

ARTICLE II. TREE PROTECTION*

***Editor's note:** Ord. No. 98-128, adopted June 9, 1998, deleted art. III, div. 1, in its entirety to read as herein set out. Former div. 1 pertained to similar subject matter and derived from Ord. No. 92-124, art.1, adopted May 12, 1992; Ord. No. 92-144, adopted July 28, 1992; and Ord. No. 93-123 adopted April 4, 1993.

DIVISION 1. GENERALLY

Sec. 62-25. Short title.

This division may also be known as the "Tree Ordinance" of the city.
(Code 1985, § 28-31; Ord. No. 98-128, § 1, 6-9-1998)

Sec. 62-26. Intent.

It is the intent of this division through the preservation and protection of trees to:

- (1) Protect, preserve, and promote the aesthetic appeal, character and value of the city;
- (2) Promote public health and safety through the reduction of noise, stormwater runoff, air pollution, visual pollution, artificial light glare, and heat; and
- (3) Preserve the quality of life for the city's citizens.

(Code 1985, § 28-32; Ord. No. 98-128, § 2, 6-9-1998)

Sec. 62-27. Objectives.

The objectives of this division are to protect, maintain, and enhance both the immediate and longterm health, safety and general welfare of the citizens of the city. The following objectives support this purpose by encouraging a productive balance between development and nature:

- (1) To encourage preservation of trees and prevent unreasonable or unnecessary damage to the city's existing tree canopy;
- (2) To promote and enhance the natural value of trees which contribute to the enhancement of public and private property values, contribute to air purification, oxygen regeneration, groundwater recharge, stormwater runoff control, noise abatement, to the reduction of energy for heating and cooling, and glare;
- (3) To promote energy conservation by maximizing the shading and cooling effects of trees;
- (4) To preserve a portion of existing trees and to ensure that local stock of native trees is replenished;
- (5) To maintain natural beauty in developed areas by promoting the preservation and replanting of trees;
- (6) To promote preservation of existing large shade trees by keeping their life needs in mind when developing;
- (7) To promote new tree plantings during the land development and building construction process; and
- (8) To create an environment where the trees will survive and thrive.

(Code 1985, § 28-33; Ord. No. 98-128, § 3, 6-9-1998)

Sec. 62-28. Standards for **tree** alteration.

In order to obtain the objectives of this division, the following standards are applied:

- (1) A minimum density of **trees** per acre of land is required.
- (2) Lands which have a land alteration activity (see definition in section 62-29) to take place are required to meet the minimum **tree** density requirement.
- (3) A **tree** permit, **tree** permit application and monitoring procedures are established.
- (4) Certain kinds of **trees** are determined to be desirable or preferred that will greatly enhance the foliage cover for the city. To encourage the planting of these **trees** a higher value is given to them.
- (5) The planting of **trees** is encouraged in large parking areas for the purpose of segmenting the pavement expanse.
- (6) Alterations including maintenance of all **trees** including designated protected **trees** shall be done in accordance with the National Arborist Association Inc., Pruning Standards for Shade **Trees** (ANSI A300), and in accordance with those maintenance procedures referenced in this division.
- (7) **Tree** protection measures are to be utilized for any **trees** that are to remain on the site.
- (8) Any person or applicant is to demonstrate that a reasonable effort has been made to save and protect existing **trees** from any **tree** activity.
- (9) Any person or applicant is required to replace any "new" **tree** planted which has died within two years of planting it on the site of the **tree** activity. Any **tree** dying within two years of its planting on a site is considered to be **tree** removal.

(Code 1985, § 28-34; Ord. No. 98-128, § 4, 6-9-1998)

Sec. 62-29. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Altering of a **tree**, **tree** alteration, alteration of a **tree**, or altered **tree*** means pruning, trimming, defoliating, grading around the base, damaging the **tree**, or other actions to the **tree**. This definition includes **tree** removal.

Applicant means any individual, landowner, lessee, building contractor, developer or other entity applying for a **tree** permit. The applicant must have authority over the **tree** activity and the implementation of the requirements of this division.

Caliper means the diameter of a **tree**, measured six inches above the soil line, except that grafted **trees** shall be measured one inch above the graft union if union can be seen. The caliper of multi-stemmed **trees** which branch within 12 inches of the soil line shall be the diameter of the dominant or larger stem, measured six inches above the point of branching.

Certificate of occupancy means a certificate issued by the city's planning and development services certifying that all requirements for development or redevelopment of property have been met and authorizing occupancy of buildings and structures.

City arborist means the city arborist or designee. In the case that the position of city arborist is vacant, the director of parks and recreation will designate an individual to perform the duties of the arborist.

Clearing means the removal of any **tree** of four inches *DBH* or greater; or the removal of any **tree** planted, or preserved under the requirements of this division or under the previous **ordinance**.

Diameter at breast height (DBH) means the diameter of a **tree** measured at a breast height of 54 inches above the ground. If a **tree** splits into multiple trunks below 54 inches, then the trunk is measured at its most narrow point beneath the split.

Director of engineering means the city director of engineering or the director of engineering's designee.

Impervious area means an area that is covered by pavement and structures. Pavement for this definition is considered to be areas traveled upon by motor vehicles for ingress, egress, and parking having an impervious material which prevents the percolation of runoff. Examples of such materials are: asphaltic concrete, Portland cement concrete, and paving blocks. A structure is defined in the city's zoning **ordinance**.

