

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: _____

CALENDAR NO. _____

NO. _____ MAYOR COUNCIL SERIES

BY: COUNCILMEMBER _____

AN ORDINANCE to amend and ordain Sections 106-211, 106-230, 106-231, 106-232, 106-233, 106-234, 106-235, 106-236, 106-237, 106-238, 106-239, 106-240, 106-241, 106-242, 106-243, 106-244, 106-245, and 106-246 of the Code of the City of New Orleans to establish procedures, plans, responsibilities, permits, penalties, fines, and remedial action regarding the protection, preservation, and expansion of the New Orleans tree canopy.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS,
That Sections 106-211, 106-230, 106-231, 106-232, 106-233, 106-234, 106-235, 106-236, 106-237, 106-238, 106-239, 106-240, 106-241, 106-242, 106-243, 106-244, 106-245, and 106-246 of the Code of the City of New Orleans be amended and ordained to read as follows:

“Chapter 106 – PARKS AND RECREATION

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ARTICLE IV– PROTECTION OF VEGETATION

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Sec. 106-211. Definitions.

The following 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:

- A. “Applicant” means the owner or agent for the owner, evidenced by written instrument, of the parcel of ground where the trees to be cleared or removed are located.
- B. “City” means the City of New Orleans and its officers, departments, agencies, boards, commissions, and other affiliated entities.
- C. “Critical root zone” means the roots within the dripline of a tree, which is the area within the circumference of a circle drawn equal distance in all directions from the trunk of a tree with a radius equal to the length of the limb, measured to the tips of its branches, extending the greatest distance from the trunk of the tree.
- D. “DBH or Diameter breast height” means the diameter of the trunk of a tree measured at a height of four and one-half feet from the ground.
- E. “Declining tree” means a tree that is nearing the end of its projected life-span or is suffering from damage and is showing demonstrable evidence of decline, such as reduced tree canopy, dead

limbs, split bark, or termite infestation. This designation needs to come from a licensed professional (see below).

- F. “Director” means the Director of Parks and Parkways.
- G. “Heat island” means areas where trees are absent and in need of a tree planting or other strategies for increasing urban tree canopy.
- H. “Landmark tree” means any tree that is determined by the City Council to be of unique and intrinsic value to the general public because of its size, age, historic association, or ecological value.
- I. “Permit” means a written authorization from the City to proceed with activities affecting trees in New Orleans.
- J. “Private heritage tree” means a tree with a DBH of twenty inches or more located on property within the City.
- K. “Private tree” means a tree on private property.
- L. “Professional service provider” means a person who by academic training and professional licensure, is qualified to offer a credible and informed opinion on matters related to preservation, condition, value, suitability, and care for trees on public or private property, such as a landscape architect, arborist, or urban forester.
- M. “Public heritage tree” means a tree located on lands owned by the City or by other governmental subdivisions within the City; or located on any land upon which servitudes are imposed for the benefit of the City or other governmental subdivisions; or located on property upon which other ownership control may be exerted by the City or by other governmental subdivisions, including rights-of-way, parks, public areas and servitudes for drainage, sewer, water, and other public utilities, if the tree has a:
 - (i) DBH of six inches or more when located on property owned by the City or other governmental subdivisions;
 - (ii) DBH of six inches or more when located on any lot within twenty feet of a street right-of-way;
 - (iii) DBH of eight inches or more when located on any lot within ten feet of any other property line; or
 - (iv) DBH of twelve inches or more when located elsewhere on a lot.
- N. “Public tree” means a tree in located on lands owned by the City or by other governmental subdivisions within the City; or located on any land upon which servitudes are imposed for the benefit of the City or other governmental subdivisions; or located on property upon which other ownership control may be exerted by the City or by other governmental subdivisions, including

rights-of-way, parks, public areas and servitudes for drainage, sewer, water, and other public utilities.

- O. “Public utility” means an entity authorized by law or municipal license to deliver regulated services to residents of the City, including but not limited to the Sewage and Water Board of New Orleans, and providers of cable, telephone, electrical, and gas services.
- P. “Replacement tree” means a tree with a minimum of two inches dbh at the time of planting, which is or was required to be planted by the provisions of this chapter, to replace a previously existing tree.
- Q. “Sidewalk” means the area extending from the property line to the gutter curbing.
- R. “Street tree” means a tree located in the public right-of-way of the City on public neutral grounds, parks, open spaces or on rights-of-way between streets and sidewalks.
- S. “Specifically protected trees” means Cypress and Live Oak trees measuring twelve inches DBH or greater, heritage trees, and landmark trees.
- T. “Tree abuse damage” means any action that adversely impacts or impairs the health of a tree located within the City, including removal of limbs, reduction of tree canopy, severing roots, damaging bark, or damage to a tree in any way.

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Sec. 106-230. Municipal Liability.

