

ORDINANCE NO. O-505-09

**AN ORDINANCE TO MANAGE CITY TREE RESOURCES
BY REGULATING THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES
IN PUBLIC PLACES AND ESTABLISHING A TREE COMMISSION. PRESCRIBING
REGULATIONS RELATING TO THE PLANTING, MAINTENANCE, AND REMOVAL
OF TREES, SHRUBS AND OTHER LANDSCAPE MATERIALS ON PUBLIC LAND**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSONVILLE, ALABAMA,
AS FOLLOWS:

Section 1. Short Title.

This Ordinance shall be known and may be cited as the “Tree Ordinance of the City of Jacksonville, Alabama.”

Section 2. Definitions.

For the purpose of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein.

Approved Tree List is the list of tree species adopted by the City Council approved for planting as street trees, park trees or ornamental trees on public property.

Community Tree Plan shall mean a written document that guides the work of the Tree Commission.

City is the City of Jacksonville, Alabama.

City Forester is the person appointed by the Mayor and approved by the Council who shall serve as an ex-officio member of the Tree Commission and who shall carry out the enforcement of this Ordinance. This person may be a volunteer, city employee, or contracted provider.

Person is any person, firm, partnership, association, corporation, company, or organization of any kind.

Street or Highway means 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 and pedestrian traffic.

Park shall include all public parks having individual names.

Public Places shall include all grounds owned by the city.

Property Line shall mean the outer edge of a street or highway right of way (R.O.W).

Treelawn (R.O.W edge) is that part of a street or highway, not covered by sidewalk or other paving, lying between the property line and the edge of the street.

Public Trees shall include all shade and ornamental trees now or hereafter growing on any street or on any public land where otherwise indicated.

Large Trees are designated as those attaining a height of forty-five (45) feet or more with a mature spread of 40 feet or more.

Medium Trees are designated as those attaining a height of thirty (30) to forty-five (45) feet with a mature spread of 30 feet or more.

Small Trees are designated as those attaining a height of twenty (20) to thirty (30) feet with a mature spread of 20 feet or more.

Property Owner shall mean the person owning such property according to the Calhoun County Tax Assessor's records and maps.

Urban Forest shall mean the collection of trees, shrubs, other vegetation and associated natural features that make up the city tree canopy and its growing zone.

Section 3. Establishment of a Tree Commission.

A. There is hereby created a commission to be known and designated as the "City of Jacksonville Tree Commission." The Tree Commission shall be composed of seven (7) members, consisting of five (5) voting members, and two (2) ex-officio members.

B. The five (5) voting members shall be citizens of the City of Jacksonville with experience or knowledge of trees or gardening and shall be appointed by the Mayor with approval of the City Council. One ex-officio member shall be the City Forester and the other ex-officio member shall be the appointed representative of the Mayor.

C. The five (5) voting members shall be appointed as follows: two (2) for two (2) years; two (2) for three (3) years, and one (1) for four (4) years, and serve until their successors are duly appointed by the Mayor and approved by the Council.

D. Successors to those voting members initially appointed 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.

E. All members of the Commission, with the exception of a contract or employee City Forester, shall serve without pay.

Section 4. Duties and Authority of the Tree Commission.

The duties and authority of the "Tree Commission" shall be as follows:

