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RECOMMENDED BY: COUNCILOR VALERIE ABBOTT

SUBMITTED BY: THE CITY ATTORNEY

ORDINANCE NO. 25-144

AN ORDINANCE TO REVISE AND REACTIVATE THE CITY’S TREE COMMISSION AND TO FURTHER PROVIDE FOR AND REGULATE THE CARE, MAINTENANCE, REMOVAL, AND REPLACEMENT OF PUBLIC TREES IN THE PUBLIC RIGHTS-OF-WAY AND OTHER PUBLICLY-OWNED PROPERTY, TO FURTHER DEFINE OFFENSES RELATED TO TREE DAMAGE AND REMOVAL WITHOUT PERMISSION, AND TO ADDRESS TREE HAZARDS ON PRIVATE PROPERTY THAT ARE A DANGER TO PUBLIC TRAVEL, SAFETY, AND HEALTH BY AMENDING THE GENERAL CODE OF THE CITY OF BIRMINGHAM, TITLE 2, “GENERAL GOVERNMENT”, CHAPTER 5, “BOARDS, COMMISSIONS, AND COMMITTEES”, ARTICLE U, “URBAN FORESTRY AND TREE COMMISSION” AND ADDING ARTICLE C TO TITLE 6, “HEALTH AND ENVIRONMENTAL CONTROL”, CHAPTER 5, “TREES AND SHRUBS” AND BY REPEALING CERTAIN DUPLICATE PROVISIONS OF THE GENERAL CITY CODE.

SECTION 1. BE IT ORDAINED by the City Council of the City of Birmingham, Alabama, that the Birmingham Tree Ordinance, amending the General Code of the City of Birmingham, Title 2, “General Government”, Chapter 5, “Boards, Commissions, and Committees”, Article U, “Urban Forestry and Tree Commission”, be and is hereby amended by repealing and replacing provisions of Sections 2-5-311 through 2-5-316 of the General City Code relating to the Urban Tree and Forestry Commission with Sections 12 through 16 of this ordinance and by repealing Sections 2-5-317 through 2-5-322 of the General City Code and adding Sections 1 through 11 and Sections 17 and 18 of this ordinance to create Article C of Title 6, “Health and Environmental Control”, Chapter 5, “Trees and Shrubs” of the General City Code, and to repeal Section 6-5-1 of the General City Code, as follows:

Section 1.

Purpose

The purpose of this ordinance is to:

Create a policy that reinforces Birmingham's Comprehensive Plan to enhance residents' quality of life, create a more attractive destination for tourism and visitor experiences, and to ensure public health and safety. This Ordinance shall serve to set the minimum standard to promote the attractiveness of Birmingham's urban canopy through sustainable practices. It will also serve to manage the maturing urban forest to assess and mitigate hazardous conditions and conserve a sustainable Urban Forest. A healthy urban forest will reduce the heat island effect, improve air and water quality, and lessen storm intensity. This document will create a regulatory standard to responsibly manage the maintenance, removal and replanting strategies to create a more resilient, economically and environmentally sustainable Birmingham.

This Ordinance will address the following:

- (a) Establish recognized standards of tree planting and maintenance on public and utility easement lands within the City;
- (b) Maintain, manage and protect trees and shrubs on public and utility easement lands from willful and/or negligent harm;
- (c) Provide an avenue for private citizens to apply for permits to prune or remove trees in the City's right-of-way adjacent to their private property;
- (d) Provide for active and continuing programs for public education, environmental and public health advocacy and best management practices for providing adequate tree coverage for a sustainable urban forest;
- (e) Re-establish membership and responsibilities of the Birmingham Urban Forestry & Tree Commission.

Section 2.

Policy

The policy of the City is to establish and maintain trees upon and within the rights-of-way maintained by the City for ornamentation and to protect the public health, safety, and welfare. No tree within the City for ornamentation or public safety purposes within said rights-of-way shall be removed or intentionally damaged, injured, or destroyed, except by a duly

authorized person, company, organization, or agent of the City who has first secured permission from the Urban Forester or Landscape Architect or their agent. Any tree presently located within such a right-of-way which is maintained by the owner of the adjacent property for shade, ornamentation, screening, or other purposes, may continue to be so maintained so long as that portion of the right-of-way is not impaired for travel or utility purposes, and so long as maintenance of said tree is not inconsistent with the health, safety, and welfare of the general public. Such trees shall not be removed by the City without notice to the adjoining owner, except when such notice would impede the City's protection of the safe movement of vehicular and pedestrian traffic, or the safe operation and maintenance of the street or highway, or of public utilities or drainage facilities located within said rights-of-way. Removal for any other purpose shall be preceded by reasonable notice or securing a permit from the Urban Forester or Landscape Architect or their agent that such removal is necessary and in accordance with adopted standards.

Section 3.

Definitions

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

Adopted Tree Care Standards - developed standards of tree maintenance, trimming clearances, and methods of protection of trees during construction, as established by the International Society of Arboriculture (ISA) and the American National Standards Institute (ANSI) Standard A300 (latest edition), National Standard for Tree Care Operations - Tree, Shrub and Other Woody Plant Maintenance - Part 1 - Standard Pruning Practices, as may be amended; and the American National Standards Institute (ANSI) Standard Z133.1 (latest edition), Arboricultural Operations - Pruning, Trimming, Repairing, Maintaining, and Removing Trees, Shrubs and Cutting Brush - Safety Requirements, as may be amended.

American National Standards Institute (ANSI) – a private non-profit organization that oversees the development of voluntary consensus standards by accredited representatives of government agencies, industry and other stakeholders.