Land alteration activity (referred to as a "tree activity") means:

- (1) The construction or installation of impervious area;
- (2) Clearing, **tree** removal or altering any **tree** existing, planted, preserved or protected under this division or any predecessor **ordinance** on a site; or
- (3) Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise significantly disturbing the soil of a site, which would affect **trees**.

Land alteration permit (referred to as a "tree permit") means an official authorized **tree** permit issued by the city allowing the commencement of **tree** activity.

Living space means the minimum area allotted to each **tree** to be able to grow and survive. Living spaces do not overlap upon each other, that is only one living space (one **tree**) may occupy a certain area of land.

New trees means the **trees** listed in section 62-41(a) or approved by the director of engineering shall be called a "new **tree**." New **trees** may be shade **trees** or ornamental **trees**.

Ornamental trees means a **tree** normally reaching a height less than 40 feet but greater than a height of 15 feet, with a spread of at least 12 feet at maturity. Palm shall be considered an ornamental **tree** provided it is at least ten feet high at planting. The measurement distance for the palm shall be from the base at ground level to the main point of foliage of the **tree**, or the upper portion of the **tree** canopy.

Person means any individual, landowner, lessee, building contractor, developer or other entity involved in any **tree** activity or use of real property, including agents, employees, independent contractors or other in association with any of the above, whether natural persons, corporations, partnerships, joint ventures, or governmental bodies, agencies or officials.

Physical barrier means material used to protect the protection zone of a protected **tree** from damage or access.

Protected tree means any **tree** designated on a site plan, a **tree** permit, or a land alteration application that is to be preserved for **tree** density unit credit.

Protection zone means the area around a protected **tree** requiring a physical barrier erected at its extents.

Shade tree means a **tree** normally reaching the height of 40 feet or greater, with a spread of at least 16 feet, at maturity.

Site means the area, within the property boundaries of a principal parcel, to be developed; or contiguous parcels intended for development under a common scheme or plan.

Specimen tree means any shade **tree** more than 25 inches DBH, any ornamental **tree** more than 12 inches DBH, or any palm **tree** ten feet or more in height, located on public property; or any other **tree** or grouping of **trees** which has been determined to be of a high value because of its species, size, age, or other accepted horticultural criteria.

Tree activity means the same definition as a land alteration activity. The term "**tree** activity" is the common usage.

Tree density unit (TDU) means a numerical representation used to assign values to **trees** to calculate for **tree** density requirements; as in the case of **trees** protected during development process, or to determine the extent of replanting required on a site.

Tree removal means any act which physically takes a **tree** off a site, or which causes a **tree** to die within a period of two years after said act, including but not limited to:

- (1) Improper planting;
- (2) Neglect;
- (3) Damage inflicted upon the root system by machinery, storage of materials, or soil compaction;
- (4) Changing the natural grade of the root system within the drip line;
- (5) Excessive or improper pruning;
- (6) Paving with concrete, asphalt, or other impervious materials within such proximity as to be harmful to the **tree**.

Tree permit means the same definition as a land alteration permit. The term "**tree** permit" is the common usage.

(Code 1985, § 28-35; Ord. No. 98-128, § 5, 6-9-1998)

Sec. 62-30. Applicability of provisions.

(a) **Tree** permit required prior to commencing **tree** activity. The provisions of this division apply to any **tree** activity on all lands in the city, public and private, except as specifically exempted in section 62-31 and no person shall commence nor allow any **tree** activity to commence on such person's property without first obtaining a **tree** permit from the director of engineering.

(b) *Access authority*. The director of engineering or designee shall conduct such investigations as may be reasonably deemed necessary to carry out the duties prescribed in this division, and for this purpose shall be allowed to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites with activities that may require **tree** permits or have **tree** permits. No person shall refuse entry or access to the director of engineering or designee who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out such representative's official duties.

(c) *Liability.* Neither the approval of a **tree** permit under the provisions of this division, nor the compliance with provisions of this division shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor shall such approval or compliance impose any liability upon the city for damage to any person or property. The fact that a **tree** activity for which a **tree** permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this division or the terms of the **tree** permit.

(Code 1985, § 28-36; Ord. No. 98-128, § 6, 6-9-1998)

Sec. 62-31. Exemptions.

(a) *Complete exemptions.* The following have complete exemptions from complying with this division:

- (1) *Residential exemption.* All single-family and duplex lots in any zone where permitted by the city zoning **ordinance**. No **tree** permit is required to be obtained.
- (2) *Agricultural exemption.* Any land zoned agricultural shall be exempt from the provisions of this division. Lands which were and are actively being used for agricultural and forestry purposes and are now zoned other than agricultural are also exempt. This exemption will be maintained until the land is considered to be abandoned from agricultural purposes as defined in the zoning **ordinance**. No **tree** permit is required to be obtained.
- (3) *Commercial **tree** operations.* **Trees** grown specifically for sale, such as Christmas **trees** and nursery stock. No **tree** permit is required to be obtained.