- A. To study the urban forest including problems involving the city tree population, determine needs, compose and annually review a Community Tree Plan and seek ways to implement needed work.
- B. To recommend to the City Council for its approval a list of tree species ("Approved Tree List") suitable for planting on public land.
- C. To assist the properly constituted officials of the city, as well as citizens and community groups, in the dissemination of news and information regarding the selection, planting, and maintenance of trees within the corporate limits, whether located on private or public property.
- D. To provide regular and special public meetings at which the committees business shall take place and public comments will be allowed.
 - 1. Within a reasonable time after the appointment of the Tree Commission, the Commission shall meet and organize by the election of a chairman, vice-chairman, and secretary.
 - 2. A majority of voting members shall constitute a quorum for the transaction of business.
 - 3. The Tree Commission shall adopt rules and procedures for the holding of regular and special meetings as said Commission deems advisable and necessary in order to perform the duties set forth. A journal of proceedings and activities is to be recorded.
- E. The Tree Commission may engage in any other lawful activity in pursuit of the mission of this commission that may benefit the urban forest including, but not limited to, such activities as:
 - 1. Apply for Tree City Status with the National Arbor Day Foundation
 - 2. Conduct seminars and public education programs
 - 3. Plan and coordinate an annual Arbor Week Observance
 - 4. Develop a community forest preserve
 - 5. Organize community tree planting projects.

Section 5. Qualifications of the City Forester.

The City Forester shall, where possible, be a person skilled or trained in forestry, horticulture or other closely related field.

Section 6. Duties and Authority of the City Forester.

The City Forester shall have the following duties and authority:

- A. The City Forester shall assist the Council in developing rules governing the planting, maintenance and removal of trees on the streets or other public sites in the city.
- B. The City Forester shall report to the Tree Commission on a regular basis and shall attend all regular and special meetings of the Tree Commission, or other community meetings as requested by the Chairman.
- C. The City Forester shall have the authority and jurisdiction of enforcing rules and regulations for 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 by granting permits.
- D. The City Forester shall have the authority to affix reasonable conditions to the granting of a permit in accordance with the terms of this Ordinance.

Section 7. Community Tree Plan.

- A. Community Tree Plan. The Tree Commission shall, with the approval of the Council, formulate a Community Tree Plan, seeking and taking into consideration input from consultants, city agencies, utility companies, and the public.
- B. The Community Tree Plan shall include, but not be limited to, the goals and mission of the Tree Commission, an inventory of resources, needed work, associated cost and time schedules for such work and relevant information such as activities of the Tree Commission, standard tree maintenance and planting specifications and permit application procedures.

Section 8. Permits Required.

The following tree permits are required.

- A. Permit Required for Planting, Maintenance and Removal

No person shall plant, spray, fertilize, prune, or remove, or otherwise disturb any tree on any street or city-owned property without first procuring a permit from the City Forester.
- B. Planting Permit.
 - 1. Application Data. When making application for a planting permit on public property, the Applicant shall illustrate the number and types of trees or other plants to be planted.

2. Proper Planting. Whenever any tree shall be planted on public land, it shall be planted, fertilized, staked, watered and mulched in accordance with proper planting specifications issued by the City Forester.

C. Maintenance Permit.

Application Data. When making application for a maintenance permit, the Applicant shall state the number and kinds of trees to be sprayed, fertilized, pruned or otherwise preserved; 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 and Replacement Permit.

Application Data. When making application for a tree removal permit, the Applicant shall describe the number and kinds of trees to be removed, their size, locations, health/age condition and their method of removal and such other information as the City Forester shall find reasonably necessary to a fair determination of whether a permit should be issued.

Section 9. Trees on Private Property.

- A. 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, or obstruct views of any street or alley intersection.
- B. It shall be the duty of any person owning or occupying real property bordering on any street, park, or other public land, on which there are trees that are diseased or insect infested, to remove, spray or treat such trees in such manner that they will not infect or damage nearby public vegetation or cause harm to the community or citizens therein.
- C. The City Forester may order trees on private land that cause obstructions, present insect or disease problem or otherwise present a danger to public health or safety be pruned, removed or treated.

Section 10. Abuse of Public Trees.

No person shall intentionally damage, cut, carve, transplant, or remove any public tree; attach any rope, wire, nails, advertisements, posters, or other contrivance to any public tree, allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any public tree.

Section 11. Interference with City Forester.

No person shall hinder, prevent, delay, or interfere with the City Forester while engaged in carrying out the execution or enforcement of this Ordinance.

Section 12. Protection of Public Trees During Construction.

