

Tree Ordinance Evolution

Draft 8.17.13

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*“The Commission shall take active steps to...promote the planting,
health, and growth of trees in the City of Mobile.”
Mobile Tree Commission Art. 1961*

A Long History

Written law can first be cited as the *Hammurabi Code* or the laws of the King of Babylon. This system of 282 law goes back some 3785 years. This set of laws related to social, commercial and agricultural activities was written in chiseled cunieforn text on a great column outside of the King’s palace. The phrase ‘etched in stone’ is said to come from this period. The code does not cite garden trees in particular but does mention rules related to garden plants, construction and building.

Public policy toward trees may have a longer history than present scholars understand. Since people have lived with trees for a very long time, in fact some say descended from the trees, to live upon the ground, it makes sense to think that written policy goes back some unknown distance in human history.

At this point in time we can easily trace the history of tree ordinances back to King John, the **great grandson of William I The Conqueror**, son of Eleanor of **Aquitaine**, Queen of England and heir to the throne through bother Richard I Cour de Lion. King John, a French speaking Norman King of England created the *Charter of the Forest, 1217* that is suspected of being the predecessor of our modern tree laws.

The Charter of the Forest was related to the more famous *Magna Carta* 1215 that reduced the power of Kings, brought them under the rule of law, provided more liberty to the people and eventually became the leading lamp of democracy in the West.

In many ways the Charter of the Forest can also be seen is one of the first land use ordinances as well. Much of the text of the law, actually published after King John died late in 1216 was aimed at the use of the land and under what conditions that land may be used. The Charter liberalized to some extent whom may use the land and its resources of “vert and venison.”

The term forest as used in 1217 had different meanings based upon common usage, legal definition and variation in French or Latin language. It is commonly accepted to be where trees

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were growing and where the “chase” of animals is conducted by the King or his assigns, generally his ax men or foresters.

So it is reasonable to say, all modern tree ordinances date back to the French and Latin speaking Kings of England.

Recent Historical Points

The history of tree ordinances can be traced back to 1217. Along the way we find some pretty important events, significant leaders, specific ordinances or seminal tree laws that lead us back that far in our search for the roots of modern tree ordinances.

The Georgia Forestry Commission Tree Ordinance Development Guidebook 2004 has had tremendous impact in the State of Georgia and the entire Southeast. This work, principally in their suggested ordinance structure is the first to recognize the fact that tree regulations for both public land and private land must be harmonized in the same community ordinance to prevent the bothersome “tree regulation overlap syndrome” found in communities that have both tree ordinances and landscape codes. Their recommendation for landscape buffers opens the door to cross pollination of these two sources of urban tree regulation.

This document and a recent study for the Georgia Urban Forestry Council of Georgia Tree Ordinances by consultant Connie Head, are both trend setters for urban forestry and a research source for code writers, policy makers and vagabond professors who study such community laws.

Other influences in recent years include other model ordinances. They include the Guidelines for Developing and Evaluating Tree Ordinances 1991, amended 2001, created from a study of California ordinances by E. A. Bernhardt and T. J. Swiecki. This is highly recommended by the ISA.

The earliest modern model ordinance is the *Municipal Tree Manual-Standard Municipal Ordinance* dating to the 1970’s. This model clearly shows that the first ordinances were written to support the development of the arborist industry, perhaps as a response the decline of Elm trees across the East and mid-west in the 1950-1960. This MTM ordinance, as it is called, and those that followed in the 80’s and 90’s used this establishing municipal forestry programs though the hiring of municipal arborist. This was the first to model to suggest the use of a tree board.

It should be noted that one of the authors, James Fazio of this document was also editor of the document Bulletin #9, How to Write a Municipal Tree Ordinance, January 1990, published by

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the wonderful Arbor Day Foundation. This basic tree ordinance guide has been used by many communities to get a minimal understanding of the basic requirements to tree ordinances to gain Tree City USA recognition.