(b) *Limited exemptions.* The following have limited exemptions from complying with this division:

- (1) *Imminent hazards.* In the event that any **tree** shall be determined to be imminently hazardous or dangerous condition so as to immediately endanger the public health, safety or welfare or cause imminent harm to a building, and requires immediate trimming or removal without delay, verbal authorization may be given by the director of engineering for the **tree** to be trimmed or removed where trimming will not remove the imminent danger. A **tree** permit is required to be applied for within 72 hours of the imminent hazard action.
- (2) *Emergency.* During the period of an emergency, such as flood, ice storm, thunderstorms, windstorms, tornadoes, or any other disastrous act of nature, the requirements of this division may be suspended by the director of engineering. No **tree** permit is required to be obtained.
- (3) *General agreement.* See section 62-32 for details.

(Code 1985, § 28-37; Ord. No. 98-128, § 7, 6-9-1998)

Sec. 62-32. Execution of general agreement.

Utility companies, and governmental agencies constructing or maintaining easements for water, sewer, electricity, gas, drainage, telephone or television transmission shall execute a written general agreement with the city which, at a minimum:

- (1) As a policy requires a minimum alteration of **trees** and specimen **trees**;
- (2) Establishes design guidelines for construction and maintenance which identifies the saving of **trees** and specimen **trees** as a factor to be considered in the design process;

- (3) Requires a consultation process with and approval of the director of engineering or designee before the commencement of construction projects, maintenance work within five feet of trees, or the removal of trees and specimen trees;
 - (4) Provides that a breach of such agreement constitutes a violation of this division; and
 - (5) Provides that all pruning of trees comply with the National Arborist Association Inc., Pruning Standards for Shade Trees (ANSI A300).
- (Code 1985, § 28-38; Ord. No. 98-128, § 8, 6-9-1998)

Sec. 62-33. Duties of the city tree board and director of engineering.

(a) *Establishment of the city tree board.* There is hereby established a city tree board for the city, which board shall consist of 15 members with its members appointed by the procedure following, terms of appointment are as follows and said board members shall serve without compensation:

- (1) Seven members are appointed by the following (terms are two years each):
 - a. The mayor.
 - b. Each city commissioner (each commissioner appoints one member).
- (2) Three members are appointed by the following (terms are one year each):
 - a. City planning and development services.
 - b. "Keep Albany Dougherty Clean."
 - c. Albany Board of Realtors.
- (3) Three members are appointed by position (terms are as long as the position is held):
 - a. The state forestry commission's county forester.
 - b. Director of engineering.
 - c. City arborist.
- (4) Two members are appointed by the city tree board (terms are one year each):
 - a. A currently licensed professional civil engineer in private practice whose main field of work is site development.
 - b. Nurseryman.

(b) *Duties of the city tree board.* The city tree board shall:

- (1) Provide written short and long range planning recommendations to the mayor and the city commission each calendar year;
- (2) Every four years or as directed by the mayor and city commission, review the current ordinance and send recommendations to the mayor and city commission to maintain current status or make adjustments to the current ordinance;
- (3) Make recommendations for policies for managing trees on the city's public properties;
- (4) Make recommendations for policies concerning general agreements;
- (5) Perform other duties concerning the forestation of the city as directed by the mayor and city commission;
- (6) Meet from time to time as convened by any nine members, or by the chairman, but in all events shall convene and meet not less than once quarterly; and
- (7) Supersede and succeed to the duties of the present city tree board.

(c) *Duties of the director of engineering.*

- (1) It shall be the duty of the director of engineering to administer this division. The director of engineering shall have the authority to revoke, suspend, or void any tree

permit and shall stop work or suspend all work on any site or any portion thereof which is in violation of this division.

(2) The director of engineering may, at his or her discretion, use the positions of engineering inspectors to assist in the administering of this division, though the ultimate responsibility for administration rests with the director of engineering or designee.

(3) The director of engineering shall consult the city arborist for approvals of the following:

- a. Trees not on the tree list;
 - b. New tree caliper sizes above the maximum size;
 - c. Tree pruning, transplanting, and maintenance;
 - d. Emergency tree removal;
 - e. Repairing damaged trees;
 - f. General agreements entered into under section 60-32;
 - g. Planting dates outside of the October 1 to April 15 period;
 - h. Requests for pruning, removal or planting of trees on public property; and
 - i. Requirements of the National Arborist Association Inc., Pruning Standards for Shade Trees (ANSI A300), and maintenance procedures set out in any exhibits.
- (Code 1985, § 28-39; Ord. No. 98-128, § 9, 6-9-1998)

Sec. 62-34. Procedure for land alteration permit application.

(a) *Review for conformance, approval.* All tree permit applications, together with site plans and documentation, shall be reviewed by the director of engineering for conformance to the provisions of this division and either approved, approved with revisions, returned for revisions, or not approved within 15 working days of receipt by the director of engineering's office. If not approved, the reason for the nonapproval shall be stated in writing, and dated.

