

The Tree Next Door's Recommendations for the Proposed Tree Ordinance

May 3, 2021

Founded in 2009, The Tree Next Door (TTND) is Atlanta's oldest grassroots, all-volunteer tree advocacy organization with extensive experience in working with the Tree Protection Ordinance (TPO) to ensure its enforcement as well as proper application in permitting tree removal. We work with Atlanta residents to help them understand the importance of a healthy urban tree canopy, the rate of tree canopy loss, and the rights residents have to preserve their neighborhood's tree canopy.

Given that the Tree Protection Ordinance is the only legislation that can protect our tree canopy, we hope that the Community Development and Human Services Committee will include our recommendations below in any final Ordinance that is brought before City Council for a vote. We have consulted with other tree groups – whose feedback we have published on our website's home page: treenextdoor.org – and find that all the tree groups *are mostly in agreement* with what needs to be fixed in the City's proposed Ordinance with just a few exceptions. Our recommendations provide additional considerations not fully expressed in the feedback we have seen to date and note the few points of difference significant enough to bring to the City's attention. Any of [Trees Atlanta's Recommended Amendments to the Proposed TPO](#) that we have not addressed below are ones in which we fully support Trees Atlanta's recommendations.

Length and Complexity

The proposed Ordinance is a 64-page convoluted ordinance loaded with numerous exceptions and caveats. It is too complex for the average person to understand.

How to fix:

- 1) The Ordinance needs to be organized so one can easily find the specific regulation(s) pertinent to their tree issue(s) without having to read the entire Ordinance for fear of having missed something.
 - a) Permitting issues should be organized by permit type, citing the preservation, replacement, recompense, site density, and appeals required/allowed for each.
 - b) A chart of permit types and requirements for each should be added to the Ordinance to provide a quick overview and summary. The flow charts provided on the City website are nice for a single project, but do not provide an overview of requirements for the different types of permits available.
 - c) Eliminate all the exceptions which are not related to public safety issues. The exceptions make the law unwieldy and opens the door for potential gamesmanship.
 - d) When other sections of the Ordinance must be referenced, they should be hyperlinked within the document, including each permit type in the summary chart.
- 2) Providing brochures and pamphlets to help people understand the ordinance requirements may be helpful but should not act as a substitute for an ordinance that cannot be understood by the average person without professional or legal assistance.
- 3) City Planning has mentioned hiring additional staff to help the public navigate the new tree ordinance. Money for this staff should not come out of recompense fees since that money is to

be used to replant cut trees, not pay for additional salaries to help people understand a poorly written and far too complicated ordinance.

Urban Canopy Goal and Plan

Unlike our current TPO, which requires that there be no net loss of trees, the proposed Ordinance has no quantifiable goal for saving the tree canopy nor any plans for creating an Urban Forest Master Plan. Section 158-28(c) of the Ordinance refers to non-existent goals when it says, “To determine if these goals are met, this article will be reevaluated five years after adoption.” The Ordinance proposes significant changes in how we manage tree removal and collect recompense without any data to demonstrate that these changes will not result in the loss of more canopy and less tree replanting, much less achieve goals it has not defined.

How to fix:

- 1) The Ordinance should specify a measurable goal of no less than 50% canopy coverage and seek to achieve that goal through the implementation of an Urban Forest Master Plan no later than one (1) year after approval of the new ordinance.
- 2) The Ordinance should include the [Section 158-80 Urban Forest Master Plan](#) in the rewrite of the Tree Trust Fund section that TTND has sent the City with the additional recommendations provided in [Section 12. “Urban Forestry Master Plan”](#) of Trees Atlanta’s proposed amendments.
- 3) The approved Ordinance should be evaluated one year after implementation – not five -- and amendments be made immediately to correct any issues noted with tree preservation and collecting recompense. Waiting five years to make a course correction may result in dramatic and irreversible tree canopy loss.