Going back to the 1960s in the history of tree ordinances we find the development of the first modern landscape code based upon landscape covenants for the preservation of trees within developments. These private land development regulations were created Charles Fraser for Sea Pines Plantation on Hilton Head Island, South Carolina. Landscape architects Hideo Sasaki and Stewart Dawson.

Two significant but often overlooked tree laws in the South have influenced urban forestry in the period 1950-1961. T

The most recent which was a state statute enacted by the *State of Alabama Act 926, H. 1961 Regular Session, amended 1981*, related to the creation of the Mobile, Alabama Shade Tree Commission. The citizens of Mobile have been protecting their coastal live oak street trees for many decades and consider this state law one of the oldest in the nation to protect trees. The Urban Forestry Section of City of Mobile Urban Development Department presently staff the Tree Commission that is made up of eight citizens (sic, 5 people) that regulate the removal and planting of trees on public land.

An older ordinance was created as the *City of New Orleans, ordinance No. 17703, Commission Council Series, November 4, 1949*. This ordinance created the Parkway and Park Commission that was given authority to plant, maintain and care for trees, shrubs and other plants on all public highways, squares and other public places of the city. This law actually replaced a early 20th century shade tree commission ordinances adopted in and 1909, 1914 (ord. no.1945 SS) and 1934 (ord. no. 14098 CCS), The primary duty of this commission was to plant and protect the lovely live oaks, crape myrtles, golden rain trees, camphor trees, mimosas, azaleas, roses, hydrangeas, daylilies begonias, (Park and Parkways record mentions)

The Park and Parkways Commission was incorporated into the City of New Orleans government as the Department of Parks and Parkways on July 9, 1996 as a result of the new *City Charter 1996*. The Mayor of New Orleans and the CAO now control the appointments to the Commission and accept responsibility for trees on public land.

Contemporary Tree Ordinances

There has been much interest in recent years concerning the development of tree ordinances as public policy in cities and towns across the country. To some extent this has been influenced by *Sec. 9. (16 United States Code (U.S.C.)) 2105, Urban and Community Forestry Assistance Act (1978 CFA Act)* a section of the *Cooperative Forestry Assistance Act of 1978* (Public Law 95-

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313; Adopted July 1, 1978 as amended through P.L. 110-246, Effective May 22, 2008. This act is a direct descendant of perhaps the most important forestry law enacted in the United States. The prime Federal Statute setting forth the purpose of forestry is the 1876 Act that created the U.S. Department of Agriculture, which brought about the creation of the Division of Forestry in 1898 and eventually the U.S. Forest Services who have a secondary interest in municipal tree laws as a tool that can assist in the development of urban and community forestry.

Perhaps of all of the State and local laws that have been passed in regard to urban trees and tree ordinances none have had the impact of the Urban and Community Forestry Assistance Act on the lives of American citizens. (Principal Laws Relating to USDA Forest Service State and Private Forestry, FS 758, Rev. May 2011)

Late Nineteenth Century

In the South perhaps the oldest tree law of record stems from the layout and design of the City of Savannah, Georgia in 1733 by Gen. James Oglethorpe. Oglethorpe's plan has created one of the most livable cities in the country with neighborhoods dominated by shade trees, fountains, sculpture and places for people to sit, stroll, play and interact with neighbors and friends. Trees were being planted in the squares, on boulevards and along streets as early as 1891. This organized tree planting is certainly the ancestor of urban forestry in the south.

An ordinance creating the Park and Tree Commission was adopted in late 1895 making it one of the oldest modern tree ordinances. Today, the Urban Forestry Program of the City of Savannah is a direct descendant of this early ordinance and to this day maintain hundreds of trees on the city squares and streets.

The *City Beautiful Movement* was a direct result of World's Columbian Exposition, the Chicago World's Fair of 1893. This event that created the design of the great White City dominated by neoclassical buildings, planted open spaces and parks was planned in the early 1890's. This fair placed a period behind the Victorian Era and ushered in the modern era of civic design sensibility based upon the *beaux arts* (the beautiful arts) movement.

