



April 22, 2021

Chairman Matt Westmoreland  
Community Development/Human Services Committee  
City of Atlanta  
55 Trinity Ave SW  
Atlanta, GA 30303

Re: Updating Atlanta's Tree Protection Ordinance

Dear Chairman Westmoreland & Committee Members:

Livable Buckhead is a non-profit organization whose mission is to make the Buckhead community a place where people want to live and businesses want to operate – now and into the future.

Livable Buckhead appreciates the opportunity to provide comments on the new Tree Protection Ordinance. We also appreciate the time and effort the Department of City Planning and City Council members have put into updating the Ordinance.

Livable Buckhead is pleased to see many of the updates that have already been put forth. We appreciate that the proposed Tree Protection Ordinance distinguishes those trees that are more ecologically important by designating them as Priority Trees and providing them with a higher level of protection. The fact of the matter is that some trees provide more environmental and societal benefits than others. It's important to acknowledge this reality and not have a blanket approach to the removal or preservation of all types of trees. We are also pleased to see that green roofs can now be used to meet site density requirements, as well as many other updates.

As the Community Development and Human Services Committee works on amendments to the Tree Protection Ordinance, we respectfully request you consider the following comments and recommendations.

### **Tree Preservation Requirements**

The proposed Ordinance only sets tree preservation requirements for single family/duplex developments. There are no tree preservation requirements for commercial, multi-family, or non-residential developments.

“Strongly encourag[ing]” commercial developments to preserve Priority Trees is not sufficient. Simply requiring commercial developments to replant trees in order to meet site density requirements does not adequately counterbalance the removal of Priority Trees. It could take decades for a newly planted tree to come close to matching the environmental, social, and economic value of a long-standing Priority Tree.

**Recommendation:** There should be tree preservation requirements for all private and public properties. At a minimum, commercial developments should be required to preserve 20% of the



Priority Trees on site unless they can meet a rigorous definition of what constitutes the “necessary removal” of more than 20% of the Priority Trees on site. “Necessary removal” should be agreed to by the City Arborist and other necessary professionals and must show there are no viable alternatives to the commercial development.

### **Pre-Application Conference**

We like that the proposed Ordinance provides for an optional pre-application conference when trees are at risk of removal or destruction. This will allow the developer/owner to resolve all tree removal issues before having to spend money on development.

However, the Ordinance needs to set forth clearer standards for what is required and who should be involved in the pre-application conference. We agree with many of the suggestions put forth in the Citizen’s Group Blended Draft and recommend the below, as suggested by the Citizen’s Group.

**Recommendation:** A pre-application conference with the City Arborist office shall be available for all projects that propose to remove or destroy trees. The pre-application conference shall be attended by a City Arborist, the permit applicant and/or property owner, relevant stakeholders, and any other necessary professionals to determine whether the design is in line with this article.

The applicant shall bring the following to the pre-application conference:

1. A rough, preliminary version of the site plan, providing information about the proposed development, any relevant environmental features, and areas of disturbance.
2. A complete tree survey with information on: every tree which will be preserved, planted, or destroyed; the trees’ sizes, species, and locations; and a showing that at least 20% of the site’s Priority Trees will be saved.

These submittals shall constitute a commitment on the part of the applicant to conduct future planning around the trees as specified. Any commitments to tree preservation must be signed by the property owner before they are finalized.

If the City Arborist approves the pre-application plan to save/remove trees, the pre-applicant may undergo posting and/or appeal prior to the submittal of detailed site plans.

An appropriate fee must be paid at the time the preliminary approval is given to cover the cost of the process.

If the subsequent, full site plan application includes the removal or destruction of trees in excess of their approved Pre-Application commitment, the application shall be subject to public appeal again.



## Penalties

The proposed Ordinance does not increase the penalties for violations from the current Ordinance. The current penalties are too low and do not adequately deter violators. The penalties for violating the Tree Protection Ordinance must be substantial so that developers do not view them as just a cost of doing business.

There is a general understanding that Georgia Law does not permit an increase in fines for illegal tree destruction. However, 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.