(b) *Submission.* All tree permit applications shall be submitted to the city planning and development services for forwarding to the director of engineering. Only complete applications will be forwarded and a complete application contains the following:

- (1) Name and address of property owner;
- (2) Name, address and phone number of applicant if other than the property owner;
- (3) Address of property to have the tree activity;
- (4) Signature of applicant;
- (5) Payment of fee, if required;
- (6) Statement indicating which of the following is being applied for:
 - a. Tree altering with no other intended actions on public property (information requirements may be reduced if allowed by the director of engineering);
 - b. Tree altering with no other intended actions on private property (information requirements may be reduced if allowed by the director of engineering);
 - c. All other conditions not stated in subsections (b)(6)a. and b. of this section;
- (7) Statement of which phase of the development the application is being applied for (NOTE: separate approvals are required for each phase, as each phase enters development);
- (8) If another city permit is required for the site which requires a scaled plan (except for internal building plans), the tree plan is required to be on a scaled plan of a scale equal to or larger than the other required plan;

- (9) Statement indicating how much (if any) of the existing impervious areas were constructed prior to May 12, 1992:
 - a. Statement indicating if any of the existing impervious areas will be preserved and used after the land alteration has been completed;
 - b. Provide the location and square footages of the existing impervious areas which will be preserved and used;
 - c. The location and square footage of all proposed impervious areas;
 - d. The percentage of existing impervious areas compared to proposed impervious areas;
 - (10) Acreage of property on which the land alteration will take place;
 - (11) The total tree density units required for the site;
 - (12) The total tree density units from existing trees;
 - (13) The total tree density units from new trees;
 - (14) Existing tree density credit information:
 - a. Location;
 - b. DBH;
 - c. Specific species (common name);
 - d. Square footage of living space;
 - e. Radius of living space;
 - f. Tree unit credit for each size of tree;
 - g. Tree unit credit for each species of tree;
 - (15) New tree density unit information:
 - a. Location;
 - b. Caliper;
 - c. Specific species (common name);
 - d. Square footage of living space;
 - e. Radius of living space;
 - f. Number of trees of each species (NOTE: no more than one-third of the total number of trees planted are to be from any one species);
 - g. Number of trees which are "shade" trees (NOTE: at least one-half of the total number of trees planted are to be "shade" trees);
 - h. Preapproval for trees not listed in section 62-41(a);
 - i. Tree unit credit for each species of tree.
- (Code 1985, § 28-40; Ord. No. 98-128, § 10, 6-9-1998)

Sec. 62-35. Tree density required.

(a) *Minimum tree density requirement.*

(1) Any site on which there will be a tree activity on it shall have not less than 15 tree density units per acre.

(2) The city desires not to create or impose undue hardship on lands which had impervious areas before the enactment of the first tree ordinance on May 12, 1992.

Therefore, for lands which do not meet the minimum tree density units and had impervious areas on May 12, 1992, the following applies:

- a. The tree density units required are adjusted by a percentage. This percentage is the ratio of proposed impervious area divided by the existing preserved and used impervious area which was on the site on May 12, 1992. The proposed impervious areas are all areas which were constructed or are to be constructed after May 12, 1992.

b. If requirement of subsection (a)(2)a. of this section causes an overall tree density unit total greater than the minimum tree density units of subsection (a) of this section, then the required number of tree density units is reduced to require only the difference between the minimum tree density units of this section and the existing tree density units.

c. The minimum required new tree density units shall not be less than ten percent or require less than one tree (whichever is greater) to be planted.

(3) Nothing in this division shall authorize the removal of existing trees as to reduce site tree units below 15 tree density units per site acre, and any such removal is prohibited.

(b) *Sites with new paved parking areas.*

(1) On sites where the tree density unit requirements have been met by trees retained on the site, any proposed or new parking areas shall be designed so as to provide for the preservation of existing trees, or living space for additional trees, to break up the expanse of the paved area so that no new parking space shall be more than 75 feet from a tree density unit living space.

(2) On sites where the tree density unit requirements are not met by existing trees left on site, the site shall be designed to require planting tree density units in the expanse of the parking area to meet the site's required tree density units; and at a ratio of not less than one tree unit per 25 parking spaces, and so that no parking space shall be more than 75 feet from a tree density unit living space. If there are tree density units remaining after meeting the previous requirement, then these tree density units may be placed at the applicant's discretion anywhere on the site.

(3) Multilevel or covered parking areas are exempt from the requirements of subsections (b)(1) and (2) of this section.

(c) *Off-site tree planting requirements/city tree bank.* On sites to be altered having serious space limitations such as party walls, zero lot lines or other similar restrictions and having less than 7,500 square feet of paved area, the applicant may elect to:

(1) Provide for the required tree density units to be planted on adjacent or nearby city rights-of-way where allowed by the director of engineering; and

(2) After completing subsection (c)(1) of this section and where tree density unit requirements still remain, pay to the city \$100.00 per remaining tree density unit. The moneys shall be paid through the office of the director of engineering. Said moneys shall be used annually for planting new and replacement trees on public lands, rights-of-way, and on tree easements abutting public lands and rights-of-way, as designated by either the "Keep Albany Dougherty Clean" or city arborist.

(Code 1985, § 28-41; Ord. No. 98-128, § 11, 6-9-1998)

Sec. 62-36. Tree density unit credits.

(a) *Requirements to receiving credits.* To receive any TDU credits the minimum caliper, the minimum square footage of living space and the minimum living space radius are required. If a tree is in a location where a protection zone is needed or is determined to be needed, a protection zone is required to receive any TDU credits for that location.

