

## ORDINANCE NO. 2015 - 401

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH, NORTH CAROLINA:** that

**Section 1.** Chapter 8 of Part 9 of the Raleigh City Code is hereby deleted and replaced in its entirety as follows:

### **9-8001 PURPOSE AND INTENT**

- (a) The purpose of this chapter and the City Tree Manual, which is hereby incorporated into this chapter by reference, is to regulate and control the planting of trees and vegetation, to encourage the protection of existing trees and vegetation on the streets and public and private grounds within the City, and to establish the standard arboricultural specifications and practices for existing and future trees and vegetation in the City and on City-owned property outside the corporate limits.
- (b) The City acknowledges that trees provide environmental, aesthetic, social and economic benefits. Specifically, trees increase property values, provide aesthetic value, provide shade and cooling, reduce energy costs, decrease wind velocities, provide erosion control, conserve energy, reduce stormwater runoff, act as filters for airborne pollutants, reduce noise, provide privacy, provide wildlife habitat and food value, sequester carbon and release oxygen. By enacting these regulations, it is the intent of the City to prudently protect and manage the urban forest to secure these benefits.

### **9-8002 DEFINITIONS**

As used in this chapter, the following terms *shall* be defined as follows:

***Boundary tree.*** A tree which, when viewed in cross section at diameter at breast height (DBH) has any portion of its trunk located on a property line between private property and public property. A boundary tree is a city tree.

***Caliper.*** The American Association of Nurserymen standard for trunk diameter measurement of nursery stock. Caliper is measured six inches above grade for trees up to four (4) inches in diameter, and measured twelve (12) inches above grade for trees greater than four (4) inches in diameter.

***Certified arborist.*** A person who has successfully completed the requirements for certification set by the Arborist Certification Board of the International Society of Arboriculture, and maintains good standing in this organization.

***City-owned or city-controlled property.*** Property owned or leased by the City; or for which the city has a vegetation easement or planting contract; or upon which the city has

an easement for a street, sidewalk, greenway, park, alley, utility or to carry out any other public purpose.

**City right-of-way.** Land upon which the city has the right to construct a street, sidewalk, bicycle path, use for public utilities, landscape with plants or to carry out any other public purpose.

**City tree.** A tree that has its trunk located entirely or in part on city-owned or city-controlled property including any boundary tree.

**Critical Root Zone** or **CRZ.** A protected circular area to remain undisturbed around a tree with a radius equal to 1.25 feet per inch of tree DBH measured at 4.5 feet above grade with the tree trunk at the center of the circle. The main structural and functional portion of the root system.

**Diameter at breast height** or **DBH.** The diameter of the tree trunk measured at 4.5 feet above the soil.

**Person.** Any individual, firm, partnership, association, institution, corporation, municipality and other political subdivision, and governmental agencies.

**Private Tree.** A tree that has its trunk located entirely on private property excluding boundary trees.

**Remediation.** The requirement by the Urban Forester to cause the restoration or replacement of an impacted City tree including but not limited to corrective pruning, supplemental mulch, water or nutrition and compaction mitigation.

**Root flare.** The part of the tree near the base of a tree where the trunk transitions to root that may be visible for established trees and that must be visible at grade for new plantings.

**Shrub.** Any woody perennial that attains an overall height of less than 20' at maturity, usually with multiple stems.

**Stump measurement.** Average of two measurements taken at right angles on the cross section of stump as measured in inches, which is used to establish DBH in absence of a tree trunk.

**Tree disturbing activity.** The movement of soil, compaction of soil, chemical or physical alteration of soil, or a change in the soil cover (both vegetative and non-vegetative) and/or the existing soil topography within the critical root zone, including but not limited to chemical application, clearing, grading, filling, and excavation or stabilization of structures, and road or walkway construction; or

Chemical or physical alteration of a tree in any way that diminishes its health and vigor, including but not limited to removal, cutting, root and branch pruning, topping, bark scraping, application of chemical or biological agents, and placing permanent or temporary fixtures (lights, signs, etc.); or

The placement within the critical root zone of any permanent or temporary encroachment, including but not limited to application of impervious surfaces; storage of equipment, materials, or earth; parking; or circulation of vehicles or equipment.

***Tree impact permit*** or ***TIP***. Consent given in writing by the Urban Forester or his designee to a person to undertake any tree-disturbing activity.

