

## ARTICLE VI. - PROTECTION OF TREES ON PUBLIC PROPERTY

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### **Sec. 7-66. - Purpose and intent.**

(a) The intention of this article is to promote the preservation of trees as part of the land development and construction process and to promote the preservation of trees on public property.

Trees are recognized for their importance in shading, cooling, noise and wind reduction, soil erosion prevention, oxygen production, dust filtration, carbon dioxide absorption, and aesthetic and economic enhancement of all real property. Their contribution to the general well being and quality of life for the citizens of Gastonia is recognized and valued.

(b) The purpose of this article is to regulate the planting, maintenance and removal of trees on city-owned public property and rights-of-way within the city and on city-owned property wherever located. In order to protect and conserve trees on public property and rights-of-way, this article provides for the pruning, treatment, and removal of trees and shrubs as is deemed necessary by the city manager or the city arborist. This article is also intended to provide for the trimming or removal of trees on public land when they obscure streetlights, interfere with utility lines or constitute a hazard to pedestrian or vehicular traffic, or otherwise endanger the public health, safety or welfare.

(c) Another purpose of this article is to encourage the protection of trees and express the city's intent to use trees to create a more natural and amenable human environment. This article is not intended to be punitive or to cause hardship to any person who uses the utmost care and diligence to protect trees within the city or on city property.

(d) This article shall further provide for the establishment of a tree advisory committee, which shall be responsible for promoting trees and tree care throughout the city and for developing a city tree plan.

(Ord. No. 01-382, § 1, 12-04-01)

### **Sec. 7-67. - Definitions.**

The following words, terms and phrases, when used in this article shall have the meanings ascribed to

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them in this section, except where the context clearly indicates a different meaning:

*City-owned or city-controlled property* means the property owned or leased by the city and property over which the city has an easement for public purpose, like parks, medians and rights-of-way.

*City arborist* means the person designated by the city manager to be qualified through formal education or practical experience in the fields of urban forestry, arboricultural or horticulture and who is capable of administering a complete urban tree management program.

*DBH - Diameter at Breast Height* means the total cross sectional diameter of the trunk or trunks of a tree measured four and one-half feet from the ground at the center of the tree.

*Large tree* means any tree over 50 feet in height at maturity.

*Medium tree* means any tree between 30 and 50 feet in height at maturity.

*Right-of-way* means land over which the city has the right to construct a street, sidewalk or use for public utilities or landscape with plants for any other public purpose.

*Root protection zone* means the area 18 to 24 inches deep and distance from the trunk of a tree equal to one-half its height or its drip line, whichever is greater.

*Small tree* means any tree under 30 feet in height at maturity.

*Street trees* means trees, shrubs, and bushes on land lying within rights-of-way on either side of all streets, avenues or public ways within the city.

*Vegetation* means any living plant or group of plants such as a tree, shrub or ground cover.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-68. - Tree advisory committee.**

(a) There is hereby created and established a tree advisory committee for the city, which shall consist of five members appointed by the city council for a three year term. The city arborist and one city employee designated by the city manager shall be ex officio members.

(b) The tree advisory committee shall adopt rules for transactions of its business and shall keep a public record of its members' attendance and of its resolutions, discussions, findings and recommendations. The tree advisory committee shall set a regular schedule for meetings and the chairman may call a special meeting upon request of a majority of the members of the advisory committee. A majority of the members but in no event less than three members shall be a quorum for the transaction of business.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-69. - Duties.**

(a) It shall be the responsibility of the tree advisory committee to study, investigate, consider and develop or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposal of trees and shrubs in parks, along streets and in other public areas. Such plan will be presented annually to the city council and upon its acceptance and approval shall constitute the official comprehensive city tree plan for the city.

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(b) The tree advisory committee, when requested by the city council or the city manager shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

(c) The tree advisory committee shall serve as an advisory committee to the city council with the following duties and responsibilities:

(1) To facilitate the planting, growth and protection of trees within the city through the development of a comprehensive plan.

(2) To foster the communication among the citizens of the city that would provide the needed protection of trees and to coordinate activities to support their health and growth within the city.

(3) To conduct a tree survey of existing trees along streets and on public property within the city.

(4) To investigate available grants, loans or contributions from other governmental agencies, public or private corporations, or individuals; and to recommend the expenditure of any proceeds toward the accomplishment of the advisory committee's purpose.

(5) To conduct continuing research, planning and feasibility studies required to support the purpose stated in this article.

(d) The tree advisory committee shall also be responsible for developing an official street tree species list. No trees other than those included in the list may be planted as street trees without permission of the city arborist.

(e) The tree advisory committee will be responsible for establishing guidelines for the spacing of city trees in accordance with the official street tree species list. These guidelines will cover spacing between street trees, the distance street trees may be planted from curbs or curblines and sidewalks, the distance street trees may be planted from any street corner, the location of the street trees relative to overhead and underground water lines, sewer lines, transmission lines or other utilities, and any other areas involving the spacing of street trees, park trees, or city-owned trees.