(b) *Protection zone.* The physical barrier shall extend a minimum distance in all directions from the tree base at least five feet except for a specimen tree which must be at least seven feet. Physical barriers include but are not limited to: fencing, security screens, silt fence style of fencing, and construction warning fencing. Special conditions may warrant an adjustment to this requirement. The director of engineering with the city

arborist's guidance shall set the special conditions and may grant adjustments to this subsection on a case-by-case basis.

(c) *TDU credit conversion for existing trees.*

(1) Conversion from "diameter at breast height" (DBH) to "tree density unit" (TDU) is provided in the following table. To receive credit for the trees remaining on site, the minimum living space and minimum radius for living space are required.

TABLE INSET:

<i>DBH</i>	<i>TDU</i>	<i>Minimum area of living space (square feet)</i>	<i>Minimum radius for living space (feet)</i>
1 to 5	1	150	2
6 to 10	2	200	2.5
11 to 15	3	250	3
16 to 20	4	300	3.5
21 to 25	5	350	4
26 to 30	6	400	4.5
31 to 35	8	450	5
36 to 40	10	500	5.5
41 to 45	12	550	6
Greater than 45	14	600	6.5

(2) Since there are trees that are "preferred" to be living in the city an additional increase in units is provided for these trees. The increases are listed in the following table:

TABLE INSET:

<i>DBH</i>	<i>Increase above units by this percentage</i>
1 to 10	50
10 to 20	25
21 to 30	10
Greater than 31	5

(d) *Minimum and maximum tree density for new trees; area and radius of living space.* New trees are defined as either shade trees or ornamental trees. Each listed tree has an individual tree density unit depending on the size, shape, and desirability. The minimum tree density unit is 0.5 and the maximum is 2.0. The minimum living space range is from 75 to 225 square feet and the minimum radius of living space range is from two to four feet.

- (1) Section 62-41(a) contains the listing of trees that are available to receive credit. The section also contains common tree name, botanical name, minimum living space, minimum radius for living space, tree density units, and general comments.
- (2) The caliper of new trees is required to be between 1.5 and 3.5 inches, except that a pine tree caliper is required to be between one and 1.5 inches.
- (3) Palm trees are assigned credit based on height, not caliper, and receive one TDU credit for each ten feet height increment.
- (4) All new trees shall be planted on site between October 1 and April 15 unless the director of engineering grants permission otherwise.
- (5) Trees not on the list are required to be reviewed and approved by the director of engineering prior to any tree permit application submittal.
- (6) At least one-half of the new trees shall be from the shade tree class.
- (7) No more than one-third of the new trees shall be from any one species.
- (8) A new tree surrounded by existing or new pavement, the minimum required living space is 150 square feet.
- (9) Cape myrtles may be grouped together in maximums of three in a single living space, though the minimum living space becomes 150 square feet.
- (10) Trees being placed for this requirement may not be placed in locations such as sight clear zones that may cause hazardous situations for traffic.
- (11) Tree density unit (TDU) for new trees are listed in the following table. To receive credit for the trees, the minimum living space and minimum radius for living space are required.

TABLE INSET:

<i>TDU</i>	<i>Minimum area of living space (square feet)</i>	<i>Minimum radius for living space (feet)</i>
0.5	75	1.5
1.0	150	2.0
1.5	150	2.5
2.0	150	3.0

(12) Trees shall be placed such that full shape and height will be reached without trimming, cutting or altering. For example, a shade tree (height over 40 feet) placed near or under a power line will not be given credit nor will it be allowed.

(Code 1985, § 28-42; Ord. No. 98-128, § 12, 6-9-1998)

Sec. 62-37. Receiving a building permit or certificate of occupancy.

(a) No building permit shall be issued unless a required tree permit has been issued by the director of engineering. No certificate of occupancy shall be issued until the site is in compliance with this division.

(b) Due to the restricted tree planting period (October 1 to April 15), an allowance is made for activities which are to be completed during the non-tree planting time. A bond or an irrevocable letter of credit may be posted with the director of engineering which

will allow the applicant to occupy or use the development before all requirements of this division are met.

(1) The amount of the bond or irrevocable letter of credit shall be \$100.00 per required **tree** density unit.

(2) In no event shall a bond or irrevocable letter of credit be for a time period of longer than seven months.

(3) A bond or irrevocable letter of credit shall be accepted only during the time of April 1 to October 1.

(4) A request for an extension of an existing bond or irrevocable letter of credit may only be done through the appeal process. A request for an extension appeal application does not exempt itself from the termination date of the bond or irrevocable letter of credit.

(Code 1985, § 28-43; Ord. No. 98-128, § 13, 6-9-1998)

Sec. 62-38. Enforcement and penalties.

(a) Any person that commences any **tree** activity without a **tree** permit may be assessed a fee per required **tree** density unit for that site, in addition to the provisions regarding stop work orders set out in this division. The amount assessed shall be established by **ordinance** or resolution of the board of city commissioners, from time to time, and made available for public examination in the office of the city clerk. The amount is to be paid into the city **tree** bank, before any further continuation of any further **tree** activity or **tree** permit processing.

(b) Each violation of this division or failure to comply with any of the requirements hereof shall be additionally punishable by a fine for each violation of this division. The amount of the fine shall be according to the general penalties described in sections 1-17 and 1-18. Damage to all **trees** harmed shall be either repaired or replaced with the corresponding TDU's. The repair shall be to the maximum extent feasible as determined by the director of engineering. The fine shall be paid and all damaged **trees** repaired or replaced before continuation of any further **tree** activity or **tree** permit application processing.