***Tree protection plan***. A written document that must accompany any tree impact permit application to establish mechanisms for the protection of potentially impacted trees which are intended to remain on the property following the completion of the activity for which the permit request was made.

***Trunk***. The main stem of a tree apart from limbs, roots and root flare.

***Urban Forestry***. The management and maintenance of trees, including wooded areas, groups of trees, and individual trees, for their contribution to the environmental, sociological, and economic well-being of urban society.

### **9-8003 CREATION OF POSITION OF THE URBAN FORESTER**

- (a) The position of Urban Forester *shall* be created within the Department of Parks, Recreation and Cultural Resources. The Urban Forester, as the agent of the Department, *shall* direct, regulate and control the planting and management of trees on all city-owned or city-controlled property.
- (b) For the purpose of carrying out the provisions of this chapter, the Urban Forester *shall* have the authority, control, supervision and direction over all trees growing on city-owned or city controlled street rights-of-way and the planting, removal, care, maintenance and protection thereof.

### **9-8004 DUTIES OF THE URBAN FORESTER**

- (a) The Urban Forester *shall* direct, supervise, regulate and control the planting, maintenance and removal of all the trees growing now or hereafter on city-owned or city-controlled property.
- (b) The Urban Forester *shall* have full power and authority to enforce the terms of this chapter.
- (c) The Urban Forester *shall* have the authority to review all requests for permits for any activity impacting city trees including planting, removal and pruning on all city-owned or controlled property. The Urban Forester *shall* also have authority to attach reasonable conditions to these permits and to grant or deny them.

(d) The Urban Forester, under the supervision and direction of the Director of the Department of Parks, Recreation and Cultural Resources, *shall* prepare the City Tree Manual governing the planting and maintenance of city trees on city-owned or city-controlled property which should include:

- (1) Planting and managing trees for their functional use as well as for the aesthetic qualities;
- (2) Recycling trees and fiber;
- (3) Suggested tree list for the city, with priorities, the purpose of which would be to guide the voluntary efforts of citizens in selecting trees for planting on private property or for donation to the city, such list to distinguish generally among the conditions or places of use;
- (4) A tree education program for the public, including advisory guidelines, planting and maintenance details, costs and benefits of trees in the city;
- (5) A tree and landscape inventory and analysis;
- (6) Standards and procedures for tree planting, pruning, removal, and protection, including specific procedure and criteria for utility companies and new development.
- (7) Emergency response to provide clear and safe passage for pedestrian and vehicular traffic including inclement weather and emergency events; and
- (8) Procedures for the implementation of the Tree Impact Permit program authorized by §9-8005 of this Code, including any applicable fees.

The City Tree Manual, and any changes to the same, must be approved by the Director of the Parks, Recreation and Cultural Resources and the Parks, Recreation and Greenway Advisory Board before submission to the Raleigh City Council for its approval.

(e) The Urban Forester *shall* review and provide advice regarding all private and city-initiated development and re-development projects to plan for and manage the city's urban forest.

**Sec. 9-8005 ACTIVITIES IMPACTING CITY TREES; TREE IMPACT PERMIT REQUIRED.**

- (a) Any person desiring to undertake any City tree disturbing activity or any land disturbing activity within fifteen (15) feet of a City tree and that is on City property *shall* first obtain a written permit pursuant to procedures and standards set forth in the City Tree Manual, including the payment of any such fees required therein.
- (b) Any work performed under such permit must be done in strict accordance with the conditions of the Tree Impact Permit, the provisions of this chapter and the City Tree Manual. Violation of or deviation from any element of a Tree Impact Permit or failure to obtain a Tree Impact Permit where required by this chapter *shall* be considered sufficient grounds for the suspension or revocation of the entire permit as

well as grounds for immediate issuance of a Stop Work Order. Resumption of work *shall* be at the discretion of the Urban Forester or designee.

- (c) Before a permit to plant trees will be issued, the applicant *shall* provide documentation of the approval of the planting plan from any other regulatory agency with approval authority over such plans.
- (d) If a Tree Impact Permit is denied, the Urban Forester *shall* provide a written denial to the applicant including the reasons for such denial. A person who is denied a Tree Impact Permit may appeal such denial pursuant to §9-8013 of this chapter.