Caliper - tree trunk diameter, measured six inches above ground for trees with up to a four-inch diameter, and 12 inches above ground for larger trees. However, the preferred method is "DBH." ("diameter at breast height")

City - the City of Birmingham and its authorized agents and contractors.

Critical Root Zone (CRZ) or Tree Protection Zone (TPZ) - the circular area of soil extending from the trunk of the tree containing roots required to ensure both tree stability and overall tree health. The CRZ surrounds the base of a trunk in the top 18-20" inches of ground. This is a critical zone, which includes both the vital root plate and the fragile transport roots, where any soil disturbance is likely to negatively affect the overall health of the tree. The radius, in feet, is determined by calculating the tree's DBH (or caliper), in inches, and providing a minimum of one foot for every DBH inch extending outward from the tree trunk. (e.g.: a 12" DBH tree will require a 12' radius (24' diameter) surrounding the tree trunk, to protect the vital roots.)

Diameter at Breast Height (DBH) - for a single trunk tree, the DBH is derived by measuring the trunk circumference of a tree at a point that is four and one-half feet above ground on the uphill side of the tree and then dividing the circumference by 3.14. For a multi-stemmed tree, the DBH is derived by obtaining the sum of the separate circumferences measured at a point four and one-half feet above ground, then dividing the sum of the circumferences by 3.14.

Drip-line – an imaginary vertical line extending from the terminal edge of the tree's canopy to the ground, delineating the approximate area of the critical root zone; used to determine the Tree Protection Zone (TPZ).

Electric power facilities - power transmission and distribution lines, transformers, substations, and associated equipment.

Hedgerow - a row of closely spaced shrubs or bushes used to delineate space, restrict access, provide screening, or achieve a similar function.

Invasive Plant - species that is non-native (or alien) to the ecosystem under consideration, and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.

Lateral separation - distance, measured horizontally at ground level, such as between an electrical conductor and the center of the trunk of a tree.

Permit - a document provided by the City of Birmingham that authorizes an action, such as removal or pruning of a tree/shrub on public or utility easement land.

Live crown ratio - the fraction or percentage of the overall canopy of a tree bearing living, healthy branches.

Mulch - any organic material placed over the soil surface of a planting area which serves the same function as leaf-litter in a natural forest environment. (gravel or synthetic material (such as shredded rubber, plastic mulch, glass or pebbles) are not allowable mulch alternatives.)

Owner - the possessor of title, his agent or assignee, to the land on which particular trees stand. In the case of a tree on utility easement land, ownership rights and responsibilities are defined in section 8(b), in the absence of other specific provisions by deed or other binding agreement.

Person - any individual acting on his own behalf, or on behalf of a company, agency, corporation, or other body.

Planting - establishing a tree, shrub, groundcover, vine, or other species of vegetation in a location where it is to remain for an extended period, usually the useful lifespan of the plant in the absence of unforeseen circumstances.

Private land - land belonging to a person or corporate entity, and not the City or other government entity.

Public land - any land belonging to the City, including platted rights-of-way or streets and alleys. For the purposes of this definition, federal, state and county lands are excluded from this category unless the City has specifically assumed responsibility for its maintenance.

Root Plate - the area around the base of a tree in which the roots taper rapidly from pedestal roots to small transport roots; these structural roots are constantly subjected to compression and tension during windy conditions, so damage to these roots and subsequent decay commonly leads to catastrophic failure, especially during windy weather. (See also "critical root zone.")

Shrub - a bush, small to medium sized (2'-20'ht) perennial woody plant. Typically distinguished from trees by their multiple stems, lack of a main trunk and shorter height and spread.

Sight distance - the distance required for drivers, cyclists, or pedestrians to perceive and properly respond to traffic conditions or control devices for clear unobstructed views. This distance is typically dependent on speed of travel, slope, road curvature or other conditions present that can obstruct or prevent clear lines of sight between intermodal users.

Trees - all woody vegetation, whether naturally occurring or planted; rights, responsibilities, and standards applying to trees shall, from a legal standpoint, apply to shrubs as well.

Tree Commission - any member of the Birmingham Tree Commission as established herein, acting in pursuit of the objectives of this ordinance within its scope and within the bounds of law.

Tree Protection Zone (TPZ) –the area surrounding a tree that is designated for protection during construction or development. Typically defined by calculating the critical root zone or delineated by the drip line, where the vital roots can be found in the top 18”-20” of soil below ground.

Urban Forester - a professional engaged in the art, science, and technology of managing trees and forest resources in and around urban community ecosystems for the physiological, sociological, economic, and aesthetic benefits trees provide to society. Urban Forester, for the purpose of this ordinance, shall also mean the person designated by the City of Birmingham as the Urban Forester. Foresters are commonly credentialed by states or other certifying bodies, (e.g. the Society of American Foresters) and may be licensed, certified, or registered indicating specific education and abilities; the requirements for credentialing differ and usually include earning a baccalaureate degree in forestry, sometimes equivalent experience, and usually passing a comprehensive examination. The Urban Forester shall be the person or persons so designated by the City of Birmingham.

Utility, private - a commercial service distributed by use of the public streets, alleys, rights-of-way and easements of the City by the use of facilities and fixtures located therein but not regulated by the State of Alabama Public Service Commission.

Utility, public - a service distributed by wire, pipe, or airwaves to customers, and either regulated by the State of Alabama Public Service Commission (as in the case of electric, gas, and telephone service) or not regulated by the Public Service Commission but established as a municipal utility (as in the case of water).

Utility Easement or utility easement land - privately owned land on which an easement has been granted to the City or another entity for public services such as utility distribution, water distribution and drainage, access to maintain the public services, etc. An easement is only a right of use. The grant of an easement does not transfer ownership rights.

Section 4.

