

URBAN FORESTRY POLICIES

Purpose & Intent

The City of Shelby deems it necessary and desirable to protect and promote the health, safety and general welfare of the public by providing for the regulation of the planting, maintenance and removal of trees located on roadways, parks and public areas owned or controlled by the City of Shelby. The intent of this ordinance is to insure the preservation, planting and replacement of trees and to prevent the indiscriminate pruning and removal of trees on city owned property or right of way. The importance of trees is recognized for their shade, cooling, noise reduction, soil erosion prevention, oxygen production, dust filtration, carbon dioxide absorption, aesthetic and economic enhancement of all real property and their contribution to the general well being of the citizens of Shelby.

The purpose of this section is to encourage the protection of trees and express the City's intent to use trees to maintain and create a more aesthetic and pleasing environment. To this end, the City's policy toward trees within the right of way and other City property is to promote, when ever possible, the conservation, retention, and where necessary, replacement and planting of trees. This chapter is also intended to provide for the pruning or removal of trees when they interfere with utility lines or constitute a hazard to pedestrian or vehicular traffic, thus endangering the public health, safety or welfare.

Definitions:

Caliper. Diameter measurement of the trunk taken six (6) inches above ground level for trees up to and including four-inch caliper size. Measurement shall be taken twelve (12) inches above the ground level for larger trees.

City. City Manager or designated agent or agents.

Commission. The Shelby Appearance Commission

DBH. (Diameter breast height). The diameter of a tree four and one-half (4 ½) feet above the average ground level.

Drip line. A vertical line running through the outermost portions of the tree crown extending to the ground.

Paved Area. Any ground surface covered with concrete, asphalt, stone, compacted gravel, brick, or other paving material.

Person. A public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative, or other legal entity.

Renovation. Any construction activity to an existing structure, which changes its square footage, footprint or modifies the exterior wall material excluding cosmetic maintenance and repairs.

Root Protection Zone. Generally, 18-24 inches deep and a distance from the trunk of a tree equal to one-half (1/2) its height or its drip line, whichever is greater.

Specimen Tree. A tree or group of trees considered to be important community assets due to their unique or noteworthy characteristics or values. A tree may be considered a Specimen Tree based on its size, age, rarity or special historical or ecological significance as determined by the City. Examples include large hardwoods (e.g. oaks, poplars, maples, etc.) and softwoods (e.g. pine species) in good or better condition with a dbh of 24" or greater, and smaller under story trees (e.g. dogwoods, redbuds, sourwoods, persimmons, etc.) in good or better condition with a dbh of 6" or greater.

Utility Line Clearance Trimmers. Those persons who have received training through an approved International Society of Arborist (ISA) course or through on the job experience with a recognized tree company employing an arborist.

Topping. Any pruning practice that results in more than 1/3 of the foliage and limbs being removed. This includes pruning that leads to the disfigurement of the normal shape of the tree.

Callused Tissue. When a tree is cut/pruned the wound must grow over and compartmentalize the area.

Tree Evaluation Formula. A formula for determining the value of trees and shrubs as published by the International Society of Arboriculture.

Tree, Large Maturing. Any tree whose height is 35' or greater at maturity, or 25' spread. See landscape ordinance or typical species.

Public Tree.

Section I – Trees on Public Property

I. Permits

It shall be unlawful for any person to provide lawn maintenance/landscaping, irrigation activities, prune, treat, and plant or remove any public tree within the city without first filing an application and procuring an Urban Forestry Permit from the city before activities commence. Persons requesting to undertake any type of demolition, construction, grading or drainage work, which will impact public trees, shall secure a permit for such work from the city before activities commence. For purposes of this requirement, a complete approved site plan or landscape plan approved by the city

constitutes a permit. The city shall have the authority to review all plans and requests for permits and to grant or deny permits or attach reasonable conditions to the permits. Individual permits shall not be required of public or private utility companies which install overhead and underground utilities, including CATV installations or water and sewer installations by or at the direction of the city division of public services, provided that the company's written pruning and trenching specifications have been first approved by the city.