**Sec. 9-8006 TREES TO BE MAINTAINED; RESPONSIBILITY OF OWNER.**

- (a) Trees and shrubs standing in or upon any lot or land adjacent to any city-owned or city-controlled property and having branches, limbs, trunks, or other parts projecting into the public street or place *shall* be kept trimmed by the owner of the property on which such trees and shrubs originate so as not to interfere with the free and safe passage along the public way by pedestrians and vehicular traffic.
- (b) If the owner of the property does not keep this growth or hazard from projecting into or on public ground, then the Urban Forester *shall* have the authority to order its removal. The order *shall* be acted upon within fifteen (15) business days from the time of the receipt of the notice. If, after fifteen (15) days, the owner has not responded or acted to remove the projecting growth or hazard from said trees, then the Urban Forester or any member of his/her staff *shall* have the authority to enter upon the owner's property to perform the work. The cost of such action *shall* be charged against the property owner pursuant to the procedures set forth in the Chapter 6 of Part 12 of this Code.
- (c) The City, its agents and contractors are required to adhere to all regulations of this section in the same manner as private property owners. They may be challenged in the same manner by the Urban Forester or designee on the personal complaint of either, or by any citizen of Raleigh.

**Sec. 9-8007 TREATMENT AND REMOVAL OF TREES ON PRIVATE PROPERTY.**

- (a) When necessary for the preservation of the public health or safety, the Urban Forester, under the power herein given, may cause or order the removal of any tree or part hereof on private ground which is in an unsafe condition, or which by reason of its nature is injurious to the City's utility system or other public improvements, or which is affected with any injurious fungus, insect or other pest which may spread to public or other private property.
- (b) When not immediately necessary, but when still amounting to a public nuisance, unsafe trees as defined above may be removed, pruned or otherwise treated, and the cost of such action *shall* be charged against the subject property pursuant to the procedures set forth in Part 12, Chapter 6, of this Code.

## **Sec. 9-8008 UTILITY LINE CLEARANCE STANDARDS**

- (a) No person *shall* engage in utility line clearance, new utility construction or installation on city-owned or city-controlled property without first obtaining a Tree Impact Permit pursuant to §9-8005 above.
- (b) Utility line clearance practices *shall* conform to the standards in the most current edition of the American National Standards Institute (ANSI) A300 (Part 1) – Tree Care Operations – Tree, Shrub and Other Woody Plant Maintenance – Standard Practices. Pruning for overhead utilities *shall* also adhere to standards outlined in the City Tree Manual.

## **Sec. 9-8009 ENFORCEMENT**

- (a) Whenever the Director of Parks, Recreation and Cultural Resources or his designee finds that any person has violated or is violating this chapter, any permit issued pursuant to this chapter, or any regulation, standard, rule or order adopted in furtherance of this chapter, the Director of Parks, Recreation and Cultural Resources or his designee may serve upon such a person a written notice stating the nature of the violation, any administrative fee assessed and if applicable, an assessment of any costs incurred by the City to remedy the violation and if applicable, a fee in lieu of replacement calculated in accordance with §9-8012 below. If requested by the Director of Parks, Recreation and Cultural Resources or his designee, a remediation plan *shall* be submitted to the Director of Parks, Recreation and Cultural Resources or his designee within fifteen (15) days. Submission of a remediation plan does not relieve the person of liability for any violations occurring before or after receipt of the notice of violation. In the event of an emergency that requires the City to take immediate action to correct the violation, the City is not required to provide an opportunity for the violator to correct the violations and may assess penalties and costs pursuant to this section without prior notice.
- (b) Any person who is found to have failed to comply with any provision of this chapter, any permit issued pursuant to this chapter, or any regulation, standard, rule or order adopted in furtherance of this chapter, *shall* be subject to a civil penalty as follows:
  - (1) Two hundred and fifty dollars (\$250) for a first time violation.
  - (2) Five hundred dollars (\$500) for any repeat violation within the previous 12-months.

The notice of the civil penalty assessment *shall* be issued in writing and *shall* set forth with reasonable care the basis of the civil penalty, any administrative fee assessed and the costs to the *City* of rectifying the noncompliance that are assessed.

- (c) Any person violating any section of this chapter must pay to the City all expenses incurred by the City caused in whole or in part by such violation including the cost of labor, equipment, and materials based on current FEMA rates.