Offenses

In relation to any tree located on public land, it shall be unlawful for any person not authorized by the City of Birmingham to:

- (a) break, injure, mutilate, burn, poison, kill, remove, or destroy any tree or roots without authority to do so as set forth in this ordinance.
- (b) knowingly permit any leak to exist in any gas pipe or main, within the root zone of such tree.
- (c) knowingly permit any toxic chemical, either solid or liquid, to pass, drain, or be emptied on or about any such tree.
- (d) knowingly permit any wire, cable or conduit designed to carry electrical current to be attached to any tree, except by approval of the Urban Forester or City Landscape Architect.
- (e) excavate any tunnel, ditch, or trench, or install any driveway, sidewalk, or pavement through or across the root zone of any such tree, except in accordance with Adopted Tree Care Standards.
- (f) attach any wire, rope, cable, poster, sign, nail, or other fastener to such tree, except by approval of the Urban Forester or City Landscape Architect.
- (g) place, park, deposit, or store any vehicles, stone, brick, sand, earth, or other material so as to compact, impede or prevent the passage of water, and air to the roots of any such tree.
- (h) move any vehicle, building or other large object along any street in such a manner as to damage any tree that is maintained in accordance with adopted standards.
- (i) undertake to build any structure, pavement, utility, or other construction without proper consideration or adequate protection measures of such trees in accordance with adopted standards.
- (j) prevent, delay, or interfere with the Planning, Engineering and Permits Department or Division of Horticulture & Urban Forestry or its agents engaging in or about the planting, maintenance, or removal of any tree on public lands as authorized in this document.

Section 5.

Tree Removal or Maintenance:

Urban Forester criteria for tree removal, not subject to a Tree Permit:

(a) If a City Tree is determined to require more than trimming to alleviate a conflict the Urban Forester may allow removal from Public Property when/if one or more criteria is present:

(1) The Tree is determined to be hazardous.

a. Tree is over 75% in decline or diseased and assessed by the Urban Forester, or their representative, that failure is imminent and poses a threat to person, property or could fall within a utility easement or public Right-of-Way.

b. Tree is Dead

(2) The Tree (or Shrub) is a sight line obstruction and no other means of mitigation (e.g.: trimming, pruning, or limbing up) is an option. When removal request is brought to the City's attention, the Urban Forester, City Landscape Architect and City Traffic Engineer, or their respective representative, will coordinate and determine the mitigation approach to adequately resolve the obstruction in the Public Right-of-Way.

(3) The Tree is recognized to be a nuisance invasive/exotic species as designated on applicable national, regional or state lists of invasive species designated by the National Invasive Species Council of the US Department of Agriculture or as designated by the Alabama Department of Agriculture and Industries.

(4) When the Urban Forester determines that a Tree (or Shrub), due to its size, placement, species, or other characteristics, poses any adverse conditions to the public health, safety or welfare. This includes, but is not limited to, conditions where a tree poses danger to safe access or use of public property, lands, safe travel, or to nearby structures, or if a tree is found to be a host to a disease and/or pest infestation which may endanger other trees in the immediate vicinity, removal is authorized.

a. If a pest or disease is found, proper disposal methods may be warranted, and immediate removal and disposal of disease and/or pest abatement methods will be determined by the Urban Forester and/or City Landscape Architect.

(5) Any other circumstance as evaluated and identified by the Tree Commission Technical Group.

(b) Tree Permit:

(1) Tree Maintenance/Planting/Removal on Public Property

- a. Persons requesting trimming, cutting, or removal of City trees on Public Property will be at the Owner's expense, and subject to this Ordinance. Requestor shall secure a permit for tree work from the City's Planning, Engineering and Permits Department before commencing any work. City shall have the authority to review all requests for permits and approve, deny or place reasonable conditions associated, in writing, upon issuance of permit.
- b. Tree removal permits shall require proper debris removal, stump grinding and a suitable tree replacement. Species of replacement and suitable location shall be determined by the City Landscape Architect and Urban Forester, a minimum of 10' height and 2.5" minimum caliper per each tree removal requested.

(2) Tree removal

- a. Effective when published as required by law, any person or company in the business of conducting tree work (removal, pruning, replanting in the City's Right-of-Way), will be required to obtain a permit for tree work from the City's Planning, Engineering and Permits Department (PEP).
- b. Permitting cost is \$50.00 per job (Permits to remove invasive species, as verified by the Urban Forester, may be removed at no cost, but must still have a permit on file). The following information will be required when applying for a permit: A current Birmingham Business License, name, contact and address of tree service, location of job site, property owner's name, contact and address, and nature/description of work/scope proposed.
- c. Replacement trees must be planted within 30 days of the prior tree's removal unless the Urban Forester provides an extension of time due to special circumstances, such as drought. The replacement tree must be maintained by the applicant for a minimum of one year. Trees not surviving the first year shall be replaced at owner's expense.
- d. Permits shall be valid for 90 days; if unusual conditions result in a job lasting more than 90 days, an extension shall be required. The request must be made in writing to ensure the replacement tree is planted in accordance with ANSI best management practices. (e.g.: reasons for extension may include, but not be limited to, time of year, limited availability, pest or disease infestation, alternative species is required.)

(3) Tree replacement and mitigation (Tree Fund)

- a. Tree removal permits shall require suitable tree replacement. Species and suitable location shall be coordinated between City Landscape Architect and

Urban Forester, a minimum of 10' height and 2.5" minimum caliper per each tree removal requested.