City Allowed to Bypass TPO

The vague language in Section 158-38(d) of the proposed Ordinance enables the City to exempt from compliance almost any project serving a public purpose. Since a tree ordinance is written to protect trees, not to facilitate “the accomplishment of public purposes or the provision of public protection”, it does not make sense to allow the City Arborist to override the Ordinance when “the strict application of a particular regulation or regulations is not necessary” for public purposes or protection.

How to fix:

- 1) Rewrite Section 158-38(d) of the proposed Ordinance to clarify its intent and purpose and prevent the City from being able to bypass the TPO for any project serving a public purpose. The TPO should only be bypassed in emergency situations in which regulations in the Ordinance interfere with public safety.

Protection for Trees in the Setbacks and Stream Buffers

The Ordinance removes all protection for all trees in the setbacks and 10% of trees in 100-year flood plains, which include most stream buffers. The existing ordinance protects trees in the setback but does allow for removal of 10% of the trees in the 100-year flood plains.

How to fix:

- 1) No trees may be approved for removal from the setbacks unless:
 - a) The tree is in the portion of the setback that must be used for vehicular ingress and egress or for the installation of utilities that cannot be accomplished in a manner allowing preservation of the tree.
 - b) The tree(s) is a Non-Priority Tree(s) in a setback and removing it will preserve a Priority Tree(s) in the buildable area provided there are no other options to preserve the Priority Tree(s) in the buildable area.
 - i) The total diameter at breast height (DBH) of a tree(s) removed in the setback to save a Priority Tree(s) must be equal or less the total DBH of the Priority Tree(s) saved.
 - ii) The Priority Trees saved are not close to the end of their natural lifespan.
 - c) No administrative zoning setback variances shall be granted for the preservation of trees. NPU's must have the right to approve such variances. (We do not support the administrative zoning setback variances included in the City in the Forest's "Citizens Group Blended Draft" as it removes neighborhood input in granting zoning variances.)
 - d) No trees can be impacted or destroyed by a zoning variance unless a permit to impact or remove the trees have already been issued by a City Arborist prior to and independent of the variance request.
- 2) DDH trees removed in 100-year floodplains should be counted as part of the 10% tree removal limit. DDH trees have significant value in floodplains, especially to control erosion and benefit wildlife.

Pine Trees Deserve Equal Protection

The Ordinance adds another level of complexity by having two different size standards for issuing cutting permits: pine trees must have a diameter at breast height (DBH) of 12 inches or greater whereas all other trees must be 6 inches or greater. The current TPO requires a permit for all trees 6 inches or greater, but only requires recompense on pine trees that are 12 inches or greater.

How to fix:

- 1) To make the Ordinance more consistent, and to prevent claims of not having realized a cut tree was not a pine, require all trees 6" or greater to have a permit for removal.
- 2) Pine trees under 12 inches do not have to be recompensed provided the most recent measured tree canopy coverage is not below 45%, otherwise we need to place greater emphasis on tree replanting to prevent a net loss of trees from 2014 when we had 47% canopy coverage.

Priority Trees

The Ordinance favors preserving a percentage of Priority Trees over preserving a minimum disturbance area (MDA). Plus, many Priority Trees are closer to the end of their lifespan than the smaller trees and the Ordinance has no provisions for preserving the next generation of Priority Trees.

How to fix:

- 1) Each property must conform to their maximum disturbance area as well as saving a certain percentage of Priority Trees.
- 2) No tree can be permitted for removal due to construction unless the improvements cannot reasonably be designed or positioned to further increase tree protection.
- 3) The City Arborist shall have and exercise the authority to recommend reasonable design changes within the buildable area to help save trees and not issue a cutting permit if the applicant refuses to make them.
- 4) The Tree Conservation Commission shall also have and exercise the authority to require reasonable design changes to save trees in the buildable area. This needs to be stipulated in the new Ordinance as some Tree Commissioners have stated in appeal hearings that they do not feel they can “tell a builder how to build” to save trees.