(c) Each violation of a provision of this division shall constitute a separate offense.

(Code 1985, § 28-44; Ord. No. 98-128, § 14, 6-9-1998)

Sec. 62-39. Appeals.

(a) Appeals from any decisions of the director of engineering shall be taken to the **tree** appeals board. The appeal shall follow the following requirements:

(1) Appeal filed within three months of a director of engineering decision;

(2) In writing;

(3) Specify the reason for the appeal;

(4) Provide all supporting information; and

(5) Written report from the director of engineering why subject of the appeal was denied.

(b) Creation and duties of the **tree** appeals board.

(1) The members of the **tree** appeals board are the following members:

a. Chairman of the **tree** board;

b. Member from the planning and development services department;

- c. Director of engineering or the director of engineering's designee; and
 - d. Executive director of Keep Albany-Dougherty Beautiful.
- (2) The appeal shall be heard at a meeting of the tree appeals board. The tree appeals board shall meet within ten working days of any full appeal application.
- a. If the decision of the tree appeals board is unanimous, then the decision shall be sent, in writing, to the applicant within ten working days of the meeting.
 - b. If the decision of the tree appeals board is not unanimous, the decision will automatically be a denial of the appeal.
 - c. At the applicant's discretion, the applicant may appeal any decisions of the tree appeals board to the entire tree board for a decision. A majority vote is required for an approval, approval with conditions, or a denial of the appeal. If a regular tree board meeting is not scheduled within 45 days of the applicant's appeal to the entire tree board, a special tree board meeting will be called. The decision of the tree board shall be sent, in writing, to the applicant within ten working days of the meeting.
- (Code 1985, § 28-45; Ord. No. 98-128, § 15, 6-9-1998; Ord. No. 01-107, § 1, 4-24-2001)

Sec. 62-40. Conflict.

Where the provisions of this division conflict with other tree protection or landscape provisions contained within any other city ordinance, the stricter ordinance shall govern. (Code 1985, § 28-46; Ord. No. 98-128, § 16, 6-9-1998)

Sec. 62-41. New tree list; calculations worksheet.

- (a) *New tree list.* The following shall be the new tree list. As a reminder:
 - (1) The city encourages the planting of preferred trees by giving them a higher TDU credit.
 - (2) All trees for these TDU's are to be between 1.5 and 3.5 inches caliper, except for pine trees which are to be between one and 1.5 inches caliper.
 - (3) Trees and caliper sizes not listed may be approved by the director of engineering.
 - (4) Trees may only be planted between October 1 and April 15.

SHADE TREES
PREFERRED TREES

TABLE INSET:

<i>Common name</i>	<i>Minimum living space (square feet)</i>	<i>Minimum living radius (feet)</i>	<i>TDU</i>	<i>Preferred tree</i>
Black Tupelo (<i>Nyssa sylvatica</i>)	150	2.5	1.5	Yes
Bald Cypress (<i>Taxodium distichum</i>)	150	2.5	1.5	Yes
Florida or Southern Sugar Maple (<i>Acer floridanum</i>)	150	2.5	1.5	Yes
Ginkgo or Maiden Tree	150	2.5	1.5	Yes

(Ginkgo biloba)				
Live Oak (Quercus virginiana)	150	2.5	2.0	Yes
Overcup Oak (Quercus lyrata)	150	2.5	1.5	Yes
Scarlet Oak (Quercus coccinea)	150	2.5	1.5	Yes
Southern Red Oak (Quercus falcata)	150	2.5	1.5	Yes
Swamp Chestnut Oak (Quercus michauxii)	150	2.5	1.5	Yes
White Oak (Quercus alba)	150	2.5	1.5	Yes
<i>Other shade trees</i>				
American Beech (Fagus grandifolia)	150	2.0	1.0	
American Holly (Ilex opaca)	150	2.0	1.0	
Chinapine (Cunninghamia lanceolata)	150	2.0	1.0	
Dawn Redwood (Metasequoia glyptostroboides)	150	2.5	1.5	
Deodar Cedar (Cedrus deodara)	150	2.0	1.0	
Green Ash (Fraxinus pennsylvanica)	150	2.0	1.0	
Japanese Cryptomeria (Cryptomeria japonica)	150	2.0	1.0	
Japanese Pagodatree (Sophora japonica)	150	2.0	1.0	
Laurel or Darlington Oak (Quercus hemisphaerica)	150	2.0	1.0	
Loblolly Pine (Pinus taeda)	150	2.0	1.0	
Longleaf Pine (Pinus	150	2.0	1.0	

palustris)				
Red Cedar (Juniperus virginiana)	150	2.0	1.0	
Red Maple (Acer rubrum)	150	2.0	1.0	
River Birch (Betula nigra)	150	2.5	1.5	
Sawtooth Oak (Quercus acutissima)	150	2.0	1.0	
Shumar Oak (Quercus shumardi)	150	2.0	1.0	
Slash Pine (Pinus caribaea)	150	2.0	1.0	
Southern Magnolia (Magnolia grandiflora)	150	2.5	1.5	
Sweetgum (Liquidambar styraciflua)	150	2.0	1.0	
Tulip Tree or Yellow Poplar (Liriodendron tulipifera)	150	2.5	1.5	
Water Oak (Quercus nigra)	150	2.0	1.0	
White Ash (Fraxinus americana)	150	2.0	1.0	
Willow Oak (Quercus phellos)	150	2.0	1.0	

