

New Atlanta Tree Protection Ordinance Citizens Blended Draft

Atlanta is the City in a Forest. However, the city is losing trees at an alarming rate. Recent studies concluded that Atlanta is the fifth worst city in the US in terms of tree loss and the third worst city in the US in temperature rise. Tree loss in Atlanta increased significantly in 2020. 2,941 healthy trees and 2,659 trees classified as dead, diseased or hazardous were cut during the third quarter of 2020. These numbers are significantly higher than the norm.

The existing Atlanta Tree Protection Ordinance (TPO) is not protecting Atlanta's trees. There are several reasons for this: (1) the penalties for violation of the ordinance are too small; (2) City arborists were not allowed to conduct inspections beginning in March of 2020; and, (3) builders classify healthy trees as diseased and obtain arborist approval to cut down trees through false claims.

In March of 2020, the City released a draft TPO prepared by a consultant. This March 2020 draft would have made it easier to cut down high value trees and pay a small fine.

Concerned citizens concluded that the consultant's March 2020 draft was unworkable and formed a "Citizens Group" to prepare a better TPO for Atlanta. This "Citizens Group" represents all geographic areas of Atlanta. Its members include tree protection advocates, developers, members of the Atlanta Tree Conservation Commission, Directors of Watershed Protection Associations, arborists, ecologists, attorneys and interested citizens. With input from a wide diversity of industry professionals and neighborhood representatives, the Citizens Group prepared its own TPO. The Citizens Draft is based on simpler, more practical concepts. It achieves more tree protection and provides a smoother more streamlined process for builders.

The Citizens Group presented its TPO to the City Council on June 25, 2020. The City Council liked it and directed the City Planning Department to negotiate a new TPO with the Citizens Group. The Citizens Group's negotiations with the Planning Department resulted in many of the Citizens Group concepts being included in the Planning Department's January 2021 draft TPO. However, the Planning Department also included provisions which will enable developers to cut down too many healthy trees and cause significant damage to Atlanta's tree canopy. The Planning Department draft gives the Planning Department the sole authority to: (1) make decisions on cutting down trees without any public right to appeal arborist decisions; and (2) decide how the money in the Tree Trust Fund is spent. The Planning Department draft eliminates the Tree Conservation Commission's role in most appeals and in decisions about how Tree Trust Fund money is spent.

The Citizens Group prepared its own TPO to correct the problems in the Planning Department draft. This new TPO is referred to as the Citizens Group **Blended Draft**.

The Blended Draft uses much of the language in the Planning Department draft while changing the provisions that will significantly damage Atlanta's trees and tree canopy. The Blended Draft restores the right of appeal and the functions of the Tree Conservation Commission. The Blended Draft ensures that the positive new provisions agreed to by the Planning Department will create a smoother process for builders. The tree preservation, recompense, and planting standards in the Citizens Group Blended Draft will protect more high value trees, set reasonable goals for planting new trees, and provide a better financial offset for builders than the Planning Department draft. The Blended Draft approach is much simpler to understand and administer.

The Blended Draft adds reasonable mechanisms for tree preservation on commercial and multifamily properties, using the simple “limits of disturbance “ method, rather than the overly complex requirements in the Planning Department draft, which would result in clearcutting without any offset for Atlanta’s high value trees and urban forest areas.

The Citizens’ Group draft includes practical ways to preserve urban forest areas by including a payment-in-lieu system (being used by the City of Charlotte), and a Cap-and-Trade option that allows a developer to preserve high value forest on a alternative site. This will permanently protect our urban forest while providing flexibility to developers and creating a “market” for protecting higher value urban forest areas, often located on steep slopes that are not cost-efficient to build on anyway – a true win-win.

Between the two CDHS work sessions on the Tree Ordinance, City Council members listened to 316 voicemails totaling 6 hours and 42 minutes. More than 90% of these voicemails supported the Citizens Group **Blended Draft** and opposed the Planning Department’s current draft.

Several major problems with the Planning Department draft and the changes contained in the Citizens’ Blended Draft are as follows:

1. Tree Preservation Standard. The Planning Department draft allows a developer/owner to remove *up to 50%* of the high value trees, referred to as “Priority Trees”, even if the house can be built without removing any Priority Trees. The city defines 50% by the number of trees (stems), not the actual canopy (DBH/volume), so removing 50% of the trees on a property could easily mean removing 80% of the canopy – without appeal.