II. License, insurance for commercial work.

It shall be unlawful for any person to engage in the business or occupation of pruning, treating or removing street or park trees within the city without first registering with the city. The registration fee shall be twenty-five dollars (\$25.00) annually in advance; provided, however, that no registration shall be required of any public service company or city employee doing such work in the pursuit of such person's public service endeavors. Each registrant shall file evidence of possession of liability insurance in the minimum amounts of fifty thousand dollars (\$50,000.00) for bodily injury and one hundred thousand dollars (\$100,000.00) property damage, indemnifying the city or any person injured for damage resulting from the pursuit of such endeavors as described in this section. The registration and insurance amounts shall be established by the city manager with approval by the city council.

III. Rights of City

- a) The city shall have the right to regulate and restrict activities by others, which may cause harm or damage to public trees.
- b) The city shall have the right to plant, prune, maintain and remove trees, plants, and shrubs within the right of way of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.
- c) The city may remove or cause or order to be removed any publicly owned tree or part thereof 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 improvement, which is infected with any injurious fungus, insect or other pest. The city reserves the right to approve any plantings that take place in the right-of-way areas.

IV. Emergency Work

During emergencies such as windstorms, ice storms, fire or other disasters, the requirements of this article may be waived by the city 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.

V. Protection During Construction

Any person who is erecting, repairing, altering or removing any building or structure or altering surrounding landscape, including grading, excavation, filling or trenching

operations shall protect trees on public property from damage resulting from these or similar activities. Measures must be maintained for the duration of the project. Protection should extend to cover the full extent of the drip line and root zone. Anything less must be approved by the city.

VI. Tree Pruning

The pruning requirements shall consist of conforming to the ANSI A300 pruning guidelines, Standard Practices for Trees, Shrubs, and Other Woody Plant Maintenance, National Arborist Association or the International Society of Arboriculture. Lateral, directional, or natural pruning are the only practices allowed for pruning public trees. Stub cutting and topping will not be allowed except in specific trees as allowed by the City.

Tree topping is not permitted. It shall be unlawful as normal practice, except as described in this section, for any person or city department to top any public tree.

Trees severely damaged by storms or other causes, or certain trees that interfere with or are an imminent threat to utilities or other obstruction where other pruning practices are impractical may be exempted from this section at the determination of the city.

Pruning is to be performed by tree workers who, through related training and on the job experience, are qualified utility line clearance trimmers familiar with the techniques and hazards of this work including trimming, removal, and equipment used in such operations. **The use of climbing spurs or irons is strictly prohibited in pruning operations on live trees.**

All cuts shall be made sufficiently close to the trunk or parent limb, without cutting into the branch collar or leaving a protruding stub, so that closure can readily start under normal conditions. Clean cuts shall be made at all times.

Where branches are too heavy to handle, to prevent splitting or peeling the bark, it is necessary to precut these branches. Where necessary, to prevent tree or property damage, the use of ropes or equipment should be considered for lowering branches to the ground.

Treatment of cuts and wounds with tree wound dressing is not necessary. All branches are to cut back to a live lateral, which shall be at least 1/3rd the diameter of the severed branch. The presence of any structural weaknesses, disease condition, decayed trunk or branches, split crotches or branches should be reported to the City. All stubs not callused over shall be pruned in the same manner as outlined above in this section. Care shall be taken so as to not damage the callusing tissue.

VII. Removal of Stumps

All stumps of public trees shall be removed so that no portion of tree stump is within 12" of the normal surface of true ground. Remove all debris from grinding operation shall be removed and the hole shall be filled with clean fill dirt suitable for planting.

Section II – Urban Forestry Registration

Purpose & Intent

The City of Shelby deems it desirable and in the interest of public health, safety and welfare to enact regulations and guidelines for lawn maintenance/landscaping, preservation, planting, pruning, removal and replacement of trees and shrubs on City owned property or right of way. The importance of trees and proper lawn maintenance are recognized for their aesthetic and economic enhancement of all real property. For these purposes and others the following information is provided for persons working in these arenas. A \$25.00 fee and completion of the registration form is required to perform these duties.

Enforcement

Sec. 1-4. General penalty; continuing violations.

