



The State Senate

Senate Research Office

Telephone
404/656-0015

204 Paul D. Coverdell Legislative Office Building
18 Capitol Square
Atlanta, Georgia 30334

Fax
404/657-0929

THE FINAL REPORT OF THE SENATE TREE ORDINANCE STUDY COMMITTEE

COMMITTEE MEMBERS

Senator Chip Pearson, Chairman
District 51st

Senator Joseph Carter
District 13

Senator Nancy Schaefer
District 50

Senator Bill Heath
District 31

Senator Mitch Seabaugh
District 28

Senator Steen Miles
District 43

Senator Jim Whitehead
District 24

Prepared by the Senate Research Office
2005

COMMITTEE FOCUS, CREATION, AND DUTIES

The Senate Tree Ordinance Study Committee was created pursuant to Senate Resolution 458. Since general laws relating to county and municipal regulation of tree harvesting authorize counties and municipalities to enact and enforce tree ordinances, some local ordinances have been used to prohibit homeowners from trimming or cutting trees on their private property. The Study Committee was therefore charged with examining the current practices and enforcement of local tree trimming and cutting ordinances to determine whether additional general law limitations are needed to protect private property rights.

Senate Bill 294 was the impetus for the creation of the Study Committee. This legislation prohibits local governments from enacting tree ordinances that restrict the trimming or cutting of any trees located upon the residential property of a homeowner when such trimming or cutting is done by or at the direction of the homeowner. The legislation is intended to preserve the private property rights of each homeowner.

Senator Chip Pearson of the 51st was appointed as the Committee's Chairman. The other members serving on the Committee were: Senator Joseph Carter of the 13th, Senator Bill Heath of the 31st, Senator Steen Miles of the 43rd, Senator Nancy Schaefer of the 50th, Senator Mitch Seabaugh of the 28th, and Senator Jim Whitehead of the 24th. The Committee held one meeting and met on October 5, 2005 in Atlanta.

The Committee heard testimony from the following citizens, organizations, and local governments: Atlanta Councilmember Mary Norwood; Mr. Robert Ashe representing the City of Atlanta; Ms. Shannon L. Goessling of the Southeastern Legal Foundation; Mr. Tom Gehl of the Georgia Municipal Association; Mr. Todd Edwards of the Association County Commissioners of Georgia; Mr. Dan Reuter of the Georgia Planning Association; The Gwinnett County Government; Trees Atlanta; Ms. Susan Loftis, Landscape Architect and member of the City of Atlanta's Tree Ordinance Task Force; Mr. Sheldon Schlegman, Architect and member of the City of Atlanta's Tree Ordinance Task Force; Mr. Robert Krieger, homeowner; and Mr. Bill Dick, homeowner. Additionally, the Study Committee is grateful to Ms. Connie Head, Technical Forestry Services of the Georgia Urban Forest Council for providing a survey of local tree ordinances to the Study Committee.

COMMITTEE FINDINGS

Background

Under Code Section 12-6-24 of the Official Code of Georgia Annotated, Georgia law authorizes county and municipal governments to enact and enforce tree ordinances. However, as the Study Committee discovered, some local governments have enacted strict tree ordinances that infringe on private property rights and prohibit homeowners from cutting trees on their private property. The Study Committee recognizes that the vast majority of tree ordinances enacted by local governments throughout Georgia allow homeowners to freely remove trees on their property. The Study Committee, however, was concerned that the restrictive ordinances that do currently exist, may serve as a blueprint for other local governments who may choose to enact their own such restrictive ordinances.

Survey of Tree Ordinances in Georgia

The Georgia Urban Forest Council (GUFC) provided the Study Committee with a preliminary survey of tree ordinances enacted throughout the state.¹ The information is based on a sample review of the tree ordinances of 180 communities throughout Georgia – 144 municipalities and 36 counties.