Nothing in this chapter imposes any liability upon the City, its officers or employees, nor does it relieve the owner of any private property from the duty to keep any tree, shrub, or plant upon any street tree area on the owner’s property or under the owner’s control in proper condition to prevent it from creating either a hazard or an impediment to travel or vision upon any street, park, boulevard, alley, or public place within the City.

Sec. 106-231. Cooperation Among Departments and Contractors.

- A. The Department of Public Works and the Sewerage and Water Board must notify the Director of any application for a new curb, gutter, sidewalk, or driveway installation or other improvement that might cause injury to any street tree, require the removal of a tree, or interfere with the fulfillment of the street tree plan. The City and its agencies, boards, commissions, and departments and their contractors must communicate and cooperate with each other to protect, preserve, and expand the New Orleans tree canopy to the maximum feasible extent and must observe best practices as defined in the most recent publication of the American National Standards Institute (ANSI) A300 Tree Care Standards when performing work that impacts trees.
- B. Any public utility that maintains overhead wires or underground pipes or conduits must obtain permission from the Director before performing any maintenance work on the wires, pipes, or

conduits that could cause injury to street trees. The public utility must not do any work nor prune or injure any street tree without having first obtained approval of their proposed work and procedures by the Director. A public utility must observe best practices as defined in the most recent publication of the American National Standards Institute (ANSI) A300 Tree Care Standards when performing work that impacts trees. If a public utility damages a tree, performs work that does not comply with the terms of its permit, or fails to comply with national best practices as defined in the ANSI A300 Tree Care Standards, the Director may impose fines, order remedial action to be paid for by the utility, or pursue other remedies authorized by law. Fines of up to \$100,000.00 can be assessed depending on severity of the infraction.

Sec. 106-232. Comprehensive Tree Management Plan.

- A. Within three years after the adoption of this Ordinance, the Director will adopt a Comprehensive Tree Management Plan, which must be posted for public access on the Department of Park and Parkways' website. The Director thereafter will use best efforts to assure that activities of the Department of Parks and Parkways are guided by the Plan.
- B. The Comprehensive Tree Management Plan will incorporate the following elements:
 - (i) A clear, concise, and comprehensive Statement of Policies and Objectives for tree management in the City, which will be developed by the Director with public advice and participation derived from at least three public hearings;
 - (ii) A designation of proposed treatments for trees located on major traffic routes and districts within the City consistent with the City's Master Plan, and any existing or future Public Parks and Open Space Master Plan together with a program, schedule, and suggested budget for implementing such treatments;
 - (iii) An inventory of every street tree and any other trees deemed necessary by the Director, including, as appropriate, the species names (common and *scientific*), approximate age, DBH, condition, maintenance records, names of adjacent property owners, record of fees and fines, and any other information necessary or useful in the long-range planning or day-to-day planting and maintenance of the City's urban forest;
 - (iv) A Street-Tree Renewal Plan, based on an evaluation of species characteristics and performance as recorded in the inventory, providing for reforestation of diseased or declining trees, break-up of potentially problematic monocultures, and replacement of trees in response to and consideration of current circumstances;
 - (v) Standards to govern activities of the Department of Parks and Parkways and the public for street-tree installation, landscape-tree installation, pruning and maintenance, acceptable tree species, and any other standards, criteria, or administrative procedures

deemed necessary to carry out the purposes of this Ordinance and the Comprehensive Tree Management Plan; and

- (vi) A process for continually updating and improving the Comprehensive Tree Management Plan elements.

Sec. 106-233. Conflict Between Trees and Structures.

When the roots of a tree planted within the public right-of-way damages city curbs, gutters, sidewalks, or driveway ramps, the City is responsible for implementing appropriate corrective measures that are the least damaging to the tree.

Sec. 106-234. Performance Evaluation.

The Director or a designee must collect and maintain all records and data necessary to evaluate whether progress is being made toward the intent, purpose, and objectives of this chapter. The Director must prepare and submit an annual report as part of the Department of Parks and Parkways's budget request to the City Council, which may take action in accordance with the report's recommendations and take any additional actions necessary to advance the goals and objectives of this chapter. The Department of Parks and Parkways must post such records, data, and reports for public access on its website.

Sec. 106-235. Departmental Authority and Responsibilities.