ORNAMENTAL TREES

TABLE INSET:

<i>Common name</i>	<i>Minimum living space (square feet)</i>	<i>Minimum living radius (feet)</i>	<i>TDU</i>	<i>Comment</i>
Bradford Pear (Pyrus calleryana 'Bradford')	75	1.5	0.5	
Cabbage Palmetto (Sabal palmetto)	75	1.5	0.5	Size measured by height
Carolina Laurel Cherry (Prunus caroliniana)	75	1.5	0.5	
Cassine Holly (Ilex cassine)	75	1.5	0.5	
Chaste Tree (Vitex agnus-castus)	75	1.5	0.5	

Chinese Pistache or Pistacio (Pistacia chinensis)	150	2.5	1.5	
Chinese Tallowtree (Sapium sebiferum)	75	1.5	0.5	
Crape Myrtle (Lagerstroemia indica) when grouped in threes (3)	150	2.5	1.5	
Crape Myrtle (Lagerstroemia indica) each	75	1.5	0.5	
Croonenburg Holly (Ilex opaca v.)	75	1.5	0.5	
Dogwood (Cornus florida)	75	1.5	0.5	
Fringe-Tree or Grancy Graybeard (Chionanthus virginicus)	75	1.5	0.5	
Goldenrain Tree (Koelreuteria paniculata)	150	2.0	1.0	
Hybrid Holly (Ilex or attenuate hybrids)	75	1.5	0.5	
Japanese Evergreen Oak (Quercus acuta)	150	2.0	1.0	
Japanese Flowering Apricot (Prunus mume)	75	1.5	0.5	
Japanese Maple (Acer palmatum)	75	1.5	0.5	
Japanese or Saucer Magnolia (Magnolia soulangiana)	150	2.0	1.0	
Leyland Cyress (Cupressocyparis leylandii)	150	2.0	1.0	
Lost Gordonia (Franklinia altamaha)	75	1.5	0.5	
Nellie R. Stevens Holly (Llex aquifolium or l. cornuta)	75	1.5	0.5	
Purpleleaf Plum (Prunus cerasifera Pissardii)	75	1.5	0.5	
Redbay Persea (Persea borbonia)	150	2.0	1.0	

Redbud or Judas Tree (Cercis canadensis)	75	1.5	0.5	
Savannah Holly (Ilex opaca v.)	75	1.5	0.5	
Sassafras (Sassafras albidum)	75	1.5	0.5	
Sweetbay Magnolia (Magnolia virginiana)	150	2.0	1.0	
Trident Maple (Acre buereranum)	75	1.5	0.5	
Virginia Pine (Pinus virginana)	75	1.5	0.5	
Yaupon Holly (Ilex vomitoria)	75	1.5	0.5	
Weeping Yaupon Holly (Ilex vomitoria)	75	1.5	0.5	
Weeping Willow (Salix babylonica)	150	2.0	1.0	

(b) *Calculations worksheet.* This worksheet is only a means to assist in the application procedure and does not remove any responsibility of the applicant to comply with all aspects of this article.

Step 1. Calculate the total number of tree density units (TDU) required for the site.

Total number = area (in acres) × 15 (round to the nearest tenth 0.1 of a unit)

Example:

1 acre - $1 \times 15 = 15$ TDU

2.2 acres - $2.2 \times 15 = 33$ TDU

2.1463 acres - $2.1463 \times 15 = 32.1945 = 32.2$ TDU

Step 2. Calculate the total number of TDU's for any remaining existing trees.

- a. List and locate all the trees to remain on site.
- b. Measure the DBH of each tree.
- c. Convert DBH to TDU using the table in section 62-36(c).
- d. Check all trees for the required minimum living space (if not enough space, then remove it from the list).
- e. Check all trees for the required minimum radius for living space (if not enough radius, then remove it from the list).
- f. Total the number of TDU's.

Step 3.

a. If the TDU's from Step 1 (required units) in subsection (b)(1) of this section is greater than the TDU's from Step 2 (existing units) in subsection (b)(2) of this section, then subtract the TDU's of Step 2 from the TDU's of Step 1. The remainder is the number of new TDU's to be placed on the site. More new trees may be required because any new

parking spaces may be required to be within 75 feet of a tree's living space. (See section 62-35(b).)

b. If the TDU's from Step 1 (required units) in subsection (b)(1) of this section is less than the TDU's from Step 2 (existing units) in subsection (b)(2) of this section, then new trees may not be required. New trees may be required because any new parking spaces may be required to be within 50 feet of a tree's living space. (See section 62-35(b).)

Step 4.

a. If TDU's are required, then go to subsection (a) of this section for the listing of trees and corresponding TDU's.

b. Pick new trees (TDU's) from subsection (a) of this section lists keeping in mind that:

1. At least one-half of the trees shall be from the shade tree class;
2. No more than one-third of the trees can be from any one species; and
3. The total TDU's must equal or exceed the number in Step 3a or 3b.

c. Place the new trees on the site.

d. Check that each tree has its minimum living space. If the tree does not have its minimum, then either:

1. Remove the tree from the counting list; or
2. Provide the minimum required living space.

e. Check each tree for minimum living space radius. If the tree does not have its minimum, then either:

1. Remove the tree from the counting list; or
2. Provide the minimum living space radius.

(Code 1985, ch. 28, art. III, div. 1, app. A, app. B; Ord. No. 98-128, app. A, app. B, 6-9-1998)

Secs. 62-42--62-70. Reserved.