(f) The tree advisory committee may be requested by the city council or the city manager to review proposed landscaping projects for purposes of design and trees species and make recommendation thereon; and

(g) The tree advisory committee shall submit an annual report of its activities and recommendations to the city council.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-70. - Permit for pruning, planting, removal, etc.**

It shall be unlawful for any person to prune, treat, plant or remove any tree located on city owned property or within a city right-of-way without first filing an application and procuring a permit from the city arborist. The city maintains the right to review the application and the trees in question in determining whether or not to issue a permit. Individual permits shall not be required of public or private utility companies which install overhead and underground utilities, including CATV installations, fiber optics, underground or overhead electric lines or water and sewer installations by or at the direction of the city department of public works/utilities or electric department, provided that in the case of a public or private utility or cable company, the company's written pruning and trenching specifications have

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been first approved by the city arborist or are in accordance with the specifications adopted by the city. The requirements of this section shall be waived during any emergency as defined in section 7-73.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-71. - Rights of city.**

(a) The city shall have the right to plant, prune maintain and remove trees, plants and shrubs within avenues, lanes, squares and public property, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public property.

(b) The city may remove or cause or order to be removed any tree or part thereof located on city owned or city controlled property which is in an unsafe condition or which by reason of its nature is injurious to sewers, electrical power lines, gas lines, water lines or other public improvements, or which is affected with any injurious fungus, insect or other pest.

(c) This section does not prohibit the planting of trees by adjacent property owners providing that the selection and location of the trees is in accordance with the guidelines for planting and spacing developed by the tree advisory committee and a permit has been obtained.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-72. - Interference with city.**

It shall be unlawful for any person to prevent, delay or interfere with the city or any of its agents while engaging in and about the planting cultivation, mulching, pruning, spraying or removing of any trees, or trees on public property as authorized in this article.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-73. - Emergency work.**

During emergencies such as windstorms, ice storms, fire or other disasters, the requirements of this article may be waived by the city arborist or city manager in order to avoid hampering private or public work to restore order in the city. This section shall not be used to circumvent the requirements of this article.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-74. - Protection during construction.**

(a) Any person who is erecting, repairing, altering or removing any building or structure shall place a guard or protective fencing around any tree on city-owned or city-controlled property not scheduled for removal during the such construction so as to prevent injury to such tree. This required protective fencing must be installed prior to the commencement of any site work. Fencing shall be made of a brightly colored highly visible mesh material and shall have a minimum height of four feet and shall be supported with posts with a maximum distance between the posts of ten feet.

(b) To properly protect and ensure the health of existing trees to remain, that protective fencing should be installed to protect the tree's root protection zone. Practices for trenching and tunneling near trees must follow the methods described in "Trenching and Tunneling Near Trees: A Field Pocket Guide for Qualified Workers" by Dr. James R. Fazio or such other methods as may be approved by the

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city arborist. No nails, ropes, cables, signs or fencing shall be attached to any part of any tree that is to remain.

(c) If it is determined in the field during construction that a tree must be removed, such removal may be approved by the city manager or his designee.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-75. - Tree topping.**

It shall be unlawful as normal practice, except as described in this section, for any person, city department or public utility to top any tree on city owned or city controlled property. Topping is defined as the severe cutting back of limbs to stubs larger than two inches in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees that interfere with or are an imminent threat to utility wires or other obstructions where other pruning practices are impractical may be exempted from this section at the determination of the city manager or his designee.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-76. - Appeals.**

If any aggrieved person disagrees with a decision of the city arborist, such person may request a hearing within ten working days of receipt of the notice of this action or violation. The request must be in writing and directed to the office of the city manager. The appeal shall be heard by the city manager or his designee who shall render its decision within 30 days after the hearing.

(Ord. No. 01-382, § 1, 12-04-01)

**Sec. 7-77. - Penalty for violation of article.**

(a) A violation of the provisions of this article shall constitute a misdemeanor punishable as provided in G.S. 14-4.

(b) A violation of the provisions of this article shall subject the violator to a civil penalty in the amount of \$200.00 except as hereinafter provided. If the violator fails to pay the civil penalty within 30 days, the city may seek to recover the penalty by filing a civil action in the nature of a debt. Each day of a continuing violation shall constitute a separate violation. In determining the specific amount of the civil penalty for damage or destruction to regulated trees, the city manager or his designee shall use the standard tree evaluation formula provided by the International Society of Arboriculture, as it may be amended from time to time. The standard tree evaluation formula is made a part of this chapter and adopted herein by reference.

(c) Whenever there exists reasonable cause to believe that any person is violating this chapter or any standard adopted pursuant to this chapter or any term, condition or provision of an approved permit, the city may either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the city for a mandatory or prohibitory injunction and an order of abatement demanding the violator to correct the unlawful condition upon or cease the unlawful use of the property.

(Ord. No. 01-382, § 1, 12-04-01)

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**Secs. 7-78—7-90. - Reserved.**