- A. The Director has authority, by the use of City employees or private contractors, to plant, maintain, and otherwise care for, or if necessary, to remove trees in any public place in the City. The responsibilities of the Director include but are not limited to the following:
 - i. Prepare an annual program for tree planting and tree care in public places of the City;
 - ii. Recommend changes or additions to the Master Street Tree Plan;
 - iii. Develop maintenance standards for street trees in public places;
 - iv. Inspect the planting, maintenance, and removal of all trees in public places;
 - v. Determine what tree removals are necessary in public places;
 - vi. Provide public notice of proposed tree removals by posting on the website, notifying appropriate neighborhood organizations, and notifying near neighbors via posted signage;
 - vii. Review plans as they affect trees in public places;
 - viii. Post public documents on the Department of Parks and Parkways' website and facilitate access to public information to the maximum extent feasible; and
 - ix. Promulgate rules, regulations, policies, and procedures to administer and implement the provisions of this chapter.
- B. The Director has the authority to grant or deny a permit to perform work on trees located within the City. The Director's decision must be based upon reasonable standards, including the following:

- i. The condition of the tree with respect to its general health, damage, status as a public nuisance, danger of falling, proximity to existing or proposed structures, interface with utility services, or status as a host for parasitic plants, pests, or diseases endangering other trees or plants with the threat of infection or infestation;
 - ii. The effect of the requested action on soil retention, water retention, and diversion or increased flow of surface water; and
 - iii. The number, species, size, and location of existing trees in the area and the effect of the requested action on shade areas, air pollution, historic values, scenic beauty, and the general welfare.
- C. The Director has the authority to issue a stop-work order for any tree-pruning or other work performed by a utility if good arboricultural practices are not being followed or if work is performed by personnel lacking the required professional capabilities.
- D. The Director may require the applicant for a tree removal or relocation permit to submit a tree condition report prepared by a qualified tree expert selected and retained by the Director. The applicant must reimburse all costs for preparation of the report.

Sec. 106-236 . Posting of Notice.

The Department of Parks and Parkways must post a sign notifying the public of the date and description of a proposed tree removal. The sign must be posted in a prominent location, visible from a public street, for not less than five business days before a Departmental decision on a tree removal permit, unless an emergency requires sooner action for good cause shown to the Director.

Sec. 106-237. Responsibility of Property Owners.

- A. A property owner must notify the Director when any tree, shrub, or plant in a public street adjacent to the owner's property is injuring or damaging any public sidewalk, curb, gutter, or driveway ramp.
- B. When a property owner takes action that violates municipal tree protection provisions, the Director may order corrective action that will be paid for, in whole or in part, by the property owner.

Sec. 106-238. Permit to Plant Trees in Public Right-of-Way.

- A. No person may plant any street tree in the public right-of-way except according to policies, regulations, and specifications (including tree species) promulgated by the Director under this chapter and only when approved by permit. The Director must post approved permits for public access on the Department of Parks and Parkways' website. Any tree planted in public rights-of-way become the property of the City and can be removed at the City's discretion without compensation to the property owner.

- B. Any tree planted in the public street or sidewalk right-of-way must be located and planted under the supervision of the Director or a designee, who is responsible for supervising the location and planting of such trees. Consideration must be given to the following factors, which are determined to be of primary importance in maintaining the city forest:
- i. A tree that is removed must be replaced by new planting, except when the Director determines that unusual circumstances require otherwise;
 - ii. Where feasible, trees must be planted near old or dying trees in anticipation of their removal as determined by the Department of Parks and Parkways arborist; and
 - iii. Species selected may vary, depending on location, but native species are preferred.

Sec. 106-239. Permit Required for Removal of Heritage Trees.

- A. No person may remove or relocate any tree designated as a Heritage Tree on any public or private property within the City unless a valid permit has been issued by the Director pursuant to the provisions of this chapter.
- B. No person may cause or undertake any activity that anticipates or involves actual or reasonably likely removal, disturbance of root structure, or relocation of any tree that has a DBH greater than or equal to 20 inches without first obtaining a valid tree permit from the Director and without having first displayed a Tree Removal Notice on the lot on which the proposed activity is to take place in such manner as to be clearly and prominently visible from at least one public right-of-way abutting the lot.
- C. When considering an application for removal of any heritage tree, the Director may not act on such an application until after a public hearing is announced, publicized, and held. Notice of the time and place of the hearing must be posted in a conspicuous place on the real property upon which the heritage tree is located, posted on the city's website, and mailed to all owners of real property within a five-hundred-foot radius of the real property upon which the heritage tree is located.

Sec. 106-240. Prohibitions, Permits, and Notices Required for Public Trees.

- A. No person may abuse, destroy, or mutilate any tree in a public right-of-way; attach any rope, wire (other than one used to support a young or broken tree), sign, poster, handbill or other thing to any tree growing in a public right-of-way; cause or permit any wire charged with electricity to be attached to any such tree; or allow any gaseous, liquid, or solid substance that is harmful to such trees to come in contact with their roots, trunks, or leaves.
- B. No person, unless expressly authorized under this chapter, may plant, remove, cut, trim, or prune, any tree, plant, or shrub in a public right-of-way without a permit issued by the Director. A permit application must be made at least two working days before the intended activity and the

application must include an accurate description of work proposed as well as images demonstrating why work is proposed. The applicant may append information from a licensed professional (arborist, urban forester, or landscape architect) describing the work proposed and reasons therefore. The Director may grant the permit or impose conditions on the permit consistent with the provisions of this chapter, the Master Street Tree Plan, or other applicable laws and public policy. No permit is valid for a period greater than 30 days after the date of its issuance.