The GUFC discovered that although many tree ordinances include an exemption for homeowners, 19 (14 municipalities and 5 counties) of the 180 ordinances reviewed do not completely exempt homeowners from tree removal permit requirements. While not always called a “tree removal permit,” approval is required for the removal of specific categories of trees. The following table lists the communities requiring permits along with the criteria for defining the applicable category of trees.

Communities with Tree Removal Permit Requirements for Individual Single-Family and Two-Family Residential Properties

COMMUNITY NAME	SPECIFIC TREE CRITERIA FOR TREE REMOVAL PERMIT REQUIREMENTS
Counties	
Augusta-Richmond	Owner-nominated Landmark Trees only
DeKalb County	More than 5 trees/calendar year
Fulton County	Specimen/Heritage Trees only
Henry County	Parcels greater than 10 acres only
Cities and Towns	
Alpharetta	Specimen Trees only
Atlanta	Trees 6” DBH and larger ²
Canton	No permit required; except for trees greater than 5” DBH w/building permit
Clarkston	No permit required; except for permitted construction
College Park	No permit required; unless 50,000 square feet or more is being developed
East Point	Specimen Trees only
Fitzgerald	Trees 4” DBH and larger – No Fee
Forest Park	Annual permit for tree removal contractors
Morrow	All trees – No Fee
Mountain Park	Specimen Trees only
Newnan	More than 5 trees/calendar year; only trees greater than 8” DBH
Oxford	Historic Trees only
Pembroke	Grand Trees only
Savannah	Trees greater than 30” DBH
Tyrone	More than 5 trees/acre 24” DBH or greater in a single calendar year

Source: Ms. Connie Head, Technical Forestry Services, Georgia Urban Forest Council.

Atlanta’s Tree Ordinance

The City of Atlanta currently possesses the strictest, most confusing, and most arbitrary tree ordinance in the state. Section 158-28 of the City’s tree ordinance clearly states that “[i]t is the policy of the city that there shall be no net loss of trees within the boundaries of the city.” This noble endeavor, however, comes with the sacrifice of the basic private property rights of each homeowner. In order for a homeowner to have a tree removed that is six inches or greater in diameter, the homeowner must first obtain a permit from the City. However, the entire process is not as straightforward or as fair to the homeowner as it should. The City will not issue a

¹ Preliminary Information on Number of Georgia Communities with Tree Ordinances and Tree Related Regulations; Prepared by Ms. Connie Head, Technical Forestry Services, Georgia Urban Forest Council, October 19, 2005.

² DBH: Diameter at Breast Height.

permit for the removal of any living and non-hazardous tree unless a tree replacement plan has been approved and one of the following conditions exists:

- The tree is located within the buildable area of the lot and the applicant has been granted a building, landscaping, or other permit to make improvements;
- The tree is located in an area of the lot that must be used for vehicular ingress and egress or for the installation of utilities;
- The tree is diseased or injured to the extent that death is imminent within two years; is in imminent danger of falling; is so close to existing or proposed buildings so as to endanger them; physically interferes with utility services in a manner that cannot be corrected by anything less than destruction or removal of the tree; creates unsafe vehicular visual clearance; or is otherwise deemed a hazard by the City arborist.³

The next step for the homeowner involves filing an application with the City arborist to remove the tree. The arborist may approve, deny, or approve but amend the application. If denied, the homeowner may submit a new application or appeal to the City's Tree Conservation Commission, which requires a \$75.00 fee. If the application is approved, the notice of preliminary approval must be posted in a prominent manner upon the homeowner's property so that it may be seen and read by passers-by and must remain posted for 15 consecutive days. The notice must inform readers that an appeal may be filed with the Tree Conservation Commission clerk within 15 days of the date of posting. If no appeal is filed, then the permit will be issued. In the event that an appeal is filed, no permit will be issued until the sixth business day after the date of the Commission's written decision on the appeal.⁴