- A. All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box. The "Construction Tree Guard" shall be not less than four (4) feet high and eight (8) feet square, or at a distance in feet from the tree trunk equal to the diameter of the trunk at breast height (D.B.H.) in inches, which ever is greater. All building material, dirt, or other debris shall be kept outside the Construction Tree Guard.
- B. No person shall change natural drainage, excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten (10) feet from any public tree without first obtaining a written permit from the City Forester.

Section 13. Placing Materials on Public Property.

No person shall deposit, place, store, or maintain upon any public place of the municipality, any stone, brick, sand, concrete, or other materials that may impede the free passage of water, air, or fertilizer to the roots of any tree growing therein. Sunlight to any public tree cannot be permanently blocked by placement of materials without written authorization of the City Forester.

Section 14. Enforcement, Penalty and Appeals.

Any person, firm, or corporation violating or failing to comply with any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined a sum no less than Fifty (\$50.00) dollars, nor more than Five Hundred (\$500.00) dollars, or may be imprisoned for a term not exceeding sixty (60) days, or both.

Section 15. Administrative Guidelines.

- A. Permits may be applied for as set forth below.
 - 1. Application for permits must be made to the City Forester not less than forty-eight (48) hours in advance of the time the work is to be done.
 - 2. Standards of Issuance. The City Forester shall issue the permit provided for herein if, in his judgment, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit shall be void if its terms are violated.

3. Notice of completion shall be given within five (5) days to the City Forester for his inspection.

4. In emergency situations where a public tree creates a present and eminent danger to persons or public or private property, the pruning or removal of said tree may occur upon the verbal approval of the City Forester or Street Superintendent, or their designees, and a permit shall not be required, provided, however, that the Notice of Completion shall be given as required in paragraph 3 above.

B. Approved Tree List.

Only those tree species included on the “Approved Tree List” may be planted as street trees, park trees or ornamental trees on public property without the written consent of the Tree Commission.

Section 16. Utilities.

A. Right of Utility Not to be Impaired.

This ordinance shall not be construed to impair: (1) the right of eminent domain granted by State laws to utilities, whether public or private, or (2) their right to design, locate, erect, construct, reconstruct, alter or maintain utility poles, towers, lines, conduits, pipes or mains by statute, franchise, certificate of convenience and necessity, license or easement. The preceding will apply to work done by the utility’s employees, agents and contractors doing work for the utility.

B. Electric Power Line Clearance.

Where legal rights allow*, pruning necessary to maintain proper clearance between any existing public tree and an electric power line shall be conducted in accordance with ANSI Standard A300. In instances where a public tree cannot be pruned in accordance with ANSI Standard A300 so as to provide the proper clearance, or if the tree poses a safety issue, the electric utility shall provide a suitable replacement or other mitigation as mutually agreed by the utility and the City Forester. (*Special attention is called to the ruling in Alabama Power Company v. Jimmy and Barbara Wilson, and Rufus Kinney, et al., Circuit Court of Calhoun County, Alabama, Civil Action No. CV-07-471.)

Section 17. Conflicts.

Should any section, subsection, clause, or provision of this Ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

Section 18. Effective Date.

This Ordinance is hereby declared to be of immediate necessity for the preservation of public peace, health, and safety, and shall be in full force and effective from and after its passage and publication as provided by law.

PASSED AND ADOPTED, this the 9th day of February, 2009.

CITY COUNCIL OF THE CITY
OF JACKSONVILLE, ALABAMA

/s/ Johnny L. Smith
Mayor Johnny L. Smith

ATTEST:

/s/ Dorothy P. Wilson
City Clerk Dorothy P. Wilson

/s/ Mark Jones
Council Member Mark A. Jones

/s/ George L. Areno
Council Member George L. Areno

/s/ Derek C. Raulerson
Council Member Derek C. Raulerson

/s/ Sandra Fox Sudduth
Council Member Sandra F. Sudduth

/s/ Truman Norred
Council Member R. Truman Norred