**Recommendation:** Increase the fines for violations of the Tree Protection Ordinance in order to adequately deter violators. Both the property owner and tree cutter/contractor shall be responsible for paying for violations.

## Appeals

The proposed Ordinance removes many rights to appeal Single Family Residential tree cutting. The Ordinance should set more stringent standards for when Single Family Residential Projects are not subject to appeal for removal of trees.

**Recommendation:** The Ordinance should, at a minimum, only limit the right to appeal if higher tree preservation standards are put in place than what is currently in the proposed Ordinance. Appeals should be allowed to be made by any resident of the NPU or adjacent NPU of the subject property.

## Postings

The proposed Ordinance removes the requirement of on site postings for applications to remove trees prior to preliminary approval, as well as shortens the time period required for on site postings for public projects. This will severely limit the ability of people to become aware a tree may be removed and to act if they oppose to the removal.

**Recommendation:** On site and online postings should be required for a minimum of 10 days for all trees to be removed except for dead, dying, or hazardous trees for both the application to remove trees and the preliminary approval.

## References to Other Laws, Regulations, or Ordinances

**Recommendation:** In any instances where the Ordinance is referring to another law, regulation, or ordinance, then that law, regulation, or ordinance shall be cited rather than copying its text. For example, section 158-69(c)(8)(a)(2)(a and b) states the definition of "affordable housing" as set forth in Section 54-1 of the City of Atlanta Code of Ordinances. Rather than copying this text, section 158-69(c)(8)(a)(2) of the Ordinance should read, "The site constitutes 'affordable housing' as defined in City of Atlanta Code of Ordinances Section 54-1." By doing this, the



Ordinance will remain up to date with any amendments that might be made to the other law, regulation, or ordinance that it is referring to.

### **Setback Tree Protection**

Setbacks are where many of our trees live in an urban area such in Atlanta. Setback tree protections should be restored and strengthened in the new Tree Protection Ordinance.

**Recommendation:** Trees shall not be approved for removal from setbacks unless:

1. The tree is located in the portion of the setback that must be used for vehicular ingress and egress or for the installation of utilities, which cannot be accomplished in a manner allowing preservation of the tree, or
2. If removing a tree in a setback is needed to achieve the maximum area of Land Disturbance that will be allowed on the site, or
3. If removing a tree in a setback is needed to preserve a higher value Priority tree.

### **Enforcement**

In order to have any impact, the Tree Protection Ordinance must actually be enforced. More positions charged with enforcement need to be put in place and the Ordinance should also authorize Atlanta Police officers to fine those responsible for illegal tree removal activities. Adequate posting of public notices on sites where tree removal is proposed is also an important part of the enforcement process because the public plays a significant role in this process.

**Recommendation:** Police shall have the authority to fine responsible parties for the illegal removal of trees if a tree removal permit is not present when asked for on a site where a tree is being cut down.

### **Vesting Clause**

The Ordinance should include a reasonable vesting schedule for residential and commercial developers who have already invested in the City, but have not accounted for the latest regulatory changes when underwriting for a new or redevelopment project in the City.

**Recommendation:** Any projects that have been (1) been through Concept Review Committee (CRC) review within the prior 12 months or (2) filed for Urban Design Commission review before the adoption date, (3) filed for any zoning (rezoning, variance, special exception, etc.) or subdivision application before the new ordinance adoption date, or (4) filed for any type of permit, including demolition or land disturbance, shall be vested under the City's current tree protection ordinance.



### **Setback Variance Approval Process**

The proposed Companion Zoning Amendment legislation, which creates the new section 16-26.008 entitled "Administrative Zoning Setback Variances for the Preservation of Trees," will exclude NPUs from the setback variance approval process where trees are concerned. NPUs should continue to have input in the variance approval process.

**Recommendation:** The setback variance approval process should continue to include the input of the NPU.

Livable Buckhead thanks you for the opportunity to provide our comments on the new Tree Protection Ordinance.

Sincerely,

A handwritten signature in blue ink that reads "Robert P. Stoner".

Robert P. Stoner, Chairman