- (d) Any person violating any section of this chapter and who receives a notice of violation pursuant to this section *shall* be subject to an administrative fee of one hundred dollars (\$100) in addition to any other charge authorized by this chapter.
- (e) From and after the expiration of the time period specified in the notice of violation issued pursuant to subsection (a) above of this section for correcting a violation of this chapter, each subsequent day that the violation continues in existence shall constitute a separate and distinct offense subject to additional civil penalties.
- (f) Any appeal from a notice of violation, civil penalty assessment or permit denial shall be made in writing to the Director of Parks, Recreation and Cultural Resources within 10 (ten) days of receipt of the notice of violation or civil penalty assessment issued pursuant to subsection (a) of this section or permit issued or denied pursuant to §9-8005 of this chapter. Any appeal of a permit decision shall include justification for the appeal and an independent report from a certified arborist to support the appeal if applicable. The Director of Parks, Recreation and Cultural Resources shall use all reasonable efforts to notify the appellant in writing of his or her decision within 30 (thirty) days of receipt of the notice of appeal.
- (g) All notices required by this subsection may be served by certified mail or hand-delivery to the violator; certified mail or hand-delivery to the owner of the property in violation; or posting the notice at the property in violation. When service is made by certified mail, a copy of the notice may also be sent by First Class U.S. Mail. Service shall be deemed sufficient if the notice sent by First Class U.S. Mail is not returned by the U.S. Post office seven (7) days after mailing.
- (h) If payment is not received or equitable settlement reached after 30 (thirty) days after demand for payment is first made, the matter shall be referred to the City Attorney for institution of a civil action in the name of the City in the appropriate division of the general court of justice of Wake County for recovery of fees, costs and/or penalties.
- (i) Any person who violates any of the provisions of this chapter, any permit, or any regulation, standard, rule or order duly adopted in furtherance of this chapter, or who fails to obtain a permit or written permission as required by this chapter, shall be guilty of a misdemeanor punishable by imprisonment to the maximum number of days prescribed by law.
- (j) Whenever the City Council has reasonable cause to believe that any person is violating or threatening to violate any of the provisions of this chapter, any permit, or any regulation, standard, rule or order duly adopted in furtherance of this chapter, the City may, either before or after the institution of any other action or proceeding authorized by this Code, institute a civil action in the name of the City for injunctive relief to restrain the violation or threatened violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceeding from any civil or criminal penalty prescribed for violations of this Code.
- (k) The penalties and enforcement provisions established by this chapter may be applied in addition to or in lieu of the penalties established by other sections of this Code and applicable ordinances. The remedies provided for in this chapter are not exclusive. The Director of Parks, Recreation and Cultural Resources or his designee may take any, all, or any combination of these actions against a violator.

**Sec. 9-8010 TREE REPLACEMENT; FEE IN LIEU OF TREE REPLACEMENT**

- (a) Any person who destroys a City tree without a written permit *shall* replace such City tree at no cost to the City and accordance with the standards of this chapter and the City Tree Manual. The responsible party *shall* maintain the tree for two years following the installation date of the tree. If the tree fails to survive at any point during the two year period following the installation date of the tree, the responsible party *shall* replace the tree at no cost to the City and in accordance with the standards of this chapter and the City Tree manual.
- (b) A City tree requiring replacement *shall* be replaced on a one to one DBH basis or caliper basis, as appropriate.
- (c) If any person is unable to replace a tree that such person destroyed, the person who destroyed the City tree *shall* pay a fee in lieu of replacement at the rate of one hundred dollars (\$100) per inch of DBH. In the event the site is only able to accommodate a tree smaller than the City tree that was destroyed, the responsible party *shall* pay a fee in lieu equal to the DBH or caliper of the destroyed City tree measured in inches, minus the total DBH or caliper of the replaced tree(s) measured in inches multiplied by hundred dollars (\$100).
- (d) A fee in lieu *shall* only be granted when the site does not accommodate required tree replacement and *shall* be granted at the discretion of the Urban Forester.

**Section 2.** All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

**Section 3.** If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity *shall* not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

**Section 4.** This ordinance *shall* be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions *shall* be the maximum allowed by law notwithstanding the fifty dollar limit in G.S. 14-4(a) or similar limitations.

**Section 5.** This ordinance *shall* become effective five days following its adoption.

**ADOPTED: March 3, 2015**

**EFFECTIVE: March 8, 2015**

**DISTRIBUTION: Department Heads**

*This ordinance prepared by the Raleigh City Attorney's Office*