Architecture, the arts, city planning, sanitation, city image and urban industrial productivity took on new meaning for cities across the county. Largely due to the work of landscape architect Fredrick Law Olmsted, a member of the design team assembled to design the exposition in what is now Jackson Park in Chicago, parks, trees and street trees in particular were looked at very differently. They became an important element of the design of cities. This lead directly to the first wide reaching major urban tree planting program in the United States.

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Modern tree ordinances came out of this movement and were conceived at this time to create city Shade Tree Commissions.

Modern tree ordinances were first drafted in Massachusetts (*Tree Warden Act revised 1899*). Other states soon followed *Laws of New Jersey, General Public Laws: Session 1893, Chapter CCLXXXV, March 28, 1893*, and *General Laws of Massachusetts, Preservation of Trees, Acts of 1899, May 4, 1899*. And *Chapter 330, and Laws of Pennsylvania, Session 1907, May 31, 1907* in the first decade of the 19th century to provide shade and beauty along public roads. (Solotaroff 1912).

Eighteenth Century

Perhaps the earliest American Tree Ordinance in the nation is the *Pennsylvania Shade Tree Law of 1700*. This law was created by the Penn family to set forth some basic regulation about the use of trees with the community they were building on a land grant provided to the family by the King of England. It was not a sophisticated law but its purpose was to reforest the settlement since in the early days of the colony most of the trees were removed for firewood or building products. The term shade tree law was coined since the primary purpose was to provide ‘shade from the violent sun.’

In some ways this law reads like a modern landscape code so there is a connection to landscape regulations as well. The law cited in the book U.S. Landscape Ordinances set forth what to plant, where to plant, and why to plant.

The law stated..... ”every owner or inhabitant of any and every house in Philadelphia, Newcastle and Chester

(what to plant) shall plant **one or more trees**, viz. pines, un-bearing mulberries, water poplars, lime

(where to plant) other shade tree **before the door** of his, or her or their house and houses, not exceeding eight (8) feet from the front of the house, and preserve the same to the end that

(why to plant) the said town may be well **shaded from the violence of the sun** in the heat of the summer and there by be **rendered more healthy**.

Seventeenth Century

Many people do not think of the United States as a Spanish Colony. Yet Spain had a foothold in this county long before the arrival of French and English law. The English and French and to some extent the Dutch came later. and The English came to to settle the country and make a

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New England. The Spanish came to collect resources and Christianize the savages. They really did not come to settle, they were pleased with their hold of the Caribbean where they could transport gold, silver and other precious materials back to Spain. Yet when they came, they brought a system of laws that allowed them to build settlements according to a plan.

Zoning and city building in the western world can be dated to *Laws of the Indies* written on behalf of King Philip II of Spain. Ordinances written before 1573 lead to the development of towns and public landscapes wherever the Spanish took root in the New World. You can see this pattern of development in St. Augustine, Pensacola, New Orleans, Havana, the sugar islands of the Spanish Caribbean in Mexico and South America. They left their mark on the landscape in the way they built cities. The Laws of the Indies were much like our present zoning ordinances and created a uniform pattern of buildings and open space.

Philip II's laws did not mention trees in particular but. The Laws of the Indies formed important landscape spaces within city fortresses such as plazas, courtyards, water fronts and streets. The proper planting of them is not specifically mentioned in the code. This was left up to the builders. The order brought to the landscape as a result of the Laws of the Indies beckons landscape codes of the 20th century and formality rather than irregular tree plantings.

Trees that were planted in public and private open spaces most likely were crop producing trees such as citrus and palms and other edible plants.

Interestingly enough, the ordinances scribed by the Spaniards were 'form based codes' much like modern landscape codes are written. Form based codes are written to create a specific design form that can be used to solve a particular architecture problem or need. Form based codes such as the *SmartCode* are used today to design traditional neighborhood developments and urban design within built out cities.

So the meticulous record keeping Spaniards developed consistency within the design of cities, much like landscape codes do in the 21st century.