The City also requires each applicant to minimize the impact on the trees on the site and plant replacement trees on-site that equals the total number of trees being removed. Where construction of improvements or existing dense tree cover precludes planting of some or all of the trees, the remainder of the total number of trees may be planted in a local park, on public lands, or along rights-of-way, subject to approval of the City of Atlanta Parks Department. Where appropriate site conditions do exist, replacement trees must be overstory or mid-canopy species. Homeowners who are unable to replace all of the removed trees must pay cash recompense to the City.⁵ Recompense fees start at \$100.00 per tree plus \$30.00 per diameter inch.⁶ Therefore, removing a tree 24 inches in diameter costs a homeowner \$820.00. Each homeowner is expected to follow these steps just for the simple right to remove a tree from their private property.

Video Presentation and Homeowner Testimony

The Study Committee viewed an investigative report produced by Atlanta's FOX affiliate, WAGA-TV, and reported by Mr. Dale Russell, which examined Atlanta's tree ordinance. The investigative report examined the difficult process a homeowner faces when trying to receive the City's permission to remove a tree. In addition, the report revealed that the City has not adequately informed its residents of the tree ordinance's strict provisions. Consequently, numerous residents were fined thousands of dollars for unwittingly violating the ordinance. The Atlanta tree ordinance provides for a minimum \$500.00 fine for a first offense and a minimum \$1000.00 fine for each subsequent offense.⁷ Each removed tree is considered a separate offense.

³ Sec. 158-102

⁴ Sec. 158-101

⁵ Sec. 158-103(b)

⁶ Sec. 158-26

⁷ Sec. 158-34(a)

The Study Committee also heard testimony from individual homeowners negatively affected by Atlanta's tree ordinance. Mr. Bill Dick testified that he currently owns 2¼ acres of heavily-wooded land in Atlanta on which he would like to build a house. He simply wants to clear enough trees to make space for the house and a driveway. The City first requires Mr. Dick to provide a tree map at a cost of \$6,000. Once the map is complete, and a contractor has been hired to clear the land, he estimates that he will be required to pay an additional recompense of \$20,000 for the right to clear the trees from his private property. Mr. Dick implored the Study Committee to correct an ordinance that subjects individual homeowners to the same regulations as developers.

Mr. Robert Krieger testified how time-consuming and unresponsive the City of Atlanta was to his request for a permit to remove a single tree from his property. Mr. Krieger explained how he grew increasingly frustrated with the City after waiting over three months and never receiving a response to his permit request. On his own volition and without a permit, he decided to remove the tree himself. Just a few weeks later, the City arborist finally appeared unannounced, discovered the cut tree, and fined Mr. Krieger \$1,300 for violating the tree ordinance. Appearing before the Tree Conservation Commission to appeal the fine, Mr. Krieger testified to the Study Committee that he felt that he was treated like a convicted felon and believed that the Tree Conservation Commission's decision to reject his appeal was predetermined.

COMMITTEE RECOMMENDATION

The Study Committee recognizes that the Georgia Constitution and the Municipal Home Rule Act authorizes counties and municipalities to adopt clearly reasonable ordinances. However, the Study Committee finds that a strict tree ordinance that prohibits a homeowner from removing a tree on his or her private property is not a reasonable ordinance. The same laws that provide for county and municipal autonomy in adopting reasonable ordinances also empower the General Assembly to regulate or limit a local government's authority. Therefore, in an effort to protect the private property rights of individual homeowners and to prevent the further spread of restrictive tree ordinances throughout the state, the Senate Tree Ordinance Study Committee recommends that the General Assembly adopt and enact Senate Bill 294, which prohibits local governments from adopting tree ordinances that imperil a homeowner's private property rights.

Respectfully Submitted,

THE SENATE TREE ORDINANCE STUDY COMMITTEE

Senator Chip Pearson of the 51st, Chairman

Senator Joseph Carter of the 13th

Senator Bill Heath of the 31st

Senator Steen Miles of the 43rd

Senator Nancy Schaefer of the 50th

Senator Mitch Seabaugh of the 28th

Senator Jim Whitehead of the 24th