private property within the city, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the city. The City Forester shall determine which tree or trees are to be removed.

(b) Unless such trees pose immediate hazard to public safety, the owner of such trees will be ordered, in writing, to remove said trees, stating the reason for removal and the location of said tree or trees to be removed. Removal shall be done by said owners at the owner's expense within fourteen (14) days after the date of the order to remove. In the event the owner fails to comply with such order to remove, or if public safety considerations require immediate removal, the city shall then proceed to remove said tree or trees, and to charge removal costs to the owner of the property as provided by law in the case of special assessments.

(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-316. Professional License and Business Practice

Any commercially licensed business conducting tree work (as described in Sec. 32-302) including but not be limited to Tree Care Companies, Lawn Service Companies, Landscape Companies, Painting, Building and Renovation Companies or any person or firm receiving payment of any type to conduct tree work, must obtain a City of Chattanooga business license and provide proof of liability insurance in the maximum

amount of the applicable limits of liability for governmental entities under the Tennessee Governmental Tort Liability Act at the time such work is performed.

DIVISION 4. ENFORCEMENT

Sec. 32-317. Violations declared nuisances.

The treatment of any tree in violation of the provisions of this Article by any person is declared to be a public nuisance dangerous to the public safety and shall be abated as set forth in this Article.

(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-318. Notice requiring abatement of violations; abatement by City; lien for costs.

Upon ascertaining a violation of the provisions of this Article, the City Forester shall cause to be served upon the offender a written notice to abate which shall (i) describe the conditions constituting a nuisance under this Article and (ii) state that the nuisance may be abated by the City at the expense of the offender at the expiration of fourteen (14) days from the date of such notice if the condition is not corrected by the offender. If, at the expiration of fourteen (14) days from the date of said notice to abate, the condition constituting a nuisance has not been corrected, then such condition may be corrected for the nuisance abated by the City at the expense of the offender under the directions of the City Forester. The City shall have a lien on the property upon which such nuisance is located to secure the amount expended for the abatement of such nuisance.

(Ord. No. 9315, § 1, 1-30-90)

Sec. 32-319. Violation declared misdemeanor; penalty.

Any person who shall violate any provision of this chapter, or any person who shall fail or refuse to comply with any notice to abate or other notice issued by the City Forester and/or City Landscape Inspector within the time allowed by such notice, shall be guilty of a misdemeanor; each day of such violation or failure or refusal to comply shall be deemed a separate offense and punishable accordingly. Each violation of this article shall be punishable by a municipal fine of not less than fifty (50) dollars and costs for each day of violation for this municipal offense. In addition to any municipal fine, any violator shall be responsible for the actual cost incurred by the City for replacing any illegally removed tree. The replacement tree and location for planting shall be determined by the City Forester.

SECTION 3. That this Ordinance shall become effective two (2) weeks from and after its passage as provided by law.

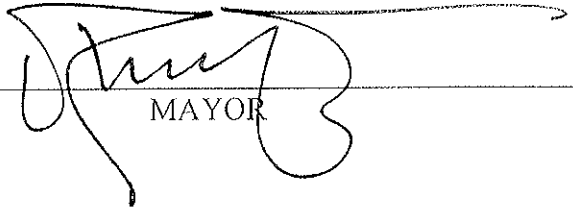
PASSED on Second and Final Reading

June 26, 2012.


CHAIRPERSON

APPROVED: _____ DISAPPROVED: _____

DATE: June 28, 2012.


MAYOR

PAN/ kac