Next Tree Ordinances

Urban Forestry Ordinances are the emerging trend in tree regulations. The terms tree ordinance will pass out of use in the future when ordinances move away from the individual tree and start to address the forest of the city.

Urban Forest Ordinances are beginning to be found scattered across the country that mark a new direction in tree ordinances. These ordinances are more about the urban forest and other natural resources in the city than they are about individual trees, their planting, care and maintenance. A full definition is yet to be defined but it seems that urban forestry ordinances may encompass the

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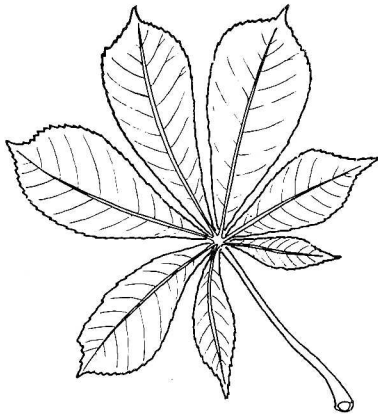


Figure 1.0 *Aesculus pavia*

following *7 Principles of Sustainable Urban Forestry*.

1..Establish, staff, equip and fully fund a municipal forestry program dedicated to city sustainability.

2.. Inventory, analyze and oversee trees on both public and private property with a professional program staffed with trained and qualified people.

3.. Prepare Urban Forestry Management Plans and collect useful data on trees and other resources of the the urban forest to develop a science and climate based program.

4.. Protect the urban forest resource as an essential element of ‘urban sustainability’ with emphasis on maintaining habitat to filter and purify the air, enriching the soil, recycle the energy of nature, collecting rainfall and cleaning storm water, purifying ground water, protect wildlife, modulating climate and providing for human health and wellbeing through recreation.

5.. Establish and maintain a minimum canopy cover in built over areas to shade the community.

6.. Assist the public in planting trees for the future. The “Their Fair Share Program.”

7.. Harmonized green laws where all tree regulations, tree ordinances, landscape codes and land development regulations are organized in one body of law, preferably the zoning law.

The program needs to raise dedicated money and accept gifts to establish town forests or conservation areas and provide more recreational access to natural areas in the city that are doing environmental work.

Today we see the roots of this new brand of ordinance scattered across the nation but more common in the Pacific Northwest. Here ordinances related to trees are focused on the forest and not the individual tree as seen in most tree ordinances from the 1970-2010 period of tree ordinance history. These ordinances which can be tied to zoning deal more with setting up municipal forestry programs and setting canopy standards within zoning districts, on individual lots and in some cases controlling industrial forestry within cities.

This type of ordinance will “harmonize” existing tree regulations with landscape regulations so we will no longer have two laws related to trees in most municipal codes. This will solve the problem previously mentioned as the “tree regulation overlap syndrome” that places tree

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regulations into ordinances that are aimed at arborists and foresters on one hand, and landscape architects and planners on the other.

The urban forestry ordinance from Fort Worth, Texas is a good example of the nature of this emerging brand of tree regulations. (*Fort Worth Code of Ordinances, Part II Code, Appendix A, Chapter –Development Standards, Art 3- Landscaping, Buffers and Urban Forestry, Sec. 6.302-Urban Forestry, Ord. No. 18615-052009, May 19, 2009, (American Legal)*). The purpose of this ordinance is to limit the removal of tree canopy, set specific canopy standards per zoning district or lot use and to develop a multi-aged urban forest to provide for “more orderly development of the city.” This ordinance takes aim at the entire forest of the city and the police power of zoning is the mechanism to make that possible. This ordinance addresses urban forestry and not just trees and solves the tree “regulation overlap syndrome” while “harmonizing” the landscape requirements with the landscape regulations.

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Visit the The Green Laws Organization Web Site at www.the_green_laws.org to find the final copy of this paper and other papers related to trees ordinances, landscape codes and land development regulations.

Word Count 2625

Tree Ordinance Evolution, Athens Conf. v.2



Photographs below

Fig. 1.0

Fig. 2.0

Fig. 3.0

Landscape Codes