- a) General enforcement. Violations of this Code of Ordinances or any other city ordinance shall constitute a misdemeanor and/or, at the election of the city, shall subject the violator to civil penalties and/or, where permitted by law, equitable remedies for said violation as hereinafter provided.
- b) Injunction and order of abatement remedies.
 - 1) Any provision of this code or any other city ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by the general court of justice. When a violation of such a provision occurs, the city may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.
- c) Civil Penalties.
 - 1) Upon determination of a violation of any section of this ordinance, the city may cause a notice of violation to be issued to the violator by the appropriate official of the city and served on the violator or his agent, either in person or by first class United States mail, postage prepaid and addressed to the last known address of the violator as contained in the records of the city or as obtained from the violator or his agent. The appropriate city official serving the notice of violation shall sign and have notarized an affidavit describing the type of service and the date of service. The violator shall be deemed to have been served upon the mailing or personal service of the notice of violation. The notice of violation shall set out the nature of the violation, the code section or ordinance violated, the date or dates of the violation, and shall contain an order to immediately cease the violation. The notice of violation shall

specify that a second and subsequent citations will assess a civil penalty, together with costs, attorney fees, and such other relief as provided by law. The notice of violation shall also inform the violator of the violator's appeal rights. If the violation is in the nature of an offense for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated with which the violation must be abated.

- (2) The violator must file an appeal from a notice of violation within 10 days from the service date of the notice of violation as indicated on the affidavit of service. An appeal is deemed filed when it is received by the city manager or his designee. Forms and instructions for filing an appeal shall be made available at the office of the city manager or his designee. A violator who fails to file an appeal within the time period described above is deemed to have forfeited the right to appeal the violation, the notice of violation, the civil citations, and the civil penalties assessed for the violation. Appeals shall be heard by an administrative process established by the city. The decision of the appeal board shall be heard by the City Manager.
- (3) Where the city determines that the period of time stated in the original notice of violation is not sufficient for abatement based upon the work required or based on a consent agreement, the city may amend the notice of violation to provide for additional time.
- (4) Upon failure of the violator to comply with the notice of violation within 10 days of service of the notice of violation, a civil citation shall be issued by the appropriate official of the city and served on the violator or his agent, either in person or by first class United States mail, postage prepaid and addressed to the last known address of the violator as contained in the records of the city or obtained from the violator or his agent. The appropriate city official serving the civil citation shall sign and have notarized an affidavit describing the type of service and the date of the service. The violator shall be deemed to have been served upon the mailing or personal service of the civil citation
- (5) The civil citation shall direct the violator to immediately cease the violation, shall inform the violator of the civil penalty, and shall direct the violator to make payment of the civil penalty to the city manager or his designee within 10 days of the date of the civil citation, or alternatively to pay the citation by mail postmarked within 10 days of service of the civil citation. Once a notice of violation has been issued and the 10-day warning period has expired, civil citations may be issued for each day the same or similar violation continues until the prohibited activity is ceased or abated. If a violation is repeated within a two-year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies as set forth in this section. A repeat violation is one, which is identical to or reasonably similar to a previous violation for which a notice of violation or civil citation has been issued by the city.

- (6) If the violator fails to respond to a civil citation within 10 days of its service, by paying the penalty prescribed therein, the city may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees and such other relief as permitted by law.

- d) In the event any provision of this section is found to be in conflict with any other provision of any other ordinance or code of the city, the more specific provision shall prevail. In the event any provision of this section is found to be invalid, the remaining provisions shall remain effective and valid.

- e) The time periods in this section shall be computed in the manner set forth in Rule 6(a) and 6(e) of the *North Carolina Rules of Civil Procedure*.

- f) The provisions of this code and any other city ordinances may be enforced by one, all or a combination of the remedies authorized and prescribed by this section.

- g) Unless otherwise provided herein, each violation of this code and any other city ordinance constitutes a misdemeanor. Any person, firm, corporation, or other entity convicted of violating the provisions of this code is, upon conviction, guilty of a misdemeanor and is subject to a fine not to exceed fifty dollars (\$50) and/or subject to imprisonment for a period not to exceed thirty (30) days

- h) Unless otherwise provided, civil penalties shall be in the following amounts:
 - First citation.....\$50.00

 - Second citation for same or similar violation.....\$100.00

 - Third and subsequent citations for same or similar violation.....\$500.00

Once a notice of violation has been issued and the 10-day warning period has expired, civil citations in the above amounts may be issued for each day the same or similar violation continues until the prohibited activity is ceased or abated in accordance with this section.

Sec. 1-5. Violations by corporations.

If any provision of this code is violated by a corporation or statutory corporate entity, the officer, agent or employee who violates such provision, or who procures, aids or abets such violation, shall be subject to the same penalties as if he himself committed the violation.