- b. If replacement is not possible, due to utility conflict, sight distance obstruction and/or other potential conflict, payment into the City's Tree Fund will be required. The cost of the replacement trees will be based on the caliper inches of tree(s) being removed.
- c. Mitigation fee shall be determined by adding up the total removed tree DBH (in inches) and calculated at a rate of \$65.00 per each DBH inch removed, to be paid into the City's Tree Fund.
- d. The Tree Commission shall recommend how money from the Tree Fund will be spent, and the City Council will approve those expenditures.

(4) Inspections

- a. The Urban Forester/Landscape Architect, or their designee, agent, officials or qualified personnel authorized by the City are authorized to inspect sites to determine compliance with this ordinance.
- b. No person shall refuse entry or access to any authorized City representative or agent who requests entry for the purpose of inspection, nor shall any person resist, delay, obstruct or otherwise interfere with said agent or representative while in the process of carrying out official duties.
- c. If, through inspection, it is determined that a violation exists the Urban Forester, Landscape Architect or their City-authorized agent shall serve a written notice of violation and, if necessary, issue a stop work order. A notice of violation shall identify the nature of the violation and shall set forth the measures necessary to achieve compliance. The notice shall advise that failure to correct the violation within a reasonable specified time shall subject the responsible party to the prosecution provided for in Section 7.

Section 6.

Enforcement

- (a) The Urban Forester (or Landscape Architect) shall investigate damage to or removal of any Tree/Shrub on public property in the City of Birmingham to determine if the damage is due to any of the offenses set forth in Section 4 of this ordinance. The Urban Forester may be assisted by appropriate enforcement authorities. Investigation may be

initiated by a complaint from a member of the public or upon observation by the Urban Forester or other City department.

(b) If the identity of the person or persons responsible for the damage or removal is known or readily ascertainable, written notice shall be sent to the responsible person or persons informing them of the nature of the violation and giving options to resolve the violation with replanting a tree/shrub at the same location or at another location acceptable to the City within 30 calendar days unless the Urban Forester provides an extension of time due to special circumstances, such as drought. This shall be the time to replant or to respond. If the responsible person or persons do not respond within the specified time, the Urban Forester or City Landscape Architect shall, in consultation with the appropriate enforcement authorities, seek a summons or warrant for the violation(s) in Municipal Court.

(c) If the identity of the person or persons responsible for the damage or removal is not known or readily ascertainable, the Urban Forester shall investigate and may be assisted by the appropriate enforcement authority. When the identity of the person or persons responsible is ascertained, the Urban Forester or the appropriate enforcement authority shall proceed as set out in subsection b., above.

(d) Nothing in this section shall be construed to prohibit any witness to an offense set forth in Section 4 of this ordinance from making a report with the Birmingham Police Department, nor to prohibit a witness to an offense from seeking a complaint and summons or warrant with the City Magistrate.

Section 7.

Violations and Penalties

- (a) No person shall, without proper authority, willfully or maliciously cut down or destroy or remove, steal or injure any tree, plant or shrub, planted or preserved for shade or ornament in any public street or square or in any yard, ground or park belonging to the city or to any individual inhabitant of the city, or remove therefrom any substance, earth, dirt or turf.
- (b) It shall be unlawful for any person to fail to perform any duty required by this chapter, or to do any action prohibited by this chapter.
- (c) Violations set forth in Section 4 (a) through (i) of this ordinance may be charged as criminal mischief as set out in Ala Code §§ 13A-7-20 through 13A-7-23.

- (d) In addition to any penalties imposed by the Municipal Court upon conviction, restitution to the City or property owner in the amount needed to replace the tree/shrub with one of like size and quality up to 6" d.b.h. (or 5 gallon size for shrubs) shall be required. Selection and planting of the tree(s) shall be performed under the supervision of the Urban Forester and in accordance with the provisions of the Birmingham ReLeaf Tree Guide. Tree(s) must survive for a minimum of one year or replanting will be required. If the tree cannot be replaced (due to site constraints, drought, etc), then monetary restitution to the Tree Fund is required at the rate set forth in Section 5.
- (e) Upon conviction, violations of this ordinance are subject to the penalties set out at Section 1-1-6 of the General Code of the City of Birmingham, as now or hereafter amended.

Section 8.

Trees on Public Land

(a) **Maintenance.** Maintenance of trees located on public property shall be performed under the supervision of the Urban Forester who shall be in consultation with the City department having jurisdiction over the property in question.

(b) Planting of trees on public land. Any tree hereafter planted on public land, as it matures, will affect the safe use of public land and shall be selected, sited, planted, and maintained in accordance with the tree care standards set out in this ordinance. Further, any tree classified by the Urban Forester and the Tree Commission as unacceptable for planting on City property may be removed through the processes described in this ordinance. A copy of the list of acceptable species of trees for planting in the ROW shall be provided upon request by the Urban Forester or Landscape Architect.

(c) Removal and replacement of trees on public land.

(1) **Tree removal permission.** Any public utility removing a tree from public land shall do so in accordance with the standards adopted in this ordinance (reference Section 5). Any person or agency, private or public, needing to remove a tree four inches (4") or more in DBH from public land shall first obtain a permit from the Department of Planning Engineering and Permits and the Urban Forester. Such permission may be granted for one tree or for groups of trees. A licensed and insured tree service will be allowed to perform the removal if a permit is granted.

(2) **Replacement of trees removed by permit.** Any person or agency removing trees by permit which are four inches (4") or more in DBH shall provide for the planting of new trees in approximately equal numbers and in appropriate

locations determined by the Urban Forester or City Landscape Architect. Failure to obtain a permit for removal of a tree shall not relieve responsibility for its replacement and shall be subject to a violation of this ordinance.

(d) Protection During Construction

(1) Plans for any construction done within the City, on either public land or utility easement land, shall include a tree management plan, developed by or in cooperation with the City Landscape Architect and Urban Forester, for existing trees on, or adjacent to, the construction site.