Appeals

The proposed ordinance removes the public’s right to appeal if the developer/owner meets the tree preservation standard that allows removal of up to 50% of Priority Trees on the lot. It does not allow any more than five business days for someone to appeal a preliminary approval (yellow sign posting), a huge burden for people who work during the day. It also limits those who can appeal decisions regarding trees impacted by development on private property to those in the NPU or within a one-mile radius of the property, while allowing anyone in the City to appeal preliminary approvals on public property. Because all trees provide a community-wide benefit in improving air quality and reducing storm water runoff into our sewers and streams, the Ordinance places meaningless geographical restrictions on who may appeal preliminary approvals.

How to fix:

- 1) All preliminary approvals to remove trees should be appealable. (Livable Buckhead suggests that appeals may be restricted if higher tree preservation standards are implemented in the new Ordinance, but we disagree. Without appeals there is no way to hold the City accountable for enforcing those higher standards.)
- 2) The time to appeal a preliminary approval on any type of property should be increased to 10 business days in which the Arborist Office is open and an Administrative Analyst for the Tree Commission who can answer appeal questions can be accessed. (Presently, the Administrative

Analyst is accessible only Mondays – Thursdays and has no backup other than the Arborist Office, the entity being appealed.)

- 3) Any individual who resides or owns property or a business in the City of Atlanta; or any civic association in the City of Atlanta, should be able to appeal any decision affecting any trees impacted by development or projects in the City of Atlanta.

Appeal Decisions

The Ordinance does not address that many appeals heard by the Tree Commission include more than one section of the TPO that the appellant believes was misinterpreted or misapplied by the City, but sometimes the Tree Conservation Commission will make a ruling based on just one part of the appeal and fail to address all other issues raised in the appeal.

How to fix:

- 1) No appeal should be denied in whole based on the denial of part of an appeal.
- 2) Before completely denying an appeal, the Tree Commission shall provide a written statement explaining why the appellant's facts or supporting material do not represent a misinterpretation or misapplication of the TPO for every section cited in the appeal. Otherwise, the Tree Commission must uphold the appeal.

Postings

The proposed Ordinance removes the orange sign onsite posting and puts it exclusively online. It also reduces the yellow sign posting on public property to 5 business days, while keeping the 5 business days for yellow sign posting the same for private property. The removal and shortening of on-site postings limit public awareness of proposed tree removal and the ability to act, especially among those who are not computer-savvy or do not have easy access to the Internet. There is still no requirement to post non-development related tree removal, which causes concerns that permitted DDH trees are being removed illegally.

How to fix:

- 1) The 10-business day (orange sign) posting that an application to remove a designated tree(s) has been filed with the City can be exclusively online provided proper public notification is given during a longer on-site posting indicating that a preliminary approval to remove trees has been given (yellow sign).
- 2) The on-site yellow sign posting should be required for a minimum of 10 business days -- or longer if the appropriate City personnel is unavailable on any of those business days to answer questions and/or receive appeal forms.

- 3) Tree removal that requires a permit but not a preliminary approval (i.e., DDH, invasive species, or Homeowner Allowance to Remove Trees) shall be required to self- post a City-issued notification of tree removal with the permit number displayed on frontage with visibility from street on day of work.

Boundary Trees

The proposed Ordinance does not improve upon the current TPO in protecting boundary trees on adjacent properties and allows boundary trees to be removed with co-owner agreement. Presently, homeowners are often pressured by developers to sign a Boundary Tree Agreement that allows their trees to be impacted and/or destroyed without fully understanding their rights to protect their trees.