DIVISION 2. PUBLIC RIGHTS-OF-WAY AND OTHER PUBLIC LANDS

Sec. 62-71. Applicability.

The provisions of this article apply to any land disturbing activities affecting trees on public rights-of-way or other public lands.

(Code 1985, § 28-51; Ord. No. 92-124, art. II, § 1, 5-12-1992)

Sec. 62-72. Approval procedures.

Requests for pruning, removal and replanting of trees shall be forwarded to the director of engineering for approval.

(Code 1985, § 28-52; Ord. No. 92-124, art. II, § 2, 5-12-1992)

Sec. 62-73. Maintenance of public trees.

All pruning, and tree caring of preserved trees shall be done in accordance with the National Arborists Association, Pruning Standards for Shade Trees.

(Code 1985, § 28-53; Ord. No. 92-124, art. II, § 3, 5-12-1992)

Secs. 62-74--62-104. Reserved.

DIVISION 3. PRIVATE PROPERTY

Sec. 62-105. Exemptions.

This division is subject to the following exemptions:

- (1) *Residential exemption.* All single-family and duplex lots in any zone where permitted by the city zoning ordinance.
- (2) *Agricultural exemption.* Any land zoned agricultural shall be exempt from the provisions of this article.
- (3) *Commercial timber operations.* Commercial timber operations and normal silvicultural practices, shall be exempt from the provisions of this article.
- (4) *Commercial tree operations.* Trees grown specifically for sale, such as Christmas trees and nursery stock, are exempt from the provisions of this article.
- (5) *Pecan trees.* Pecan trees are exempt.
- (6) *Nuisances.* In the event that any tree shall be determined to be imminently hazardous or in dangerous condition so as to immediately endanger the public health, safety or welfare or cause imminent harm to a building, and requires immediate trimming or removal (in some cases) without delay, verbal authorization may be given by the city engineer or the city engineer's designee and the tree trimmed or removed in other cases where trimming will not remove the imminent danger.
- (7) *Period of emergency.* During the period of an emergency, such as a flood, ice storm, thunderstorms, windstorms, tornadoes, or any other act of nature, the requirements of this article may be waived by the director of engineering or the director of engineering's designee.

(Code 1985, § 28-61; Ord. No. 92-124, art. III, § 1, 5-12-1992)

Sec. 62-106. Clearing approval procedure.

- (a) *Approval required for land disturbance activity.* Except for the exemptions stated in section 62-105, a property owner shall not commence any land disturbance activity on his or her property without first obtaining a land disturbance approval. Applications for approval for land disturbance activities shall be submitted by the landowner or an authorized agent on a form provided for this purpose. Such applications shall be submitted to the director of engineering along with all required attachments.
- (b) *Approval by director of engineering.* All plans and related documentation shall be reviewed by the director of engineering for conformance to the provisions of this article and either approved, returned for revisions, or denied within 14 days of receipt. If denied, the reason for denial shall be annotated on the plan or otherwise stated in writing.
- (c) *Tree protection plan.* A tree protection plan shall show:
 - (1) The location of existing and proposed buildings, parking, and other pertinent areas of development.
 - (2) The location and species of all trees to be retained on the site for which tree density credit are to be claimed. The applicant shall make a reasonable effort to save large trees on site.
 - (3) The location of all trees to be planted on the site for which tree density credit are to be claimed, giving their respective species.
 - (4) All tree protective measures to be utilized for trees that are to remain on the site.
- (d) *Separate approval for each phase.* If a tract is to be developed in phases, then a separate approval shall be required for each phase as appropriate.

(Code 1985, § 28-62; Ord. No. 92-124, art. III, § 2, 5-12-1992)

Sec. 62-107. Off-site **tree** replanting requirements.

(a) On sites to be developed with fewer than 100 parking spaces, when it is impractical to meet the criteria for replanting on the confines of the property to be developed the applicant shall provide for replanting to occur on other properties within the city, public or private, that are acceptable to the director of engineering, provided all other requirements are met.

(b) As an option to provision for off-site replanting, the applicant may pay to the city \$100.00 per **tree** density unit to plant the required number of replacement **trees** on public lands and rights-of-way.

(Code 1985, § 28-63; Ord. No. 92-124, art. III, § 3, 5-12-1992)

Sec. 62-108. Building permits and occupancy permits.

No building permit shall be issued unless and until a land disturbance approval has been secured. A final occupancy permit shall not be issued until the application is in compliance with this article upon final inspection or that provisions satisfactory to the director of engineering have been made for compliance, in no event more than six months after occupancy.

(Code 1985, § 28-64; Ord. No. 92-124, art. III, § 4, 5-12-1992)

Sec. 62-109. **Tree** maintenance.

Care and maintenance of **trees** is encouraged to minimize health and safety risks.

(Code 1985, § 28-65; Ord. No. 92-124, art. III, § 5, 5-12-1992)