(2) The Tree Protection Plan shall identify and provide adequate protection plan including, protection details/specifications for trees whose species, condition and location justify their preservation on the construction site. The Tree Protection Plan shall include, at a minimum, measures to:

- a. provide recent survey or tree inventory showing the location, species and size of all public trees within the right-of-way.
- b. prevent damage to the roots, trunk and branches of trees to be preserved;
- c. prevent construction activities of all types, particularly excavation and the parking of vehicles and equipment, in trees' critical root zone area;
- d. evaluate planned construction (grade cuts and fills; paving; materials storage; traffic and parking; fires; attachment of signs, fences, utility boxes; improper handling and dumping of toxic materials; washing and maintenance of equipment; etc.) in the critical root zone of trees to be saved (clearly defined as tree protection zones (TPZ)), and provide measures to minimize damage to the trees in such areas;
- d. provide landscaping recommendations for interfaces between construction areas and tree protection zones (TPZ);
- e. provide elements of an education program for work crew members and their supervisors.
- f. provide for the replacement of any tree damaged during construction with a tree of similar type and size.

(3) Provide for the removal of trees that cannot or should not be preserved during construction.

- (b) The project manager shall consult the Urban Forester with individual tree problems when necessary.

- (c) Disposal of tree-maintenance remains shall be in accordance with Birmingham Ordinance Title 4, Chapter 3/Ordinance No. 23-52 and Title 6, Chapter 5 of the GCC.

The Urban Forester and City Landscape Architect shall coordinate the planting of trees as needed to replace those removed during construction by any City agency or private developer.

Section 9.

Abatement of Hazards

- (a) When it comes to the attention of any owner of a parcel of land which adjoins any public land or utility easement land that any tree on his property and maintained by him is likely to become, a threat to public safety, it is the duty of said owner to abate said hazard by appropriate action in accordance with the adopted standards.
- (b) When an officer or agent of the City has reasonable cause to believe that any tree maintained on a parcel of property which adjoins any public land is, or is likely to become, a threat to the safety of the public, the appropriate agent of the City, including the Urban Forester, may view and enter private property for the purpose of inspecting conditions thereon. Reasonable cause may be established by, but is not limited to, an evaluation performed pursuant to the Urban Forester's tree hazard evaluation process or by the filing by any person of a complaint with the city concerning a potential nuisance.
- (1)
 - a. Whenever an enforcement officer or agent of the City, in the exercise of his or her reasonable judgment by using the Urban Forester's tree hazard evaluation process, determines that a tree hazard exists on private property that is, or is likely to become, a threat to the safety of the public, the official shall make a preliminary written hazard declaration. This declaration shall include the address of the property on which the hazard exists, describe the particular circumstances of the hazard, the manner in which it should be abated, and state the period in which the person(s) on whose property the hazard exists is ordered to abate that condition.
 - b. The appropriate enforcement official shall give notice of the preliminary hazard determination on private property and order to abate same to the person(s), firm, association, or corporation last assessing that property for state

taxes and all mortgagees of record by U.S. mail, properly addressed and postage prepaid. Such mailing to those addresses shall constitute notice as required herein. Also, notice of this hazard declaration and order to abate (or a copy thereof) shall be posted at or near the tree hazard.

- (2) The notice of the preliminary hazard determination given by the enforcement official shall contain the following information:
 - a. The address of the property on which the tree hazard exists;
 - b. A description of the particular circumstances of the tree hazard;
 - c. The actions required to abate the tree hazard;
 - d. State that the property owner has 5 business days from the date of the mailing to make a plan for remediation and 60 days take the necessary action or actions needed to remedy the hazardous condition;
 - e. State that, if the tree hazard is not abated during the period set by the appropriate enforcement official, the City Council may authorize city representatives to enter the property, abate the hazard and assess the City's remedial cost thereof against the property or institute other actions to collect its expenses;
 - f. State that the person who owns, leases, occupies or controls the property in question or other interested person may object to the preliminary hazard declaration and abatement order by filing a written objection with the city clerk within ten days of the date of service of notice of that declaration, request a hearing before the city council and appear at that hearing to present written or other evidence to contest the enforcement official's declaration.
- (3) If an objection to the preliminary hazard declaration and request for hearing is made, the city council will schedule the requested hearing not more than 14 days after request. The filing of such request for a hearing shall stay any action on the hazard declaration until its consideration by the city council. The city clerk shall give at least seven days' advance notice of the time, date and location of the requested hearing by U.S. mail, properly addressed and postage prepaid, to the person(s), firm, association, or corporation last assessing the property for state taxes and all mortgagees of record to the address on file in the tax collector's or revenue commissioner's office. The mailing of said notice of hearing shall constitute notice as required herein.
- (4) The city council shall take the following actions concerning a preliminary hazard declaration:

a. If a person(s) to whom notice of a hazard declaration is sent fails to abate that condition within the period ordered by the enforcement official and does not request a hearing to contest same, the enforcement official will report that development to the city clerk. Thereafter, the city council shall schedule a public meeting at which council will consider all evidence pertinent to the hazard declaration. The city clerk will provide at least seven days' advance notice of the time, date and location of that public meeting by first class mail, properly addressed and postage prepaid to the person(s), firm, association, or corporation last assessing the property for state taxes, and all mortgagees of record to the address on file in the tax assessor's office. The mailing of this notice of hearing shall constitute notice as required herein.