- C. When performing work on trees in a public right-of-way, a public utility must observe good arboricultural practices as specified by the International Society of Arboriculture and as promulgated in regulations adopted by the Director.
- D. The failure or refusal of any person to comply with a final decision under this chapter or to comply with any provision of this chapter is a misdemeanor punishable by a fine of not more than \$1,000, six months of imprisonment, or both. The failure or refusal of any person to comply with a final decision under this chapter further constitutes a public nuisance that may be abated in accordance with procedures established by law.

Sec. 106-241. Damaged and Replacement Trees.

In addition to any civil or criminal penalties imposed, a person who violates any provision of this chapter may be ordered by the Director to pay for any expenses required to remediate the effects of damage to a tree or to replace a tree that has been removed by or because of the violator's actions. The location, species, and planting specifications must be approved in advance by the Chief Arborist.

Sec. 106-242. Withholding or Revocation of Permits.

Failure of any party to follow procedures required by this chapter constitutes grounds for withholding or revoking site plan approval, a building or occupancy permit, or any other permits or approvals necessary to continue development.

Sec. 106-243. Remedial Actions.

- A. A person who abuses a tree in violation of this section may, in addition to penalties found elsewhere in this chapter, be required to pay for monitoring, pruning, fertilizing, spraying, and other remedial services that the Director determines are reasonably necessary to protect public safety or property and to help the tree survive tree abuse damage.
- B. If a tree is destroyed or is damaged so severely that it must be removed, the violator may be ordered by the Director to pay for a replacement tree to be installed on-site. If the site cannot accommodate a replacement tree, the replacement tree may be installed on public land approved by the City. If no suitable public lands are located, the violator must pay into the reforestation account funds equivalent to the cost of a replacement tree as determined by a schedule for the

current value of replacement trees plus installation and maintenance costs as established by the Director. Remedial action and replacement trees required under this section must be completed within sixty (60) days of notice from the Director that such actions are required, except when a delay is authorized by the Director for good cause shown. The City may require a violator to undertake remedial action immediately if the abused tree is an immediate threat to the public or property.

- C. When a tree is planted in violation of provisions in this chapter, the Director may remove or cause the removal of the tree. The cost of removing the tree may be charged to the person responsible for planting it.
- D. The Director must post for public access on the Department of Parks and Parkways' website all orders of remedial action; all permits approved, denied, withheld, or revoked; all fines imposed; and all other enforcement actions taken by the Department of Parks and Parkways. Information given must include names, addresses, and other relevant information relating to permits/remedial action.

Sec. 106-244. Enforcement Procedures.

- A. The City and the Department of Parks and Parkways may enforce the provisions of this chapter in accordance with Administrative Procedures established in Chapter 6 of the Code of the City of New Orleans.
- B. The remedies in Chapter 6 are nonexclusive. Enforcement remedies may be pursued independently of each other and in addition to other remedies provided by law.

Sec. 106-245. Civil and Criminal Penalties.

- A. Violation of any section of this chapter is a basis for injunctive relief.
- B. Any person, partnership, firm, corporation, or other legal entity that violates any provision of this chapter may be found guilty by a court of competent jurisdiction of a misdemeanor and punished by a fine of not more than one thousand dollars, or by imprisonment for a period not exceeding six months, or by both fine and imprisonment. Violations of a continuing nature constitute a separate offense for each day that the violation continues. Any violation of this chapter also constitutes a public nuisance that may be enjoined or abated as provided by law.

Sec. 106-246. Appeals.

- A. An appeal may be filed in writing with the Director no later than ten days after a decision by the Chief Arborist and must specify the reasons why an appeal is requested. The Director's decision on an appeal must be in writing and must give reasons for the decision based on legally-established criteria and standards. When an appeal is filed, action pursuant to any permit is

suspended pending a final disposition of the matter, unless emergency circumstances require sooner action.

- B. An appeal from a decision by the Director may be filed in writing with the Administrative Adjudication Bureau no later than ten days after the decision and must specify the reasons why an administrative hearing is requested. The appeal will be processed in accordance with the procedures in Chapter 6 of the Code of the City of New Orleans.
- C. Any further appeal after a final decision rendered in the administrative adjudication process must be to Civil District Court for the Parish of Orleans in accordance with Section 6-41 of the Code of the City of New Orleans.
- D. Any final decision that provides for limitations on the property must be recorded so that record notice of the decision is given to prospective purchasers and to successors in interest of the property. The costs of recordation must be reimbursed by the property owner.”