How to fix:

- 1) No boundary tree can be impacted by more than 33% even with a Boundary Tree Agreement.
- 2) Boundary trees impacted by more than 20% must have a signed co-owner's Boundary Tree Agreement.
- 3) The signed Boundary Tree Agreement must clearly state:
 - a) The percentage of the Critical Root Zone that is impacted for each tree impacted.
 - b) That a tree is considered "destroyed" when more than 20% of a tree's Critical Root Zone is damaged without a prescription.
 - c) That a prescription may help preserve the tree but does not guarantee the tree will survive five years.
 - d) That if an impacted tree fails to survive, the co-owner may be 100% responsible for the costs of removing the tree(s).
- 4) The Boundary Tree Agreement must be accompanied by a site plan showing which trees on the co-owner's property are being impacted and by what percentage, as well as all the trees to be impacted or destroyed on the property under development.
- 5) The Boundary Tree Agreement must also be accompanied by literature that acknowledges the benefits of trees and the potential impacts of damaging and/or removing trees.

Tree Replanting and Recompense

The proposed Ordinance fails to ensure enough tree replanting and/or collection of recompense to maintain existing tree canopy, much less achieve a canopy goal of 50%. It increases the recompense fee per inch to equal the true replacement value but negates that by immediately discounting the number of inches that must be replaced and further discounts that amount if some of the trees are planted on or off site. The fact that replanted trees are often "planted better" than the trees which were removed does not mean a recompense discount is warranted, especially when most recompense fees collected are not actually used for tree replanting. Also, the proposed Ordinance provides numerous discounts off recompense to accomplish goals that do not replace the tree canopy. While we support these goals, the

Ordinance uses recompense reductions as though they are tax credit incentives and does not consider that reduced recompense means fewer trees replanted, ultimately reducing the tree canopy. The Ordinance does state that the 20% recompense discount on single family developments sold to low-income households will be “replenished by the City through a revenue source other than the Tree Trust Fund”, but there is no mention of where that replenishment money will come from.

How to fix:

- 1) Eliminate the immediate reduction of replacement and recompense owed (75% of Priority Trees and 50% of non-Priority Trees removed DBH).
- 2) Do not give recompense discounts for replanting trees since these discounts reduce the overall number of trees replanted.
- 3) Do not use recompense reduction as an incentive to achieve goals such as creating green infrastructure facilities, soil cells, green roofs, and building more affordable housing units. All these recompense discounts need to be eliminated or else the Tree Trust Fund will not be able to afford to replant trees.
- 4) Trees Atlanta has suggested adding a recompense discount as an “incentive” for decreasing the amount of impervious surface area that is allowed by zoning, however, they are not incenting any developer to change their footprint. They are simply helping to defray building costs for builders who build smaller homes. There needs to be other ways for the City to help reduce the costs for small home builders other than sacrificing our tree canopy. The City could offer a property tax credit or discounts on building permitting fees rather than not collect full recompense on cut trees.

Site Density

The proposed Ordinance changes how site density is defined. Instead of requiring a certain number of *inches* DBH on a property, it requires a certain number of *stems* -- between 20 – 28 stems per acre depending on size lot. It is notable that the lot sizes no longer correspond with the zoning districts for which we already have a minimum tree density standard:

- R-5 and R-4-A districts: 35 inches per acre
- R-3, R-3-A, and R-4 districts: 40 inches per acre
- R-2 and R-2-A Districts: 100 inches per acre
- R-1 districts: 150 inches per acre
- RG, PD and all other districts: 90 inches per acre

With stems only needing to be a minimum of 2.5”, site density in the proposed Ordinance has been reduced from 35 to 150 inches per acre to 50 to 70 inches per acre, depending on lot size. While the presumption may be that the average stem size will be increased by the preservation of Priority Trees, there is no guarantee that the Priority Tree preservation standard will be met. Also, site density can be reduced on commercial sites that preserve Priority Trees.

How to fix:

- 1) Include a minimum number of DBH tree inches that each lot must meet for site density if the Priority Tree Preservation standard is not met.
- 2) Preserving Priority Trees on commercial sites should not reduce the site density requirement. It's not likely a Priority Tree will be saved just to avoid having to replant two 2.5" trees. Rather, commercial sites should be required to save a certain percentage of its Priority Trees.