At the public meeting the city council may request information from the enforcement official or other persons attending same concerning the nature of the tree hazard, the cost of its abatement, any responses received by the enforcement official to the notice, any efforts by interested persons to remedy the condition, and find whether a tree hazard exists by either affirming, modifying or reversing the hazard declaration.

b. If the preliminary hazard declaration and abatement order is affirmed, the city council will pass a resolution that authorizes the enforcement official to enter the subject property, abate the tree hazard using city or contract forces and equipment (or any combination thereof), and remedy the tree hazard as soon as reasonably can be accomplished or by such time ordered by the council.

(5) The city council's findings concerning a tree hazard declaration and abatement order shall be final.

(6) If the city council finds that abatement of a tree hazard should occur and the city thereafter incurs costs to abate same, the enforcement official shall compute and record the expenses thereof (including, without limitation, labor, cost of equipment, materials purchased, and contractor expense). The proceeds of any amount received from the sale of salvaged or other materials generated in the abatement operations shall be applied to the city's account or credited against its abatement expense.

The city's expense for tree hazard abatement on private property shall be reported to the council for consideration at a public meeting of the council not less than twenty-one (21) days after the report of expenses. At that meeting the council will consider whether to adopt a resolution finding that those costs were reasonably incurred and assessing them against the private property(ies) on which those were

incurred. The city clerk shall give at least seven days' advance notice of the time, date and location of such public meeting by U.S. mail, properly addressed and postage prepaid, to the person(s), firm, association, or corporation last assessing the property for state taxes and all mortgagees of record to the address on file in the tax assessor's office. Any person having an interest in the subject property may be heard at the meeting, present evidence and object to the fixing or assessment of those costs.

The city council's findings concerning the fixing or assessment of costs to abate a tree hazard shall be final.

- (7) The fixing of the costs by the city council shall constitute a special assessment against the lot(s) or parcel(s) of land upon which the tree hazard was located and abated and shall constitute a lien on that property for the amount of the assessment, which charge shall be a lien on the lot or parcel of land to be collected as all debts are collected, or liens enforced.. The lien shall continue in force until paid. A certified copy of the resolution shall also be filed in the office of the judge of probate of the county in which the city is situated.
- (8) In the event the tree in question is determined to be an imminent danger of causing public property damage and/or an imminent danger to public safety pursuant to the Urban Forester's tree hazard evaluation process, the enforcement officer or agent of the City may forthwith enter the subject private property and abate the hazardous condition. Notification to the person(s), firm, association, or corporation last assessing that property for state taxes and all mortgagees of record of the imminent danger hazard declaration in writing, by U.S. mail shall be attempted 48 hours in advance, and a notice of the imminent danger hazard declaration and order to abate (or a copy thereof) shall be posted at or near the tree hazard. The declaration shall include the address of the property on which the hazard exists and describe the particular circumstances of the hazard. Abatement costs may be assessed and fixed, and a lien attached to the subject property, as provided herein.
- (9) If the tree in question is deemed to be partially located on private property and partially located on public property, then the cost of abating the hazard shall be borne both by the City and the private property owner. The assessment of costs that shall be attributed to the City and to the property owner shall be assessed and prorated based on the proportion of the stump diameter of the tree located on private and public property.

Hindering City Abatement Operations

Following the city council's passage of a resolution authorizing the abatement of a tree hazard on private property, it shall be a violation of this ordinance for any person to hinder, obstruct, prevent or interfere with operations, actions, or work by the City to abate that nuisance, including access to the property for such work by City employees, contractors or representatives.

Section 10.

Tree Care Standards

1) Trees on private land

(a) Trees located on private land are the property and responsibility of the owner of such land. Still, such trees also have public usefulness and value in energy conservation; in moderating extremes of temperature and humidity; in reducing noise, glare, and air pollution; in reducing soil erosion; and in improving the City's aesthetic character. To encourage conservation of this resource, the Division of Horticulture & Urban Forestry is empowered to take the following measures:

- (1) provide information to landowners, developers, builders, and other interested parties, including persons in private and public agencies, regarding the protection of trees during planting and construction,
- (2) cooperate with interested public and private parties in conservation efforts such as the observance of Arbor Week, plant digs and community tree-planting,
- (3) participate in cooperative community projects as authorized and directed elsewhere in this ordinance.

(b) **Trees on, or affecting, the use of utility easement lands.** Trees on utility easement lands are the property and responsibility of the owner of the land on which the easement lies. The City accepts no responsibility for the management of such trees beyond what is necessary to accomplish its lawful activities on such land, or consequent to such activities within applicable statutes of limitations. All removal or maintenance work involving such trees should be conducted in accordance with the tree care standards adopted herein. City arborists will not be allowed to remove trees within 10' of power lines.

2) Tree Care Standards and best management practices

(a) Tree planting.

(1) **Planting procedures.** The planting specifications approved by the Urban Forester shall be used for all planting projects executed or coordinated by the City. These procedures are to be adapted for individual planting sites by the Urban Forester. The procedures include, but are not limited to, proper planting, providing adequate watering/irrigation, and mulching. ~~staking, and guying.~~ Additional information, including a copy of the planting specifications, shall be available from the Urban Forester upon request.

(2) Minimum size of trees to be planted on City property or as approved by the Urban Forester due to special circumstances:

Mature tree size	Minimum size at planting
Large (mature height 60' and above)	10' Height and 2.5" caliper
Medium (mature height 40' and above)	6' Height and 2.5" caliper
Small (mature height 20' and under)	15-30 Gallon and 6' Height

(3) Planting distance from above ground electrical utility lines, as measured horizontally from a line on the ground directly under the nearest charged distribution conductor, generally, shall be:

Mature tree size	Minimum lateral separation
(A copy of the classification chart is available through the City Forester.)	
Large	20'
Medium	15'
Small	no lateral separation required, if mature height is less than 20 feet
Notwithstanding Section 10-A-3 above, planting distance may be determined by the Urban Forester in coordination with the Utility involved based on the specific site conditions and proposed planting materials.	