The Citizens Draft allows a developer/owner to remove Priority Trees only if necessary to build what the developer/owner wants.

2. Right to Appeal. The Planning Department draft takes away the public’s right to appeal if the developer/owner meets a weak tree preservation standard.

The Citizens Draft preserves the public’s right of appeal for citizens living within the area of the NPU or an adjacent NPU.

3. Assistance for Low Income Homeowners for assessment, removal and replacement of DDH trees on their property. This concept was adopted by the Planning Dept. from the Citizens Group, and the Blended Draft preserves this language from the Planning Department.

4. Pre-Application Conference. The Planning Department draft mentions the use of a pre-application conference but fails to provide clear standards.

The Citizens Draft gives a developer/owner the right to resolve all tree removal issues before having to spend money on development. Both developers and tree advocates agree on the pre-application option.

5. Priority Tree Classification. The Planning Department draft omits many high value trees (such as most dogwoods) from its list of Priority Trees, and the sizes at which many trees species are considered large enough to be considered “Priority” trees is so high that many species of trees will never qualify (even at ages of 150 – 200 years old) and so would have no protection.

The Citizens Draft list of Priority Trees is based on current science. The list includes all of the high value trees as Priority Trees and value sizes are realistic for each species.

6. Enforcement. The Planning Department draft does not strengthen the existing enforcement provisions. It does include a new provision to hold tree cutters liable for illegal tree removal, but only results in a written warning for the first tree illegally destroyed. Atlanta is losing too many trees because the penalties associated with illegal tree removal are too small.

Removing a tree without a permit on site is a serious violation in the Citizens Draft and the police would be authorized to arrest the responsible parties. The Citizens Blended Draft includes the new Planning Dept. concept but strengthens it to function as a realistic deterrent to illegal cutting. For example, offenders who repeatedly cut down trees illegally would be banned from doing business in the City for up to 3-5 years.

7. Protection of setback trees and trees in floodplains and stream buffers. The Planning Department draft eliminates protections for setback trees and allows destruction of 10% of healthy trees in floodplains.

The Citizens Draft restores current protections for setback trees and closes loopholes for destroying healthy trees in floodplains and stream buffers.

8. Boundary Trees. The Planning Department draft allows a developer/owner to bypass the ordinance and cut down a boundary tree on an adjacent property.

The Citizens Draft eliminates this loophole and protects boundary trees.

9. Dead, Dying, and Hazardous Trees. The definition of dead, dying and hazardous trees (DDH) in the current ordinance is vague, often results in inconsistent decisions on whether a tree is allowed to be removed or not. Developers often classify healthy trees as DDH are permitted to remove the trees without paying any recompense fees. The Planning Department draft fails to correct this problem.

The Citizens Draft institutes a consistent science-based standard definition of dead, dying, and hazardous trees. This will both prevent healthy trees from being removed as DDH trees, and provide more consistent application of City Arborist decisions.

10. Tree Trust Fund. The Planning Department draft gives the Planning Department total authority over how the money in the Tree Trust Fund is spent.

The Citizens Draft retains the role of the Tree Conservation Commission by requiring the Planning Department to obtain approval of a budget for expenditure of Tree Trust Funds from the TCC.

11. Urban Forest Master Plan. The Planning Department draft provides that Tree Trust Funds may be utilized for an Urban Forest Master Plan, but does not require the development of such a plan.

The Citizens Draft requires the preparation and implementation of an Urban Forest Master Plan.

12. Tree Preservation Requirements for Multi Family and Commercial Properties and Subdivisions. The Planning Department draft has no tree preservation requirements for commercial and multi-family properties and subdivisions.

The Citizens Draft has tree preservation requirements for all private and public properties, and includes flexible yet effective ways to preserve more trees and urban forest areas as well as plant new trees more effectively on these properties.

13. Overall Goal of the Tree Protection Ordinance. The Planning Department draft states that the ordinance's goal is to "reduce canopy loss over time." This goal essentially has no meaning, and assumes continued tree loss without preservation and no measureable point in future for tree gain to offset loss. This sadly ignores the current problem of sustained loss of trees in the City, particularly high value trees.

Citizens believe Atlanta deserves attainable goals for both preserving and enhancing the quality of Atlanta's trees and tree canopy.

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