Parking Lots

The proposed Ordinance requires only 50% of the trees to be overstory and does not require enough soil volume for newly planted trees. Also, it does not require existing parking lots that have fallen out of compliance with the current TPO to be brought into compliance.

How to fix:

- 1) Include the additional recommendations provided in [Section 14. "Parking Lots"](#) of Trees Atlanta's proposed amendments. These amendments require parking lot trees to be overstory, unless restricted by structures or overhead powerlines, and increases the space and volume of soil required for newly planted trees.
- 2) Require that existing parking lots with 30 or more spaces that have been built or resurfaced since 2000 be brought into compliance with the vegetation requirements outlined in [Sec. 158-30. Parking lot requirements](#) of the current TPO within one year of the implementation of the new Ordinance. A new Ordinance should not allow non-compliant existing parking lots to be grandfathered just because the current TPO has not been adequately enforced. Dead and dying trees must be replaced on those existing lots.

Reporting

The proposed Ordinance does not require the budget, expense reporting, data access, nor tree permit reporting needed to understand the impact of the proposed Ordinance and the City Arborist's decisions on our tree canopy so that appropriate changes can be made in a timely fashion. When we need to be receiving more data, not less, the new Ordinance reduces the only report that currently exists – the quarterly tree permitting data report – to an annual report.

How to fix:

- 1) As [recommended by the City Auditor](#) in their Tree Trust Fund investigation, the following reports should be required in the new Ordinance:
 - a) An annual budget for the Tree Trust Fund.
 - b) A trust fund specific quarterly report that ensures expenses incurred are aligned with the allowable expense categories.

- c) The current quarterly tree permitting data report continued to be published on a quarterly basis.
- 2) Quarterly tree permitting reports should be published within two weeks after the end of a quarter.
 - a) A posted schedule for publishing tree permitting Quarterly Reports on the city website should be created and followed.
 - b) Quarterly Reports should provide a breakdown by neighborhood, NPU, and City Council District so that the appropriate neighborhood and city legislators can see what is happening in their own neighborhood/district.
- 3) An annual report of the tree permitting data should be published at the end of each fiscal year.
 - a) This annual report should be published within six weeks after fiscal year end.
 - b) The report shall include an analysis of the data and recommendations by neighborhood/City Council District.
 - c) The report shall include an estimate of current canopy coverage based on permitting data and tree planting data, including all trees replanted using recompense funds.
- 4) Better access to data is needed to aggregate and meaningfully interpret the permitting information.
 - a) All tree-related reports should be downloadable to a spreadsheet format (i.e., Excel) and be organized and labeled so that the public can understand it.
 - b) Permitting data needs to be Open Source so that third party platforms have the most accurate and up-to-date permitting information (i.e., DiscoDroid's [Atlanta Tree App](#)).

Enforcement

While the Registered Tree Professional requirement may help the public select more reputable tree professionals, the fines for working without or a suspended registration is simply the same misdemeanor fine that is not high enough to deter illegal tree removal and tree fencing violations. As Livable Buckhead points out in their [Penalties](#) section in their *Comments on Atlanta's Tree Protection Ordinance*, Atlanta's Post-Development Stormwater Management Ordinance allows the City to impose a penalty of \$2,500 per violation for each day the violation remains unremedied, indicating that there are ways to charge more than the maximum \$1000 misdemeanor fine.

How to fix:

- 1) Find a way to increase the financial penalties for violations of the Tree Protection Ordinance to adequately deter violators. Consider imposing a stop work order for a certain number of days to act as a deterrent.
- 2) All field arborists should be sworn in as police officers and tickets should be issued for illegal tree removal. Both arborists and police officers shall immediately halt any unpermitted tree removal, not wait until all the trees are removed and then issue a fine.