(4) Planting of trees on, over, across, or upon underground primary utility distribution facilities is prohibited. Alabama Call-Before-You-Dig (8-1-1), or its successor, shall be the official resource for utility location information.

(5) Parking lot landscaping plantings. All parking lot landscaping shall conform to the Zoning Ordinance of the City of Birmingham, Alabama, as amended or supplemented.

(b) A Right-of-Way Use Agreement may be required to establish maintenance requirements and responsibilities for any replacement tree.

The City wishes to encourage and promote the planting of shade trees along streets within the City; however right-of-way space is limited and not always adequate for large-growing shade trees. Space on private property adjoining the right-of-way is often adequate for the planting of shade trees by the City, and the use of such space would ensure that many streets and neighborhoods that would otherwise be excluded from the City tree planting program would be included. The planting of shade trees by the City on private property adjoining the right-of-way would produce significant public benefits by providing a healthy and attractive tree canopy along City streets, and also serve to encourage property owners to plant suitable shade trees in a similar manner on their property.

For these reasons, the Urban Forester is hereby authorized to contract with property owners within the City using a Permit and/or ROW Use Agreement developed by the City's Law Department.

3) Pruning Standards

(a) The pruning of trees on City property, or pruning conducted by City employees shall be in accordance with:

(1) The International Society of Arboriculture (ISA) and American National Standards Institute (ANSI) Standard A300, latest edition and

(2) The International Society of Arboriculture (ISA) and the American National Standards Institute (ANSI) Standard Z133.1, latest edition.

4) Education of tree care workers

(a) The Urban Forester will acquire or develop training materials oriented toward field tree-service crews and their supervisors, on the following topics and others as needed:

- (1) public policies, ordinances, etc.,
- (2) tree anatomy and growth,
- (3) tree reactions to injury and decay,
- (4) tree maintenance standards (ANSI Standard A-300),
- (5) safety and aerial rescue (ANSI Standard Z- 133), and
- (6) utility pruning techniques and unacceptable pruning techniques, such as topping (provide/require ISA Utility Specialist qualification when hiring new arborists).

(b) The Urban Forester may provide appropriate assistance as time and budgets permit, as requested by City departments, utility companies, commercial tree-service companies, in the training of crews, supervisors, and other personnel. The City of Birmingham may contract with instructors available from outside sources, if needed, with costs shared by the agencies requesting the training.

Section 11.

Required Electric Power Line Clearances

(a) When pruning is required to maintain the necessary clearance between any existing tree and an electric power line, the pruning shall be conducted in accordance with the International Society of Arboriculture (ISA) and ANSI Standard A300 where legal rights allow. Branches or leaders to be cut back shall either be pruned to the next lateral having a diameter at least 1/3 of that being cut, or else be pruned just outside the branch-collar at the base of the branch.

(b) Except as provided in subsection (c) below, the following minimum clearances shall be periodically established between electrical conductors at various voltages and adjoining vegetation:

- (1) Telephone, TV cable, and other insulated communication lines require one (1) to two (2) feet minimum clearance from the line.
- (2) Secondary electric power lines which carry voltage between 21-750 volts, insulated, shall require a minimum clearance of 2' for areas of existing construction, and a minimum clearance of 4' from the line in areas of new construction.

- (3) Distribution and transmission lines which carry voltage between 750-35,000 volts, uninsulated, shall require a minimum clearance of 15' from the line.
- (4) Distribution and transmission lines which carry voltage in excess of 35,000 volts, uninsulated, shall require a minimum clearance of 15' from the line. These distances shall not supersede any federal, governmental or regulatory commission mandate.
- (c) Removal and replacement of street trees near electric power facilities shall be conducted as follows: When a tree whose base is wholly or partly on a street right-of-way cannot be pruned in accordance with the International Society of Arboriculture (ISA) and ANSI Standard A300, as may be amended, so as to provide the required clearance as listed in subsections (a) and (b) above, or when in the judgment of the Horticulture & Urban Forestry Division and the electric utility, a street tree interferes with the safe and reliable operation of the electric power system, Birmingham-area utilities may offer to remove the tree (unless within 10' of Utility lines) and to replace the tree with a species and in a more suitable location mutually acceptable to the City and the electric utility. Alternatively, the electric utility can fund a replacement planting by the City, with a species and in a location mutually acceptable to the City and the electric utility, or pay into the City's Tree Fund. Such trees may be planted on public land or on private property, within the limitations and intent of Section 10.2.
- (d) 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, re-construct, alter, protect or maintain utility poles, towers, lines, conduits, pipes or mains reasonably required in public service or (3) their right to exercise authority conferred by statute, franchise, certificate of convenience and necessity, license or easement. Maintenance, repair and extension of any public utility lines or related infrastructure are expressly allowed. The preceding will apply to work lawfully done by the utility's employees, agents and contractors doing work for the utility.
- (e) **Required Right-of-way Clearances**

The pruning clearances applicable to sidewalks, streets, alleys, or any other rights-of-way, traffic control signals or signs, and all street lighting shall be in accordance with the standards adopted in the City Code of the City of Birmingham, with the following: trees may be planted at least 45' feet from a major intersection, or 25' feet from a neighborhood street or alley intersection.

Trees shall be planted at least 2'-5' feet from the curb and 2'-5' from edge of sidewalks and driveways, depending on the species and with the approval of City Staff. All measurements are from the back of curb (BOC).

Section 12.