- 3) Have 311 be the number to call for all tree ordinance violations, and track the complaints and resolutions.
- 4) Provide 24 X 7 enforcement procedures so that evenings and weekends are not seen as the time to cut trees illegally.
- 5) All appeals of illegal tree cutting must provide the name and contact information of the company and/or individual(s) who cut the tree(s). A representative employed by the tree cutter company (or the individual who cut the tree) must appear at the hearing.

Pre-Construction Conferences

The new Ordinance no longer requires a pre-demolition or pre-construction conference to be mandatory unless there are approved tree CRZ impacts of greater than 20%. The existing TPO requires a conference to take place before any grading, demolition, construction, or tree removal can take place to ensure all trees not to be removed are protected, not just the ones with CRZ impacts over 20%.

How to fix:

- 1) A pre-demo and/or pre-construction conference must be made mandatory before any land disturbance or construction takes place to verify that the required tree fencing and staging materials have been placed correctly.
- 2) If construction does not immediately follow demolition, a separate preconstruction conference must occur before construction begins to ensure that the location of tree fencing and staging materials still comply with the permitted site plan.
- 3) Fencing must be upgraded to chain link for all tree fences that are within 8 feet of a structure being built; otherwise, mesh fencing is almost certain to be knocked down by workers and equipment trying to maneuver between the fence and the structure.
- 4) Include the additional recommendations provided in [Section 18. Fencing/Protection from Construction](#) of Trees Atlanta's proposed amendments.

Conservation of Forested Areas

The proposed Ordinance allows for forested areas or stands of trees that are preserved and undisturbed on site on commercial lots -- and protected in perpetuity through a conservation easement or deed restriction -- to be credited against the Replacement plantings required for trees removed or destroyed. No more than 50% of the trees that receive Conservation Credit may be growing within a Floodplain, or Stream Buffer or Wetland Buffer; however, since the Ordinance only allows 10% of the trees within a Floodplain to be removed, the other 40% of trees eligible for Conservation Credit are already protected from removal.

How to fix:

- 1) No more than 10% of the trees that receive Conservation Credit may be growing within a Floodplain, or Stream Buffer or Wetland Buffer.
- 2) City in the Forest has recommended in their “Citizen Group Blended Draft” that conservation areas be allowed to be created off site for any site that does not include residential use. We strongly recommend not adopting their recommendation as it may result in “shifting trees” from one part of town to another, creating urban jungles in the more commercialized areas of town. We could end up with an urban core with almost no tree canopy. All conservation areas should be on the site in which the development occurs or within 500 feet of the developed property.

Heritage Trees

The proposed Ordinance claims that Heritage Trees “deserve special protections” but includes no special protections other than placing them on a registry, putting a plastic plaque on them, and requiring authorization from the Tree Conservation Commission (TCC) before being removed. But because many Heritage Trees are near the end of their lifespan, the TCC may have difficulty in refusing a developer’s request to remove them.

How to fix:

- 1) Have criteria for the TCC to use in evaluating whether a Heritage Tree can be removed. Such criteria would include the expected number of years the tree is expected to continue to be healthy, and the location and historical significance of the tree.
- 2) Do not spend tree replanting money to purchase Heritage Tree plaques. Find a charity to sponsor that cost or have the tree’s owner pay for the plaque.

Tree Trust Fund

The Tree Trust Fund consists primarily of recompense fees to replant trees elsewhere when they cannot be replanted onsite. An investigation by The Tree Next Door and subsequent City Audit showed \$3 million of this fund had been spent on unapproved salaries instead. The proposed Ordinance does not include the recommendations by the City Auditor to prevent further misspending from this fund; instead, it puts all decision making for this fund in the sole hands of the Commissioner of Planning, reduces reporting requirement, and does not ensure that recompense money is used to replant trees.

How to fix:

- 1) Adopt the [rewritten section of the Tree Trust Fund](#) we have already submitted to the City.