Tree Commission

Purposes and objectives

The purpose of the Commission is to preserve, protect and enhance the ecology, economics and aesthetics of the environment of the City of Birmingham. Trees protect soil from erosion; reduce the hazards of flooding; absorb carbon dioxide and supply oxygen; reduce the effects of wind, heat, noise, glare, dust and objectionable activities generated by some land uses; safeguard and enhance property values; buffer and screen adjacent properties; promote the pleasant appearance and character of neighborhoods and cities; and provide shade, which reduces energy consumption, it is further the purpose of this section to improve the appearance, quality and quantity of trees throughout the City of Birmingham and to preserve the natural beauty of the city.

In pursuit of these purposes, the objectives to be met are:

- To conserve and protect, insofar as possible, healthy and existing trees;
- To continually replenish the local stock of trees suitable for growing in the City of Birmingham with the right tree, in the right place;
- To protect and preserve the unique identity of neighborhoods as well as the City of Birmingham at large and to provide an attractive appearance to city streets; and
- To maintain Birmingham's status as a Tree City USA.

Section 13.

Tree Commission Membership

There is hereby established and created a Tree Commission for the City of Birmingham, Alabama which shall consist of eighteen (18) members, including nine (9) persons who are active or experienced in conservation, forestry, ecology or the environment, with a preference for principal place of business or principal residence in the Birmingham city limits, including one representative from each of the following:

Voting members: 11

1. Birmingham Botanical Society/Friends of the Garden
2. Birmingham Planning Commission
3. Alabama Urban Forestry Association (AUFA)
4. Alabama Cooperative Extension Service
5. Overhead line utility company
6. Landscape architecture professional
7. Tree service industry (Arborist)
8. Plant & tree nursery industry (Horticulturalist)
9. Administrator of a Nature-based Non-profit
10. Birmingham Citizen
11. Birmingham Citizen

Non-Voting members: 7

1. Birmingham City Council (ex-officio)
2. City employees serving as Technical Advisory Staff;
Technical Advisory Staff: (City Employees)
 1. Department of Planning, Engineering & Permits – Permits and Administrative duties for the Tree Commission.
 2. Urban Forester - Birmingham Department of Public Works
 3. Keep Birmingham Beautiful Commission
 4. A member of BDOT or the City Engineer's office
 5. A member of the Parks and Recreation Department
 6. The City Engineer, or his or her designee, or member of the ROW Staff, or a member of the Capital Projects Department.

The eleven voting members of the Commission shall be appointed by the City Council from a list of recommended candidates provided by the Birmingham Tree Commission. One member of the Birmingham City Council, appointed by the Council, shall serve as an ex-officio, non-voting member of the Commission. Members who are representatives of City departments will serve in an advisory capacity and will be non-voting members. The Commission shall be advisory in nature and voting members will serve without compensation.

Section 14.**Term of office for Voting Members**

The terms of office of the commission members shall be six (6) years. Initially, the terms of four (4) members shall be for two (2) years; the terms of four (4) members shall be for four (4) years, and the terms of three (3) members shall be for six (6) years. Following the expiration of a member's initial term, each member's appointment thereafter shall be for a

term of six years. Should a vacancy occur prior to expiration of a member's term, a successor shall be appointed by the City Council from a list of interested individuals provided by the Birmingham Tree Commission. Members shall continue to serve until a replacement is appointed.

Section 15.

Officers

The commission shall elect its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the voting members (6) shall constitute a quorum for the transaction of business. The Commission shall meet as often as necessary to fulfill the duties imposed on it by this ordinance but no less than two (2) meetings per year.

Section 16.

Duties and responsibilities

The powers and duties of the Commission shall be as follows:

- (1) Produce and maintain a list of suitable and desirable kinds, species, spacing, and locations of trees for planting,
- (2) Recommend areas, conditions and timetables under which such trees should be planted and promote tree planting projects in City neighborhoods,
- (3) Recommend public tree care policies,
- (4) Make recommendations on the removal of dead, dying, diseased and infected trees,
- (5) Inventory city-owned trees,
- (6) Recommend policies on cutting of trees on public rights-of-way,
- (7) Recommend policies on tree preservation and planting in the development of private property,
- (8) Recommend and/or establish educational and informational programs for the public concerning the benefits of planting trees, tree care, and proper planting and maintenance techniques,
- (9) In conjunction with the Horticulture & Urban Forestry Division, present a Comprehensive Tree Plan to the City Council with updates periodically, but no less than five-year intervals, which upon acceptance and approval by the City Council shall constitute the official Comprehensive Tree Plan for the City of Birmingham, and
- (10) Otherwise provide tree-related information, give advice, and make recommendations to the Mayor and City Council as requested.

Periodically, the Commission shall report its overall activities to the Mayor and City Council.

Section 17.

- (a) There is hereby established a tree fund to be used exclusively to plant trees in green spaces, public spaces, and other areas throughout the city.
- (b) Monies paid as fines, restitution, or in lieu of replacing a removed public tree under this ordinance shall be paid into this fund.
- (c) The director of finance is authorized to deposit such monies in an interest-bearing account.
- (d) The Technical Advisory Staff, as set out in the ordinance, are authorized to develop plans for the use of the fund for the purposes stated herein, with the assistance and approval of the director of finance.

Section 18.

Emergency Powers in Case of Disaster

In the event that any provision hereof should be unnecessary or illegal or constitute an undue burden during or immediately after any emergency or disaster, said provision may be partially or totally waived by the Mayor, provided that the Mayor finds, after consideration of all the circumstances, that the public health, safety or welfare is not substantially damaged.

SECTION 2. Sections 2-5-317 through 2-5-322 and Section 6-5-1 of the General Code of the City of Birmingham are hereby repealed.

SECTION 3. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by declaration of any court of competent jurisdiction, such declaration shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. This ordinance shall be effective immediately and when published according to state law.

